

1 Wednesday, 4 March 2026

2 [Open session]

3 [The accused entered the courtroom]

4 --- Upon commencing at 9.30 a.m.

5 JUDGE GOSNELL: Good morning to everyone in and around the  
6 courtroom.

7 Madam Court Officer, would you call the case please.

8 THE COURT OFFICER: Good morning, Your Honour. This is file  
9 KSC-BC-2023-12, The Specialist Prosecutor versus Hashim Thaci,  
10 Bashkim Smakaj, Isni Kilaj, Fadil Fazliu and Hajredin Kuci.

11 JUDGE GOSNELL: And good morning to all the accused whom I note  
12 are all present in court this morning.

13 Are the appearances the same as yesterday?

14 Mr. Hafetz?

15 MR. HAFETZ: Good morning, Your Honour. They are with one  
16 addition. Claire O'Connell is joining the SPO today.

17 JUDGE GOSNELL: Thank you.

18 Defence, any changes?

19 MS. MENEGON: Good morning, Your Honour. The Thaci team is  
20 joined today by our co-counsel Mr. Luka Misetic. Thank you.

21 JUDGE GOSNELL: Thank you very much.

22 Could the witness be brought in, please.

23 And while that's happening, Mr. Holmes, I understand you have a  
24 revised estimate for cross-examination?

25 MR. HOLMES: Yes, thank you, Your Honour. I think we can be

1 done in 45 minutes.

2 JUDGE GOSNELL: So if I could ask that Witness 9 be available at  
3 the start of the second session, I'd be grateful.

4 MR. HAFETZ: Certainly, Your Honour.

5 [The witness takes the stand]

6 JUDGE GOSNELL: Good morning, Mr. Herlaar. Welcome back. Can  
7 you hear me?

8 THE WITNESS: Yes, I can hear you.

9 JUDGE GOSNELL: I remind you that you're still under oath, and  
10 we hope to be able to finish your testimony this morning.

11 Before you start, can I just ask, do you have your report in  
12 front of you as you sit there now?

13 THE WITNESS: [Interpretation] Yes, I do.

14 JUDGE GOSNELL: Is that all right with you, Mr. Rees?

15 MR. REES: [Microphone not activated]. Absolutely fine,  
16 Your Honour. I think it's very helpful. Like Mr. Herlaar, I prefer  
17 to use paper as well. It's more friendly for the environment.

18 JUDGE GOSNELL: All right. Please proceed, Mr. Rees. Thank  
19 you.

20 WITNESS: KOEN HERLAAR [Resumed]

21 [The witness answered through interpreter]

22 Cross-examination by Mr. Rees: [Continued]

23 Q. Mr. Herlaar, we were at the point of discussion of potential  
24 defects, or otherwise, in the image quality that you received.  
25 Before we continue with that, can you just clarify the following

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Cross-examination by Mr. Rees (Continued)

1 principles, as it were: that if a document containing microdots is  
2 colour copied by a second machine, that can produce overlapping or  
3 mixed patterns?

4 MR. HAFETZ: Your Honour, before the witness answers, I would  
5 just ask to return to private session, which is where we left off on  
6 this line yesterday.

7 JUDGE GOSNELL: Yes, private session, please.

8 MR. REES:

9 Q. Mr. Herlaar.

10 JUDGE GOSNELL: We're not in private session yet.

11 MR. REES: We're not in private session.

12 [Private session]

13 [Private session text removed]

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6 [Open session]

7 THE COURT OFFICER: Your Honour, we are now in public session.

8 Cross-examination by Mr. Holmes:

9 Q. Mr. Herlaar, good morning. I ask questions on behalf of  
10 Mr. Kilaj.

11 This is a very niche area of expertise, isn't it?

12 A. Yes, it is indeed.

13 Q. There's not a great deal that's publicly known about this.

14 Indeed, researching this as a topic for cross-examination, it's quite  
15 difficult to find much written at all about these tiny little dots  
16 that appear on nearly every piece of printed paper.

17 A. I have to -- understood the question.

18 Q. Well, do you agree? Do you agree that it's niche?

19 JUDGE GOSNELL: Mr. Holmes, he already --

20 THE WITNESS: [Interpretation] Yes, indeed.

21 JUDGE GOSNELL: -- answered that. Perhaps you want him to agree  
22 with the proposition in your second question?

23 MR. HOLMES: I mean, I think he's answered the question,  
24 Your Honour. I can move on.

25 Q. Not only is it unusual, but there's a great deal that's withheld

1 from the public by virtue of international agreements; is that right?

2 A. Yes, that's right.

3 Q. I just want to get a sense, please, of just how niche this topic  
4 is.

5 MR. HOLMES: Could I ask, please, that Mr. Herlaar's CV be put  
6 on the screen. This is not to be broadcast to the public. The ERN  
7 reference is 127822 to 127830 RED. And, please, if I could have the  
8 final page.

9 Q. And I can just explain to you, Mr. Herlaar, whilst that comes  
10 up, this is the appendix that you've helpfully prepared to your CV.  
11 It references -- well, you can tell us if I'm wrong, but I think what  
12 you purport to do here is to reference those parts of your profile,  
13 your background which are particularly relevant to this case.

14 A. Yes, that's correct.

15 Q. [Microphone not activated].

16 We can see halfway down the page, "Examinations in casework,"  
17 collectively 24 cases that you've listed there under "Relevant work  
18 experience related to 'yellow dots'." Yes?

19 A. Yes, that's right.

20 Q. And that's in -- that's throughout your, what, 16 years with the  
21 NFI?

22 A. Yes, that's correct.

23 Q. And you've told the Prosecutors -- we've covered this already,  
24 but the department that you were previously a member of, questioned  
25 documents and printers, was subsumed and replaced by SISA - is that

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1 fair? - in 2018?

2 A. It was translated by the interpreters that the department was  
3 replaced. That's not correct. The questioned documents and printers  
4 department or field of work was discontinued by the NFI and was  
5 entrusted with other agencies in the Netherlands. However, some  
6 activities of that examination, the field, were placed within the  
7 SISA area. SISA already existed. There are two subsections of the  
8 field of work. Questioned documents and printers were moved to SISA,  
9 and I also moved to SISA.

10 Q. And that included expertise in microdot analysis that moved to  
11 SISA in 2018?

12 A. Yes, that's right.

13 Q. Does that reflect the relatively niche area of practice that  
14 microdot analysis represents?

15 A. Not in its totality. The NFI is not the only laboratory in the  
16 Netherlands that carries out analysis, microdot analysis. There are  
17 other experts working in the field outside of NFI, and every European  
18 country also has a number of microdot experts. And worldwide, in  
19 many, many countries, there are a number of microdot experts to be  
20 found. But in each country, it is a niche field.

21 Q. Yeah, Mr. Herlaar, you can safely assume that my questions  
22 relate to your expertise here in the Netherlands, not to proceedings  
23 worldwide, okay? So what I'm asking really is whether the expertise  
24 within -- in microdot analysis is -- well, I can ask it this way:  
25 You've stated that you're currently one of three people at the NFI

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1 with credentials as an expert in the field of microdots; is that  
2 right?

3 A. Yes, that is correct. That is the case inside the NFI.

4 Q. And you have 16 years with the NFI. Where do you rank in terms  
5 of experience in those three? Are you the most experienced, the  
6 least experienced?

7 A. Of these three people, I am the person with the most experience.

8 Q. You've talked about outside agencies just now, other agencies  
9 that can provide forensic expertise within the Netherlands, but it's  
10 right, isn't it, that something as niche as microdot analysis, that  
11 expertise, for a prosecution case, could only come from the NFI?

12 A. That's correct.

13 Q. You told the SPO -- well, I'm just going to read a portion of  
14 the -- or I'm going to summarise a portion of a note of a meeting  
15 which the SPO held with you. And it says that the majority of your  
16 examinations to date have arisen from requests for expert analysis  
17 made to the NFI from Dutch investigating judges in criminal cases.

18 MR. HOLMES: Actually, I wonder if this could be put on the  
19 screen, please. Can it be put on the screen - I understand this  
20 technology is available - alongside the document that's already  
21 there, yes? Thank you very much. So this is the Official Note dated  
22 10 July 2025, ERN 128072 to 128080. And it's paragraph 10, which is  
23 page 4 of the document.

24 Q. It's paragraph 10, Mr. Herlaar, halfway down:

25 "The majority of Witness 8's expert examinations to date have

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1 arisen from requests for expert analysis made to the NFI from Dutch  
2 investigating judges in Dutch criminal cases. Witness 8 has also  
3 provided forensic expertise in a case before the ... (ICTY)."

4 And then in paragraph 11:

5 "Typically, Witness 8's final NFI expert reports are submitted  
6 to a Dutch investigating judge without Witness 8 providing live  
7 testimony [or] oral submissions. The Dutch court system determines  
8 the use and/or further dissemination of the NFI's expert report in  
9 each case."

10 And so just going back to the 24 cases that you've done  
11 throughout your career on microdots for the NFI, were those all  
12 submitted to a Dutch investigating judge? Are you able to say or do  
13 you not know?

14 A. A number of those cases will have been submitted to an  
15 investigating judge. Others may have been commissioned by the public  
16 prosecution service whereby the reports will have been submitted to  
17 the prosecutors and not an investigating judge.

18 Q. Okay. But you don't know, then, do you, how many reports were  
19 actually -- that you prepared were submitted to an investigating  
20 judge?

21 A. At this point in time, no, I don't know off the top of my head.  
22 If this question is very relevant, then that is information which  
23 could be obtained from the NFI internal system.

24 Q. And the ICTY case that you had some involvement with, that can't  
25 have involved yellow dots, can it?

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1 A. No, no, it was not related to yellow dots.

2 Q. You've said --

3 MR. HOLMES: Can we just go, please, to -- on the CV, please, to  
4 page 7. It's ERN 127828.

5 Q. And just before I ask you questions on that, Mr. Herlaar, so am  
6 I right in saying some of the cases that you may have been involved  
7 in may have been purely in the capacity as generating lead evidence  
8 rather than evidence that would be admitted at trial? You don't know  
9 whether it was or it wasn't.

10 A. All reports which I deliver for investigating judges become part  
11 of the official case file. As to whether those reports are discussed  
12 in court, I don't know. But I know that I have not been asked to  
13 appear as -- that I'm not -- that is not normal that I'm called to  
14 appear as a witness expert. It's not a standard thing in the Dutch  
15 criminal justice system that experts are invited to testify in court.

16 Q. Okay. Thank you, Mr. Herlaar. I'm not asking for the general  
17 position. I'm asking for whether you know how many of your reports -  
18 whether your reports - were relied on in court, but I think I have  
19 your answer.

20 Top of page 7 of your CV, we have a subheading there "Summoned  
21 as an [expert witness]." Three times you've been summoned as an  
22 expert witness. Does that involve being questioned as a witness?

23 A. Yes, it did.

24 Q. And those are the only three times that's happened?

25 A. Yes, at a hearing on the substance of the case, on the merits.

1 Now, there are also preliminary hearings not in a courtroom but in  
2 the chambers, if you like, of the investigating judge. There, there  
3 may be meetings, hearings regarding the state of the examination  
4 carried out, and that happens a couple of times or a few times a  
5 year. It's not mentioned here in the CV.

6 Q. So how many of those -- how many times has that happened, then,  
7 in a preliminary session have you been questioned on the topic of  
8 microdots? If we can narrow the field a little bit, how many times  
9 has that happened to your knowledge that you can remember?

10 A. I don't recall that I have ever appeared before an investigating  
11 judge with respect to microdots.

12 Q. Okay. Thank you. Returning to your CV, the first two entries,  
13 am I right, they refer to the same case actually? Can you see that,  
14 top of page 7 of your CV, those first two bullet point cases? Is  
15 that the same case?

