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Transcript of James J. Fiduccia

Date: September 6, 2017

Case: Boyle -v- City of Chicago, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

-----X

JERRY BOYLE, on behalf of :
himself and a class of others :
similarly situated, :
Plaintiff, : Case No. 17-cv-00244
vs. : Hon. Harry D.
CITY OF CHICAGO; Former : Leinenweber
Superintendent of the Chicago :
Police Department GARRY :
MCCARTHY; :

-----X
(Caption continued on next page)

Deposition of JAMES J. FIDUCCIA
Chicago, Illinois
Wednesday, September 6, 2017
10:00 a.m.

Job No. 158729
Pages: 1 - 51
Reported by: Jean S. Busse, CSR, RPR
Notary Public, DuPage County, Illinois

1 Caption continued from previous page)
2 Former Superintendent of the :
3 Chicago Police Department :
4 JOHN ESCALANTE; Current :
5 Superintendent of the Chicago :
6 Police Department EDDIE :
7 JOHNSON; Former Chief of the :
8 Bureau of Organized Crime :
9 NICHOLAS ROTI; Current Chief :
10 of the Bureau of Organized :
11 Crime ANTHONY J. RICCIO; :
12 Bureau of Organized Crime : Case No. 17-cv-00244
13 Technical Support Section : Hon. Harry D.
14 Supervisors JACK COSTA and : Leinenweber
15 JAMES WASHBURN; unknown :
16 Chicago Police Department :
17 Supervisor JOHN DOES; and :
18 unknown Chicago Police :
19 Department Cell Site :
20 Simulator Operator JOHN DOES, :
21 Defendants. :

22 -----X

23
24

1 Deposition of JAMES J. FIDUCCIA, held at
2 the offices of:

3 Loevy & Loevy
4 311 North Aberdeen Street
5 3rd Floor
6 Chicago, Illinois 60607
7 (312) 243-5900

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11 Pursuant to notice before Jean S. Busse, a
12 Certified Shorthand Reporter, Registered
13 Professional Reporter, and a Notary Public in and
14 for the State of Illinois.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

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ON BEHALF OF DEFENDANTS:

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E X H I B I T S

(Attached to Transcript)

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1 PROCEEDINGS

2 (Witness duly sworn.)

3 JAMES J. FIDUCCIA,

4 having been duly sworn, testified as follows:

5 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

6 BY MR. TOPIC:

7 Q Could you state and spell your name,
8 please?

9 A It's James J. Fiduccia; F, as in Frank,
10 i-d-u-c-c-i-a.

11 Q And Sergeant Fiduccia, are you employed by
12 the Chicago Police Department?

13 A Yes, I am.

14 Q What is your title?

15 A I'm a sergeant in the Police Department.

16 Q What are your responsibilities?

17 A I'm currently the supervisor of the
18 Electronic and Technical Support Unit.

19 Q Is that also known as the Tech Lab?

20 A Yes, it is.

21 Q How long have you held that position?

22 A Since the end of April 2015.

23 Q And prior to that time, did you have any
24 involvement with the Tech Lab?

1 A Ancillary for equipment sign-out, yes.

2 Q Well, what did you do before your current
3 position?

4 A I had a gang intelligence or gang
5 investigations team in the Gang Intelligence or Gang
6 Investigations Unit. It would change names a couple
7 times.

8 Q In the course of that prior duty, did you
9 sometimes have occasion to request electronic
10 surveillance through the Tech Lab?

11 MS. SOBOTA: Object to form.

12 MR. TOPIC: You can answer.

13 A I'm not sure what you mean by "electronic
14 surveillance."

15 Q Okay. So you understand we're talking
16 today about something called the cell site
17 simulator.

18 Are you familiar with that term?

19 A I am.

20 Q And what is your general understanding of
21 what a cell site simulator is?

22 A A cell site simulator is a multi-component
23 device utilized to find cell phones.

24 Q And during your prior position before the

1 current position, did you ever request the use of a
2 cell site simulator?

3 A I requested it once.

4 Q How did you go about doing that?

5 A There was a request through my
6 supervisors, and a court order was drafted.

7 Q So when you make a request to your
8 supervisor, is that done in writing or otherwise?

9 A No, not necessarily. Sometimes it is.
10 For my purposes it was not.

11 Q Was there a procedure that you were aware
12 of for requesting a cell site simulator at that
13 time, like a written procedure?

