Witness: Donald Toy

Date: 2004-08-03

Proceedings held August 3, 2004

Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos; Redirect – David Harris; Recross – Mark Geragos

Day 1 of 1 for this witness

Court: San Mateo County Superior Court, Redwood City (People v. Scott Peterson)

Source: https://pwc-sii.com/CourtDocs/Transcripts/Toy.htm

Page/line: not available (source HTML has no page or line markers)

Text below is verbatim from the source page for this date only.

Direct Examination by David Harris

HARRIS: Mr. Toy, who are you employed by?

TOY: Echostar.

HARRIS: Echostar, is that a company that has some other company that's probably better known?

TOY: Better known as Dish Network Satellite Company.

HARRIS: What is Dish Network Satellite Company?

TOY: We provide satellite programming for residents, businesses, in the U.S.

HARRIS: Are you an authorized representative of that particular company?

TOY: Yes, I am.

HARRIS: And like to have marked People's next in order, some SDT documents from Echostar.

JUDGE: That will be People's Number 175.

HARRIS: I'm going to present to you what's been marked as People's Number 175. Do you recognize this as being documents from Dish Network?

TOY: Yes, they are.

HARRIS: And were these documents produced pursuant to a subpoena?

TOY: Yes, they were.

HARRIS: Now, the documents that you are looking at in People's Number 175 there, are those copies of documents that are maintained by Dish Network as part of their regular course of business?

TOY: Yes, they are.

HARRIS: And are you familiar in your employment with the company, familiar with how those documents are created and generated?

TOY: Yes, I am.

HARRIS: And does your business try to keep them accurate so that you can stay in business?

TOY: Yes.

HARRIS: And the entries, are they made at or near the time of the events they reflect inside those documents?

TOY: Yes, they are.

HARRIS: Now, those documents, particular, documents this People's Number 175, does that relate to a particular subscriber's account?

TOY: Yes, it does.

HARRIS: And look at, it's about the third page in, isthere a rental agreement or some type of agreement with the customer?

TOY: Yes.

HARRIS: Who opened up this particular account?

TOY: It's in the name of Laci Peterson.

HARRIS: And so Laci Peterson becomes a subscriber of Dish Network, or do you provide satellite services to her at that time?

TOY: Yes, we did.

HARRIS: Now, going through this just pretty quickly. When was the account set up?

TOY: March 13th of 2001.

HARRIS: What kind of basic programming at that point in time?

TOY: At that time it was Top 100, local channels from Sacramento, and HBO.

HARRIS: I want to move forward in time to after December 24th, 2002. Was there a change in programming?

TOY: Yes, there was.

HARRIS: And specifically in January of 2003, was the account, was the programming changed?

TOY: Yes, it was.

HARRIS: What was the first change?

TOY: In January 2003, on January 8th, Playboy Channel was added.

HARRIS: And was the Playboy Channel kept, or did something happen with that?

TOY: After approximately five days, it was dropped and Ten Ecstasy Channels were added.

HARRIS: Ten Ecstasy, is that one word, or is that,

TOY: Ecstasy is two different program packages combined to make one package. It gives a better deal.

HARRIS: And what are these two channels?

TOY: They are adult content.

HARRIS: You say adult content. Is this uncensored sexual content?

TOY: Very explicit.

HARRIS: You say it's a better package. Is this an individual thing, or a monthly? What is it?

TOY: It's a monthly subscription. You can order adult content programming either by Pay-Per-View for a period of time, or you can do a subscription where you can watch it unlimited at your leisure.

HARRIS: And when was this change to this package done?

TOY: It was done on January 12th.

HARRIS: Moving forward in time to February 18th, do you know a Detective Kipp Loving?

TOY: Yes, I do.

HARRIS: Have you worked on other satellite piracy cases with him?

TOY: Yes, I have.

HARRIS: And did he contact you on the 18th?

TOY: Yes, he did.

HARRIS: When he contacted you, was he trying to find out something about service?

TOY: Yes. He had called me and said he was on a search warrant, and wanted to know what happened to the programming, because I guess television was on, and satellite signal went off.

GERAGOS: Objection. Hearsay. Motion to strike.

JUDGE: It is hearsay. Sustained. May be stricken. Jury can disregard it.

HARRIS: Was he asking you at the time that he called if there was something happening with the service?