16 A. Yes, that is correct. It's the same case but at different  
17 points in the substantive proceedings.

18 Q. Sure. Okay. And does it follow from the answers you've already  
19 given that none of those three entries related to microdots?

20 A. Yes, that's correct.

21 Q. So is this a fair summary, then: That in the 24 times in the 16  
22 years you've been with the NFI that you've been asked to write a  
23 report -- sorry. There have been 24 times in the 16 years you've  
24 been with the NFI that you've been asked to write a report concerning  
25 microdot pattern analysis. I'm just asking you to agree with the

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1 summary, Mr. Herlaar. Is that a yes?

2 A. Yes, that's right.

3 Q. You've not been summoned as a witness in any of those cases.

4 A. Yes, that's correct.

5 Q. Your expertise in microdot pattern analysis has never been  
6 subjected to cross-examination other than today and yesterday.

7 A. Yes, that's correct.

8 Q. Now, I'm going to change topic now and move to international  
9 agreements.

10 MR. HOLMES: I anticipate my learned friend may wish this area  
11 to be heard in private session. It's not my application, but I  
12 anticipate that may be the case.

13 JUDGE GOSNELL: Does the Prosecution have a position?

14 MR. HAFETZ: Well, Judge, without knowing exactly what he's  
15 going to ask, we don't. But it sounds like it may be treading in  
16 that area, so then, yes, we would request to move into private  
17 session. If it becomes readily apparent that it doesn't need to be,  
18 I will alert Your Honour.

19 JUDGE GOSNELL: Out of an abundance of caution, we'll go into  
20 private session, and, of course, this is always subject to  
21 reclassification at a later time.

22 So private session, please, Madam Court Officer.

23 [Private session]

24 [Private session text removed]

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Witness: Koen Herlaar (Resumed) (Private Session)  
Cross-examination by Ms. Menegon

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Witness: Koen Herlaar (Resumed) (Private Session)  
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1 [Private session text removed]

2 [Open session]

3 THE COURT OFFICER: Your Honour, we are now in open session.

4 JUDGE GOSNELL: We are adjourned until 12 noon. Thank you.

5 --- Recess taken at 11.30 a.m.

6 --- On resuming at 11.59 a.m.

7 JUDGE GOSNELL: Could the witness be brought in, please.

8 MR. EDWARDS: Your Honour, while that's being done, if I may,  
9 with Your Honour's leave, I will be absenting myself in about  
10 20 minutes' time. Mr. Holmes will assure the Defence of Mr. Kilaj,  
11 and I'll be back for the afternoon session.

12 JUDGE GOSNELL: Thank you.

13 Just as a matter of scheduling, we are required to take a  
14 15-minute break between the two witnesses. But other than that, we  
15 will resume the regular sitting hours for the court. So we will,  
16 after the 15-minute break, then continue until 1.00 p.m. and take the  
17 lunch until 2.30, just for everyone's information.

18 Thank you, Mr. Edwards.

19 MR. HAFETZ: Your Honour, if it's useful for your scheduling, I  
20 expect to be about 45 minutes with the last witness, Witness 9.

21 JUDGE GOSNELL: Thank you.

22 [The witness takes the stand]

23 JUDGE GOSNELL: Welcome back, Mr. Herlaar.

24 THE WITNESS: Thank you.

25 JUDGE GOSNELL: Ms. Menegon.

1 MS. MENEGON: Thank you, Your Honour.

2 Q. Mr. Witness, I note that NFI data of 22 July 2025 said that due  
3 to international agreements, details of microdots are never disclosed  
4 in expert reports. Can you please clarify what is the nature of the  
5 NFI? Is it a government agency?

6 A. The NFI is an independent agency that operates under the aegis  
7 of the Ministry of Security and Justice. It is indeed a government  
8 institution.

9 Q. Thank you. So can we say that you are a civil servant or  
10 employee of the public sector?

11 A. That's correct.

12 Q. Thank you.

13 MS. MENEGON: I would like to go into private session, please.

14 JUDGE GOSNELL: Yes, private session, please.

15 [Private session]

16 [Private session text removed]

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Witness: Koen Herlaar (Resumed) (Private Session)  
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8 [Open session]

9 THE COURT OFFICER: Your Honour, we are now in open session.

10 JUDGE GOSNELL: Mr. Herlaar, that brings your testimony to a  
11 conclusion. Thank you for your time and for your answers, and you'll  
12 now be escorted out of the courtroom by the Court Clerk. Thank you  
13 very much.

14 THE WITNESS: [Interpretation] You're welcome. Thank you.

15 [The witness withdrew]

16 JUDGE GOSNELL: As previously indicated, we are obliged to take  
17 a 15-minute break to prepare for the next witness.

18 Is the witness ready and available, Mr. Hafetz?

19 MR. HAFETZ: Yes, he is, Judge.

20 JUDGE GOSNELL: Wonderful. So we will reconvene -- yes,  
21 Mr. Holmes?

22 MR. HOLMES: Your Honour, there was -- we alerted your Court  
23 staff to a request that we have to make a short application to you.  
24 It relates to Witness 8 and the submissions -- the further  
25 submissions that are due, as things stand, within two days of the

1 completion of his evidence.

2 A number of additional matters have arisen through the course of  
3 his evidence which, in our submission, relates more closely to the  
4 fundamental fairness of admitting his evidence, what is, in effect,  
5 incomplete testimony, and we know that now because Witness 8 was  
6 unable to answer a number of important questions which relate to the  
7 basis of his -- the conclusions, his final conclusions.

8 In essence, we ask for seven days to file submissions on that to  
9 deal with the expert status of the witness but also to roll up within  
10 that submissions on fairness, if any are to be made, by the various  
11 Defence teams.

12 Can I just also, because these -- a number of things were raised  
13 in open court yesterday around the issue of whether he was going to  
14 be able to answer questions that were covered by these purported  
15 international agreements. This is all -- I don't think there's any  
16 need to go into private session for this, and I'll be extremely  
17 brief.

18 But it's stated in filing F620, filed on 15 December 2025,  
19 that's the SPO's response to the Defence Rule 149 notice, it's stated  
20 in there, in paragraph 15, that the witness will be prohibited from  
21 answering any -- there are certain matters which the witness will be  
22 prohibited from answering in any forum. The basis for that assertion  
23 are threefold. One is that it has been the NFI's stated position.

24 Well, the NFI's stated position, if I can refer Your Honour to  
25 document 128444, not to go on the screens, but that's a notice from

1 22 July 2025 from the NFI which makes no mention whatsoever of the  
2 scenario in which Witness 8 would refuse to answer questions in any  
3 forum. It talks about cooperation in closed-session proceedings. It  
4 does mention that experts will be unable to mention certain details  
5 in public filings, and that certain details will be withheld from  
6 expert reports. Make of that what we will. But there is no mention  
7 in there of a refusal to answer questions in any forum. So I make  
8 that point for the completion of the record.

9 The second point which I wish to make relates to Ms. Menegon's  
10 submissions yesterday around the relevance of Rule 107 and Article 58  
11 to this issue. That was raised for the first time by the SPO  
12 themselves. That is one of the bases, they say, for withholding  
13 answers to legitimate questions.

14 Rule 107, as Your Honour remarked yesterday rightly, relates to  
15 lead evidence, evidence that is there for a limited purpose only.  
16 And in Rule 211, a procedure is envisaged by which the protections in  
17 107 will be engaged. That involves an application by the third party  
18 providing the evidence - in this case, that would have been the NFI -  
19 to the President, and then the President shall refer the application  
20 to the competent Panel.

21 There's been no such application, Your Honour. So just to put  
22 that rule and that procedure into context. That requires an  
23 application. It's not an automatically arising protection that would  
24 prevent -- that would allow the Prosecution to lead evidence, in a  
25 wholly exceptional manner, without providing answers to certain

1 legitimate questions.

2 And then just finally, Article 58, Your Honour, establishes a  
3 principle which then requires the Rules of Procedure and Evidence to  
4 implement. So it provides no additional procedural power that the  
5 Prosecution might appeal to in order to lead evidence in this way.

6 So I just wanted to contextualise those submissions in that way.

7 But in essence, the application is for seven days from today to  
8 file submissions both on the expert status of Witness 8 as envisaged  
9 in Your Honour's prior ruling, but to add to that submissions around  
10 the fairness of leading this evidence at all.

11 JUDGE GOSNELL: Thank you, Mr. Holmes.

12 Before I ask Mr. Hafetz if he has any reaction, I assume that  
13 these -- the submissions about the legal complexity of the matters  
14 and the scope of the issues that you wish to raise are reasons for  
15 extending the deadline to seven days; is that right?

16 MR. HOLMES: Yes, Your Honour. You've understood that  
17 correctly. Thank you.

18 JUDGE GOSNELL: Mr. Hafetz, on that point, do you have any  
19 objection to the request for seven days?

20 MR. HAFETZ: No, Your Honour, on that point, none, other than  
21 that we just be granted a commensurate amount of time to respond  
22 given the breadth of the issues that he's now raising. Thank you.

23 JUDGE GOSNELL: I'll rule on that request after the break of  
24 15 minutes.

25 So we will resume at 12.45, and we stand adjourned until then.

1 Thank you.

2 --- Break taken at 12.30 p.m.

3 --- On resuming at 12.45 p.m.

4 JUDGE GOSNELL: So there is a request to vary the deadlines set  
5 out in decision 691 for submissions in relation to the expertise of  
6 the witness, which now may, based on the submissions of the Defence,  
7 be related to submissions on other matters. And the request is for  
8 an extension from two days to seven days for their submissions, and  
9 the SPO has requested a similar extension if it is granted.

10 So I will set the deadline for the Defence's submissions for  
11 next Tuesday, which I believe is six days hence. And the deadline  
12 for the SPO will also be six days thereafter, being the following  
13 Monday. I don't have the dates in front of me. It seems to be very  
14 difficult to open a calendar up on my computer, but I'm sure that is  
15 clear enough.

16 MR. HOLMES: Thank you, Your Honour.

17 JUDGE GOSNELL: Madam Court Officer, could the next witness be  
18 brought in, please.

19 [The witness entered court]

20 JUDGE GOSNELL: Mr. Witness, welcome to the courtroom.

21 THE WITNESS: Good morning, Your Honour. Thank you.

22 JUDGE GOSNELL: You are going to be appearing as a Prosecution  
23 witness. You will, first of all, be asked questions by the  
24 Prosecution, and then by one or more of the Defence teams. I ask you  
25 to please, if you do not understand a question, ask for it to be

Witness: Christopher Kelly (Open Session)

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1 repeated or clarified and that will be done for you.

2 I'll ask you now to please read the solemn declaration in front  
3 of you.

4 THE WITNESS: Conscious of the significance of my testimony and  
5 my legal responsibility, I solemnly declare that I will tell the  
6 truth, the whole truth, and nothing but the truth, and that I shall  
7 not withhold anything which has come to my knowledge.

8 WITNESS: CHRISTOPHER KELLY

9 JUDGE GOSNELL: Thank you very much. You are now under oath,  
10 and that means you have the obligation to tell the truth. And if you  
11 do not tell the truth, you may be liable for an offence within the  
12 jurisdiction of this Court.

13 THE WITNESS: Understood, Your Honour.

14 JUDGE GOSNELL: Thank you very much.

15 Mr. Hafetz.

16 MR. HAFETZ: Thank you, Your Honour.

17 Examination by Mr. Hafetz:

18 Q. Good afternoon. Can you please state your name for the record.

19 A. Yes. My name is Christopher Kelly.

20 Q. Mr. Kelly, I'm going to be asking you some questions for about  
21 45 minutes to an hour, I project. We are now in open session,  
22 meaning the proceedings are accessible to the public, and I expect us  
23 to remain in public session throughout your testimony.