14 A No.

15 Q Have you been deposed before?

16 A I have.

17 Q How many times?

18 A I don't know the exact number, but more
19 than two.

20 Q Okay. And were those in your capacity as
21 a Chicago Police Department officer or otherwise?

22 A I would say from the standpoint of being a
23 Chicago police officer.

24 Q Do you know what kinds of cases they were?

1 A There was a Federal lawsuit on cell
2 phones. I was deposed by your group here on a
3 policy matter concerning cars.

4 Q What was the lawsuit about cell phones?

5 A It was the FLSA lawsuit.

6 Q Oh, you mean officers' use of cell phones?

7 A Correct.

8 Q Have you ever -- we'll go to criminal in a
9 second.

10 Have you ever testified in a civil trial?

11 A In a civil trial?

12 Q Yes.

13 A Other than that one, no.

14 Q "That one" being the cell phone one?

15 A Correct.

16 Q Have you testified in criminal
17 proceedings?

18 A A couple times.

19 Q Did any of those occur while you were in
20 your current position with the Tech Lab?

21 A No.

22 Q Have you ever provided any testimony about
23 cell site simulators?

24 A No.

1 Q How about cellular surveillance more
2 generally?

3 MS. SOBOTA: I'm going to object to form.

4 Q As a Chicago Police Department officer,
5 have you ever been subject to any discipline?

6 A I have.

7 Q Just generally, could you describe those
8 instances for me?

9 A Once 23 years ago, a minor incident, a
10 beach discrepancy about something --

11 Q Okay. That's fine.

12 A -- and recently my house was under
13 construction.

14 I had one of my service weapons, and I
15 forgot where I hid it. I reported it and
16 subsequently found where I hid it. It was one of
17 those things where I didn't want anybody to find it,
18 and I still took some time because I lost temporary
19 control.

20 Q Anything else?

21 A Nothing.

22 Q I'm going to hand you what we're going to
23 mark as Exhibit No. 1.

24 (Fiduccia Exhibit 1 marked for

1 identification.)

2 Q I'm handing you Exhibit No. 1. This is
3 the declaration that you submitted in this case.

4 Why don't you go ahead and just take a
5 minute and reread it so it's fresh in your mind.
6 When you're done doing that, let me know and then
7 I'll begin questions.

8 A Okay.

9 Q Do you recognize Exhibit No. 1 to be a
10 declaration that you signed on April 24, 2017?

11 A I do.

12 Q Who drafted this declaration?

13 A Myself in consultation with counsel.

14 Q Did you type it or did somebody else type
15 it?

16 A No, I had to type some of it.

17 Q Okay. Let's start on Paragraph 1. You
18 say, "I make this Declaration based on personal
19 knowledge and to the best of my recollection."

20 How would you characterize your
21 recollection about the events that are described in
22 the declaration?

23 MS. SOBOTA: Object to form.

24 THE WITNESS: Could you repeat the

1 question?

2 MR. TOPIC: Yes.

3 Q I mean how well did you recall these
4 events when you put this together?

5 MS. SOBOTA: Object to form.

6 Q Another way of saying it is if you could
7 be more specific about what the best of your
8 recollection is.

9 A I mean it's to the best that I can
10 remember at the time that this was drafted.

11 Q How well do you think you recall these
12 events?

13 MS. SOBOTA: Object to form.

14 A Well, in totality? The events on each
15 part here that I'm stating?

16 Q Right.

17 A Pretty well.

18 Q Okay. You began at the Tech Lab in April
19 of 2015; right?

20 A Correct.

21 Q And when you arrived, did your predecessor
22 or someone else train you about, for example, the
23 kinds of equipment that the Tech Lab had control
24 over?

1 MS. SOBOTA: Object to form.

2 A I had a brief time overview with my
3 predecessor going over some stuff but not all the
4 equipment.

5 Q Was that Sergeant Costa?

6 A It would be.

7 Q Okay. Did Sergeant Costa explain to you
8 what cell site simulator equipment the Tech Lab
9 possessed at the time?

10 A No.

11 Q Was there an inventory of that equipment?

12 MS. SOBOTA: Object to foundation.

13 MR. TOPIC: I don't see how that lacks
14 foundation.

15 A There's not a -- it's not in the inventory
16 asset management system that we currently have.

17 Q Is it in a different asset management
18 system?

19 A No, it's not.

20 Q So there's no asset management system that
21 inventories the cell site simulator that the Chicago
22 Police Department has; is that right?

23 A To my knowledge, yes.

24 Q How did you learn about the cell site

1 simulator that was going to be under your purview as
2 the sergeant in charge of the Tech Lab?

3 A Through prior experience, the one time I
4 requested it. Then it turned out not to be
5 available, and then just through communication, you
6 know, scuttlebutt.

7 Q Have you ever operated the equipment?

8 A No.

9 Q Who does the operating of the equipment?

10 A My trained technicians that are trained on
11 the equipment.

12 Q Have you ever undergone the training that
13 they've undergone?

14 A No.

15 Q You mentioned in a prior answer that you
16 gained a little experience because you had requested
17 a cell site simulator but it wasn't available; is
18 that right?

19 A Correct.

20 Q Do you know why it wasn't available?

21 A From what I remember, it was not
22 functioning or something was wrong with it.

23 Q Do you remember when that was?

24 A I believe it was sometime in 2014. It was

1 during a major operation that we conducted.

2 Q Let's go back to your declaration. It
3 mentions the Electronic and Technical Support Unit
4 and your experience there.

5 Am I correct that you would not have
6 knowledge about any cell site simulators that were
7 owned or operated by other divisions within the
8 Chicago Police Department?

