Witness: Kipp Loving

Date: 2004-08-02

Proceedings held August 2, 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)

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Direct Examination by David Harris

HARRIS: Sir, what is your occupation?

LOVING: Police officer with the City of Turlock.

HARRIS: And how long have you been a police officer?

LOVING: Approximately 21 years.

HARRIS: What is your current assignment?

LOVING: Currently assigned to the Sacramento Valley High Tech Crime Task Force.

HARRIS: Were you working in that capacity back on February 18th of 2003?

LOVING: Yes.

HARRIS: And as part of your assignment with the high tech task force did you participate in the service of a search warrant on a street address in Covena in the City of Modesto?

LOVING: Yes, I did.

HARRIS: And when you went there, did you go to look at things from high tech or electronic computer kind of nature?

LOVING: Yes.

HARRIS: And when you went there, did you find a computer?

LOVING: Yes, I did.

HARRIS: What type of computer was it?

LOVING: It was a Sotec computer. Spelled S-O-T-E-C. It's a notebook computer.

HARRIS: Let me back up through that. Sotec, is that a brand or a type?

LOVING: That's a brand.

HARRIS: So the manufacturer, or whatever it's being labeled as, is Sotec?

LOVING: Correct.

HARRIS: Then you said it was what kind of a computer?

LOVING: A notebook computer, or portable computer.

HARRIS: Also referred to as a laptop?

LOVING: Yes.

HARRIS: Did you seize this particular notebook or laptop?

LOVING: Yes, I did.

HARRIS: And was it turned over to another detective from the high tech task force?

LOVING: Yes.

HARRIS: Who was that?

LOVING: It was turned over to Detective Stockham from the Modesto Police Department.

HARRIS: Is that Kirk Stockham?

LOVING: Yes.

HARRIS: Now, during the time that you were there on February 18th, did you happen to notice that the TV was on in the house?

LOVING: Yes, I did.

HARRIS: And was it on or not?

LOVING: It was on.

HARRIS: During the time that you were there and you're collecting this particular computer, did something happen with the TV?

LOVING: The TV went out.

HARRIS: When you say the TV went out, what happened?

LOVING: It had been on a DISH Network satellite system, so it was viewing programming from the satellite system and the signal was lost.

HARRIS: You say the signal was lost. Let me just go through this.

LOVING: Yeah.

HARRIS: In terms of mechanics, there's a TV, I mean real basic.

LOVING: Yeah.

HARRIS: There's a TV there,

LOVING: There's a TV there and then a separate tuner, satellite tuner, which allows you programming through the satellite service, in this case DISH Network. And at some point during the service of the search warrant the signal was lost, the TV went out. The TV when I say went out, the TV was working fine, just the signal was lost. So it would be similar to like the cable service going out. If you're subscribing to cable.

HARRIS: Now, you referred to this as DISH Network. Is it also referred to as EchoStar?

LOVING: Correct. That's the parent company of DISH Network.

HARRIS: And in your assignment with the Sacramento Valley High Tech Task Force, have you dealt with either DISH Network or EchoStar before?

LOVING: Yes, a number of times.

HARRIS: And did you contact a representative from that company on the phone at that time?

LOVING: Yes, I did.

HARRIS: Who was it that you talked to?

LOVING: I spoke with Don Toy. He's a signal theft integrity investigator for DISH Network or EchoStar Communication.

HARRIS: And he's a representative of the company?

LOVING: Yes.

HARRIS: And when you talked to him, were you still at the house at that time?

LOVING: Yes, I was.

HARRIS: So the signal goes out, you call up DISH Network almost immediately?

LOVING: Correct.

HARRIS: The People have no other questions.

Cross Examination by Mark Geragos

GERAGOS: Are you telling me that you, you went in on the search warrant on the 18th and the TV was on?

LOVING: The TV was on while I was there, yes.

GERAGOS: The TV was, so when you came in, were you one of the first guys there?

LOVING: Yes.

GERAGOS: And who, who was home at the time?

LOVING: I'm sorry?

GERAGOS: Who was home? Who was there?

LOVING: There was nobody home.