24 However, if you believe that I've asked you a question the  
25 answer to which would require confidential or private information,

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1 please just bring that to my attention, and I'll ask the Court to  
2 move into private session. Do you understand?

3 A. Yes.

4 Q. To start, I have just a few background questions. Are you  
5 currently a part-time contractor for the Specialist Prosecutor's  
6 Office?

7 A. Yes, I am.

8 Q. For about how long have you been a part-time contractor?

9 A. Just over two years now.

10 JUDGE GOSNELL: Mr. Hafetz, just please do remember to observe a  
11 pause after the witness's answer to allow the interpreters to work.

12 MR. HAFETZ: Thank you, Your Honour.

13 Q. Broadly speaking, what type of work do you perform for the SPO  
14 as part of your contract?

15 A. Digital forensic investigations.

16 Q. Do you have professional experience outside your work for the  
17 SPO in extracting evidence from digital devices, including from  
18 mobile phones and computers?

19 A. Yes.

20 Q. And approximately how many years of experience do you have in  
21 doing that kind of work?

22 A. Approximately 26 years.

23 Q. Does that prior experience in extracting evidence from digital  
24 devices include working with programmes known as Cellebrite and  
25 Magnet Axiom for the purpose of conducting that work?

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1 A. Yes.

2 MR. HAFETZ: If I could put on the screen SPO ERN 129373-129380.

3 Q. Mr. Kelly, in the course of your work for the SPO, do you recall  
4 writing several documents that outline in broad terms how you  
5 conducted some of your extraction work?

6 A. Yes.

7 Q. And in a couple of cases, did you draft and sign notes in which  
8 you described in more detail some of the specific extractions that  
9 you made?

10 A. Yes, I did.

11 Q. And looking at the screen in front of you, on the left-hand side  
12 is the English version. Is this a note that you wrote?

13 A. Yes.

14 MR. HAFETZ: And if I could ask just to go to the final page.

15 Q. Is that your digital signature on the left-hand side of the  
16 page?

17 A. Yes, it is.

18 Q. Have you recently had the opportunity to review the document and  
19 make any corrections or amendments to it?

20 A. Yes.

21 Q. And did you, in fact, make two minor typographical corrections  
22 to the document?

23 A. Yes.

24 Q. And did you make a correction as to the specificity of your  
25 residence in the Massachusetts area?

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1 A. Yes.

2 Q. Other than those corrections --

3 THE INTERPRETER: The interpreters kindly ask the speakers to  
4 slow down.

5 MR. HAFETZ:

6 Q. -- which were memorialised and read back to you --

7 JUDGE GOSNELL: Mr. Hafetz.

8 MR. HAFETZ: Yes.

9 JUDGE GOSNELL: We have a note from the interpreters to --

10 MR. HAFETZ: Sorry, Judge.

11 JUDGE GOSNELL: And I think also for the witness. Do please  
12 observe a pause after the question.

13 THE WITNESS: I'll do that, Your Honour.

14 JUDGE GOSNELL: And, Mr. Hafetz, you will do the same.

15 MR. HAFETZ: Judge, we will slow it --

16 JUDGE GOSNELL: Please.

17 MR. HAFETZ: We will slow it down.

18 JUDGE GOSNELL: Thank you.

19 MR. HAFETZ:

20 Q. So going back, have you had the opportunity to fully review the  
21 note and make amendments and corrections?

22 A. Yes, I have.

23 Q. To be clear, two of those corrections were minor typographical  
24 errors; is that correct?

25 A. Yes.

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1 Q. One was a minor correction as to your residence; is that  
2 correct?

3 A. That's correct. Yes, sir.

4 Q. Other than those minor corrections, is the document true and  
5 accurate to the best of your knowledge?

6 A. Yes, it is.

7 MR. HAFETZ: Madam Court Officer, I'd ask you now to pull up ERN  
8 129384 to 129387.

9 Q. Mr. Kelly, do you recognise the document as depicted on the left  
10 side of your screen?

11 A. Yes, I do.

12 Q. Is this another one of the documents you drafted summarising  
13 some of your work for the SPO?

14 A. Yes, it is.

15 MR. HAFETZ: Madam Court Officer, if you could please go to the  
16 last page of the document.

17 Q. Is that your digital signature at the bottom of the page?

18 A. Yes.

19 Q. Mr. Kelly, did you recently have an opportunity to review this  
20 document and make any corrections or amendments?

21 A. Yes.

22 MR. HAFETZ: If we could go to page 2 of the document and down  
23 to paragraph 3.

24 Q. Mr. Kelly, is the sole correction that you made to this document  
25 the addition of the word "the" before "Mustafa iPhone" in the second

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1 line of paragraph 3?

2 A. Yes, it is.

3 Q. Other than that typographical error, are the contents of this  
4 document true and accurate to the best of your knowledge?

5 A. Yes.

6 MR. HAFETZ: And lastly, Madam Court Officer, I'd ask you to  
7 please pull up 129388-129393.

8 Q. Mr. Kelly, same questions. Looking at the left-hand side of the  
9 screen, do you recognise the document?

10 A. Yes, I do.

11 Q. Is this another one of the notes you wrote as part of your work  
12 for the SPO?

13 A. Yes.

14 MR. HAFETZ: Madam Court Officer, if we could go to the last  
15 page, 393.

16 Q. Again, is that your digital signature at the bottom of the page?

17 A. Yes, it is.

18 Q. And have you recently had an opportunity to review this document  
19 and make any corrections?

20 A. Yes.

21 Q. And for this document, there were no corrections; is that right?

22 A. That's correct.

23 Q. Having had the chance to review the document, are they true and  
24 accurate -- the contents true and accurate to the best of your  
25 knowledge?

Witness: Christopher Kelly (Open Session)

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Examination by Mr. Hafetz

1 A. Yes.

2 MR. HAFETZ: Your Honour, at this point, and pursuant to our --  
3 your decision, 154 decision 687, all three of these notes were  
4 tendered therein. And pending completion of the satisfaction of the  
5 Rule 154 criteria, which I think we've now met, we would ask these to  
6 be admitted. And I'm going to also ask that all of the associated  
7 exhibits, save for four of them, also be admitted.

8 JUDGE GOSNELL: Mr. Kelly, do these three statements also  
9 reflect what you would say if you were to be examined on the same  
10 subjects here in court?

11 THE WITNESS: Yes, Your Honour.

12 MR. HAFETZ: Thank you, Judge.

13 JUDGE GOSNELL: On that basis, the three statements are -- I  
14 should first ask, any objection from the Defence?

15 MR. MISETIC: There is no objection. I assume that the  
16 associated exhibits are the exhibits that have been provisionally  
17 approved by the Panel. If that's the case then -- by you,  
18 Your Honour, then we have no objection.

19 MR. EDWARDS: No objection.

20 MR. YOUNG: No.

21 JUDGE GOSNELL: Thank you.

22 MR. ADMIRAAL: No.

23 JUDGE GOSNELL: Thank you.

24 On that basis, the three statements are admitted as well as the  
25 associated exhibits, and those ERNs are indicated in filing 635

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1 Annex 2, subject to the documents that were not admitted pursuant to  
2 decision F687, which was decided on 22 January 2026. But with that  
3 exception, all of the associated exhibits and statements are  
4 admitted.

5 MR. HAFETZ: Thank you, Your Honour. And just to clear up the  
6 record a bit on our side. There are four exhibits which we are not  
7 tendering. I can identify those. Those are in the table on page 2.  
8 And these have all been, just for the record, communicated to the  
9 Court previously and to all the parties in a spreadsheet that  
10 correspond to the notes. But for the record, I'll read them out.

11 We are not seeking to tender 125653-125655. We are not seeking  
12 to tender 128799 to 128806. We are not seeking to tender 125708 to  
13 125709. And, lastly, we are not seeking to tender 125710 to 125714.  
14 That's for the first note.

15 JUDGE GOSNELL: Thank you.

16 Madam Registrar.

17 [Single Judge and Court Officer confers]

18 JUDGE GOSNELL: So the Registrar will circulate a list to ensure  
19 that there is absolute clarity on what is admitted. And if there are  
20 any mistakes or errors or objections, then I'll expect to hear from  
21 you by the end of today, please. Thank you.

22 MR. HAFETZ: Thank you, Your Honour. And just for the record,  
23 once again, there is one other from note 3. So I started with  
24 note 1. There is one item from note 3 that we are not tendering.  
25 And for the benefit of all, I will note that that is

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1 SPOE00346751-00346770.

2 I would ask now -- and we're not seeking the tendering of that  
3 last exhibit because it's already been admitted.

4 Now, what I'd ask the Court Officer to please do is to pull up  
5 129950 to 129954.

6 Q. Mr. Kelly, looking to the left side of your screen again, do you  
7 recognise this document?

8 A. Yes, I do.

9 Q. Did you draft this?

10 A. Yes.

11 MR. HAFETZ: Going to the final page of the document, if you  
12 don't mind, Madam Court Officer, which is 129954.

13 Q. Is that your digital signature, sir?

14 A. Yes.

15 Q. Broadly speaking, does this document contain your summary of  
16 extraction of evidence from electronic devices similar to the first  
17 note we looked at?

18 A. Yes, it does.

19 Q. And prior to coming to court today, have you had a chance to  
20 review this document?

21 A. Yes.

22 Q. And are its contents true and accurate to the best of your  
23 knowledge?

24 A. Yes, it is.

25 Q. And if you were asked the questions about the facts contained in

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1 this document right now, would your answers be the same?

2 A. Yes, they would.

3 MR. HAFETZ: Your Honour, subject to any objection, we would  
4 seek to admit this fourth note of Mr. Kelly which contains additional  
5 set of exhibits, which I will discuss in a moment, that were  
6 extracted from mobile devices in the same exact manner as the first  
7 note that he described.

8 JUDGE GOSNELL: Defence.

9 MR. MISETIC: Mr. President -- sorry, Your Honour, it's unclear  
10 to me what rule is being invoked here. This is not part of the  
11 Rule 154 application as far as I understood, nor is it subject to  
12 your provisional decision admitting the documents. So if I could  
13 just ask clarification what rule we're invoking here to admit this,  
14 because otherwise it's hearsay and it's leading.

15 MR. HAFETZ: Your Honour, I'd --

16 JUDGE GOSNELL: Mr. Hafetz.

17 MR. HAFETZ: I'd seek to admit it under Rule 138. But if  
18 counsel prefers, or the Court prefers, I'm happy to go through each  
19 of the items that I seek to authenticate via the note.

20 MR. MISETIC: Your Honour, if I may suggest, since we're, I  
21 think, well past the 1.00 lunch break, could we have time to consider  
22 and then let you know if we have an objection after the lunch break?

23 JUDGE GOSNELL: Certainly. And thank you for pointing that out.  
24 We are past 1.00. So I'll simply, at this point, invite the parties  
25 over the lunch break to consult with one another and see whether or

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1 not agreement can be reached. And if not, then there will have to be  
2 a ruling.

3 We stand adjourned until 2.30. Thank you.

4 --- Luncheon recess taken at 1.06 p.m.

5 [The witness stands down]

6 --- On resuming at 2.29 p.m.

7 JUDGE GOSNELL: Good afternoon. The witness may be brought in.

8 Mr. Hafetz, we will have to end your questioning at -- if you're  
9 still going, by 3.55, or perhaps it'll be the Defence by that time,  
10 but we'll have to end at 3.55 to deal with a couple of matters at the  
11 end of today's session.

12 Yes, Mr. Misetic.

13 MR. MISETIC: Just to complete where we were before the break,  
14 we have had a chance to speak to the SPO, and the Thaci Defence does  
15 not object to the admission of those notes pursuant to Rule 138.