9 MS. SOBOTA: Object to form.

10 A To my knowledge, ours is the only one in
11 the Chicago Police Department. So that's kind of
12 a -- the question I'm kind of confused about.

13 Q Sure. Your knowledge about what cell site
14 simulator the Chicago Police Department has is
15 limited to what's in the Electronic and Technical
16 Support Unit. Is that an accurate statement?

17 A Yes, that would be accurate.

18 Q Let's go on to Paragraph 3. You describe
19 "general oversight of the system known as a 'cell
20 site simulator,' which includes both hardware and
21 associated software."

22 Why don't we start by having you identify
23 the hardware and associated software that you're
24 referencing in that paragraph.

1 A I can't identify any software. If you
2 want me to describe the system --

3 Q Let's just -- I'm sorry. I cut you off.
4 I apologize.

5 A So do you want me to describe the
6 equipment?

7 Q Why don't we start by just inventorying
8 what the components are that you are referencing
9 here in this declaration. Then we can go from
10 there.

11 A Well, there's four boxes, and then there's
12 an additional box with the word "StingRay" on it.
13 Then there's a power supply unit. That's what I
14 got.

15 Q What are the four boxes? Let's start with
16 that.

17 MS. SOBOTA: Object to foundation.

18 A I couldn't tell you.

19 Q You don't know anything?

20 A No. I just know the box has "StingRay" on
21 it. I don't know what the other boxes are.

22 Q You know there's software, but you don't
23 know what the software is?

24 A I know it's been out for software updates,

1 which was one of the reasons why it was down. So
2 no, I don't know the firmware or software.

3 Q Who do you think would best know the
4 answer to that question?

5 A That would probably be the manufacturer.

6 Q Who at the Chicago Police Department do
7 you think, if anyone, would know what the associated
8 software is that's referenced in your affidavit?

9 A When you're talking about software, you're
10 talking about proprietary knowledge. I mean,
11 they're not giving us the -- they'll do the updates
12 remotely if they have to or something like that --
13 not remotely, but we'll send it out and they'll do
14 the updates.

15 We don't actually have anything to do with
16 the software. It is what it is when we get it.

17 Q So if the software has been upgraded, are
18 you informed of what the upgrades are?

19 A That's one of the reasons why it had to go
20 out at the time of the incident was for a complete
21 software update.

22 Q Right. So let's just start with that.

23 What software update was performed?

24 MS. SOBOTA: Object to foundation.

1 A I don't know. An upgrade to the system I
2 would just say. I can't be specific. I have no
3 knowledge.

4 Q Is there anyone else at Chicago Police
5 Department who you believe would have that
6 knowledge?

7 A To the specific software update?

8 Q To any details about what the software
9 update was.

10 A No, not to any details.

11 Q Let me ask you this way: Is there anyone
12 at Chicago Police Department you're aware of who you
13 think would know more about the upgrade that you
14 referenced than you do?

15 A Yes.

16 Q Who would that be?

17 A Several of my techs who have been trained
18 on the equipment would have a basic understanding.

19 Q Who are those people?

20 A The 9126 police technicians that work for
21 me.

22 Q What are their names?

23 A We have Ron Bonadurer, Wayne Metcalf,
24 David Heppner, Adam Aleszczyk, Dragan Nikin, Steven

1 Yee, Jeff Pineda, Tony Green, and Jose Colon.

2 Is that ten?

3 Q We'll figure it out. I wasn't counting.

4 I'm still on Paragraph 3. Your job
5 responsibilities include general oversight of the
6 system known as a cell site simulator?

7 A Yes.

8 Q Could you explain what you mean by
9 "general oversight"?

10 A So if a court order comes in to utilize
11 the equipment, I'll verify that the language in the
12 court order is pursuant to the 2017 statute --
13 January 1 statute and then authorize or deny based
14 on the appropriate court order.

15 Prior to January there was existing
16 language, but the most recent is a January statutory
17 update.

18 Q Is there any written policy or order or
19 directive or procedure or any document like that
20 that talks about the 2017 statute that you
21 mentioned?

22 A No.

23 Q So at some point you became aware of the
24 2017 statute; right?

1 A Yes.

2 Q How was that? How did you become aware of
3 it?

4 A It was forwarded to me by a supervisor.

5 Q Okay. And then you were responsible for
6 ensuring that any court orders to use the cell site
7 simulator comply with that statute?

8 A That is correct.

9 Q How do you go about doing that?

10 A Well, if a pen comes in, I'll review it
11 for the appropriate language, and then we -- if
12 circumstances allow, we would let the equipment go
13 out.

14 Q When you say "pen," you mean an
15 application has been made for a pen register order?

16 A That is correct, with specific language
17 regarding the cell site simulator.

18 Q Is there a specific reference to cell site
19 simulator or what is the term that is used?

20 A Cell site simulator.

21 Q Got it. Okay. Are you involved in
22 reviewing any applications before they are submitted
23 to the court?

24 A Negative.

1 Q Have you had to reject any applications
2 since the 2017 statute took effect?

3 MS. SOBOTA: Object to form.

4 Applications or the actual court order?

5 MR. TOPIC: I'm sorry. Let me ask it
6 differently. Fair point.

7 Q Would it be accurate to say that if
8 someone would get a court order to use the StingRay,
9 they would make a request to your department to then
10 employ the StingRay?

