

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:19-cr-605-WFJ-CPT

MICHAEL J. DACORTA

_____ /

**F.R.E. 902(14) NOTICE OF FILING AFFIDAVITS
CERTIFYING DATA COPIED FROM
AN ELECTRONIC DEVICE, STORAGE MEDIUM, OR FILE**

Defendant Michael J. DaCorta, through undersigned counsel, files this Notice and the attached affidavits certifying the accuracy and authenticity of certified data copied from an electronic device, a storage medium, or file, as required by Federal Rule of Evidence 902(14).

Federal Rule of Evidence 902(14) states that parties can authenticate certain electronic evidence other than through the testimony of a foundational witness. The rule applies to: “Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by certification of a qualified person that complies with the certification requirements of Rule 902(11) or 12. The proponent also must meet the notice requirements of Rule 902(11).” Fed. R. Evid. 902(14).

The affidavits attached to this notice, Attachments A, B, and C, certify that data extracted from the electronic device and storage medium, some of which data

undersigned defense counsel intends to offer into evidence at trial in this case was extracted and copied using accurate and reliable tools and has been authenticated by a reliable process of identification. *See* Fed R. Evid. 902(14).

In filing this notice and attached affidavits and having previously served the same upon Government counsel, defense counsel has provided notice that it may offer into evidence at trial, under Rule 902(14), data from the electronic device and storage media identified in the affidavits. *See* Attachments A, B, and C.

This data is in defense counsels' possession. The storage media containing the data was provided to defense counsel from Government counsel in discovery.

Respectfully submitted,

A. FITZGERALD HALL, ESQ.
FEDERAL DEFENDER
MIDDLE DISTRICT OF FLORIDA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April 2022, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF, which will send a notice of the electronic filing to:

AUSA Rachelle DesVaux Bedke

AUSA Frank Murray

AUSA David Chee

/s/ Adam B. Allen
Adam B. Allen, Esq.
Assistant Federal Defender

/s/ Sylvia Irvin
Sylvia Irvin, Esq.
Assistant Federal Defender

/s/ Russell K. Rosenthal
Russell K. Rosenthal, Esq.
Assistant Federal Defender

ATTACHMENT A

Affidavit of Ken Morris

I, Ken Morris, attest and certify under penalty of perjury under the laws of the United States of America, and pursuant to 28 U.S.C. §1746, that the information contained in this certification is true and correct.

1. I am employed as a paralegal in the Federal Defender's Office, Middle District of Florida. I have been employed with Federal Defender Organizations for 26 years as an IT systems administrator, Deputy Chief of National IT services with Defender Services Office and most recently as Litigation Support Paralegal. I have training and experience with Electronically Stored Information (ESI), digital forensics and evidence review software. Specifically, I have attended Access Data vendor specific training for electronic evidence and cell phone collection and examinations and have served as faculty for Techniques in Electronic Case Management and other similar national training classes provided by the Defender Services Office. I have testified twice in court proceedings regarding digital evidence.

2. As a part of my paralegal duties, I receive and process electronic case discovery sent from the U.S. Attorney's office.

3. AFD Sylvia Irvin asked me to memorialize my work on the discovery our office received in *U.S. v. Michael J. DaCorta*, Case No. 8:19-cr-605-WFJ-CPT. She explained that this affidavit would be used to help satisfy Rules 902(11) and 902(14) of the Federal Rules of Evidence.

4. On April 16, 2020, the FDO received a discovery production from the U.S. Attorney's office in *U.S. v. Michael J. DaCorta*, Case No. 8:19-cr-605-WFJ-CPT. The discovery production contained 7TB of forensic images obtained from various electronic devices seized by government agents. An index was included in this discovery production indicating the address from which the devices were seized by the government agents. These device images were provided in E01 format which is an industry standard, forensically secure format also known as Forensic Toolkit images.

5. The index of the forensic images provided by the government showed that images QTP59_1, QTP60_1, QTP62_2 and QTP63 originated from 4064 Founders Club Drive, Sarasota, FL 34240 and were used by Joseph Anile.

6. Beginning in January 2021 and through early February 2021, Alan Nelson, FDO Computer Systems Administrator and a trained forensic examiner, extracted all email files from forensic images QTP59_1, QTP60_1, QTP62_2 and QTP63. The resulting data set of emails contained approximately 5.4 million individual files.

7. As our in-house evidence review software (Eclipse SE) could not handle that volume of emails, on February 1, 2021, I contacted the National Litigation Support Team (NLST) from Defender Services regarding the possibility of contracting for the services of an online evidence review platform. The NLST advised that an online platform would enable us to quickly cull the email data set to exclude duplicates and “junk” emails consisting of advertisements, jokes, spam emails, etc. On February 23, 2021, a three-month contract was issued by our office for the online platform Everlaw.com.

8. Daily from March 1, 2021 through March 7, 2021, I uploaded zip files containing the 5.4 million emails to the Everlaw.com review platform.

9. Beginning March 8, 2021 through June 15, 2021, Tina Budzisz, the paralegal assigned to Mr. DaCorta’s case, and myself reviewed all emails uploaded to the Everlaw.com platform and tagged relevant emails as well as “Junk” emails. Beginning April 13, 2021 through June 15, 2021, approximately 111K emails tagged as relevant were exported from the Everlaw.com platform and imported into our in-house evidence review software Eclipse SE. Subsequent review of the relevant 111K emails in Eclipse SE were performed by paralegals in our office.