GERAGOS: Objection. Hearsay.

JUDGE: Calling for hearsay.

HARRIS: Just asking if he asked that question.

JUDGE: Without asking what he said?

HARRIS: Correct.

JUDGE: Okay.

HARRIS: Did he ask you that question?

GERAGOS: Still hearsay.

JUDGE: If you include what's included in the question, it is hearsay.

HARRIS: Based on what the detective was asking you, did you do something in terms of looking at the account?

TOY: Yes, I did. I checked the account to see if it was normally operating, and it had been disconnected.

HARRIS: When had it been disconnected?

TOY: Within the last couple hours I would say.

HARRIS: So from the time that you were talking with the detective, the account had been disconnected within a couple hours of that?

TOY: Right. It had been disconnected that day within a short period of time.

HARRIS: Now, when somebody attempts to disconnect service, is there a process, how do you do that?

TOY: The customer would call up and request that the account be disconnected. And at that point we would try to save them as customer to give them options so we didn't have the complete disconnect. There are restart fees associated with, if they decide to become a customer again. And the account was offered that opportunity. The customer was offered that opportunity, and apparently declined. The account was disconnected.

GERAGOS: Objection. Hearsay. Motion to strike.

JUDGE: Overruled. You are testifying from the records?

TOY: Yes.

JUDGE: Overruled.

HARRIS: Let me back up. You keep saying the customer. Can anybody just call up and cancel somebody else's account?

TOY: No.

HARRIS: So do you have to do things to identify yourself as being connected with the account?

TOY: There is a couple of different methods. One, if you call from the phone number that's associated with the account, it would auto populate the account up on the Customer Service Representative's screen. And if that person, if the person is calling from another number other than the one on the account, it would automatically ask you to input the account number or phone number of the account.

HARRIS: And do they ask you any additional questions to verify who you are?

TOY: They normally go through a process of trying to verify the caller given information that the accountholder should only know.

HARRIS: Is this the same if somebody changes description services?

TOY: Yes.

HARRIS: Now, on the 18th of this, when this the account is disconnected, you are talking about how the process the company tries to keep the business. Do they document what the reasons are that the customer is trying to close the account?

TOY: Any time a customer calls the Customer Service Rep, they would notate the record on the account to show they have talked to somebody. That also shows how their time is spent. So,

HARRIS: Did the customer in this particular case indicate why they wanted to close the account on February 18th?

TOY: According to the records they had.

GERAGOS: Be the same objection.

JUDGE: Overruled.

GERAGOS: Under Crawford.

JUDGE: Overruled.

TOY: They had indicated in, the Customer Service Rep indicated in the account that the customer called up and said that they were moving overseas.

HARRIS: People have no other questions.

Cross Examination by Mark Geragos

GERAGOS: Well, the customer first tried to disconnect, didn't they?

TOY: I'm sorry?

GERAGOS: The customer didn't say, "I'm leaving to go overseas I'm going to disconnect," right? That's not what happened.

TOY: They called up just requesting to disconnect their service.

GERAGOS: Right. And you have a program in Echostar called Win-Back.

TOY: Yes.

GERAGOS: What is Win-Back?

TOY: It is to try to keep the customer from disconnecting. We'll offer different options for them.

GERAGOS: Right. You try not to lose the customer?

TOY: Absolutely.

GERAGOS: Okay. So when the customer called up, the customer didn't say, "I want to disconnect because I'm leaving the country." The customer said I want to disconnect, and somebody went into the protocol for the Win-Back procedure, correct?

TOY: Yes.

GERAGOS: Okay. When they went into the protocol for the Win-Back procedure, they start suggesting alternatives, correct?

TOY: Yes.

GERAGOS: Okay. Now, some of the alternatives that they suggest are, is there somebody else moving into the house, for instance, right?

TOY: Right.

GERAGOS: The guy says, no, there is nobody else that I want to transfer to. Then they go to Phase Two, right?

TOY: Pretty much.

GERAGOS: Okay. Phase Two would involve, what, if we discounted, or what, if you don't, you are going to have to pay extra if you disconnect now?

TOY: Right.

GERAGOS: Kind of a financial penalty?

TOY: Right. It's an extra fee if they reconnect later.

GERAGOS: I'm not going to characterize it as a threat. But Stage Two, you started to getting a little nuclear and say, look, you want to disconnect, you are not, nobody else is moving in to take over the service, you are going to pay some more money, right?

