Witness: Nils Myers

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Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos

Day 1 of 1 for this witness

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

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Direct Examination by David Harris

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

MYERS: EBay Incorporated.

HARRIS: And what is your particular assignment with eBay?

MYERS: I'm supervisor of the fraud investigations team in San Jose.

HARRIS: And as part of that assignment, are you an authorized representative of the business for the purposes of their records?

MYERS: Yes, I am.

HARRIS: If I could have marked a binder and its contents next in order.

JUDGE: 221.

HARRIS: Mr. Myers, I would like to show you what's been marked as 221 and ask you to look at this and see if you recognize it.

MYERS: These would be the records that, that were provided in response to a subpoena, eBay records.

HARRIS: And these eBay records, do they pertain to a particular account?

MYERS: Yes, they do.

HARRIS: I'll give counsel a moment, but while he's doing that, which account do they apply to?

MYERS: They apply to a account of Scott Peterson.

HARRIS: Now, these particular records that we're talking about on People's 221, are those records that are maintained in the regular course of business by eBay?

MYERS: Yes, they are.

HARRIS: And they're made at or near the time of the events that are reflected in the records?

MYERS: Yes, they do.

HARRIS: And these are true and accurate copies of the originals that eBay maintains?

MYERS: Yes, they are.

HARRIS: Now, the particular records that we're talking about, I want to go through this for anybody who isn't too familiar with the eBay process. EBay is an Internet web site?

MYERS: Yes. EBay is an Internet web site.

HARRIS: And the function or purpose of that Internet web site is to facilitate auctions or transactions between individuals?

MYERS: It, yes, it's, for a comparison what it is, it's sort of like an Internet based kind of,

JUDGE: Auction house?

MYERS: But a newspaper classified would be more of an accurate.

JUDGE: Okay.

MYERS: It does have an auction style format, but it's not a true auction, but it's more like a classified. That would be more accurate.

HARRIS: So someone, if they wanted to sell something through your service, they contact eBay and then they would go through the process of whatever the internal requirements are for eBay, list an item on your, on your web site so that they could sell it to whoever might be interested?

MYERS: Yes. Basically when you contact eBay it's through a virtual, you know, web page. And basically you, eBay can be viewed by anybody, but to actually, you know, interact with it you need to register. And once you register, depending on how you register, you can either just purchase, or you can also list items for sale.

HARRIS: And this registration process that we're talking about, is that, again, part of the records keeping part of eBay?

MYERS: Yes, it is.

HARRIS: So if somebody registered, you were telling us that this particular account, these records, dealt with Scott Peterson. Excuse me. Do your records show that Mr. Peterson registered as an eBay user?

MYERS: From my review of the records it indicated that Scott, the name Scott Peterson, yes, did register with the Ebay site.

HARRIS: Now, as part of the documents that you, refer you to the first section right behind the letter from Mr. Burke. There is a computer printout of transactions. Do you see that there?

MYERS: Yes, I do.

HARRIS: And is that a computer printout of all of the transactions involving that particular accounts registration?

MYERS: Yes. This would be like a, a list of, just a data run of just a simple list of that activity, listing activity on the site through this particular account.

HARRIS: Now, just so we're clear on the terminology, when you're talking about listing activity, so this particular account, the defendant, Scott Peterson, becomes a user, lists items for sale on eBay?

MYERS: Yes. My review of the records indicate he both bought and sold on eBay.

HARRIS: So let me go to that second one. Part of that first computer stuff is a run of any items that he had purchased?

MYERS: No, this indicates here this is the list, this is a list of items that he posted for sale on the eBay site.

HARRIS: Going into approximately the third page of the computer printout, does that then show transactions in which he was a buyer?

MYERS: In this, this is, this is the, a listing where he was the high bidder, yes.

HARRIS: Now, to break this up, there are tabs in there. And just so that we're clear about this, the first tab, it says Registration?

MYERS: Yes, it does.

HARRIS: And the second tab says?

MYERS: It says User ID and e-mail history.

HARRIS: The next tab?

MYERS: Is Feedback.

HARRIS: And again, for clarification, as people communicate or work with eBay, either buying or selling, they then, so to speak, rate the other individual involved in the transaction, so other members of the eBay community can figure out how that person was to work with?

MYERS: Yeah. The distinction we need to make, when people buy or sell, it's not to E, it's not eBay selling the item. We're simply facilitating the listing of an item and the acceptance of bids or purchase prices. And all transactions actually happen between individuals. So the distinction is, you're not really dealing with eBay but through eBay. And the feedback is a reflection of a voluntary method. If you complete a transaction with somebody, you do have the opportunity to just, like, leave some sort of commentary how your transaction went for public viewing, so you can give people, other members, or the public in general can read it, too, just how that particular transaction had transpired.