10. I understand that this certification is intended to help satisfy Rules 902(11) and 902(14) of the Federal Rules of Evidence.

Kenneth S. Morris



Digitally signed by Kenneth S. Morris
Date: 2022.04.14 09:14:47 -04'00'

Ken Morris

Date

ATTACHMENT B

Affidavit of Alan D. Nelson

I, Alan D. Nelson, attest and certify under penalty of perjury under the laws of the United States of America, and pursuant to 28 U.S.C. §1746, that the information contained in this certification is true and correct.

1. I am employed as a Computer Systems Administrator (CSA) in the Federal Defender's Office, Middle District of Florida. I have been employed by the Federal Defender's Office for over twelve (12) years.

2. As part of my position with the Federal Defender's Office, I have attended several forensic trainings, taught at various forensic seminars, assisted on many of our office's cases involving electronics, and testified several times in federal court. Trainings I've attended include but are not limited to, AccessData Bootcamp, AccessData User Conference, AccessData Mobile Phone Examiner Training, and Microsoft Security Training.

3. As a part of my CSA duties, I assist in receive and processing electronic case discovery sent from the U.S. Attorney's office.

4. AFD Sylvia Irvin asked me to memorialize how I assisted in receiving and processing the discovery our office received in *U.S. v. Michael J. DaCorta*, Case No. 8:19-cr-605-WFJ-CPT. She explained that this affidavit would be used to help satisfy Rules 902(11) and 902(14) of the Federal Rules of Evidence.

5. On April 16, 2020, we received a discovery production from the U.S. Attorney's office in *U.S. v. Michael J. DaCorta*, Case No. 8:19-cr-605-WFJ-CPT. The discovery production contained 7TB of forensic images obtained from various electronic devices seized by government agents. An index was included in this discovery production indicating the address from which the devices were seized by the government agents. These device images were provided in E01 format which is an industry standard, forensically secure format also known as Forensic Toolkit images.

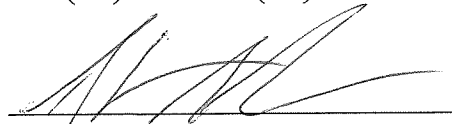
6. Beginning in September 2020 and through early 2021, at the request of the AFD Adam Allen and AFD Jessica Casciola, I began processing a selection of the hard drives in Forensic Toolkit 7.4. These images were, QTP59_1, 60_1, 61_1, 62_2, 62_1_1, 63, 64, 65_2. I was specifically asked to target emails found on any of these devices and extract them for the case team to review.

7. Upon completion of the forensic processing, 5.4 million emails were extracted from the above devices and saved in PST files. It was determined that this amount of emails were beyond any of our tools' ability to handle, so I contacted Ken Morris, our in-house discovery coordinator, for assistance. He worked with our National Litigation Support team to devise a way for us to efficiently review these emails. A third-party company was selected who would give us an online review platform and the ability to extract specific emails from that system.

8. After an initial review of the emails, the case team determined that that further processing of images needed to be performed. Due to the enormous amount of data, an outside expert, Richard Connor of ESI Consulting, was contracted to perform the further processing. 18 of the images were identified as possibly containing pertinent information and those were sent to Mr. Connor in April of 2021.

9. In May of 2021, Mr. Connor sent a hard drive with the extracted results from four of the images, 62_2, 65_2, 66, and 72. The results for each image were also stored in their own image container corresponding to the original images. I extracted the data from these images using FTK Imager and saved the data to our network drives.

10. I understand that this certification is intended to help satisfy Rules 902(11) and 902(14) of the Federal Rules of Evidence.


Alan Nelson

4/14/2022
Date

ATTACHMENT C

Affidavit of Richard D. Connor, Jr.

I, Richard D. Connor, Jr., attest and certify under penalty of perjury under the laws of the United States of America, and pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct.

1. I have practiced computer and digital forensics since 2006. I have been qualified in both state and federal courts as an expert in more than 100 cases. I have the following certifications - AccessData Certified Examiner (ACE), Certified Computer Examiner (CCE), Certified Forensic Computer Examiner (CFCE), Digital Forensic Certified Practitioner (DFCP), EnCase Certified Examiner (EnCE), IACIS Certified Mobile Device Examiner (ICMDE). I have almost 400 hours of training since 2006.

2. In April 2021, I was contracted by the Federal Defender's Office, Middle District of Florida (FDO), to process certain electronic discovery in *U.S. v. Michael J. DaCorta*, Case No. 8:19-cr-605-WFJ-CPT.

3. On or about April 17, 2021, I received a hard drive from the FDO with 18 forensic images of hard drives in this case.

4. In May 2021, I used X-Ways Forensics to create clones of some of the forensic images, items 62_2, 65_2, 66, and 72. A clone is an exact duplicate of the original hard drive and does not change or alter any of the data.

5. On or about May 10, 2021, I shipped a hard drive containing the forensic clones to the FDO.

6. I understand that this certification is intended to help satisfy Rules 902(11) and 902(14) of the Federal Rules of Evidence.


Richard D. Connor, Jr.

April 14, 2022
Date