11 A Not exactly.

12 Can you rephrase that?

13 Q Let me ask you one thing: If I say
14 "StingRay" and "cell site simulator," do you
15 consider those to be the same thing?

16 A For the purposes of this deposition I
17 would, yes.

18 (Mr. Burday entered the room.)

19 MR. TOPIC: Okay. Joining us is my
20 colleague, Josh.

21 THE WITNESS: Hi, Josh.

22 MR. BURDAY: Good morning. How are you?

23 BY MR. TOPIC:

24 Q You said that when someone wants to use

1 the cell site simulator, they apply for an order.

2 The order comes in to you, and you verify
3 that it complies with the 2017 statute; is that
4 right?

5 A Yes.

6 Q Have you ever had an instance in which you
7 concluded that the order didn't comply with the 2017
8 statute?

9 A Yes.

10 Q Then what did you do in that instance?

11 A I rejected the use of the equipment.

12 Q Do you keep a file of those orders?

13 A The pen orders we have a working file, but
14 they're mixed -- it goes by pen number. So we're
15 not concerned about the particular verbiage when we
16 track it. Like there's no cell site simulator
17 folder and then there's no 2017 pens or 2016 pens.

18 Q So any court orders for using a cell site
19 simulator would be in the pen order working file
20 along with other pen orders?

21 A That would be correct.

22 Q Where is that file kept?

23 A There's a working file cabinet right
24 outside my door.

1 Q Is there an electronic copy that's kept
2 anywhere?

3 A No.

4 Q Did you complete any paperwork approving
5 or denying a request for a cell site simulator?

6 A No.

7 Q Is any paperwork kept that keeps track of
8 when and where a cell site simulator is deployed?

9 A By me?

10 Q By you, or if you're aware of anyone else
11 doing it, you can tell me that, too.

12 A Not by anyone in the Electronic and
13 Technical Support Unit.

14 Q Is there anyone else who keeps track of
15 that, to your knowledge, or you just don't know?

16 A I can only speak to my personal knowledge
17 from being in the -- having a major investigation.
18 If I requested it, I have a working copy of that pen
19 in my case folder. So somebody has it documented,
20 the original, in their case folder somewhere within
21 the department if they ever requested it.

22 Q So let's move, though, beyond just the
23 order and into the actual deployment.

24 So in an instance in which the order is

1 obtained and you agree that the cell site simulator
2 is going to be deployed, is there any record that's
3 kept of when or where it's actually deployed, to
4 your knowledge?

5 A On advice of counsel, at this point we do
6 not track that in the Electronic and Technical
7 Support Unit.

8 Q Are you aware of anyone else tracking
9 that?

10 A I don't have personal knowledge of it
11 being tracked anywhere else.

12 Q Have you ever been told that it's tracked
13 somewhere else?

14 A No.

15 Q You said that was based on advice of
16 counsel?

17 A That we are not tracking it, correct. The
18 Electronic and Technical Support Unit does not track
19 or document the usage of the vehicle.

20 Q When did you receive that advice of
21 counsel?

22 A It was pursuant to the beginning of the
23 Martinez FOIAs.

24 Q Around the beginning of the Martinez FOIAs

1 you received advice of counsel not to keep track of
2 when and where cell site simulators were used within
3 your division?

4 A Well, I inquired as to whether or not that
5 would be something that, you know, we could or
6 should be doing, and at this point I've been advised
7 by counsel to hold off.

8 Q Okay. So prior to that time, at the
9 beginning of the Martinez FOIAs, you described there
10 wasn't -- as far as you know, there wasn't any
11 tracking of when and where a cell site simulator was
12 used; is that right?

13 A Correct.

14 Q And then in the course of the Martinez
15 FOIAs, you inquired as to whether you should be
16 tracking that information?

17 MS. SOBOTA: I'll just caution the witness
18 not to get into any discussions that you had with
19 counsel. You can answer that question yes or no.

20 THE WITNESS: Can you repeat the question?

21 Q Am I right that during the course of the
22 Martinez FOIA case, you inquired as to whether you
23 could or should keep track of when and where cell
24 site simulators were being used?

1 A What you're asking is the
2 chicken-before-the-egg-type thing.

3 I inquired about doing it and then was
4 informed of pending FOIAs. So that was -- it wasn't
5 that I went into, "Hey, because of this, do we need
6 to do this?"

7 Q Got it. So independent of the Martinez
8 FOIAs, you had asked as to whether you should keep
9 written track of usage of the cell site simulators?