HARRIS: And the next tab?

MYERS: E notes.

HARRIS: And that would be any communications between the company and the individual or the individual and the company?

MYERS: E notes could include that, but typically that's kind of like a notation on a, in a particular account.

HARRIS: And the next tab?

MYERS: Credit card.

HARRIS: So as part of this process, when someone registers, they can register their personal information, such as a credit card, to facilitate their purchases?

MYERS: What they can do is actually, to register just to purchase, you can simply register. If you want to list, we do ask for a second level of verification. That could be a credit card. That could also be a third party verification, we call ID verify. A credit card could also be used if you want to register in any means with like an account like Hotmail or Yahoo! Also we would require a credit card for age verification, if you wanted to view the adult section where items are sold.

HARRIS: And if a person were to be selling items, is there a cost involved for them to list items on eBay?

MYERS: Yes. We do have, it's, there's a basic listing fee, and if you want some extras, like to add extra pictures or to make something bold on the general listings, there's, that's part of a listing. And then if it sells successfully, eBay typically takes between, I think the average now is between two and four percent, depending on how much it closes for.

HARRIS: And in terms of the credit card information, can that be an account that's billed by eBay for some of those extra costs for the transactions?

MYERS: Yes. When eBay, eBay itself, any kind of billing is really regards to the listing activity. So they're paying, we're charging for the service of listing the items, not for actually for the buyer purchasing the item. That would be actually a different service.

HARRIS: And the next tab?

MYERS: Settlements.

HARRIS: And what, what does that mean?

MYERS: This is strict, this is simply just an indication of, of a credit card being charged for those billing services.

HARRIS: The next tab?

MYERS: Invoices. Every seller account, it just, like you would get like, it's just a, a line by line notation of what's charged or credited to that particular account.

HARRIS: And then the next tab?

MYERS: And Item Descriptions. These are just screen prints from the, from various auction pages that you would view and print out through a printer.

HARRIS: Let me just go back through that. When you, when somebody lists an item on eBay, there is a page that's basically created that may have a photograph that has a description and information so that you can bid on that particular item?

MYERS: Yes. When someone, that's correct. When someone lists an item, they get an opportunity to give it a title, also to, to pretty much add as much description as they feel necessary or see fit. There's really no limit, that I understand there is. And then you could also put photographs with it, if you so choose.

HARRIS: And so the information that's placed on a sales page, one of these classified ads that you were describing earlier, that's information that's put by the listing individual?

MYERS: Yes. The, the account holder would have to provide all that information.

HARRIS: If I could get you to go back to the very first section, the registration section. And if you would turn to the -- I believe it's the second page.

MYERS: Okay.

HARRIS: Since there's so many there, I'll just point it out so you can see it. What, I'm referring you to this particular item right here.

GERAGOS: What page are you looking at?

HARRIS: This would be the second page of the computer print, looking to an item near the bottom. It would be the second one that says "bobster."

GERAGOS: Says what?

HARRIS: "bobster." Mr. Myers, having a chance to look at the, the one that I just pointed out to you, does that indicate a description for that particular item?

MYERS: The description that we maintain is just a title in this case. It says, let me check if this is correct. Amazing Diamond Bezel Ladies Watch, Croton.

HARRIS: And there's, there's a price next to that, to the right?

MYERS: The price indicates $100.

HARRIS: And then to the right of that, is there some kind of transaction, serial number that eBay maintains on each transaction?

MYERS: Yes. That would just be the unique item number.

HARRIS: And what is that unique item number?

MYERS: Each time we post an item, for just easy retrieval, and also just maintain, maintaining that individual, that item, it does give a unique number that each item has. That can be searched

by, by the seller, if they have it, or a bidder. But it's a tracking number of sorts.

HARRIS: Now, that, there's a value there for a high bidder. Just because there's a high bidder doesn't mean that the auction was actually completed, though, does it?

MYERS: No. Again, going back to the analogy that we're like newspaper classified, what we're doing is really just -- you know, allowing people to list items for sale, but it's really between the two parties to finalize any sort of sale. And this doesn't verify that. This simply indicates there was a high bidder. And also with this record, it does not necessarily indicate, in this particular listing, if it closed successfully. Just that it had a high bidder, and in this case the high bidder was 100 dollars.

