

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUY WESLEY REFFITT,

Defendant.

CR Action
No. 1:21-032

Washington, DC
March 4, 2022

1:42 p.m.

TRANSCRIPT OF JURY TRIAL
(AFTERNOON SESSION)
BEFORE THE HONORABLE DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

JEFFREY S. NESTLER
RISA BERKOWER
U.S. ATTORNEY'S OFFICE
555 Fourth Street NW
Washington, DC 20530
202-252-7277

For the Defendant:

WILLIAM WELCH, III
5305 Village Center Drive
Suite 142
Columbia, MD 21044
410-615-7186

Reported By:

LORRAINE T. HERMAN, RPR, CRC
Official Court Reporter
U.S. District & Bankruptcy Courts
333 Constitution Avenue, NW
Room 6720
Washington, DC 20001
202-354-319

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P R O C E E D I N G S

(Whereupon, the morning session of this proceeding was reported by Sara Wick and is bound under separate cover.)

(Sealed sidebar discussion.)

THE COURT: All right. Can you call the case?

COURTROOM DEPUTY: Certainly, Your Honor.

We are in the matter of Criminal Action 21-32. We have Mr. Welch for Mr. Reffitt and Jeffrey Nestler and Risa Berkower for the government.

THE COURT: All right, folks. I brought you in here because Mr. Hopkins just brought to my attention a message that he received last night that he wasn't able to listen to until today at lunch. And it was a message left by Juror Number 5.

Juror Number 5 says she has concerns about something she overheard. Other jurors talking about the case. I'm not sure how many but it made her feel uncomfortable. So my proposal is to bring Juror Number 5 in here. I'll ask her what she heard, who was involved. If you all would like to do brief follow-up questions, I will give you the opportunity to do that as well.

Then we will take her out, talk about it, in all likelihood bring in the other jurors who were involved. With the bottom line goal of ensuring that whatever was

1 heard by one or more jurors isn't influencing them in their
2 deliberations. Right?

3 Any other thoughts that you all have at this
4 point?

5 [No response]

6 All right. I'm surprised because I don't think I
7 have forgotten to warn them on every occasion.

8 **MR. NESTLER:** You have not, Your Honor.

9 Can I confirm we are at the equivalent of a bench
10 conference?

11 **THE COURT:** This is an under-seal proceeding.

12 Another thing you should know, there are press
13 inquiries about the under-seal proceeding that happened this
14 morning. So when we go back into the public courtroom, I
15 will say something like, We've had, you know, three
16 different issues under seal today. One related to a juror
17 issue. It can't be disclosed. I'll just go through the
18 substance of what they are so they feel comfortable that I'm
19 not having sealed proceedings that should be open to the
20 public.

21 With respect to some of these down the road,
22 post-trial, I suspect I will unseal those. But it's during
23 the trial that I don't think it's appropriate for the press
24 to be writing about jurors talking about deliberations in
25 the event a juror sees the article.

1 So I'm going to proceed under seal for now.

2 **MR. NESTLER:** Understood, Your Honor. It was
3 awkward --

4 **THE COURT:** We are in a separate courtroom, yes.
5 Please say it's not being piped anywhere, Mr. Hopkins.

6 **COURTROOM DEPUTY:** Sorry?

7 **THE COURT:** This is not being piped anywhere.
8 Right?

9 **COURTROOM DEPUTY:** No, it's not. That's the
10 reason I wanted to keep mics off, because I didn't want it
11 too loud.

12 **THE COURT:** All right. I will mention we had
13 another sealed proceeding in another courtroom. I don't
14 want to be hiding stuff from them, but I am not going to get
15 into the content. It will be jury related.

16 So bring in Juror Number 5. She can sit in the
17 first seat here in the front row.

18 (Juror entered the courtroom.)

19 **THE COURT:** Good afternoon, ma'am. How are you?

20 **JUROR:** I'm good.

21 **THE COURT:** Are you comfortable taking off your
22 mask?

23 **JUROR:** I am.

24 **THE COURT:** All right. So as you might suspect,
25 we brought you in here because of the message that you left

1 on Mr. Hopkins' voicemail last night.

2 He just listened to it at lunch today. He had a
3 busy morning and wasn't able to check voicemail. So I am
4 just learning about this now.

5 And I understand, you told him in the voicemail
6 message that you were uncomfortable because you had heard
7 jurors talking about the case; is that right?

8 **JUROR:** Not at length but just a few comments, and
9 it made me a little uncomfortable.

10 **THE COURT:** I'm glad you did what you did, because
11 we want to know about things like that.

12 So can you tell us, if you can -- you will not
13 know the juror numbers, but do you know where the jurors are
14 seated in the other courtroom, who you saw speaking about
15 the case?