16 JUDGE GOSNELL: Thank you. Are there any objections --

17 MR. MISETIC: And let me also add, and the associated exhibits.

18 JUDGE GOSNELL: Any other objections from the Defence?

19 MR. REES: No, thank you, Your Honour.

20 MR. HOLMES: No, thank you.

21 MR. ADMIRAAL: No, thank you.

22 JUDGE GOSNELL: And I note none from Mr. Fazliu either. So  
23 thank you very much to the Defence for that and to the parties for  
24 their constructive collaboration.

25 [The witness takes the stand]

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Examination by Mr. Hafetz

1 JUDGE GOSNELL: Mr. Hafetz, the floor is yours.

2 MR. HAFETZ: Thank you very much, Your Honour. I will go  
3 slowly, and I have the translation in my ear so I should know when  
4 it's done.

5 At this point, Your Honour, I would -- having met the criteria  
6 for Rule 138 for the admission of 129950 through 129954, I would  
7 offer that 5 February 2026 note which was drafted by Witness 9, and I  
8 would offer the associated exhibits in the table on page 2 of that  
9 same document under the same rule. I note that two of the items are  
10 already admitted, and that's P174 and P15. So in total, that's eight  
11 associated exhibits.

12 JUDGE GOSNELL: Those documents are admitted. The Registrar  
13 will circulate a list as with the others, and if by tomorrow morning  
14 there are no objections, they will all be considered to be admitted.  
15 Thank you.

16 MR. HAFETZ: Thank you, Your Honour.

17 If I could have the Court Officer pull up ERN 125701 to 125703.  
18 And if you could, I'd ask for the added partial ET to be put up  
19 alongside it.

20 And just for the Court's awareness, there are one or two  
21 exhibits I will show for public broadcast, but this one is not one,  
22 so this will stay confidential.

23 Q. Mr. Kelly, is this item you see here one of the extractions you  
24 made from Rrustem Mustafa's phone?

25 A. Yes.

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1 Q. And you've verified that the data on this phone is in the  
2 forensic image of the phone; is that correct?

3 A. That's correct.

4 MR. HAFETZ: Can we go to the second page.

5 Q. And I'm going to ask you a few questions that I think will  
6 elucidate, without belabouring the record, what some of the  
7 information contained in the rows and columns is so that this can be  
8 applied to other items you extracted.

9 So just to the upper left-hand part of the table on the  
10 left-hand side of your screen.

11 MR. HAFETZ: So to the left, sorry. All the way to the left.  
12 Thank you.

13 Q. It says "WhatsApp Chat," yes?

14 A. Correct.

15 Q. And so these two items below that are WhatsApp messages  
16 extracted from Mr. Mustafa's phone; is that correct?

17 A. Yes.

18 Q. And the numbers on the -- if we start with the number column, so  
19 the far left column, there's a 1 and a 2. Do you see that?

20 A. Yes, I do.

21 Q. Is that the sequential order in which they occurred in time as  
22 extracted from the phone?

23 A. Yes.

24 Q. Meaning that the first message, number 1, is the first one that  
25 happened in time, and the second is the second?

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1 A. That's correct.

2 Q. The "Participants" category, what does that refer to?

3 A. Those are the two people that are participating in this  
4 particular chat conversation.

5 Q. And when it says "owner" next to Mr. Rrustem Mustafa, what does  
6 that refer to in terms of the device?

7 A. The device owner.

8 Q. And then immediately beneath that is the name Hajredin Kuci.  
9 And does that mean that this conversation, this text exchange, is  
10 between the Mustafa phone and a phone of Mr. Kuci?

11 A. It's between those -- those two individuals. What's -- those  
12 are WhatsApp identifiers for those people, that's correct, yes.

13 Q. And let me be a bit more precise about that. That's a phone  
14 number that's registered in this phone to Hajredin Kuci; correct?

15 A. Correct.

16 Q. You don't know whether it actually belongs to the Hajredin Kuci,  
17 for example, sitting in this room or not, do you?

18 A. That's right.

19 Q. If we go a little bit to the right so we can look at the "From"  
20 column, what does that reflect?

21 A. That's the participant that sent the message.

22 Q. So in this case, this first message is sent from Hajredin Kuci's  
23 phone, or in the name of Hajredin Kuci, to this device of  
24 Mr. Mustafa; is that correct?

25 A. That's right.

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1 Q. And what is the timestamp --

2 THE INTERPRETER: Interpreters kindly ask the speakers to make a  
3 pause between question and answer. Thank you.

4 MR. HAFETZ:

5 Q. What does the "Timestamp: Time" refer to?

6 A. That's the date and time that the message was sent.

7 Q. And what does UTC+2 mean?

8 A. UTC is an acronym for Coordinated Universal Time. It's  
9 essentially Greenwich Mean Time, if you will. Timestamps within  
10 mobile devices are stored in UTC format, so we have to apply the time  
11 zone offset in order to get the appropriate local time for when that  
12 message was sent. So here it's plus two hours off of UTC.

13 Q. And if we go a little bit further to the right, does the column  
14 "Body" refer to the actual text that was exchanged between the  
15 phones?

16 A. Yes.

17 Q. And if we go a little further to the right, did you apply that  
18 SPO translation or was that applied by the SPO after you provided the  
19 -- after you provided the underlying extraction in Albanian?

20 A. Translations were done by the SPO after I did the extraction.

21 Q. And immediately to the right of the "SPO Translation" column, it  
22 says "Status," and what does that refer to?

23 A. So the status is basically the result of the message. And you  
24 can see that the first of these messages has a status of it being  
25 read, that the other participant read the message, and that the

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1 second of these two messages said that it had been delivered.

2 Q. And generally across the extractions from the phones you did for  
3 this case, did the WhatsApp messages follow this general pattern as  
4 presented here?

5 A. Yes.

6 MR. HAFETZ: I'd ask the Court Officer now to pull up  
7 SPOE00398224. And for the record, this is P1 -- excuse me. I'll  
8 hold off on that. This can be made public. This can be published.

9 Q. Do you recognise this?

10 A. Yes.

11 Q. What is it?

12 A. So this is an exhibit that documents a message conversation, a  
13 WhatsApp message conversation between the phone identifiers or the  
14 WhatsApp identifiers for Fahri Fazliu and Rustem Mustafa.

15 Q. Did you create this?

16 A. I did.

17 Q. And what devices did you use to create it? What underlying  
18 devices did you use to create it?

19 A. So the content of this exhibit was created using certain items  
20 from Mr. Mustafa's iPhone and Mr. Fazliu's iPhone.

21 Q. If you could just take us through -- there's only seven pages.  
22 If you can take us through what's depicted here on the first page.

23 A. So on the left-hand side of this screen is an extraction or it  
24 is message metadata, right, including date and timestamp, the sender,  
25 as well as the translated body of the message. And the source of

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1 this particular content is from Mr. Mustafa's iPhone. There's a part  
2 of a conversation -- there's actually three pages here of  
3 conversation between these two participants, between these two chat  
4 participants. This is the first of those. It starts on June 26th,  
5 2023, at 19:05, and this particular segment of the conversation ends  
6 at 19:12:58.

7 MR. HAFETZ: And if we can go to the second page.

8 Q. Consistent with what you just said, this is the second of the  
9 three dates that you pulled messages for; is that correct?

10 A. That's correct. So, again, this is the second of three  
11 segments. So, basically, there were three particular days of  
12 WhatsApp conversations within this thread. This is segment 2. This  
13 took place on September -- excuse me, on 29 June 2023, between  
14 9:40:41 a.m. and 10:02:08 a.m.

15 MR. HAFETZ: And, Madam Court Officer, if we could go to the  
16 third page.

17 Q. And are these the messages from 3 July that you extracted from  
18 Mr. Mustafa's phone?

19 A. Yes, they are.

20 Q. Now, I'd like now to go to the fourth page, and I'd ask you to  
21 explain what is depicted here, starting with the first table.

22 A. So the question arose, when it pertains to this WhatsApp  
23 conversation -- is -- were the corresponding messages -- or were the  
24 corresponding messages on Mr. Fazliu's iPhone as well. They were not  
25 detected. I could not detect them or find them using normal search

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1 techniques. So the next step would be to actually analyse the  
2 database where the messages would have otherwise been stored.

3 When I get down into the database, I can see that there are  
4 essentially missing records within the database. So, in other words,  
5 each message within -- each WhatsApp message gets stored within a  
6 database, and each of those records gets a unique identifier for it.  
7 By looking at date and timestamps as well as those record  
8 identifiers, you can see gaps within those messages.

9 Q. Are those gaps represented by the "Primary Key" column on the  
10 left-hand side of each table?

11 A. Yes. So if you see that "Primary Key" column, the 38 -- or,  
12 excuse me, the row that starts 38450, that is a -- that's a message.  
13 That's a record for a message. And you can see that the timestamp  
14 there is 26 June 2023 at 14:52. So that provides some context for --  
15 you know, where those records otherwise would have been located.

16 And you can see the next primary key identifier or the next  
17 record identifier is on 27 June at 12:26:38. So those records, in  
18 other words, they exist within the database. The remaining record  
19 numbers between 50 and 74, so numbers 51 through 73, they are not in  
20 that database.

21 Q. And is that what's reflected by the box to the left saying  
22 23 missing records during segment 1?

23 A. That's correct.

24 Q. And is it correct that for 29 June, on Mr. Fahri Fazliu's phone  
25 there were 16 records missing?

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1 A. Yes.

2 Q. And for 3 July, there were 15 missing?

3 A. That's right.

4 MR. HAFETZ: Just to illustrate this, if we could, on the  
5 right-hand side of the screen, call up the third page of the exhibit.

6 Q. So in this window from 14:20:11 to 17:36:10 on 3 July, there are  
7 corresponding messages on Rrustem Mustafa's phone with Fahri Fazliu  
8 that are not on Fahri Fazliu's phone?

9 A. That's correct.

10 Q. And is that consistent with deletion of the messages from the  
11 Fazliu phone?

12 A. Yes.

13 Q. Are there other explanations for the missing records that you  
14 see on one phone and not on another?

15 A. There are several different ways that messages can be deleted,  
16 but at some point there's some action that's taken place to remove  
17 those messages -- or to remove records, I should say.

18 Q. And just to be clear, you don't know whether this was  
19 intentional or not intentional in this particular instance?

20 A. No, I don't.

21 Q. If they were deleted.

22 A. That's correct.

23 MR. HAFETZ: I'd ask to pull up SPOE00403537. And this may also  
24 be published to the public.

25 Q. Do you recognise this?

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1 A. Yes, I do.

2 Q. Did you create this map?

3 A. Yes.

4 Q. And if you could just briefly explain what it represents.

5 A. Yes. So this is a mapping of location data that comes from two  
6 different iPhones. The first iPhone is a phone attributable to  
7 Bashkim Smakaj, and the second one is one that was used or collected  
8 from Bislrim Zyrapi.

9 The location data that you see mapped here is -- it's an export  
10 from Cellebrite, and then we take the coordinates that are in the  
11 Cellebrite extraction and put those into Google Earth. So the  
12 information here is consistent with some Apple-specific technologies.  
13 Your Apple iPhone collects information about your normal patterns of  
14 locations when you enable location services. And locations that are  
15 significant to you -- they're called significant locations.  
16 Locations that are significant to you have information that's stored  
17 on your phone that has basically the area, the specific area that you  
18 travel to or you might spend time in, as well as entry times and exit  
19 times into those specific areas.

20 Q. What's represented by the orange dot and the blue dot as you  
21 depicted on the map here?

22 A. So the way that the iPhone -- the way this particular technology  
23 works is that the area itself is refined over a course of time. So  
24 imagine that one of the areas that's of significant location -- or is  
25 a significant location for a specific iPhone user is the home. It

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1 creates that -- basically a virtual perimeter we call a geofence  
2 around that home, and then it will take the middle of that -- it'll  
3 take the middle of that virtual perimeter, or geofence, and establish  
4 that as the -- basically the centre of that geofence.