HARRIS: Now, also just to get so we're clear on how this works. If an individual who wants to sell an item puts a reserve price on that, then the reserve would have to be met before the auction could be successfully completed as well?

MYERS: The reserve price is simply like a minimum price they want for an item. It's usually not noted unless they actually note it in the description. In an event that the bidding doesn't reach that amount, it's just not a successful auction.

HARRIS: Now, if you could go from that particular item that we were just looking at and go five items up, do you see that same description again?

MYERS: Yes.

HARRIS: And what is the individual or the unique number for that particular item?

MYERS: The item number was 986070668.

HARRIS: And it has the same title description as the same Croton watch?

MYERS: Yes. It's, it's the same item, or title. Description.

HARRIS: In reviewing of those particular records, was that particular watch listed on December 1st for an auction to expire on December 8th, and then relisted on December 8th for an auction that expired on December 15th?

MYERS: From reviewing the, the records, yes, that's what it appeared to be.

HARRIS: The People have no other questions.

Cross Examination by Mark Geragos

GERAGOS: The, can you pull up in the records that you have the specific, I guess it's what the eBay would be if somebody clicks on eBay to see what it is?

MYERS: Certainly. The auction page?

GERAGOS: Yeah.

MYERS: Okay. That would be back here. And let's see if they have, did you want that particular item?

GERAGOS: Yes. The one you were just asked about, the Croton watch. If it helps, I have the Bates number stamp.

HARRIS: Bates number is 18490.

MYERS: 1849, okay, so it starts towards the back.

GERAGOS: Yeah, it should be right before that.

MYERS: Okay.

GERAGOS: The, this is what we're talking about, this is the auction page?

MYERS: Yes.

GERAGOS: Okay. And specifically what you were talking about was, let me just get the pointer and you can just tell me, I'll try and walk you through this real quick. When somebody posts something on eBay, and in this case it's described as an Amazing Diamond Bezel Ladies Watch, Croton, correct?

MYERS: Correct.

GERAGOS: Then when you talk about the start of the auction is the 1st and it ends on the 8th?

MYERS: Yes.

GERAGOS: And it shows no bids?

MYERS: No bids on this particular auction, correct.

GERAGOS: So from the 1st to the 8th nobody bid on this, correct?

MYERS: Unless someone bid and they retracted the bid, that would indicate somewhere else. But that doesn't appear that was the case.

GERAGOS: Okay. And then the description is the Croton, Woman's Dress, and the age is 1970. That's something that's all put in by the person who puts it up on the web site?

MYERS: Yes. In that top part that you pointed out, that's like a feature where they can kind of choose, like when they list the item, it's something that associates this particular item so people can easily search by, maybe they're looking for something very specific, it just helps them with the search criteria, yes.

GERAGOS: Right here, where does that come from?

MYERS: That comes from the, the person, the member listing the item.

GERAGOS: Okay.

MYERS: They provide that picture.

GERAGOS: And then the second page, same thing?

MYERS: Correct.

GERAGOS: Okay. And then when you said the billing is closed, bidding, I'm sorry, is closed for this item?

MYERS: That was just the time has run out. The, unlike, like a genuine auction, it's not an open ended until someone, just no more bidders, it's a set open and closed, which is a major distinction between us and a real auction.

GERAGOS: And these pictures here, these three pictures here are also provided by the person selling the item, correct?

MYERS: Yes. Actually two pictures, because that one is actually redone to a little tiny one. And if they clicked on that second one, it would just give you a bigger picture. That's what it would do.

GERAGOS: And if I understand correct, this Croton watch was, went through two cycles of the auction? Is that what we just, is that what we were just trying to get through? I just showed the 1st through the 8th, and it also went the 8th through the 15th?

MYERS: This watch? I can, I can, I can testify that it's the same description and they appear to be the same pictures. But eBay does not handle any of the actual items, so I could not say that was actually the same watch.

GERAGOS: Okay.

MYERS: But they appear to be the same item.

GERAGOS: And it looks like this was not the only watch that was put up for auction all at the same time, correct?

MYERS: No, it appears others were also.

GERAGOS: Okay. Let me just run through these real quick. It looks like there's a series of watches that were all put together. I'll just run through them. The first is this ladies Mickey Mouse gold watch, correct?

MYERS: Yes.

GERAGOS: And this, this looks like it was sold?

MYERS: Yes. Yes, it does, because it says reserve met at the current bid, one ninety-two fifty, I believe it says, and it says reserve met, so it was a successful closing on this item.

GERAGOS: Okay. So this means this watch right here, here's the description of it, this one was put on and it was sold, correct?