16 **JUROR:** I can identify them but I can't say where
17 they are seated.

18 **THE COURT:** Can you describe them?

19 **JUROR:** Tall, dark hair, Europe/British accent.

20 **THE COURT:** She sits on the front row. Front left
21 side. Okay. All right. You heard her. Who was she
22 speaking to?

23 **JUROR:** I don't remember. I just heard the
24 comments.

25 **THE COURT:** Can you tell us what she said?

1 **JUROR:** Um, something like, That lawyer is a jerk
2 or something like that.

3 **THE COURT:** Do you know which lawyer she was
4 talking about?

5 **JUROR:** I have no idea.

6 **THE COURT:** Hmmm. Okay.

7 Was there anything else about the case that she
8 said?

9 **JUROR:** Then there was another brief moment when
10 that same juror -- and, again, I don't remember the other
11 jurors that they were speaking to, just kind of identified
12 the who's who in the back of the courtroom.

13 **THE COURT:** I'm sorry? I'm not following you.

14 **JUROR:** Like, what relationship those persons in
15 the back may have had to people involved in the case.

16 **THE COURT:** Oh, I see. And do you remember which
17 juror that was?

18 **JUROR:** The same juror.

19 **THE COURT:** Oh, same juror. Okay.

20 So she mentioned two things. One, she said a
21 lawyer -- that lawyer was a jerk. You are not sure which
22 lawyer she was talking about.

23 **JUROR:** I don't want to say for sure exactly what
24 she said. I just -- I was not -- I didn't want to hear
25 anything so --

1 **THE COURT:** Okay. Yeah. Understood.
2 And you're not sure who around her heard beyond
3 you?

4 **JUROR:** [No response]

5 **THE COURT:** Where did she say this?

6 **JUROR:** I believe in the --

7 **THE COURT:** The courtroom? The jury room?

8 **JUROR:** Yeah.

9 **THE COURT:** And then you also heard her mention
10 something about the individuals in the back of the courtroom
11 being related to Mr. Reffitt.

12 **JUROR:** Possibly.

13 **THE COURT:** Okay. All right. Would counsel for
14 either side like to ask any questions?

15 **MR. NESTLER:** No, Your Honor.

16 **MR. WELCH:** No, Your Honor.

17 **THE COURT:** Okay. All right. Thank you very
18 much. If we could ask you to step outside. If you could
19 just wait in that small jury room.

20 (Juror exited the courtroom.)

21 **THE COURT:** All right. So two things: One,
22 correct me if I'm wrong, I think that's an alternate, number
23 2?

24 **MS. BERKOWER:** Yep.

25 **MR. NESTLER:** Yes, Your Honor.

1 **THE COURT:** Two, I mean, given the nature of the
2 comments, I'm not sure we have to bring in that juror but
3 I'm happy to do so, if counsel thinks otherwise.

4 Mr. Welch, do you want me to call her in and ask
5 her which attorney she's talking about?

6 **MR. WELCH:** No, Your Honor. I don't think that's
7 necessary.

8 **THE COURT:** Are you sure?

9 **MR. WELCH:** I'm sure.

10 **THE COURT:** All right. What about the statement
11 about Mr. Reffitt's -- you know, speculating about those
12 being his family members? Does that concern either side?

13 **MR. WELCH:** Not that comment, per se. I am,
14 though, getting the feeling that -- this is what this lady
15 was good enough to come forward and tell us she overheard.
16 It sounds like this particular juror, who I think we all
17 know who it is at this point, is likely talking about the
18 case. And I think it might be a good idea to excuse this
19 alternate before any other comments are made. You've
20 already admonished them not to talk about the case.

21 **THE COURT:** Uh-huh.

22 **MR. WELCH:** And this other juror apparently is not
23 following those instructions. I think probably the most
24 prudent thing to do is get rid of that juror, excuse that
25 alternate.

1 **THE COURT:** Now, is she the fourth alternate or
2 the first?

3 **MS. BERKOWER:** (Showed one finger.)

4 **THE COURT:** I do share your concerns.
5 Mr. Nestler?

6 **MR. NESTLER:** We disagree that it's warranted to
7 excuse her at this point, if we don't know what else she has
8 said. I think Mr. Welch is speculating on what else she is
9 saying. If we think there is a concern of that, we should
10 voir dire her about it, based on the comments we've heard
11 from the juror.

12 **THE COURT:** All right. But we definitely don't
13 want her talking.

14 **MR. NESTLER:** That we 100 percent agree with. I
15 am saying, at this point, I don't think there is a basis to
16 excuse her. But I think it would be appropriate for the
17 Court to admonish her and/or the entire panel to not talk
18 about the case.

19 **THE COURT:** I will. I certainly intend to do that
20 at a minimum.

21 **MR. NESTLER:** Can I make another suggestion?