10 A Among other things.

11 Q And you were advised not to do that?

12 A That is correct.

13 Q Okay. Were you told that some other part
14 of Chicago Police Department was going to be keeping
15 track of that?

16 MS. SOBOTA: I'm going to object to the
17 extent that that calls for attorney-client
18 privileged information.

19 If you learned anything from your lawyers
20 about that, don't answer. Otherwise, you can
21 answer.

22 MR. TOPIC: I think he's already waived it
23 at this point.

24 THE WITNESS: Can you repeat the question?

1 MR. TOPIC: Sure.

2 Q Were you informed after you inquired about
3 keeping written track of use of cell site simulators
4 that some other division or segment of Chicago
5 Police Department was keeping track of that
6 information?

7 A No.

8 Q From whom did the advice of counsel come?

9 A Ultimately it was from Perconte, I
10 believe, who was handling that matter.

11 Q The outside counsel for the Chicago Police
12 Department in that case?

13 A Correct.

14 Q Did that go directly to you or did it go
15 through a lawyer at the Chicago Police Department or
16 your supervisor or how did you learn of that?

17 A Through Lieutenant Biggane.

18 Q Who is that?

19 A She works in the Chief of Patrol office,
20 who has been handling some of these FOIA issues.

21 Q Are you able to provide any explanation
22 about what the capabilities of the cell site
23 simulator referenced in Paragraph 3 of your
24 affidavit is?

1 A What do you mean by "capabilities"?

2 Q By "capabilities" I mean the things that
3 the system can do.

4 A I don't believe I can --

5 MS. SOBOTA: He's just asking if you can
6 provide any information.

7 A (Continuing.) Not firsthand knowledge.

8 Q But have you acquired knowledge about the
9 capability of the cell site simulator from others?

10 A I've been told on what the capabilities --
11 or some of the capabilities are -- or what the
12 capabilities are of the devices.

13 Q And do you know whether one of the
14 capabilities is to acquire the subscriber ID number
15 from a phone?

16 MS. SOBOTA: Again, he's just asking if
17 you know that. So yes or no if you know that.

18 A I don't.

19 Q Can you tell me any of the capabilities
20 that you've been told the cell site simulator
21 referenced in Paragraph 3 of your declaration has?

22 MS. SOBOTA: I'm going to object to that
23 to the extent it calls for information protected by
24 the nondisclosure agreement between Chicago Police

1 Department and the FBI and direct the witness not to
2 answer it on that basis.

3 MR. TOPIC: I assume you're going to
4 follow your attorney's advice there?

5 THE WITNESS: Yes.

6 MR. TOPIC: I have to ask.

7 Q Let's go to Paragraph 4. Why don't you
8 read Paragraph 4 to yourself. Then I'll have a
9 question for you.

10 A Okay.

11 Q In the second sentence you state that "the
12 CPD has only possessed one active and usable cell
13 site simulator." Do you see that?

14 A Yes.

15 Q Am I correct you do not have any firsthand
16 knowledge about what cell site simulator system
17 might be possessed by other parts of CPD outside the
18 Tech Lab?

19 A Well, I don't believe anybody has any
20 other cell site simulator, but I don't have any
21 knowledge.

22 Q What is your belief based on?

23 A That the workings of the requests of the
24 cell site simulator, we were the only ones that I

1 know of who are trained on the equipment. When I
2 say "we," I mean the people that work for me.

3 So to my knowledge, we're the only ones
4 with the cell site simulator.

5 Q But what I'm getting at is the basis of
6 your knowledge is what you're aware of within the
7 Tech Lab; is that correct?

8 A Well, I've been around a bit on the
9 Chicago Police Department. So my past history is
10 aid to the Chief of Patrol. I understood that the
11 Tech Lab is the only place that had that type of
12 device.

13 Q Okay. And that's based on discussions
14 you've had with other people, not your firsthand
15 knowledge?

16 A Correct.

17 Q You refer to it as "one active and usable
18 cell site simulator."

19 Do you see that portion of the declaration
20 there?

21 A Yes.

22 Q What do you mean by "active and usable"?

23 A There's one -- what is the word I want to
24 use? There's one set of active components --

1 operating and functioning components. That's what I
2 mean, "active" meaning functioning.

3 Q And as of the time that you began at the
4 Tech Lab, were there any inactive or unusable cell
5 site simulator systems or components possessed by
6 Chicago Police Department?

7 A To my knowledge, there is an old -- it's
8 called a DRT system --

9 Q Okay.

10 A -- that's inoperable due to technology. I
11 mean, it's probably 15 years old or older. I have
12 no idea, but it just couldn't function in today's
13 environment with 3G, 4G, going to 5G.

14 Q How do you know it would be inoperable due
15 to current technology?

16 A Well, my technicians told me so, that it
17 didn't function.

18 Q Do you have any firsthand knowledge about
19 whether the DRT system you referenced could operate
20 today -- or actually, I should say could have
21 operated in January of 2015?

22 A My firsthand knowledge would be based on
23 the cell technology. Not in use but based on the
24 advances in cell technology, it's impossible for

1 that device to work based on its age.

2 Q How do you know that to be the case?

3 A Well, if cell technology is advancing at
4 the rate it is and every two years there's a new
5 generation of cell technology, which has also caused
6 us to have this reiteration of updating of
7 equipment, then you can see something that's almost
8 20 years old -- 15 to 20 years old couldn't possibly
9 work.