5 The points that you see mapped here and the coordinates that you  
6 see on the left-hand side of the screen under the red text are the  
7 actual coordinates extracted or exported from Cellebrite for this  
8 particular significant or native location, as well as the entry times  
9 and exit times that those phones were in those locations on that  
10 specific day, 24 October 2023.

11 Q. So if I understand correctly, the orange and the blue dots are  
12 not meant to signify the exact specific location of each phone during  
13 that time window; is that correct?

14 A. No.

15 Q. It's an approximation; is that correct?

16 A. The phones were somewhere in that geofence on that day. That is  
17 the centre of that geofence.

18 Q. Do you know roughly how large that geofence area is?

19 A. I believe for Mr. Smakaj's iPhone it was approximately 32  
20 metres, and for Mr. Zyrapi's iPhone it was approximately 24 metres.

21 MR. HAFETZ: I would now ask the Court Officer - and this would  
22 be confidential - to pull up SPOE0036637. Thank you.

23 Q. Do you recognise this document?

24 A. Yes, I do.

25 Q. Did you extract this from Mr. Smakaj's Lenovo ThinkPad?

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1 A. No, I didn't.

2 Q. And did you review this item?

3 A. Yes.

4 Q. And did you confirm its presence on Mr. Smakaj's laptop?

5 A. Yes, I did.

6 Q. Can you just explain the "Source" column, what is represented by  
7 that?

8 A. Yes. So the "Source" column is essentially where you would find  
9 this document on the laptop. So the beginning here is the name of  
10 the image. So an image is a copy of the data that's on a hard drive  
11 or some other type of media that comes from a computer system. So  
12 that number that you see that starts -- excuse me, that alphanumeric  
13 string that you see that starts with AADX, that was created by the  
14 forensic provider that conducted that image.

15 And then you see there's some metadata there that indicates  
16 Microsoft NTFS, which is information about the -- a little bit of  
17 information about the computer itself.

18 After the first slash there, you see the name "Users," so that's  
19 essentially a Windows profile or a Windows user profile where they're  
20 all stored.

21 The next that you see is "Online3," so that's actually the name  
22 of the user account where this particular document was located.

23 The next is a subdirectory -- a location within that user  
24 profile called the user desktop.

25 And then there's a directory that's named

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1 "desktop/desktopi2022," and it's in that folder that that file  
2 docs1.docx is located.

3 MR. HAFETZ: And if I could just ask the Court Officer to show  
4 each page of the document to the witness. It's six pages total.  
5 Thank you.

6 Q. Mr. Kelly, having looked at each of the pages, I just want to  
7 confirm, you don't speak Albanian, do you?

8 A. I do not.

9 Q. But looking at the pages you just saw, you have confirmed that  
10 each of these pages was, in fact, found on Mr. Smakaj's laptop?

11 A. Yes. I've had an opportunity to review the document.

12 MR. HAFETZ: Your Honour, if I could just have one moment.

13 Your Honour, I have no further questions now. Thank you.

14 JUDGE GOSNELL: Thank you, Mr. Hafetz.

15 Is it Mr. Misetiç?

16 MR. MISETIÇ: Yes, it is, Your Honour. May I proceed?

17 JUDGE GOSNELL: Yes, please.

18 MR. MISETIÇ: Thank you.

19 Cross-examination by Mr. Misetiç:

20 Q. Good afternoon, Mr. Kelly.

21 A. Good afternoon, sir.

22 Q. My name is Luka Misetiç. I am counsel for Hashim Thaci, and I  
23 just have a few questions for you this afternoon. And I will do my  
24 best to pause after you give your answer. And I would ask you, if I  
25 forget, that you give a pause before you give your answer to my

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1 questions, and that way we won't get the interpreters upset with us.

2 First, as a matter of background, you've been tasked to extract  
3 data from the mobile phones of several accused and several witnesses;  
4 namely, Mr. Fadil Fazliu, Mr. Fahri Fazliu, Mr. Smakaj, Mr. Kilaj,  
5 Mr. Mustafa, and Mr. Zyrapi. Is that correct?

6 A. Yes.

7 Q. I understand that the raw material you used were mobile device  
8 extraction reports created by NFI, the National Forensic Institute,  
9 from these phones; is that correct?

10 A. Yes, that's correct.

11 Q. Now, Mr. Kelly, extractions from the various seized phones were  
12 conducted using a list of key words and search terms; is that  
13 correct?

14 A. The NFI conducted the extractions, which is the copy of the data  
15 from each device. They provided those extractions to the SPO, and  
16 those extractions were searched for different key words, yes.

17 Q. Okay.

18 MR. MISETIC: Madam Court Officer, if I could please have  
19 DHT1200405 to 00405. It is confidential and not for public  
20 broadcast. We have released the queue, so -- I understand that they  
21 don't have the queue yet.

22 [Single Trial Judge and Court Officer confers]

23 JUDGE GOSNELL: We just need a minute, Mr. Misetic. We're  
24 trying to locate the queue and the document.

25 MR. MISETIC: Thank you, Your Honour.

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1           Your Honour, maybe I can ask a few questions while that's being  
2           pulled up so that we can use our time that don't relate to documents.  
3           It's going to jump around a little bit, but if that's okay.

4           JUDGE GOSNELL: Yes, thank you. Yes.

5           MR. MISETIC:

6           Q. Mr. Kelly, I wanted to follow up on some questions that were  
7           asked by the Prosecutor at the end. And in particular, you noted,  
8           with respect to a Google Map that was shown to you about the phones  
9           of Mr. Smakaj and Mr. Zyrapi, that locations -- that the iPhone  
10          records locations that are significant to you. Do you recall that?

11          A. Yes.

12          Q. What do you mean -- what constitutes a significant location for  
13          iPhone?

14          A. It's actually specific to each user based on their patterns of  
15          activity. The significant locations, that's an Apple expression,  
16          it's an Apple term. They created that, ostensibly, as they post on  
17          their web site, to enhance the user experience.

18          Q. So am I correct that a place of some significance to you would  
19          be a place that Apple considers that you frequent?

20          A. Yes.

21          Q. And did I understand correctly that that location was of some  
22          significance to both Mr. Smakaj and Mr. Zyrapi?

23          A. Yes, it is a significant location for both parties.

24          Q. So it's correct then that both Mr. Smakaj and Mr. Zyrapi would  
25          frequent the Gizzi restaurant area, let's say?

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1 A. You don't necessarily need to frequent a location for it to  
2 become a significant location. A couple of visits for prolonged  
3 periods of time. There is various ways it becomes significant. But  
4 this wouldn't necessarily be the first time that they had visited  
5 there.

6 Q. Okay. So we can conclude that for both of these gentlemen,  
7 whether they were together at all times or individually, they would  
8 be in this area for some frequency, let's say?

9 A. I think that's fair.

10 Q. Okay.

11 MR. MISETIĆ: I understand we have the queue.

12 Madam Court Officer, just for the record again, I was calling up  
13 DHT1200405 to 00405, and it's not for public broadcast.

14 Q. Now, Mr. Kelly, this is an e-mail sent by the SPO to the Defence  
15 on 20 March 2025, pursuant to which they "are providing today via  
16 attachment here the SPO search term/query protocols to be run across  
17 mobile phones currently listed on the Rule 102(3) list ..."

18 MR. MISETIĆ: And now I'd like to go to the annex, which is  
19 DHT1200406 to 00411, not to be broadcast. This is the annex to that  
20 e-mail from the SPO that we've just seen.

21 Q. This document contains a list of key words used by the SPO to  
22 extract Rule 102(3) data from the seized phones; is that correct?

23 A. Yes, it does.

24 Q. Have you seen this document before?

25 A. Yes, I have.

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1 Q. The purpose of the document was to extract any proof of contact  
2 between the owner of the phone and those listed individuals; is that  
3 correct?

4 A. Messages and call logs are detailed in this section I, and then  
5 there are items in section II that are specifically delineated, but  
6 yes.

7 Q. Were these your instructions?

8 A. Yes.

9 Q. The data extracted was limited to data from 1 January 2023 until  
10 the date of the seizure of the phone; is that correct?

11 A. Yes.

12 MR. MISETIC: Your Honour, I would like to tender pages 00408  
13 and 00409 of this document, please.

14 JUDGE GOSNELL: Any objection?

15 MR. HAFETZ: No, Your Honour. I just need to make sure the  
16 document is complete, it's not missing a page, but --

17 MR. MISETIC: Sorry, actually, I stand corrected. We'd actually  
18 like to tender the whole thing if that's okay.

19 MR. HAFETZ: There's no objection to that.

20 JUDGE GOSNELL: This document is admitted.

21 THE COURT OFFICER: Thank you, Your Honour. Document with ERN  
22 DHT1200406 to 00411 will receive Exhibit 1D00030, and classification  
23 is confidential. Thank you.

24 MR. MISETIC: Thank you. And I'd also like to tender the cover  
25 e-mail, which is DHT1200405 to 00405.

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1 MR. HAFETZ: No objection.

2 JUDGE GOSNELL: This is admitted.

3 THE COURT OFFICER: Thank you, Your Honour. That document will  
4 receive Exhibit 1D00031. Classification is confidential. Thank you.

5 MR. MISETIC: Thank you.

6 Madam Court Officer, if we could just -- with the document on  
7 the screen, if we could please go to page 00408 on this document.

8 Q. Now, Mr. Kelly, can you confirm there in section II that the  
9 searches mentioned in this document were run, *inter alia*, on  
10 Mr. Fadil Fazliu's phone, that's line a; Mr. Fahri Fazliu's phone,  
11 which is line b; Mr. Smakaj's phones, which is line d; and  
12 Mr. Kilaj's phone, which is line l on the next page, please.

13 A. I can't confirm that because -- oh, excuse me, yes, those four  
14 phones, yes.

15 Q. Thank you. So if there were any contacts with the listed  
16 individuals in the analysed phones, the data would have been  
17 extracted by you or another SPO analyst; is that correct?

18 A. I believe that I was the only person to run those searches  
19 across those specific mobile devices.

20 Q. So they would have been extracted by you then?

21 A. Yes.

22 Q. Okay. Now, I'd like to turn to the extraction concerning  
23 Mr. Fadil Fazliu and Rrustem Mustafa. You were tasked to extract  
24 data from Fadil Fazliu's phone. And while you were searching his  
25 phone, you did not identify any communications between

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1 Mr. Fadil Fazliu and Mr. Mustafa; is that correct?

2 A. That's correct, sir.

3 Q. Okay. Turning to Fahri Fazliu and Rrustem Mustafa. You were  
4 also tasked to extract relevant data from Mr. Mustafa's phone and  
5 Mr. Fahri Fazliu's phone; is that correct?

6 A. That's right.

7 MR. MISETIC: Madam Court Officer, if we could please have on  
8 the screen SPOE00369419 to 00370234 RED at page SPOE00369419, please.  
9 This item is also not for public broadcast. And -- yes, if we can  
10 look at the top section there in the summary.

11 Q. Have you seen this document before?

12 A. I recently received copies of the number of -- of one of the --  
13 of the filings of the 102(3) search results. I can't look at it and  
14 say it's something that I've received, but I -- likely.

15 Q. Who created this compilation of data?

16 A. I don't know.

17 Q. Do you know how it came to the SPO?

18 A. It -- no, I -- it didn't come to the SPO. So I conducted  
19 searches, and I provided those search results to the SPO. And after  
20 that, I wasn't involved in the process.

21 Q. We can see an evidence number on the first page. Do you see  
22 that in the summary, at the very bottom of the summary?