GERAGOS: And so the TV was on, and nobody was home?

LOVING: Well, the TV I believe, there were two TVs in the house that I dealt with. With the satellite receivers. And I turned the TVs on.

GERAGOS: Okay. So they weren't on. You turned them on?

LOVING: Yes.

GERAGOS: Okay. That's what I wanted to make sure. And you, prior to going in, you had talked to this Mr. Toy at EchoStar, right?

LOVING: Correct.

GERAGOS: I, maybe I misunderstood, but I thought you said that you called Mr. Toy after you went in?

LOVING: I had also called him after I went in, yes.

GERAGOS: Well, you, but did you mention on direct that you called him before you went there? Did they ask you that question? I stepped out for a minute, so I don't know if I missed it.

JUDGE: No, they did not.

GERAGOS: Okay. So basically you called Mr. Toy at EchoStar before you went and did the search warrant, right?

LOVING: Yes.

GERAGOS: Okay. And you've met and talked with this guy on numerous occasions, right?

LOVING: Yes.

GERAGOS: Okay. And you wanted to see whether or not they had a service under the name of Laci, right? Isn't that what you asked Mr. Toy?

LOVING: Correct. I was trying to see if there was an account from DISH Network at that location, yes.

GERAGOS: Okay. And you were, you received information, and based on that information and the conversation with Mr. Toy, then you went and went inside of the house sometime at about 9:40 in the morning, right?

LOVING: Approximately, yes.

GERAGOS: Okay. And the, before you went in there, you knew that there was an EchoStar system, right? Because you had talked with Mr. Toy and he had given you all the information?

LOVING: Correct.

GERAGOS: So it wasn't something where you turned on the TV and all of a sudden it went out and then you called EchoStar, that's not what happened?

HARRIS: Objection. Argumentative.

GERAGOS: I'm asking.

JUDGE: He's cross-examination. He can ask him.

GERAGOS: That's not what happened, right?

LOVING: Can you repeat?

GERAGOS: Well, let me see if I've got what really happened. You called EchoStar and talked to this guy, Don Toy, who you've talked to on numerous occasions, right?

LOVING: Correct.

GERAGOS: And you did that before you ever went inside the house?

LOVING: Correct.

GERAGOS: So then, and when, when did you call him? What date?

LOVING: If I can refer to my report?

GERAGOS: Sure.

JUDGE: Sure.

GERAGOS: Do you have numbers on the bottom right? No. Can you tell me what page?

LOVING: Currently looking at page 3.

GERAGOS: Okay. If you turn the page one way or another, would you tell me?

LOVING: I believe I spoke with Mr. Toy on the 15th, approximately.

GERAGOS: Of February?

LOVING: Yes.

GERAGOS: Okay. And when you talked to him on the 15th, you got the information, and then when you went in there on the 18th, you assisted Modesto police detectives with the search warrant, is that right?

LOVING: Correct.

GERAGOS: And when you went in there, you immediately located two receivers in the residence, right?

LOVING: Yes.

GERAGOS: One that was in the family room and one in the bedroom, right?

LOVING: Correct.

JUDGE: Mr. Geragos, when you say receivers, he was talking about, I'm confused now. Is he talking about computer terminals?

GERAGOS: No.

JUDGE: Or TV,

GERAGOS: No. Let me see if I've got it right. When you have one of these Direct or EchoStar unit, basically what it is is a unit that sits on top of your TV that's connected, correct?

LOVING: Correct.

GERAGOS: And then there's also some wiring that goes to the wall that's attached to one of these remote antennas that downloads from the satellite, correct?

LOVING: Correct.

GERAGOS: And when you went in there, what you were looking for, based on your conversation with Toy, was these two receivers, meaning the two TV sets presumably are being provided with service from EchoStar, correct?

LOVING: That's correct.

GERAGOS: Okay. So when you went in you found one in the bedroom that was connected to there and one in the other room, right?

LOVING: Correct.

GERAGOS: Okay. And those were both connected to TV sets, right?

LOVING: Yes.

GERAGOS: Okay. You found both of the receivers were in working order, right?

LOVING: Yes.