10 Q Do you know whether that system could get
11 software upgrades that would allow it to work on
12 cell phones as of January 2015?

13 A I was told the equipment was obsolete. So
14 I'm just going with that.

15 Q Who told you that?

16 A My techs.

17 Q You don't have any firsthand knowledge
18 whether the equipment was obsolete?

19 A Not user knowledge.

20 Q Okay. Based on the --

21 A Based on the age of the equipment, we've
22 never fired it up. It's on a shelf in a box.

23 Q Where is the shelf?

24 A The shelf is at Homan Square.

1 Q Is that where it was located in January of
2 2015?

3 MS. SOBOTA: Object to foundation.

4 A I can't tell you. I was not there in
5 January of 2015.

6 Q Does Chicago Police Department have any
7 hand-held cell site simulator devices?

8 A No.

9 Q Has Chicago Police Department ever
10 acquired a hand-held cell site simulator device?

11 A Not to my knowledge.

12 Q Other than the DRT system that you
13 referenced, is there any other cell site simulator
14 equipment that is currently inactive or unusable?

15 A There is one --

16 THE WITNESS: Can I give the name?

17 A -- Kingfish box that is from an older
18 generation of equipment that is no longer
19 functioning.

20 Q Where is that located?

21 A In the same place, at Homan Square.

22 Q Any other cell site simulator systems that
23 are --

24 A That's a component, not a system.

1 Q Fair point.

2 Any other cell site simulator components
3 that CPD possessed or currently possesses other than
4 the ones you've referenced?

5 A No. We only have the one functioning
6 system.

7 Q We talked a little bit about there being
8 four boxes plus a box called the StingRay box power
9 supplier. Do you recall that?

10 A Yes.

11 Q Are those the components of the system
12 that's referenced in Paragraph 4 of your declaration
13 as the active and usable cell site simulator?

14 A It is.

15 Q You state that these hardware components
16 will only function when they are installed and used
17 as a complete system. Do you see that?

18 A That's my understanding.

19 Q How do you know that to be the case?

20 A That's what I was told by my technicians
21 and representative of Harris when they came out.

22 Q Other than that, you don't have any
23 firsthand knowledge about whether the components can
24 only function when they are installed and used as a

1 complete system?

2 A Well, I would say that that's a pretty
3 good account when you get it right from the company.

4 Q I understand, but also the company
5 couldn't have said that.

6 So I'm trying to understand if you have
7 any knowledge other than what somebody else told you
8 about it to you.

9 A As I said, Counselor, I've never used the
10 equipment. I just have to go by what the company
11 tells me.

12 Q Right. What I'm trying to do is separate
13 out what you know based on your personal knowledge
14 and what you know because of what someone else told
15 you.

16 If I'm hearing you correctly, the
17 statement that these hardware components will only
18 function when they are installed and used as a
19 complete system is based only on what other people
20 have told you; is that correct?

21 A Yes.

22 Q Okay. Those people are your technicians
23 and some representatives of Harris Corporation?

24 A That would be correct.

1 Q Let's go to Paragraph 5. You reference
2 Harris cell site simulator components in storage.

3 A Uh-huh.

4 Q Is that the DRT system and the Kingfish
5 that you referenced earlier?

6 A Yes, but the DRT is not Harris. It was a
7 different company. It was the predecessor
8 evidently, from what I'm told.

9 Q Let's actually go back to Paragraph 4.
10 You say, "Since I began my current assignment, the
11 CPD has only possessed one active and usable cell
12 site simulator manufactured and maintained by Harris
13 Corporation."

14 Since the time you began your current
15 assignment, has CPD possessed any active and usable
16 cell site simulator system manufactured by someone
17 other than Harris?

18 A Can you rephrase that? You said
19 functioning; correct?

20 Q Well, let's go back to Paragraph 4. I'll
21 try to make it real easy. Go back to Paragraph 4,
22 the sentence that starts "Since I began my current
23 assignment." Do you see that?

24 A Yes. April of 2015?

1 Q Right. With the same time frame in which
2 you were referencing in the declaration, Paragraph 4
3 here, since you began your current assignment, has
4 CPD possessed any active or usable cell site
5 simulators manufactured or maintained by someone
6 other than Harris?

7 A No.

8 Q Okay. Let's go back to Paragraph 5. We
9 were talking about outmoded cell site simulator
10 components in storage.

11 A Okay. Go ahead.

12 Q You were referencing Harris.

13 But am I correct CPD also has what you
14 would call outmoded cell site simulator components
15 by other manufacturers?

16 A By one other manufacturer, yes.

17 Q That's the manufacturer of the DRT system?

18 A That's what I'm told, yes.

19 Q Are there any other outmoded cell site
20 simulator components in storage other than the ones
21 you've mentioned, regardless of which manufacturer?

22 A No.

23 By "referenced," you mean previously
24 stated here or referenced in the document?

1 MR. TOPIC: Can I have the question and
2 answer back?

3 (The Reporter read the question as
4 follows: "Are there any other outmoded cell site
5 simulator components in storage other than the ones
6 you've mentioned, regardless of which
7 manufacturer?")