MYERS: It had a high bidder, so, yes, it was successful.

GERAGOS: "Successful" means somebody bought the thing, right?

MYERS: Yeah. I can't attest they actually made the transaction. We would have to, but I mean yes, as far as we're concerned it was successful.

GERAGOS: Then we've got the Belair Watch, Gold and Diamonds. Was this successful?

MYERS: Reserve not met. So, no, it was not.

GERAGOS: Okay. That's this watch right here?

MYERS: Yes.

GERAGOS: Okay. And then we've got this Ladies Raymond Weil. Was this a successful,

MYERS: No. Again, like the other one, it did have bidders, but the reserve was not met.

GERAGOS: Okay. And once again, now, this shows the 8th through 15th. Just shows it was extended another week, is that right?

MYERS: Yeah. It was, that would be the 8th to the 15th, another week, and received one bid, but not, the reserve not met.

GERAGOS: Okay. And that's one of the reasons that you would expect that somebody would extend it from the 1st to the 8th, and it went from the 8th to the 15th, once again got the Raymond Weil Watch, because it had not sold, correct?

MYERS: Correct.

GERAGOS: Okay. Then we've got the same picture. Got a Longines, also the 8th to the 15th. Did this sell?

MYERS: Says reserve met, so it was a successful auction.

GERAGOS: Okay. And this is the Longines watch once again. This just shows the, is that the last, and then the buyer, and then right here, what does it say about bobster?

MYERS: Okay.

GERAGOS: Is that,

MYERS: If you're not, okay. Buyer, if you're not sure how much to pay, you can request, I think it says request the total from your seller.

GERAGOS: Okay. So is that something, you have an interaction with the person?

MYERS: Yes. We, we really do try to make sure people, to make communications clear, that the ability is there to make sure that, once it is successful, that they can make that communication and finalize their, the sale.

GERAGOS: Okay. So is it a fair statement that as far as you can tell the only watch that ended up getting sold on eBay between December 1st and the 15th was the Mickey Mouse watch?

MYERS: There was Mickey Mouse watch and that second one. They had the reserve met. So those two. The others didn't appear to be successful transactions.

GERAGOS: And the, I'm going to show you the Longines watch again.

MYERS: Okay.

GERAGOS: Who is the seller on that?

MYERS: Jgheaven.

GERAGOS: Okay. Does it look like that's not the seller for this account that we've been talking about?

MYERS: It doesn't appear to be, unless, I'd have to just check the,

GERAGOS: Does it look like the person that Mr. Harris was talking about, bobster, had gone on and purchased a watch, a Longines watch, from a different seller?

MYERS: It's a different user ID, yes. Different, different member.

GERAGOS: So it looks like he had put a bid in on the Croton watch, reserve wasn't met, and then he went on and he purchased a different watch from somebody else?

MYERS: That indicates, yes, that he had a successful listing with this.

GERAGOS: With this,

MYERS: jgheaven.

GERAGOS: Right. Which is not, has nothing to do with this account?

MYERS: Doesn't appear so, no.

GERAGOS: Okay. Once again, the only watch that got sold by Mr. Peterson, or through Mr. Peterson's account was that Mickey Mouse watch?

MYERS: Yes, it appears the Mickey Mouse watch was the one successful watch proceed.

GERAGOS: Okay. There are no, I'll have you take a look at it if you want, but you don't see any sales after the 15th of December, do you?

MYERS: No, no, that, mid December is when it ceased, and there was no, also no invoicing after that.

GERAGOS: Okay. So as of December 15th, so we've got it clear,

MYERS: Okay.

GERAGOS: the only watch that was sold was the Mickey Mouse watch. The Croton gold watch, by the way, that was described as a yellow gold quartz watch or gold Croton watch?

MYERS: I'd have to check it, but...

GERAGOS: I just put it over there, but it's a Croton gold watch?

MYERS: Yes.

GERAGOS: Is that correct?

MYERS: Yes.

GERAGOS: In that, so there is no record of eBay of that watch having ever been sold on eBay, correct?

MYERS: No. The, the listings, as indicated, did not look like, were not successful listings, no. They were not sold.

GERAGOS: And the, so just so I've got it clear, the picture that is on the auction web site is placed there by the user, correct?

MYERS: Yes.

GERAGOS: Okay. So eBay doesn't have anything to do with it. The user takes the picture, puts it on there?

MYERS: Yes. What we do is we have the software that allows them to do it, but they're the ones going to take that picture, choose it, place it with that listing.

GERAGOS: Thank you. I have no further questions.