22 **THE COURT:** Sure.

23 **MR. NESTLER:** If she was speculating about who the
24 people in the back of the courtroom were, I don't know if
25 Your Honor or Mr. Hopkins has told the jurors there are

1 three people sitting behind them.

2 **THE COURT:** I think I mentioned there would be
3 places for three members of the public, and I may have said
4 the defendant's family.

5 **COURTROOM DEPUTY:** I think you did, Your Honor.

6 **MR. NESTLER:** Okay. We're not worried about that
7 comment, just that she's talking generally.

8 **MR. WELCH:** She's already expressed an opinion
9 about counsel, whoever it might be, and --

10 **THE COURT:** We don't even know which side it is,
11 though.

12 **MR. WELCH:** And I don't know it is appropriate to
13 inquire into that. Certainly if opposing counsel wants to,
14 we can go down that road. I don't know that it's
15 appropriate.

16 The bigger concern is you told the jury, you gave
17 instructions. So if this juror is already not listening to
18 your instructions, not following them, even though you've
19 continued to give instructions and admonish, what guarantee
20 do we have that she will follow your instructions about
21 anything in the future? They may taint the jury pool, if
22 they are talking about things.

23 I think the most prudent thing to do is excuse
24 this juror before this gets out of hand.

25 **THE COURT:** Well, I guess I'm reluctant at this

1 stage to excuse her entirely. I want to think about that.
2 I might move her to the end. I am going to give a more
3 specific admonishment and say, When I say don't talk about
4 the case, I mean don't talk about the parties, don't talk
5 about the attorneys, don't talk about anything that happens
6 in this courtroom.

7 So I'm obviously not happy that this juror said
8 anything. However, I'm reassured that it's not about the
9 evidence in the case. It's not about Mr. Reffitt. I don't
10 know which side it is. And, Mr. Welch, if you want to bring
11 her in, we can figure that piece out; that might change your
12 mind on whether you want her off.

13 **MR. WELCH:** It might change my mind. Then we are
14 going to be getting personal, aren't we? I don't know that
15 it's necessary to go down that road.

16 **THE COURT:** All right. I just want -- I want you
17 to know that I'm fully able and willing to bring her in
18 here. And I would -- I would question her, and you all
19 would not have to say anything so that she wouldn't hold it
20 against anyone.

21 I'm happy to bring her in here, admonish her
22 individually, ask about that comment, if either side thinks
23 that's important to do. I just want to give you the
24 opportunity to ask for that.

25 **MR. NESTLER:** We don't believe it's necessary to,

1 unless Your Honor was inclined to take some sort of action,
2 like excusing her and moving her in the alternate order,
3 then we think it would be appropriate. Right now we have
4 what Juror 5 said. We haven't even heard from Juror 2.

5 **THE COURT:** Well, I'm not going to decide that.
6 What I'm saying right now is, based on what I know now, I'm
7 not for certain excusing her. I haven't ruled it out. We
8 could always talk to her later. And I'm not going to decide
9 whether I am moving her now. But, again, Mr. Welch, if you
10 want me to bring her in here, I will do that.

11 **MR. WELCH:** I understand. No, I do not want her
12 to be brought in. I am moving formally that she be excused
13 at this time.

14 **THE COURT:** I understand.

15 **MR. WELCH:** I understand you will take it under
16 advisement, but that is our position. She should be excused
17 now before she taints anything further.

18 **THE COURT:** Before we go back in there, so I just
19 don't have to put us under seal again in that courtroom, we
20 may as well just continue.

21 I want to circle back to the Peyton Reffitt issue.
22 As I understand it, the government disclosed additional
23 information that Peyton provided just recently about
24 Mr. Reffitt and about her and an alleged sexual assault and
25 Jackson's hitting of her after the sexual assault.

1 Can you give me any more context of that about how
2 it came to be that Jackson Reffitt allegedly hit her after
3 an alleged rape? It doesn't make sense to me, and I want to
4 understand more clearly what the government's understanding
5 of that issue is.

6 **MR. NESTLER:** Yes, Your Honor.

7 We met with Peyton last night for maybe 45 minutes
8 to prepare for her testimony. It was -- it was maybe 7:00,
9 7:30 last night. She was upset when we started the meeting.
10 She said, Can I tell you what I am upset about? We said,
11 Sure. She gave us -- told us she had a rough year in 2020.
12 She had been sexually assaulted --

13 **THE COURT:** Well, wait. Let me stop you. Sorry
14 to interrupt.

15 **MR. NESTLER:** Sure.

16 **THE COURT:** Do you get the sense she was aware of
17 what Jackson testified about yesterday? Because that was a
18 big point of examination on whether he's empathetic and
19 truly caring about his family.