8 Q And other than you mentioned in your
9 deposition today.

10 A No.

11 Q You mentioned the DRT system and Kingfish.

12 A Right.

13 Q Any other cell site simulator components
14 that CPD currently possesses and has in storage?

15 A Negative.

16 Q You say, "It is my understanding that
17 these components are outdated and have been out of
18 use for quite some time."

19 Is that based on the sources of
20 information you testified about previously?

21 A That is correct.

22 Q Any others or just those?

23 A Just those.

24 Q Okay. You say, "Presently CPD has no

1 other cell site simulator system that is usable or
2 otherwise."

3 Actually, I don't have any questions on
4 that. I think we covered it.

5 In Paragraph 6 you reference essential
6 components of CPD's StingRay system.

7 Which were those components?

8 A I'm not sure which ones went out or came
9 back, personal knowledge-wise.

10 Q How do you know that they're essential?

11 A I know that they were part of the StingRay
12 equipment; and as the device only works in unison
13 with everything together, missing several
14 components, it's not going to work.

15 Q Your conclusion about working in unison is
16 based on the sources of information that you've
17 described earlier?

18 A Yes, the Harris Corporation themselves and
19 my technicians.

20 Q Yes. Then the upgrades referenced in
21 Paragraph 6, you don't know what those upgrades
22 were; is that right?

23 A I do not. I do know a software update was
24 part of it, but I don't know.

1 Q When the components were returned, was
2 there any training about how to use the system with
3 its new upgrades?

4 A There was.

5 Q And was there any documentation associated
6 with that training?

7 A Can you elaborate what you mean by
8 "documentation"?

9 Q Sure. Were there any training materials
10 that were provided to anyone at CPD about the
11 upgrades or how to use the system in light of the
12 upgrades?

13 A The training materials I believe were
14 taken back by -- the actual physical materials were
15 taken back by Harris at the end of the training,
16 from my understanding.

17 Q Do you know who participated in that
18 training?

19 A My 9126s, the ten individuals I previously
20 mentioned.

21 Q Were you left with any reference materials
22 or other materials that you could use on an ongoing
23 basis to assist in using the system?

24 MS. SOBOTA: Object to foundation.

1 A They gave us a phone number, and we called
2 when we'd have to troubleshoot or power handle it,
3 whatever.

4 Q Do you know if anyone took notes of those
5 trainings at all?

6 A I don't know.

7 Q Do you know whether there are any cell
8 site simulator components that Chicago Police
9 Department once possessed and no longer possesses?

10 A I don't know. I would assume not, since
11 they are in the control of the ETSU and I listed
12 what we have.

13 MR. TOPIC: Let's take a break for a
14 couple minutes.

15 (A recess was taken from 10:48 a.m. to
16 10:54 a.m.)

17 MR. TOPIC: I don't have a lot more
18 questions.

19 BY MR. TOPIC:

20 Q In the course of preparing this
21 declaration, did you review any documents to help
22 you remember anything?

23 A I believe I looked at the invoices for the
24 upgrades and the documents regarding its shipping.

1 Q Anything else?

2 A No, not to my knowledge.

3 Q Other than any attorneys, did you speak
4 with anyone to refresh your recollection about
5 anything that was put in your declaration?

6 A I mean, I did speak briefly to Lieutenant
7 Biggane regarding the proceedings, where we were
8 going. Other than that --

9 Q Just about the lawsuit itself?

10 A Yes.

11 Q Okay.

12 A Keeping her in the loop, so to speak.

13 Q Remind me again. Her position is what?

14 A She is the lieutenant in the Chief of
15 Organized Crime's office. Originally I said Patrol,
16 but it was Organized Crime.

17 Q Is she an attorney?

18 A She is.

19 Q Does she act as an attorney?

20 A She does not.

21 MS. SOBOTA: I'm going to object to the
22 extent that calls for a legal conclusion.

23 If you know, you can answer.

24 Q Have you ever asked for legal advice from

1 her or would you ask someone else for legal advice?

2 A I wouldn't ask anybody for legal advice.
3 I'd ask somebody to ask somebody. No. The answer
4 is I did not ask her.

5 Q She provided some information to you
6 about the lawsuit?

7 A Yes.

8 Q What did she tell you?

9 A There's a lawsuit.

10 Q Anything else?

11 A She was kind of just a conduit for
12 introductions, and she knew about the case. That
13 was really it.

14 Q Is she the person who approached you about
15 providing a declaration?

16 A No.

17 Q Who was that?

18 A I mean honestly, I think I brought up
19 something. "Can't we just write something out that
20 says the equipment wasn't here when they were
21 looking?" That's how the conversation came about
22 and how we came up with the declaration.

23 Q How were you sort of, for lack of a better
24 term, brought into the sphere of the lawsuit?

1 A I was thrown into Daniel's pit is what I
2 was. "Here's your job. A couple months later there
3 might be a lawsuit coming or something going on."
4 That was basically it.