23 A. Yes, I do.

24 Q. And this corresponds to the mobile phone of Mr. Rrustem Mustafa;  
25 is that correct?

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1 A. I don't recall all of the SPO evidence numbers for all of the  
2 different devices, sir, but I'll take your word for it that it's  
3 accurate.

4 Q. Yeah. Just for the record, this is in your Official Note at  
5 129373 to 129380 at page 129376. So I don't know if you have a copy  
6 of your notes in front of you? No? Okay.

7 A. I only have the television.

8 Q. Okay. Now, the fact that the evidence number and Mr. Mustafa's  
9 phone number match, does that mean that this compilation of data was  
10 extracted from Mr. Mustafa's mobile phone number -- or mobile phone,  
11 I should say?

12 A. Yes.

13 Q. And can you please tell us in the summary -- or, sorry, in this  
14 report - and we can scroll down if necessary - what is the type of  
15 data that's extracted from this phone as shown on the first page of  
16 the report, so there on the contents? What is that type of data?

17 A. That's good. Thank you. According to this page, the contents  
18 of this document include call logs, chats, which include several  
19 different types of chat applications on the native messenger on the  
20 phone, Facebook Messenger, recents, Viber, and WhatsApp, as well as  
21 contact information, log entries, some web history, and data files.

22 MR. MISETIC: If we can go back -- or scroll up, please. Yes.

23 Q. If you look at in the summary it says "Report filter used," does  
24 that mean that that's the time period for which the data was  
25 extracted?

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1 A. From the reader report, yes.

2 Q. Can you tell me what that qualifier means?

3 A. Sure. So the Cellebrite reader report is -- that's the content  
4 of the mobile extraction that's provided from NFI. So this was a  
5 date and time filter used for the purposes of the export.

6 Q. So all that was exported was information from 1 January 2023  
7 until 12 September 2023; is that correct?

8 A. Including items without timestamps. So, in other words, things  
9 that don't have that metadata that indicates when it was -- you know,  
10 what the -- you know, the time of the message might have been, or the  
11 date of the photos and things. Like, that is the -- the note that  
12 you see there is including times without timestamps. So,  
13 theoretically, there could be things that require further  
14 confirmation on whether they do or do not fall within that temporal  
15 period.

16 Q. Now, this report was generated thanks to the application of the  
17 key words and temporal scope defined in the Rule 102(3) list which we  
18 just looked at; is that correct?

19 A. I wasn't part of that process, sir.

20 Q. So do you know what criteria was used to pull messages from this  
21 time period?

22 A. I conducted the searches for the different key words. I took  
23 the -- I tagged all of the items inside of the extraction reports,  
24 and then I sent that along, and I don't know what happened after the  
25 curation process at the SPO.

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1 Q. But when you extracted, what were you extracting? Based on what  
2 criteria?

3 A. So what -- I applied the search terms, and anywhere that those  
4 search terms had a result, I included all of that information. Like,  
5 that first phase of it was to provide the SPO with all of the  
6 potentially responsive search terms for them to do a subsequent  
7 review.

8 Q. Right. But when we say "search terms," we're talking about the  
9 search terms that we just looked at before, the list of terms and key  
10 words; is that correct?

11 A. So there were names, phone numbers, e-mail addresses, Facebook  
12 IDs -- yeah, so basically like entity searches for --

13 Q. Those [Overlapping speakers] ...

14 A. -- each of those individual -- that's right.

15 MR. MISETIC: Okay. Madam Court Officer, I'd like to move in  
16 this document to page SPOE00369428, please, and also call up its  
17 English translation, DHT1200397-00399 at page 00397, please.

18 Q. Mr. Kelly, these messages were extracted from Mr. Mustafa's  
19 phone; is that correct?

20 A. Are we still in the same document that you showed me earlier,  
21 sir?

22 Q. Yes. Yes, within the same item. Yes.

23 A. They appear to be, yes.

24 Q. And these are Facebook communications between Mr. Fahri Fazliu  
25 and Mr. Mustafa; is that correct?

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1 A. Yes, sir.

2 Q. We can see two messages sent by Mr. Fahri Fazliu on  
3 16 April 2023; is that correct?

4 A. I see one message on April 16th on this page.

5 MR. MISETIC: If we could scroll down, please.

6 THE WITNESS: Yes, I see the second message.

7 MR. MISETIC: Yes.

8 Q. And if we look in the square above the text messages - if we can  
9 scroll up, please, on the page - we see: Start time 8 May 2020. Can  
10 you tell us what that means?

11 A. So it's the first -- that's basically the beginning of this  
12 conversation, so that would be the first time that a message is sent  
13 in the conversation.

14 Q. So they've been talking in this application since at least --  
15 sorry, since 8 May 2020; is that correct?

16 A. Yes.

17 MR. MISETIC: If we move to the next page, SPOE00369429, please.

18 Q. We see that the conversation continues. Can you confirm that  
19 these are communications between Mr. Fahri Fazliu and Mr. Mustafa on  
20 Facebook Messenger dated 17 April 2023?

21 A. Yes.

22 MR. MISETIC: Now, Madam Court Officer, if we could please go to  
23 page SPOE00370103, which is page 685 of the PDF, and its English  
24 translation at DHT1200397 to 00399, which I believe is already up, at  
25 page DHT1200398, please.

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1 Q. Now, Mr. Kelly, are we -- first of all, can you tell us, it says  
2 at the top of the page, please, in -- yes. It says: Start time  
3 4 May 2022. Can you tell us what that means?

4 A. The same as before, counsel. It's the start time for that  
5 specific conversation. So that would be May 4th, 2022.

6 Q. Yes. We can then see three messages exchanged between  
7 Mr. Fahri Fazliu and Mr. Mustafa via WhatsApp on 28 April 2023.

8 MR. MISETIĆ: And if we can scroll down on the page, please.

9 Q. Is that correct?

10 A. If you could just pull it down just a little bit further,  
11 please. I see those three messages, yes.

12 Q. And the date is 28 April 2023?

13 A. Correct.

14 MR. MISETIĆ: And if we can go to the next page, SPOE00370104,  
15 please.

16 Q. These are additional communications between Mr. Fahri Fazliu and  
17 Mr. Mustafa on Facebook Messenger; is that correct?

18 A. That's correct.

19 Q. We see a missed call on 3 May 2023 and several messages on  
20 4 May 2023; is that correct?

21 A. I can't see the date stamp for the ones at the very bottom of  
22 the page. Yes, that's correct.

23 MR. MISETIĆ: I'd like to move to page SPOE00370105.

24 Q. Is it correct that the conversation between Mr. Fahri Fazliu and  
25 Mr. Mustafa continues on this page on 4 May 2023? And we can scroll

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1 down if you wish. I don't know if you can see the print.

2 A. I can't see it all, but that's correct.

3 MR. MISETIC: I'd like to next go to page SPOE00370106, please.

4 Q. Is it correct that Mr. Fahri Fazliu sent several attachments to  
5 Mr. Mustafa on or around 5 May 2023?

6 A. I see the two -- I see the two attached photographs that are on  
7 the screen, and a third -- yes. Third is -- that's correct, May 5th.  
8 Excuse me.

9 Q. Thank you.

10 MR. MISETIC: And, Madam Court Officer, could we please move to  
11 the next page, SPOE00370107.

12 Q. This page shows three messages sent on 26 June 2023; is that  
13 correct?

14 MR. MISETIC: If we could scroll down a little bit on the ...

15 THE WITNESS: Yes, it does.

16 MR. MISETIC:

17 Q. Now, Mr. Kelly, in your Rule 154 statement, which has now been  
18 admitted, but I still have the ERN as 129373 to 129380, you created a  
19 Cellebrite extraction of messages between Mr. Mustafa, Witness 1, and  
20 Fahri Fazliu for the period of time from 7 June 2023 until  
21 18 July 2023 from Mr. Mustafa's mobile phone seized on  
22 12 September 2023. It contains the messages sent on 26 June,  
23 29 June, and 3 July 2023.

24 But as we've just seen, Mr. Mustafa and Fahri Fazliu had been in  
25 contact months and even years prior to June 2023, and regularly

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1 exchanged messages; is that correct?

2 A. That's correct, sir.

3 Q. Thank you.

4 MR. MISETIC: Your Honour, I would like to tender several pages  
5 of item SPOE00369419 to 00370234 RED, which we've shown to the  
6 witness. Specifically, pages SPOE00369428, SPOE00369429, and  
7 SPOE00370103 to SPOE00370107, and its accompanying English  
8 translation DHT1200397 to 00399.

9 JUDGE GOSNELL: Any objection?

10 MR. HAFETZ: No. Thank you, Judge.

11 JUDGE GOSNELL: This is admitted, I assume, as a confidential  
12 exhibit?

13 MR. MISETIC: Well, it's classified by the SPO. I don't know if  
14 it needs to be confidential or not.

15 MR. HAFETZ: Your Honour, we would need to -- it may be able to  
16 be public, but we'd want to review the numbers in here to make sure  
17 that they're not sensitive. But it should be no problem.

18 JUDGE GOSNELL: Let's admit it for now as a confidential  
19 exhibit.

20 THE COURT OFFICER: Thank you, Your Honour. These pages just  
21 listed by the counsel will receive Exhibit 1D00032, together with the  
22 corresponding English translation. And classification is  
23 confidential. Thank you.

24 MR. MISETIC: Thank you.

25 Q. Mr. Kelly, I would now like to turn to extractions you did

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1 regarding communication between Mr. Smakaj and SPO witnesses. First  
2 turning to Mr. Smakaj and Bislum Zyrapi.

3 MR. MISETIC: I would like to call up SPOE0040010997 to 40012496  
4 RED at page SPOE40010997. This item is also not for public  
5 broadcast.

6 Q. I assume, Mr. Kelly, you don't know who created this extraction  
7 report?

8 A. No, I don't.

9 Q. We can see on the first page that the case name is Smakaj. If  
10 you see that there on the bottom of the summary.

11 A. I see it, yes, sir.

12 Q. And that the evidence number is listed there. Do you see that  
13 number?

14 A. Yes, I do.

15 Q. Now, in your Official Note, at 129373 to 129380, at page 129376,  
16 you identify that number -- that evidence number as identical to  
17 Bashkim Smakaj's iPhone. Do you have any reason to dispute that?

18 A. I don't.

19 Q. Okay. That means that the data we see here was extracted from  
20 Mr. Smakaj's mobile phone; is that correct?

21 A. Yes.

22 Q. If we -- and in terms --

23 MR. MISETIC: If we could scroll down, please.

24 Q. In terms of the contents that was extracted, it's similar to the  
25 items we just looked at; is that correct?

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1 A. Yes.

2 Q. If we go back up the page, the report filter used is the same,  
3 is that right, from January 1st, 2023, except it goes to  
4 30 October 2023, including items without timestamps; correct?

5 A. That's correct.

6 MR. MISETIC: I'd like to move to page SPOE40011760, which is  
7 page 764 of the PDF, and also call its English translation,  
8 DHT1200400 to 00401 at page 400.

9 THE INTERPRETER: Interpreter's note: The counsel is kindly  
10 asked to slow down when reading out numbers. Thank you.

11 MR. MISETIC: If we could show the top of the page, please.

12 Q. Mr. Kelly, from the table at the top of the page, we understand  
13 that the following messages below that are Viber messages between  
14 Bashkim Smakaj and Bislim Zyrapi; is that correct?

15 A. Yes, sir. That's correct.

16 Q. And in front of start time, we see the date of 17 March 2020.  
17 Does that again mean that this is when the conversation in Viber  
18 started?

19 A. Yes.

20 Q. On this page, we can see - and we can scroll down on the page -  
21 messages sent at different dates between them: 1 March 2023,  
22 31 March 2023, 2 May 2023, and 6 June 2021; is that correct?