20 So do you think she's either -- I hope she's not
21 in the overflow room or Mrs. Reffitt's telling her what is
22 happening in the courtroom.

23 **MR. NESTLER:** I asked her. She said, no. She
24 said she didn't come to court. Her mom and older sister are
25 upset. She spent the past week comforting her mother and

1 older sister.

2 **THE COURT:** Did you ask her if her older sister
3 told her what happened in the courtroom?

4 **MR. NESTLER:** We asked if she knew what was
5 happening in the courtroom. She said, no. I asked if she
6 had spoken with Jackson or seen him. She said, no.

7 **THE COURT:** Go ahead. Sorry to interrupt.

8 **MR. NESTLER:** No, it's no problem.

9 She said New Year's Eve 2020 -- 2019 into 2020,
10 she was sexually assaulted during a party at her parents'
11 house -- where they lived -- her parents, with their
12 friends, Jackson was with his friends. And it was Jackson's
13 friend that did it. The next day Peyton was at a friend's
14 house and Jackson found out. Jackson came over.

15 **THE COURT:** Found out she told someone or had been
16 sexually assaulted?

17 **MR. NESTLER:** She said "found out."

18 **THE COURT:** Okay.

19 **MR. NESTLER:** I assumed it was found out she was
20 sexually assaulted. He came over and picked her up, and she
21 generally said he had a hard time processing his feelings;
22 that he hit her while they were driving. And he stopped the
23 car, and hit her and pushed her down.

24 **THE COURT:** Okay. Wait. He was upset that she
25 had been assaulted or -- I don't want to put words in his

1 mouth, but he might have perceived that this wasn't a sexual
2 assault, but she had a relationship with one of his friends.

3 **MR. NESTLER:** It was someone in his friend group.
4 She clarified not one of his friends. She generally said
5 that Jackson had been under the impression that his parents
6 had been far too lenient with her; and that she had been too
7 wild during her, I guess it was her sophomore year in high
8 school; and she had been going out; she had gotten arrested;
9 and she had done things that had been -- Jackson didn't like
10 what she was doing, and thought she was too out of control.
11 So she thought this may have been Jackson trying to be some
12 sort of disciplinarian or taking on some sort of parental
13 role, but he wasn't able to process his feelings that well.

14 **THE COURT:** And who is driving the car?

15 **MR. NESTLER:** Jackson was driving.

16 **THE COURT:** Okay. So he reached over and --

17 **MR. NESTLER:** That's what she said. We didn't get
18 into that many details. It was more of a, How are you
19 feeling about this process? And she wanted to disclose
20 this. I was with two FBI agents and a social worker. We
21 were not going to stop her.

22 **THE COURT:** All right.

23 **MR. NESTLER:** That's what she disclosed. She then
24 said it was relevant context for us to know because the --
25 she spent the year of 2020 being depressed and in a funk of

1 what happened. And her father was similarly depressed and
2 in a funk about not providing for the family and being
3 generally sort of unhappy that year. So this was all
4 Peyton's background way of --

5 **THE COURT:** Her context as a tough time for the
6 family.

7 **MR. NESTLER:** It brought her and her father closer
8 together in a way that Jackson was not close to her father
9 that year and she was. That was the context she was giving
10 us.

11 **THE COURT:** That makes more sense.

12 Mr. Welch, anything you want to say in response to
13 that?

14 **MR. WELCH:** Can I have a moment of the Court's
15 indulgence?

16 **THE COURT:** Sure.

17 **MR. WELCH:** Thank you, Your Honor.

18 That was a lot more detail than I have in the
19 email that I received this morning from Mr. Nestler. I just
20 wanted to be sure that my client was aware that his daughter
21 had been sexually assaulted in his home, and aware of what
22 his son had done. He was aware of his daughter being
23 sexually assaulted, but he was not aware of what Jackson had
24 done to Peyton.

25 I asked him if he wanted me to ask, you know, for

1 a recess this afternoon so he could have time to think about
2 that. He said, No. He wants to continue to focus on his
3 trial and keep moving. I did offer to him to at least make
4 that request to the Court. He asked me not to do it.

5 **THE COURT:** All right. Okay.

6 Well, I don't change -- based on having more
7 information, my mind's not changed on whether this is
8 appropriate to bring out. And whatever, you know, marginal,
9 probative value this might have in terms of impeaching
10 Jackson, as caring about members of his family in connection
11 with the events of January 6th, I think it's a high risk.
12 Under 403 it becomes a mini trial on the rape. And the
13 alleged, you know, assault with Jackson, battery. And it
14 would be confusing to the jury, you know, at the same time.
15 So, you know, balancing the relevance versus the potential
16 confusion and of the mini trial, I will keep that out.