GERAGOS: Okay. And you didn't see any other outside source of TV programming, right?

LOVING: There were no, there's a connection on the back of the receiver boxes that would allow for outside programming. Neither one of the receivers had some.

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GERAGOS: Thank you.

GERAGOS: Now, officer, you had this information from this Don Toy, correct, when you entered that residence, right?

LOVING: Yes.

GERAGOS: Then when you got inside the residence, the TV wasn't on. You turned it on so that you could see if there was, if they worked, right?

LOVING: Correct.

GERAGOS: And you found them to be in working order, right?

LOVING: Yes.

GERAGOS: And then you turned the TV off and took photographs of both of them, and the receivers and the TVs, right?

LOVING: I don't remember if I turned them off at any particular time. I remember taking having photographs taken, yes.

GERAGOS: Now, you had testified that at one point the service just cut out. That didn't happen, right?

LOVING: Yes.

GERAGOS: What really happened is, you turned off the TV, and then you called EchoStar afterwards, right?

LOVING: I said, yes, it did happen.

GERAGOS: It did happen? Where in the report did you put that in? Which page? You prepared a written report, correct?

LOVING: That's correct.

GERAGOS: It looks to me like it's 1-2-3-4-5 pages, is that right? 5 pages single-spaced?

LOVING: I show 9.

GERAGOS: 9 pages single-spaced?

LOVING: Some of them refer to photographs. One is a property page.

GERAGOS: Okay. Where in that report do you mention that the TV just went off while you were there?

LOVING: If I can refer to my report, please.

JUDGE: Go ahead.

LOVING: On page 5, indicated that I contacted Don Toy. That's when the TV went off. It was sometime prior to noon, approximately.

GERAGOS: Is there anywhere, I understand you said contact was made with Don Toy from EchoStar. Where does it say that the TV went off?

LOVING: It doesn't say that, but that was the reason I contacted him.

GERAGOS: Well, didn't you then say in your report that you specifically had gone in and that the TVs were in good working order? Isn't that what you said? I found them to be in working order?

LOVING: Correct.

GERAGOS: Okay. Did you say anywhere, while I was there the TVs went off?

LOVING: No.

GERAGOS: Okay. You said in checking the residence there was no other signs of an outside source of programming, right?

LOVING: Correct.

GERAGOS: You said I also checked the rear of the satellite receivers, there was no connector jack, right? Where it was unused?

LOVING: There was no connector jack.

GERAGOS: Connector jack was unused, right?

LOVING: Which connector jack?

GERAGOS: The F-type connector jack?

LOVING: There is a jack specifically designed for an external antenna that was unused, correct.

GERAGOS: Okay. You specifically, then, in your report said you went in, you checked it, the TVs were in working order. You located the satellite dish, right?

LOVING: Yes.

GERAGOS: And then Brocchini asked you if you could determine through EchoStar whether or not Martha Stewart had aired, right?

LOVING: At a particular time, yes.

GERAGOS: Well, that was the next thing that's in your report. Brocchini asked you if you could determine through EchoStar whether a specific Martha Stewart program might have been on the dates of the 23rd and 24th, correct?

LOVING: Correct.

GERAGOS: Okay. And you referred that information to Toy, right?

LOVING: Yes.

GERAGOS: And that's when you called Toy, isn't it?

LOVING: Yes.

GERAGOS: Okay. You called Toy because Brocchini said, I want to know when Martha start aired. Wasn't because the TV went off, correct?

LOVING: Yes.

GERAGOS: Okay. And when you referred me before to page 5. You said that you contacted Toy after the TV went off. That isn't why you contacted Toy. You did it after the computer items were seized. That's what you wrote in your report, right?

LOVING: Correct.

GERAGOS: Thank you. I have no further questions.

Redirect Examination by David Harris

HARRIS: Detective Loving, looking at People's Number 12 behind you. When you were referring to the bedroom, which bedroom on that particular diagram are you talking about?

LOVING: There.

JUDGE: There is a pointer there.

LOVING: The second bedroom.

HARRIS: You are pointing at this point in time to the representation of a room that has a label on it, "Second Bedroom"?