23 A. That's correct, sir.

24 MR. MISETIC: And, Madam Court Officer, if we could now move to  
25 the next page, which is SPOE40011761, please.

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1 Q. Mr. Kelly, this is the continuation of the same conversation on  
2 Viber between Mr. Smakaj and Mr. Zyrapi on 6 June 2023; is that  
3 correct?

4 A. The first -- yes, the first four messages are 6 June.

5 Q. Yes.

6 MR. MISETIĆ: And if we could, Madam Court Officer, now show  
7 SPOE40011078, please, which is page 82 of the PDF.

8 If we look at the bottom of the page here -- actually, I think  
9 we're on the wrong page. It should be 078 is the SPOE number. Yes.

10 Q. Yes, if we look at the bottom of the page, the table refers to  
11 "Native messages." Do you see that under "Source"? Can you tell us  
12 what native messages are?

13 A. Yes. So these are messages sent and received using the --  
14 basically the messaging app that comes with your Apple iPhone when  
15 you take it out of the box, so iMessage in the messages app.

16 Q. Just out of curiosity, would a native message also be an SMS  
17 message as between an iPhone and a non-iPhone?

18 A. And a non-iPhone?

19 Q. Yes?

20 A. Yes.

21 Q. That would be called a native message?

22 A. It would.

23 Q. The start time indicates 17 March 2020. Again, is this the  
24 start of presumably iMessages between Mr. Smakaj and Mr. Zyrapi?

25 A. It's the first message in the conversation, yes.

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1 MR. MISETIĆ: If we move, please, to page SPOE40011079, please.

2 Q. We can see several messages. Are these iMessages exchanged  
3 between Mr. Smakaj and Mr. Zyrapi on 28 June 2023?

4 A. Yes.

5 Q. And in terms of the substance of the communications, we see that  
6 they are wishing each other greetings for Eid; is that correct?

7 A. I would -- I don't speak Albanian, sir, but I will --

8 Q. Like Bajram or Eid?

9 A. -- take your -- take your word for it, yes.

10 Q. Okay.

11 MR. MISETIĆ: Now, if we could go back, please, to page  
12 SPOE40011761, related to the Viber exchanges between Mr. Smakaj and  
13 Mr. Zyrapi.

14 Q. Now, we see a message dated 29 June 2023, which has been  
15 translated as "Happy Eid ... Bislo. Will you go out somewhere  
16 today?" Can you see that?

17 A. I see that, yes, sir. At 1327?

18 Q. Yes.

19 A. Yes.

20 Q. Considering we've had to change sections to get to this chain of  
21 communication, i.e., to move from native messages to Viber, do you  
22 agree that Mr. Smakaj and Mr. Zyrapi communicated interchangeably via  
23 various applications?

24 A. Yes, I'd agree with that.

25 MR. MISETIĆ: Madam Court Officer, could we please now move to

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1 page SPOE40011048, please.

2 Q. We're now looking at Facebook Messenger extractions between the  
3 same two individuals; is that correct?

4 A. Yes.

5 Q. And the start time data suggest that their conversations on this  
6 platform started on 29 June 2023, or at least for this conversation;  
7 is that correct?

8 A. That's correct.

9 Q. The first message on this page is dated 29 June 2023, and the  
10 following messages are dated 30 June and 1 July; is that correct?

11 A. Yes.

12 MR. MISETIĆ: Madam Court Officer, I'd like to now go back to  
13 page SPOE40011761, and its English translation, DHT1200400 to 00401  
14 at page 00401, related to the Viber exchanges between Mr. Smakaj and  
15 Mr. Zyrapi.

16 Q. We can see two sent messages on 9 July 2023; is that correct?

17 A. One by each party, yes, sir.

18 Q. Yes.

19 "Good luck and health to you ... Bislo."

20 And the response:

21 "Thanks mate!"

22 Correct?

23 A. That's right.

24 Q. And we can also see a message sent on 1 August 2023 by  
25 Mr. Smakaj at 8:23; is that correct?

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1 A. Yes.

2 Q. And that message says:

3 "Hello Bislo, how are you?"

4 Correct?

5 A. Yes.

6 Q. Now, I'd like to move to the next page, SPOE40011762, concerning  
7 the same Viber exchange. We see here that a little later that same  
8 day there's another message sent by Mr. Smakaj to Mr. Zyrapi at  
9 10:39; correct?

10 A. Yes.

11 Q. And here he says:

12 "I'm inside here where they smoke."

13 Correct?

14 A. The --

15 Q. Can we scroll down?

16 A. Yes -- no, no, no, it's okay. No, back up. It's okay. I'm  
17 just comparing them to -- just give me a moment. Yes, that's right.

18 Q. Okay. And the last message on this page is dated  
19 31 August 2023, and it's part of the messages you've extracted and  
20 compiled for the SPO; correct?

21 A. I'm sorry. Could you just move up just a little bit more on the  
22 page, please? Yes, that's right.

23 Q. Okay. Is it correct, Mr. Kelly, that the messages you extracted  
24 at the request of the SPO from Mr. Smakaj's phone are only a portion  
25 of existing communications between Mr. Smakaj and Mr. Zyrapi?

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1 A. Yes.

2 MR. MISETIC: Your Honour, I tender the following pages from  
3 this document, namely pages SPOE40011048, SPOE40011078, SPOE40011079,  
4 SPOE40011760, SPOE40011761 and 762, and the accompanying translation,  
5 DHT1200400 to 00401.

6 JUDGE GOSNELL: Any objection?

7 MR. HAFETZ: None at all, Your Honour. And on the  
8 confidentiality issue, I've looked at the document as we were  
9 scrolling. Fully acknowledge the long-standing relationship and  
10 friendship between the two men. Notwithstanding that, we just want  
11 to make sure, A, Mr. Smakaj wouldn't have an issue with his phone  
12 number being made public; and, two, I'd want to triple-check there is  
13 none that have the witness's phone number. But no issue as to an  
14 objection.

15 JUDGE GOSNELL: Mr. Misetic, do you wish to have this admitted  
16 as a public document?

17 MR. MISETIC: My preference is for as much to be public as  
18 possible. If there needs to be a redaction of phone numbers and the  
19 rest of it made public, that's fine with me as well. We have no need  
20 for the actual phone number to be in the public domain.

21 JUDGE GOSNELL: Mr. Rees, are you in a position to give to an  
22 indication --

23 MR. REES: No objection to the admission of this material, but  
24 we do think contact details ought to remain confidential.

25 JUDGE GOSNELL: This document is admitted as a confidential

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1 document, and I would suggest that we can revisit whether it may be  
2 admitted in a redacted form at your request, Mr. Misetic, if you wish  
3 to do so.

4 MR. YOUNG: Your Honour, may I be heard on this. Just simply to  
5 agree with Your Honour that in relation to, for example, the phone of  
6 Mr. Fahri Fazliu, I'd ask for redactions in relation to personal  
7 details or any personal numbers. Thank you.

8 JUDGE GOSNELL: Certainly. So this is admitted as a  
9 confidential document.

10 THE COURT OFFICER: Thank you, Your Honour. Pages listed by the  
11 counsel and corresponding English translation will receive  
12 Exhibit 1D00033, and classification is confidential. Thank you.

13 MR. MISETIC: Thank you.

14 Q. Mr. Kelly, one final matter regarding communication between  
15 Mr. Smakaj and Mr. Zyrapi. I would like to look at the Cellebrite  
16 extractions from Mr. Zyrapi's phone.

17 MR. MISETIC: And I'd like to call up SPOE00374260 to 00374337  
18 RED at page SPOE00374260. And this item is not for public broadcast.

19 Q. Again, you see a Cellebrite extraction report, and this is data  
20 from Mr. Zyrapi's mobile phone; is that correct?

21 A. It appears to be, yes, sir.

22 Q. And if we look there at the report filter, we see that it's for  
23 the date range of January 1st, 2023, to 1 November 2023, including  
24 items without timestamps; correct?

25 A. Yes.

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1 MR. MISETIC: And I would like to go to page SPOE00374268,  
2 please.

3 Q. And if we go to the bottom of this page, the table refers to  
4 Facebook Messenger as a source and mentions the names of Mr. Smakaj  
5 and Mr. Zyrapi. Is it correct that this, therefore, relates to their  
6 exchanges on Facebook Messenger?

7 A. Yes, it does.

8 MR. MISETIC: I'd like to go to the next page, please,  
9 SPOE00374269, and put up next to it its English translation,  
10 DHT1200404 to 00404, please.

11 Q. Now, there we see two messages of 29 June 2023, one at 13:58 and  
12 one at 13:59, between Mr. Smakaj and Mr. Zyrapi; correct?

13 A. I can see it on the translation side, sir. I can't see it on  
14 the right-hand side of the screen. I can see the 13:59:19 and the  
15 13:58 -- yes. Yes.

16 Q. Now, the first message sent by Mr. Zyrapi has been translated  
17 as:

18 "Thank you Bashko, Tomorrow I have to take my daughter to the  
19 exam in 12."

20 And the second message says:

21 "Okay, great, let's have some coffee."

22 Is that correct?

23 A. Yes.

24 Q. Now, we've gone through the messages exchanged between  
25 Mr. Smakaj and Mr. Zyrapi as extracted from Mr. Smakaj's phone. We

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1 didn't see these messages on Mr. Smakaj's phone; is that correct?

2 A. I don't recall all of the messages that I've seen on the prior  
3 exhibits, sir.

4 Q. Okay. What would be the explanation for why, just assuming I'm  
5 correct, these messages appear in the Facebook Messenger of  
6 Mr. Zyrapi's phone but not Mr. Smakaj's phone?

7 A. The likelihood is that somebody has removed them or they've been  
8 deleted.

9 Q. Did you check?

10 A. I don't recall whether I did or not, but I may have.

11 Q. Had you checked, would you have recorded that or disclosed that,  
12 that you checked and you noted some deletion by Mr. Smakaj?

13 A. Yes.

14 MR. MISETIĆ: Your Honour, I tender page SPOE00374269 of this  
15 item and its translation DHT1200404 to 00404.

16 JUDGE GOSNELL: Any objection?

17 MR. HAFETZ: None at all, Your Honour. And the same point on  
18 the redactions.

19 MR. MISETIĆ: Yes.

20 JUDGE GOSNELL: This is admitted as a confidential document.

21 THE COURT OFFICER: Thank you, Your Honour. This one page and  
22 its corresponding English translation will receive Exhibit 1D00034.  
23 Classification is confidential. Thank you.

24 MR. MISETIĆ: Thank you.

25 Q. Mr. Kelly, I would like to return to the phone extraction of

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1 Mr. Smakaj that we were looking at earlier, item SPOE40010997 to  
2 40012496 RED, to focus this time on contacts between Mr. Smakaj and  
3 Mr. Rrustem Mustafa.

4 MR. MISETIC: Can we please go to page SPOE40011755, which is  
5 page 759 in the PDF, and its translation DHT1200402 to 00403.

6 Q. Now, we're looking at communications between Mr. Smakaj and  
7 Mr. Mustafa on the Viber application; is that correct?

8 A. I actually don't think so, sir. I know Mr. Mustafa's phone  
9 number, and that is not it. You see, I -- we may just be on the  
10 wrong page.

11 Q. Probably.

12 A. But that BC is not his contact info.

13 MR. MISETIC: Is this 11755 on the screen on the right-hand  
14 side? There we go.

15 Q. If we look at the top, the box on the top, do you agree that  
16 this is a Viber communications between Mr. Smakaj and Mr. Mustafa?

17 A. That's the contact name there. I can't see the phone number.  
18 But that's -- yes.

19 Q. Okay. Again, we see start date 27 October 2020, which, as I  
20 understand your testimony, is the beginning of this conversation in  
21 this application; correct?