17 If anyone thinks Peyton is about to go there,
18 let's have a sidebar and figure out how to deal with it.

19 **MR. WELCH:** But just to be clear, it is still fair
20 cross-examination to ask Peyton whether after he went --
21 after my client was arrested and he indicated that he stayed
22 at home in order to comfort his family, after the -- I guess
23 it would have been the 16th of January. If he continued to
24 stay at home following the 11th, excuse me, in order to
25 comfort his family -- it's still fair game to ask about

1 that.

2 **THE COURT:** Absolutely. I think it is completely
3 fair to go into what Jackson's actions were in and around
4 January 6 and after Mr. Reffitt's arrest, with respect to
5 caring for the family and not being selfish, whatever. I
6 don't know where you want to go, but all of that is
7 appropriate cross.

8 Mr. Nestler is nodding. He agrees.

9 **MR. NESTLER:** Yes, Your Honor, I agree.

10 **MR. WELCH:** All right.

11 **THE COURT:** So it's just -- that's a tangent, a
12 year earlier. It just seems to have little relevance and
13 would be excludable under 403, to the extent it has any
14 relevance.

15 **MR. NESTLER:** Understood, Your Honor.

16 I wanted the record to be clear. We disclosed the
17 information after we learned it, which is why we sent
18 Mr. Welch the email this morning.

19 **THE COURT:** It sounds like you could have
20 elaborated. I didn't follow the hit after the sexual
21 assault. Doesn't make sense. In the context you provided,
22 it makes more sense. I can see why he would have liked more
23 information about that. But, you know, it's the middle of
24 trial.

25 I wish you all were communicating more because I

1 feel like this trial is taking longer than it needs to
2 because of your lack of communication with one another.

3 All along, you know, the last six weeks your
4 inability to reach agreement on issues has been frustrating.
5 It is what it is but I hope we can get across the line in an
6 expeditious way, with you all working together, because it
7 just slows things down and we start losing jurors. That
8 concerns me. We could have had a group talking about the
9 case and have a mistrial, you know, because we still have
10 another two to three days to go in trial.

11 **MR. NESTLER:** Yes, Your Honor.

12 **THE COURT:** Please work together.

13 All right. So we will go back in the courtroom.
14 I will summarize generally what we've done, and I'll
15 admonish the jury and then we will have Kennedy? Is that
16 the next witness?

17 **MR. NESTLER:** Yes, Your Honor.

18 **THE COURT:** Okay. All right. Terrific. Thanks.

19 (Sealed discussion at sidebar concluded.)

20 **MS. BERKOWER:** Thank you, Your Honor.

21 Over the lunch break, in light of the Court's
22 discussion with the parties this morning, we agreed to move
23 into evidence ahead of this next witness, Karla Kennedy, the
24 following exhibits: 101, 102 -- sorry. 101 -- I'll start
25 over -- 101, 103, 105, 107, 109, 110, 111, 112, 113, 114,

1 115, 139, 128A, 128B, 130, 131, 132, 133, 134, 137, 138,
2 144, 145, 146, 149 and 150.

3 And in addition to that, Mr. Welch has also agreed
4 that we will admit 1B1, 1B3, 1B6, 1B7, 1B10, 1B13.1, 1B13.2,
5 1B13.3, 1B14, 1B19, 1B20.1, 1B20.2, 1B22, 1B23.1, 123 point
6 -- excuse me -- 1B23.2, 1B27, 1B28.1, 1B28.2, 1B28.3, 1B29.

7 **THE COURT:** All right. Thank you, Ms. Berkower.
8 So without objection, all of those exhibits are admitted
9 into evidence.

10 (Government's Exhibits 101, 103, 105, 107, 109, 110,
11 111, 112, 113, 114, 115, 139, 128A, 128B, 130, 131, 132,
12 133, 134, 137, 138, 144, 145, 146, 150, 1B1, 1B3, 1B6, 1B7,
13 1B10, 1B13.1, 1B13.2, 1B13.3, 1B14, 1B19, 1B20.1, 1B20.2,
14 1B22, 1B23.1, 1B23.2, 1B27, 1B28.1, 1B28.2, 1B28.3, 1B29
15 were admitted into evidence.)

16 **THE COURT:** And just for the record, the exhibits
17 that the record doesn't reflect the Court admitting
18 yesterday include 1B4, 1B4.0, 1B20.1.1, 1B20.1.2, 1B22. All
19 of those are exhibits that the parties agree the Court did
20 admit yesterday. So just for a clear record. Anything
21 more?

22 **MS. BERKOWER:** No, Your Honor.

23 **THE COURT:** Okay.

24 **MS. BERKOWER:** The next witness will be testifying
25 about those exhibits, but we won't have to actually go

1 through and admit them.

2 **THE COURT:** Wonderful. Thank you.