5 Q I understand. What did you do to prepare
6 for your deposition today?

7 A I reread this document. Other than that,
8 no.

9 Q Did you meet with attorneys?

10 A Well, I took a cab over here, yes.

11 Q Other than that?

12 A Not really. I was running late.

13 Q Other than your declaration, did you
14 review any documents to prepare for the deposition
15 today?

16 A No.

17 Q We may have covered this. I apologize,
18 but I want to make sure.

19 Are there currently any written policies
20 about use of cell site simulators?

21 A There are not.

22 Q Have there been at any earlier point
23 during your tenure with the Tech Lab?

24 A No, there have not been.

1 Q Were you asked to search for any records
2 that might be relevant to this lawsuit?

3 A At one point I was.

4 Q Do you recall when that was?

5 A Not precisely.

6 Q Did you search for records in response to
7 that request?

8 A I did.

9 Q Where did you search?

10 A The file cabinets that, you know, were
11 left to me by my predecessor.

12 Q Anywhere else?

13 A No, because, again, the request for
14 information comes down the chain, you know, from the
15 Chief of Organized Crime's office. If it was
16 something pertaining to them, I never got it.

17 Q Did you search like your e-mail for any
18 documents related to the cell site simulators?

19 A I didn't, but I've been told that there
20 was an exhaustive search done by Public Safety and
21 IT for that.

22 Q We talked a little bit about -- well, let
23 me -- I'll withdraw the preface.

24 If you wanted to know whether a cell site

1 simulator was used on a particular date, are you
2 aware of any way to determine that?

3 A No.

4 Q Are you familiar with a cell phone app
5 called Open Signal?

6 A I am not.

7 Q Are you aware of an offer from Harris to
8 provide a loaner cell site simulator to Chicago
9 Police Department while the equipment referenced in
10 your declaration was being sent for an upgrade?

11 A I am not.

12 Q And do you know whether CPD in January of
13 2015 had a loaner cell site simulator from anyone
14 else?

15 A From my understanding, no.

16 Q But that's based on what others have told
17 you?

18 A Well, when I got there, there was no cell
19 site simulator. It was with Harris. So if we had a
20 loaner, we would have still had it.

21 Q Have there ever been joint operations
22 between CPD and other agencies in which another
23 agency's cell site simulator was used?

24 MS. SOBOTA: Object to form.

1 MR. TOPIC: Just a yes or no. I don't
2 need to know the details.

3 A Yes.

4 Q Can you tell me what the other agency
5 was -- let me withdraw that. Go back.

6 How many different such operations were
7 you aware of?

8 A I couldn't tell you how many.

9 We have police officers assigned to task
10 forces that are CPD that work with all of these
11 Federal agencies, and they use it. They'll request
12 that agency, if they have that equipment, to use it
13 and go out.

14 Q Do any of those requests go through the
15 Tech Lab?

16 A Negative.

17 Q So if there was a request like that, you
18 wouldn't be aware of the specific details
19 ordinarily; is that right?

20 A Ordinarily, no.

21 Q Are there any instances in which you are
22 aware of those details?

23 MS. SOBOTA: Object to form.

24 A Not specific details.

1 Q Do you know what agencies?

2 MS. SOBOTA: Are you asking ever or during
3 his tenure at the Tech Lab?

4 MR. TOPIC: Just any that he's aware of.

5 A Do I know what other agencies have them
6 you're asking?

7 Q Do you know of any other agencies in which
8 you know that CPD conducted some sort of joint
9 operation that used that other agency's cell site
10 simulator?

11 MS. SOBOTA: Object to form.

12 A I don't have firsthand knowledge of the
13 particular agency.

14 Q Okay.

15 A I just know it was requested.

16 Q From whom?

17 A If there's a Federal task force or a team
18 doing a Federal "over here" -- court ordered
19 "over here" and they need the equipment, they will
20 go with whatever agency they're partnered with.

21 Q Those are instances in which there is a
22 joint task force?

23 A Or a joint OCDETF operation.

24 Q Do you want to give us --

1 A It's an organized crime type of -- I'm not
2 sure what --

3 MS. SOBOTA: Do you know what the letters
4 of the acronym are?

5 THE WITNESS: No. We just call it OCDETF.

6 MR. TOPIC: I don't have any further
7 questions. Thank you for your time.

8 MS. SOBOTA: Nothing.

9 We'll read and sign.

10 THE REPORTER: Will you need the
11 transcript?

12 MR. TOPIC: Yes. All I need is a pdf.

13 PROCEEDINGS CONCLUDED AT 11:04 A.M.

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ACKNOWLEDGMENT OF DEPONENT

I, JAMES J. FIDUCCIA, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct, and complete transcription of the testimony
given by me, and any corrections appear on the
attached errata sheet signed by me.

(DATE) (SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Jean S. Busse, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the testimony given; that the
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and have
11 no interest, financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 10th day of
14 September 2017.

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23 My Commission Expires July 25, 2021.

24

Jean S. Busse
Certified Shorthand Reporter



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