LOVING: Yes, sir.

HARRIS: And you said there was another TV and satellite dish elsewhere. Where was that?

LOVING: That was in the living room area

HARRIS: And you are indicating to the lower right of number 12, the representation of the living room that has the label "Living Room"?

LOVING: Yes, sir.

HARRIS: You can go ahead, put that down, have a seat. Now, in terms of all this stuff that we're talking about with the satellite, so we're all clear about this, were you the one that turned on the TV?

LOVING: I believe so, yes.

HARRIS: How many times did you turn the TV on?

LOVING: Once.

HARRIS: And you checked the TV, and you checked the satellite?

LOVING: Yes.

HARRIS: And you were, at some point in time did the signal go out?

LOVING: Yes.

HARRIS: Did other people make some comment about the signal going out?

LOVING: Yes.

HARRIS: What happened?

LOVING: The signal went out, and there was some other investigators present that thought it was something that I might have done.

HARRIS: Let me go back through that, when you were looking at the TV, you are looking at the satellite, do you actually do something or input something to check these things out?

LOVING: Depending on what you are doing, you are looking at the actual receiver, so the rear of the receiver panel to make sure the connections are connected properly. And then there is also a program mode you can go in to just to determine the information on the account matches up, so in this case you have a Smart Card that allows access to specific program to a specific customer. And most of that information you can access right on screen. You don't have to pull out the card, and so forth.

HARRIS: So after you had done this, something happens to the TV picture, and you started getting grief from other detectives?

LOVING: Yes.

HARRIS: So that's how you recall that the programming went out?

LOVING: Correct.

HARRIS: When you were asked about calling Martha Stewart, you had a conversation with Mr. Toy from Dish Network?

GERAGOS: I don't think he called Martha Stewart.

JUDGE: No, he didn't call Martha Stewart.

HARRIS: You had a conversation with a detective about calling about Martha Stewart. You had a conversation with Mr. Toy. And without getting into what he said, was there some activity taking place in the account right then and there, based on your conversation with Mr. Toy?

LOVING: Correct.

HARRIS: So you were discussing

GERAGOS: Objection. That's non-responsive.

JUDGE: What, next question.

GERAGOS: No, he says was there, and he says correct.

JUDGE: Correct. There was something going on.

GERAGOS: Right. Still non-responsive.

JUDGE: I don't think so. Overruled. Go ahead, next question. So you were starting to say, so he, which was the leading question.

HARRIS: Do you recall the service going out and talking with Mr. Toy about the service going out while you were at the house?

LOVING: Yes, sir.

HARRIS: People have no other questions.

Recross Examination by Mark Geragos

GERAGOS: Well, once again, is there any place in your 9-page report where you say that that's what happened? There isn't, is there?

LOVING: That I spoke with Mr. Toy?

GERAGOS: No. That the service went out while you were watching the TV.

LOVING: No, I did not specifically.

GERAGOS: Nothing in your report. So then we can we talk about talking with Mr. Toy, you say we called him, you called him because Brocchini asked you about Martha Stewart. You say TVs were in working order. Everything I have stated is correct?

LOVING: Correct.

GERAGOS: All of that made it into the report, right?

LOVING: Correct.

GERAGOS: But nothing about the TVs going out while the officers were watching it.

LOVING: I do mention that I contacted him.

GERAGOS: You said shortly after the computer items were seized, contact was made. You don't say shortly after the TV went out contact was made, right?

LOVING: Correct.

GERAGOS: You say, I found the TVs, both receivers were tested. I found them to be in working order, right?

LOVING: Correct.

GERAGOS: You didn't say within minutes while we were watching TV the receivers malfunctioned, right? You didn't put that in anywhere in the report?

LOVING: Correct.

GERAGOS: And, once again, when you came into the house, contrary to what you testified on direct, the TVs were not on, right?

HARRIS: Objection. Argumentative.

JUDGE: Overruled.

GERAGOS: TVs were not on?

LOVING: Correct.

GERAGOS: No further questions.

JUDGE: May this witness be excused?

HARRIS: No objection.

JUDGE: Detective Loving, thank you. You can be excused.