3 Okay. I'm sorry to the public for the delay just
4 now. We did have another sealed matter that related to the
5 sealed matter that we had earlier today, and there was an
6 inquiry about the nature of that matter. The public should
7 know that the sealed proceedings related to sensitive,
8 private information that both parties agree should be under
9 seal related to a witness who will be testifying in the
10 case, and therefore those are going to remain under seal.

11 In addition, earlier today, I did address a juror
12 issue that won't be disclosed now, but may well be in the
13 future. Disclosing it now could reveal information such as
14 who the alternates are. So for that reason, those matters
15 will remain under seal.

16 Is there anything else counsel for either side
17 would like to say with respect to either of those sealed
18 proceedings?

19 **MR. NESTLER:** Not from the government, Your Honor.

20 **MR. WELCH:** No, Your Honor.

21 **THE COURT:** All right. Are we ready to bring in
22 the jury?

23 **MR. WELCH:** Yes, Your Honor.

24 (Jurors entered the courtroom.)

25 **THE COURT:** All right, ladies and gentlemen.

1 Welcome back.

2 Very, very sorry to keep you waiting. I
3 appreciate your patience. I had to deal with some legal
4 issues with the parties, and occasionally that will happen
5 during trials, so bear with us. We are going to try to keep
6 going until 4:00, when we will take a break for the weekend
7 the government is prepared to call the next witness.

8 (Sealed sidebar discussion.)

9 **MR. WELCH:** Your Honor, you were going to admonish
10 them?

11 **THE COURT:** I know. And let me tell you why I'm
12 not doing that now. The juror we spoke to expressed a
13 concern walking back that people would be upset with her. I
14 do -- I don't think we will need to take a break. So before
15 they leave this courtroom, I'm going to give them a much
16 more lengthy, cautionary instructions. And I'm going to
17 weave in those comments, because I don't think it's really
18 in anyone's interest for them to think that that's what we
19 dealt with -- you know, that she was complaining.

20 And she did have a work issue. When she went back
21 to the room, there was conversation between Mr. Hopkins and
22 her about her work. So I think that that's in everyone's
23 best interest, if at a certain point we have to bring the
24 other juror in -- you know, we'll deal with it then. But I
25 think it's -- it's better now not to have the potential

1 conflict. I don't see why, while they are sitting here for
2 the next hour and a half not talking, why they need to be
3 admonished right now.

4 **MR. WELCH:** That's fine. I agree. And I agree.
5 Obviously they are not talking to each other during
6 evidence.

7 **THE COURT:** Yeah.

8 **MR. WELCH:** I was concerned you had forgotten.

9 **THE COURT:** Oh, thank you.

10 **COURTROOM DEPUTY:** Not with this judge.

11 **THE COURT:** All right.

12 The other thing is, for the court reporter's sake,
13 this should remain under seal.

14 **MR. WELCH:** Thank you.

15 (Sealed sidebar discussion concluded.)

16 **THE COURT:** Before you bring in the witness, can
17 you give me just one -- before we bring in the witness, if I
18 can just ask those sitting in the back to not talk, because
19 sometimes it's distracting when there is a witness on the
20 stand. So keep your -- if you need to talk, go outside to
21 speak. All right?

22 Okay. Go ahead. Bring in the next witness.

23 **MS. BERKOWER:** The next witness the government
24 calls is Karla Kennedy.

25 **COURTROOM DEPUTY:** Please raise your right hand.

1 Do you solemnly swear or affirm the testimony you will give
2 to this honorable court and this jury on trial to be the
3 truth, the whole truth and nothing but the truth?

4 **THE WITNESS:** Yes.

5 **DIRECT EXAMINATION OF KARLA KENNEDY**

6 **BY MS. BERKOWER:**

7 **Q.** Good afternoon. Could you please state and spell
8 your name?

9 **A.** It's Karla Kennedy. K-a-r-l-a, K-e-n-n-e-d-y.

10 **Q.** Ms. Kennedy, are you employed?

11 **A.** Yes, I am.

12 **Q.** Where do you work?

13 **A.** FBI Dallas division.

14 **Q.** What was your job at the FBI?

15 **A.** I am the Dallas division occupational health
16 nurse.

17 **THE COURT:** Ma'am, try to keep your voice up
18 because the microphone is not picking up things very well.

19 **THE WITNESS:** Yes, ma'am.

20 **BY MS. BERKOWER:**

21 **Q.** Do you also work as a photographer for the FBI?

22 **A.** Yes, I do.

23 **Q.** Do you work with the evidence response team?

24 **A.** Yes.

25 **Q.** And did you serve as the photographer for the

1 search at the defendant's house?

2 A. Yes, I did.

3 Q. So we are going to ask you about some of the items
4 that were found at that search. Okay? So generally
5 speaking, very briefly, could you explain what you do when
6 you serve as a photographer for a search of someone's house?