22 A. It's the first message in this conversation, yes.

23 Q. Now, we see that the first messages are dated 12 April 2023;  
24 correct?

25 A. Excuse me. In the exhibit, yes.

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1 Q. Yes. And we see the following messages are dated 3 July 2023  
2 and refer to Route 66; correct?

3 A. That's right.

4 MR. MISETIC: And if we can go next, please, to page  
5 SPOE40011756, please. These are more messages exchanged on Viber  
6 between Mr. Smakaj and Mr. Mustafa; correct?

7 A. Yes, they are, sir.

8 Q. And they're dated 7 August 2023?

9 A. I can't see the last one or two messages on there.

10 Q. Can you see that now?

11 A. Yes. All -- yes. All 7 August.

12 MR. MISETIC: Yes, and can we move to the next page, please.

13 Q. The conversation continues between the same persons; correct?  
14 Messages dated 7 August and 5 September 2023?

15 A. Yes, the bottom -- the messages at the bottom of this thread are  
16 September 5th, yes.

17 Q. Yes.

18 MR. MISETIC: And if we can go to the final page, SPOE40011758,  
19 please.

20 Q. Can you confirm that the final message on this page is also  
21 dated 5 September 2023?

22 MR. MISETIC: If we can scroll down, please.

23 THE WITNESS: That's correct.

24 MR. MISETIC:

25 Q. Would you agree, based on your review of the contacts, that

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1 these two individuals were in frequent -- or regular contact, I  
2 should say?

3 A. The message thread started quite some time before these  
4 messages, so I think that's a fair assessment, at least pertaining to  
5 this -- this chat conversation.

6 Q. Yes.

7 MR. MISETIC: Your Honour, I tender pages SPOE4001175 to  
8 SPOE40011758 as well as the translations of the identified pages,  
9 DHT1200402 to 00403.

10 JUDGE GOSNELL: Prosecution?

11 MR. HAFETZ: No objection.

12 JUDGE GOSNELL: This is admitted as a confidential document.

13 THE COURT OFFICER: Thank you, Your Honour. These four pages  
14 can be added to previously admitted Exhibit 1D00033 because they are  
15 originating from the same document.

16 MR. MISETIC: That's great. Thank you.

17 THE COURT OFFICER: Thank you.

18 MR. MISETIC: Mr. President, I have one final topic. I hope to  
19 finish before the end of the day. Sorry.

20 JUDGE GOSNELL: We do need to break at 55.

21 MR. MISETIC: Yeah.

22 Madam Court Officer, I'm told that the English translation is a  
23 different document.

24 THE COURT OFFICER: That can also be added to the same exhibit  
25 number. Thank you.

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1 MR. MISETIC: Okay. Great. Thank you.

2 Q. Now, we talked a little bit about the geolocation in the iPhone  
3 at the beginning of my cross-examination. You provided aerial views  
4 from Google Earth, I believe; is that correct?

5 A. Yes.

6 Q. Okay. Showing the restaurant Route 66 and the purported address  
7 of Fadil Fazliu at six minutes by car from each other; is that  
8 correct?

9 A. Sorry, sir. I was referencing the wrong exhibit in my head. If  
10 you're talking about that particular exhibit, that was using  
11 Google -- I think I used Google Maps --

12 Q. Okay.

13 A. -- to do directions, driving directions from one location to the  
14 Route 66.

15 Q. And you established that Mr. Fazliu lived six minutes from  
16 Route 66; is that correct?

17 A. I just used the -- what Google Maps --

18 Q. Right.

19 A. -- feedback was in terms of the different routes.

20 Q. Yeah, I'm not arguing about whether it's two minutes more or  
21 less, but just that the two things you measured were Route 66 and  
22 Mr. Fazliu's address?

23 A. To the home, that's right.

24 Q. Yes. Were you asked to locate where Mr. Rrustem Mustafa lives?

25 A. Generally. The street name was also in the exhibit. I don't

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Cross-examination by Mr. Misetic

1 have the exhibit in front of me, but if you look at the exhibit, the  
2 street name is in or is part of the exhibit.

3 Q. Did you do a Google Map?

4 A. I don't -- I don't know the exact number for his home, but I  
5 know that they're proximate to one another, the Route 66 and to the  
6 home.

7 Q. When you say "proximate," what does that mean?

8 A. Close.

9 Q. Okay. So Mr. Fazliu, Mr. Mustafa, and Route 66 are all in the  
10 same general area?

11 A. Yes.

12 Q. Okay. How many times did Mr. Fazliu and Mr. Mustafa meet at  
13 Route 66 to have coffee in the neighbourhood?

14 A. I don't know.

15 Q. Were you asked to determine that?

16 A. I was not asked to determine that, no.

17 Q. Could you have determined that using their phones?

18 A. I don't believe so.

19 Q. Well, if that was locations that were significant to Mr. Fazliu  
20 and Mr. Mustafa, would their iPhone have identified Route 66 on both  
21 of their phones as places that they were in regular -- that they  
22 visited regularly?

23 A. Are you talking about -- which Fazliu are we talking about?

24 Q. We're talking about Fadil Fazliu.

25 A. So Fadil Fazliu had an Android, he doesn't have an iPhone, so he

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1 wouldn't have significant location data on his phone. And I don't  
2 recall any location data.

3 Q. Does Android have the ability to do something similar to  
4 significant location?

5 A. Androids can have location data on them, but there was no  
6 location data that I recall on this particular Android.

7 Q. Did you look for location data?

8 A. Yes.

9 Q. Turning to Smakaj and Zyrapi, you located -- you showed an  
10 aerial photo of the Gizzi restaurant extracted from Google Maps; is  
11 that correct?

12 A. Yes.

13 Q. And you showed, as was shown to you by the Prosecutor on direct  
14 examination, the locations of Mr. Zyrapi's phone and Mr. Smakaj's  
15 phone in relation to the Gizzi restaurant; is that correct?

16 A. That's right.

17 Q. Were you asked to locate the home of Mr. Smakaj?

18 A. I don't recall if I was asked to do it, but I did.

19 Q. Okay. But you did?

20 A. I'm aware of -- yes.

21 Q. Does he live in the area?

22 A. My recollection is that it was a few kilometres away, but  
23 that -- that's a vague recollection, sir.

24 Q. Okay. There is evidence in the record that the parties agree  
25 that Mr. Zyrapi has said that he would go to the University of

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1 Prishtine every Monday or Tuesday to drop someone off and then come  
2 back on Friday to pick that person up. Did you check to see how far  
3 the University of Prishtine is from the Gizzi restaurant?

4 A. I did.

5 Q. And how far is it?

6 A. My recollection is it's only a few kilometres. I didn't do the  
7 same exact type of Google Mapping, but it's relatively close.

8 Q. Well, I can show you a Google Map.

9 MR. MISETIC: So DHT12450 to DHT00450, please. I'm sorry.  
10 Wrong one. DHT1200453 to DHT00453.

11 Q. It's about a 12-minute walk, 750 metres. Do you see that?

12 A. I see it, yes.

13 Q. So it's not a few kilometres. It's less than a kilometre;  
14 correct?

15 A. Yeah, but I -- yeah, my recollection apparently wasn't as good  
16 as I thought.

17 Q. Okay. We established earlier you said that the location  
18 services provide that these two individuals would be in the area of  
19 the Gizzi restaurant with some frequency; correct?

20 A. That's how a significant location gets registered within an  
21 iPhone, that's right.

22 Q. So how many times would Mr. Smakaj and Mr. Zyrapi meet for  
23 coffee at the Gizzi restaurant?

24 A. Well, that's not necessarily the way that it works. Like, they  
25 could go on their own, and the location would be registered as a

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1 significant location for one of them, and then the other, right?

2 Q. Yeah.

3 A. It just so happens that on that particular day there was a  
4 significant location visit to that area for both parties.

5 Q. And how did you identify the day?

6 A. By mapping the location data on both phones and then looking at  
7 the correlating times when they were close.

8 Q. Right. And so my question is, did you do that exercise for any  
9 other times to establish how frequently they came -- they were in the  
10 same location of the Gizzi restaurant? For example, did they meet  
11 every Monday and/or every Friday at the Gizzi restaurant for a  
12 coffee?

13 A. This was the only time that I saw both devices in the area, and  
14 I spent a significant amount of time with the location data and  
15 mapping it. That was the only time that I recall seeing the two  
16 devices within close proximity.

17 Q. So you were asked to check for -- from January 1st, 2023, until  
18 sometime in late October for every time that those two phones were in  
19 the same location as each other?

20 A. No. It would be September till the time of seizure of those  
21 devices.

22 Q. So less than two months?

23 A. Yes.

24 Q. Okay. You didn't look in the summer, or before, how often they  
25 would meet for coffee?

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1 A. No.

2 Q. Okay.

3 MR. MISETIC: Mr. President, I tender this exhibit, which is the  
4 Google Map, DHT1200453 to 00453.

5 JUDGE GOSNELL: Any objection?

6 MR. HAFETZ: None at all, Judge.

7 JUDGE GOSNELL: This is admitted as a public document.

8 THE COURT OFFICER: Thank you, Your Honour. This map will  
9 receive Exhibit 1D00035, and it will be reclassified to public.  
10 Thank you.

11 MR. MISETIC:

12 Q. Mr. Kelly, thank you for answering my questions. That concludes  
13 my cross-examination.

14 A. Yes, sir.

15 JUDGE GOSNELL: Thank you, Mr. Misetic.

16 We'll break there for today. Mr. Kelly, you remain under oath,  
17 which means that you will not discuss your testimony with --

18 MS. MENEGON: Your Honour --

19 JUDGE GOSNELL: -- anyone -- yes?

20 MS. MENEGON: May I interrupt? I'm not sure the other parties  
21 have any further questions. You may want to ask that before  
22 [Microphone not activated].

23 JUDGE GOSNELL: Yes, Ms. Menegon, unfortunately we need to deal  
24 with a matter before we break for the day, so there's no more time  
25 available for cross-examination of this witness today. So we'll pick

1 it up tomorrow.

2 I understand there's an estimate for cross-examination from  
3 Mr. Edwards [Overlapping speakers] ...

4 MR. REES: I'm afraid I do have a very short number of  
5 questions.

6 JUDGE GOSNELL: Thank you. So we'll pick up the  
7 cross-examination tomorrow morning.

8 Mr. Kelly, so you won't discuss your testimony with anyone  
9 outside of the courtroom, and we'll see you back tomorrow morning at  
10 9.30 a.m., please.

11 THE WITNESS: Very well, Your Honour.

12 JUDGE GOSNELL: Thank you very much.

13 [The witness stands down]

14 Mr. Young, you wished to raise a matter. Does it need to be in  
15 closed session?

16 MR. YOUNG: I think it might be better, Your Honour, yes. I'm  
17 happy to -- it's only a very short matter, but I'm happy to deal with  
18 it now or tomorrow, as Your Honour sees fit.

19 JUDGE GOSNELL: Closed session, please. I'm sorry, private  
20 session.

21 MR. YOUNG: Your Honour, thank you. I hope Your Honour got the  
22 message that I -- ah.

23 [Private session]

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10 [Open session]

11 THE COURT OFFICER: Your Honour, we are now in public session.

12 JUDGE GOSNELL: Before we adjourn for the day, may I indicate  
13 that I would intend tomorrow, after completing this witness's  
14 testimony, to discuss with the parties scheduling for the remainder  
15 of the case. So - and I'll say this for myself, and also for  
16 everyone else - please bring your calendars and we'll discuss that.

17 We stand adjourned until tomorrow morning at 9.30. Thank you.

18 --- Whereupon the hearing adjourned at 4.10 p.m.

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