TOY: Right. We try to save them.

GERAGOS: Okay. Try to win them back. That's why you call it Win-Back?

TOY: Absolutely.

GERAGOS: Okay. When you don't get, at that point when the financial bomb doesn't work, then what's the third?

TOY: Well, they will offer to move it, have some other options. There are various options, depending what the situation is.

GERAGOS: Okay. So if you can't threaten them, threat is a bad word. If you can't encourage them financially, then you move into kind of the begging mode and, say come, on what can we do? We'll discount it. We'll give you this. We'll throw in this option, whatever it takes, right?

TOY: That very well could happen, yes.

GERAGOS: Okay. Now, if all of that doesn't work, and the customer is getting his house searched at that point, he doesn't want to hear any more of this, can he just say, look, I can't listen to this any more, I'm leaving the country, just cut off my service?

TOY: Sure, they can say that.

GERAGOS: Okay. And do you have anything to indicate that that's not what happened here?

TOY: I don't have that.

GERAGOS: Okay. We do have some indications that clearly there were at least two different people who were talking to this customer, correct?

TOY: Yes.

GERAGOS: One woman's name was Amy Renee Van Der Plough?

TOY: Van Der Plough.

GERAGOS: Van Der Plough. And she had quite a bit of interaction with this customer to try to keep him there, isn't that correct?

TOY: She was the Win-Back representative?

GERAGOS: And this Win-Back representative wrote a page and half of notes for the file as to everything she tried to do to win this customer back.

TOY: She did give a statement, yes.

GERAGOS: Okay. Then there was an, is it Tylesha Pendleton?

TOY: Tylesha Pendleton, yes.

GERAGOS: She also was trying to win him back.

TOY: She was the initial Customer Service Rep that talked to him.

GERAGOS: So she was kind of initial person, then when she couldn't win him back, she sends him over to Amy.

TOY: Right.

GERAGOS: Amy is kind of the hard sell?

TOY: Right.

GERAGOS: She's the closer?

TOY: She is the closer.

GERAGOS: If the closer doesn't work, then you give up?

TOY: Exactly.

GERAGOS: Okay. And short of death and leaving the country, those the only two ways to disconnect without getting financially penalized?

TOY: I guess it would depend on the situation for each customer.

GERAGOS: Okay. Now, the other thing that they were asking, Mr. Harris was asking you about, Mr. Harris asked you about, the Playboy Channel was ordered, is that correct?

TOY: Yes.

GERAGOS: Now, previous to this there was an HBO The Works package, is that right?

TOY: Right.

GERAGOS: Okay. And does The Works have adult HBO?

TOY: The Works comes,

GERAGOS: Has late night adult programming on it?

TOY: Whatever HBO offers.

GERAGOS: Okay. What is The Works?

TOY: The Works is more than one HBO channel. HBO has more than one channel they obviously offer to customers.

GERAGOS: They got a Family, HBO Family?

TOY: Yes. They have various levels.

GERAGOS: They have got an adult, HBO for adults, correct? I mean it's separate from the Family Channel?

TOY: With movie channels.

GERAGOS: Movie channel. They got an adult, not Adult Channel, they got a Latin Channel, correct?

TOY: They do.

GERAGOS: Okay. Then you can get East Coast, West Coast, the whole bit, right?

TOY: Various, yes.

GERAGOS: That's what's on it?

TOY: Yes.

GERAGOS: Then this other thing, that was this other package that you said, Ten Ecstasy?

TOY: Yes.

GERAGOS: That's what you like to call that adult programming, right?

TOY: Well, that's what it is.

GERAGOS: Okay. When they DA says, you know, describe this as pornography, you say, no, no this is adult programming, right?

TOY: It's, the way it's described as adult entertainment, adult programming.

GERAGOS: You sell this, right?

TOY: Yes, we do.

GERAGOS: Okay. There is nothing pirated about this in this instance, correct?

TOY: Correct.

GERAGOS: Okay. When they asked you whether you had worked on other piracy cases, we're not talking a piracy here?

TOY: No, we're not.

GERAGOS: Was the bill paid?

TOY: Yes, it was.

GERAGOS: You didn't, they didn't stiff you when he disconnected?

TOY: Well, actually the,

GERAGOS: Did he pay late?