7 A. Yes. So I make entry photos documenting the house
8 as we found it. After the house has been cleared,
9 photograph the evidence, and then I complete the search with
10 exit photos.

11 Q. And did you review a number of photographs before
12 you came to court that you took from that search?

13 A. Yes.

14 Q. So we are going to go through some of those now.

15 MS. BERKOWER: So first, if we could show
16 Government's Exhibit 101 and 103 that have already been
17 admitted into evidence. And Mr. Hopkins, if we could please
18 have the monitor for the jury.

19 BY MS. BERKOWER:

20 Q. Could you explain what this shows?

21 A. A white truck outside the residence.

22 Q. And going on to 103, could you explain what this
23 shows?

24 A. The rear of the white truck.

25 MS. BERKOWER: Now going on to Government's

1 Exhibit 105, which is in evidence, could you please display
2 that, Ms. Rohde?

3 **BY MS. BERKOWER:**

4 Q. Did you take that photo?

5 A. Yes, I did.

6 Q. Can you explain what it shows?

7 A. A blue jacket resting over the front passenger's
8 seat, and a bag in the rear passenger floor.

9 Q. And if we could go on to Government's Exhibit 107,
10 please. Do you see the blue jacket again in this photo?

11 A. Yes.

12 Q. Is there a plastic bag below the jacket?

13 A. Yes.

14 Q. What's inside that bag?

15 A. A black ballistic helmet.

16 Q. Now going on to Government's Exhibit 109, please.
17 Did you take that photo?

18 A. Yes, I did.

19 Q. Could you explain why?

20 A. The subject's name is in the photo.

21 Q. And where is it?

22 A. On the inside of the jacket, the tag.

23 **MS. BERKOWER:** Now, Special Agent Ryan, if you
24 could please hand up to Ms. Kennedy Government's Exhibit
25 1B10.

1 **BY MS. BERKOWER:**

2 Q. Ms. Kennedy, could you please take a look at what
3 special Agent Ryan is holding. Do you recognize that?

4 A. Yes, I do.

5 Q. What is it?

6 A. The blue jacket from the white truck in front of
7 the residence.

8 **MS. BERKOWER:** And, Special Agent Ryan, if you
9 could please display that to the jury.

10 Ms. Rohde, if we could please have Government's
11 Exhibit 110 in evidence.

12 **BY MS. BERKOWER:**

13 Q. Ms. Kennedy, is that a photo you took?

14 A. Yes, it is.

15 Q. Could you explain what you see in that photo?

16 A. Yes, the ballistic helmet, shoulder holster and
17 flex cuffs.

18 **MS. BERKOWER:** Special Agent Ryan, if we could
19 have you hand up to Ms. Kennedy Government's Exhibit 1B13.1,
20 1B13.2 and 1B13.3.

21 **BY MS. BERKOWER:**

22 Q. Ms. Kennedy, before you you have Government's
23 Exhibit 1B13.1. Do you recognize what that is?

24 A. Yes, I do.

25 Q. Could you explain, please?

1 **A.** The black ballistic helmet that was found in the
2 white truck.

3 **MS. BERKOWER:** And Special Agent Ryan, if you
4 could hand Ms. Kennedy what's been marked as Government's
5 Exhibit 1B13.2.

6 **BY MS. BERKOWER:**

7 **Q.** Do you recognize what they are, Ms. Kennedy?

8 **A.** Yes, I do.

9 **Q.** Please explain.

10 **A.** These are the flex cuffs.

11 **Q.** Are these the flex cuffs you are seeing in
12 Government's Exhibit 110?

13 **A.** Yes, these were from the truck, the white truck.

14 **Q.** Is the helmet that you were handling a moment ago
15 13.1 also in that photograph?

16 **A.** Yes, it is.

17 **MS. BERKOWER:** Special Agent Ryan, if you could
18 hand Ms. Kennedy Government's Exhibit 1B13.3.

19 **BY MS. BERKOWER:**

20 **Q.** Do you recognize what that is?

21 **A.** Yes, I do.

22 **Q.** Could you explain what that is, please?

23 **A.** This is a shoulder holster. It is the shoulder
24 holster that is in the photo.

25 **MS. BERKOWER:** And Special Agent Ryan, if you

1 could display these items to the jury, Government's Exhibit
2 1B13.1, 1B13.2 and 1B13.3.

3 While he's doing that, Ms. Rohde, if you could go
4 to photograph 111 in the evidence.

5 **BY MS. BERKOWER:**

6 Q. Ms. Kennedy, is that a different angle of the same
7 helmet that you testified about a moment ago?

8 A. That is correct.

9 Q. Do you see writing on the side of the helmet?
10 Wording?

11 A. Yes, I do.

12 Q. Could you read the wording, please?

13 A. "Three Percenter."

14 **MS. BERKOWER:** Now, Ms. Rohde, if you could please
15 pull up Government's Exhibit 114 -- and 115. Sorry.