TOY: equipment was supposed to be returned, and it was not returned. And so because it was not returned, a charge was back to the customer of $206 and some change.

GERAGOS: Okay. So you charged him back because the equipment didn't get returned?

TOY: To us.

GERAGOS: To you. Then at some point, did you, I'm looking through the records. Looks like you rehooked it up at the location.

TOY: We rehooked what, the account up?

GERAGOS: Yeah. The account changed over from Laci to Lee?

TOY: For a short period of time there was a question of whether or not they were going to allow it to be reconnected.

GERAGOS: Okay. When was that?

TOY: I don't recall the exact date.

GERAGOS: You had some, looks like in the record that Mr. Harris just marked, there was some print screens on the computer?

TOY: Yes.

GERAGOS: Is that what you are referring to?

TOY: Right. I'm looking for it.

GERAGOS: Looks like on March 12th there is an entry, customer violated promotional contract, right?

TOY: Right.

GERAGOS: So you charged the customer account for the promotional equipment, is that right?

TOY: That's correct.

GERAGOS: Then it looks like on that same screen, that the agent asked if it was all right to set up a new account at this address under the name of Lee Peterson, is that right? I'm looking at the top entry.

TOY: On 6-7-03?

GERAGOS: Yes.

TOY: Agent called in to question if all right to set up new account at the address, yes.

GERAGOS: And it looks like at some point that was done?

TOY: Well, the next entry would have been on the 18th I'll take it back. 6-7, we advised them until equipment was returned we could not activate another account at that address.

GERAGOS: What's the last day of service on this?

TOY: Well, the account was initially disconnected on 2-18-03.

GERAGOS: Okay. And was it ever reconnected?

TOY: No, it was not. Not by the records I see here.

GERAGOS: Is it possible that was reconnected under Lee Peterson's account name, and, because the subpoena was only for Laci Peterson, that those records didn't come?

TOY: I am not sure of that. Like, I know it was activated or tried to be activated that day, during that time, in June of 03.

GERAGOS: That's an, if there is a letter from Sandy Bray, B-r-a-y, is that right?

TOY: Yes.

GERAGOS: You researched to see if there are records that reflect Lee Peterson?

TOY: I'm sorry, say that again.

GERAGOS: You researched to see if you have got records that reflect that same address with Lee Peterson?

TOY: Yes.

GERAGOS: Okay. Are those records with you?

TOY: No, I don't see them here.

GERAGOS: I have no further questions. I'm going to ask once he's excused that he researches to see if he's got those records. If he does, he provides them to the Court.

Redirect Examination by David Harris

HARRIS: Mr. Toy, you were asked about these individuals that were talking to the person. The person they were talking to is Scott Peterson?

GERAGOS: Objection. Calls for speculation.

JUDGE: Overruled. So from the records.

TOY: They indicate that-

HARRIS: What do the records indicate?

TOY: They indicate that 1-12-03 they say Scott called in to remove Playboy and add Ten Ecstasy.

JUDGE: Next question.

HARRIS: You were also asked about the HBO having the same adult as Playboy. Are there kind of ratings for these channels?

TOY: Yes. The Playboy is an explicit adult programming. Ten Ecstasy is considered by most to be even more explicit. And HBO normally does not, you know, that we have seen, it shows certain aspects that are included in the adult channels.

HARRIS: So if you were to kind of rate these in terms of progression of explicitness, you would have HBO, then Playboy, then this extreme package, the Ten Ecstasy?

TOY: Yes.

HARRIS: To be the highest of all of those?

TOY: Yes.

HARRIS: People have no other questions.

Recross Examination by Mark Geragos

GERAGOS: Tell me it's not PG-13; is that right.

TOY: I'm sorry?

GERAGOS: It's not PG-13?

TOY: No, sir.

GERAGOS: And the I assume it's legal for you to sell these channels?

TOY: Yes, it is.

GERAGOS: Okay. And I assume that there is -- where is this company headquartered out of?

TOY: Which company?

GERAGOS: The company, Echostar?

TOY: Echostar is based out of Douglas County outside of Denver, Colorado.

GERAGOS: Who owns Echostar?

TOY: Charlie Ergen and stockholders.

GERAGOS: You say it's a publicly traded company?

TOY: Yes, it is.

GERAGOS: Thank you. I have no further questions.