16 **BY MS. BERKOWER:**

17 Q. Ms. Kennedy, do you recognize those?

18 A. Yes, I do.

19 Q. What are they?

20 A. White sunglasses.

21 **MS. BERKOWER:** And Special Agent Ryan, if you
22 could please hand Ms. Kennedy Government's Exhibit 1B14.

23 **BY MS. BERKOWER:**

24 Q. Could you explain what that evidence item is,
25 Ms. Kennedy?

1 **A.** Yes, these are the white sunglasses that were
2 found in the white truck on the dashboard, the same ones in
3 the photo.

4 **Q.** Thank you.

5 **MS. BERKOWER:** Special Agent Ryan, if you could
6 display those to the jury, please.

7 **BY MS. BERKOWER:**

8 **Q.** Now, Ms. Kennedy, were the photos that you just
9 testified about all taken outside?

10 **A.** Yes.

11 **Q.** Did you also find items of evidence inside of the
12 house?

13 **A.** Yes.

14 **Q.** So let's talk about some of those now.

15 **MS. BERKOWER:** Ms. Rohde, if we could please have
16 Government's Exhibit 120 pulled up on the screen.

17 **BY MS. BERKOWER:**

18 **Q.** I'm directing your attention to the coffee table.
19 Do you see several items on the coffee table?

20 **A.** Yes, I do.

21 **Q.** Did the FBI seize several of those items?

22 **A.** Yes, we did.

23 **Q.** Starting with the silver-colored square object on
24 the coffee table, did the FBI seize that?

25 **A.** Yes.

1 **Q.** Do you see black items, square objects, behind and
2 to the -- well, a little bit more in the foreground of the
3 coffee table?

4 **A.** Yes.

5 **Q.** Did the FBI seize those?

6 **A.** That's correct.

7 **Q.** And do you see a gray bag on the edge of the
8 coffee table?

9 **A.** Yes.

10 **Q.** Did the FBI seize those?

11 **A.** We did.

12 **MS. BERKOWER:** So, Special Agent Ryan, if you
13 could hand Ms. Kennedy 1B20.2, 1B22 and 1B20.1.

14 **BY MS. BERKOWER:**

15 **Q.** Ms. Kennedy, do you have 1B20.1 in front of you?

16 **A.** Yes, I do.

17 **Q.** Could you explain what that is?

18 **A.** This is a laptop, the laptop that is sitting on
19 the coffee table in the photo.

20 **Q.** And could you also take a look at 1B20.2.

21 **A.** Yes.

22 **Q.** Could you explain what that is, please?

23 **A.** This is a Seagate portable drive that is also on
24 the coffee table.

25 **Q.** And 1B22?

1 **A.** The gray bag?

2 **Q.** Yes.

3 **A.** Yes, the gray --

4 **Q.** Is that the gray back that was on the coffee
5 table?

6 **A.** Yes, it is.

7 **MS. BERKOWER:** Actually, before we get to the gray
8 bag, Special Agent Ryan, can you display to the jury
9 Government's Exhibit 1B20.1 and 1B20.2? Thank you, Special
10 Agent Ryan.

11 **BY MS. BERKOWER:**

12 **Q.** Ms. Kennedy, turning to the gray bag, if you could
13 please open it and tell us what is inside.

14 **A.** Oh, there's several cords and the GoPro PixPro
15 camera.

16 **Q.** Was that the PixPro camera that was seized at the
17 defendant's house?

18 **A.** Yes, it is.

19 **Q.** Now, looking at that PixPro camera, is there black
20 plastic around it?

21 **A.** Yes, there is.

22 **Q.** Before coming to court today, did you review this
23 item with the case agents?

24 **A.** I did.

25 **Q.** Could you explain what that black plastic item is?

1 **A.** The PixPro has a camera mount; and that is what
2 the black plastic piece surrounding it is, a camera mount.

3 **Q.** When the camera was found, did it have that black
4 plastic piece around it?

5 **A.** No, we reassembled.

6 **Q.** Before you came to court?

7 **A.** That is correct.

8 **Q.** And was that black plastic piece actually visible
9 in one of the photographs you took, when it was separate and
10 apart from the camera?

11 **A.** Yes, it is.

12 **MS. BERKOWER:** Ms. Rohde, if we could please have
13 Government's Exhibit 139.

14 **BY MS. BERKOWER:**

15 **Q.** Ms. Kennedy, do you see that black plastic piece
16 in this photograph?

17 **A.** Yes, it is.

18 **Q.** Could you explain where you see it?

19 **A.** To the left -- to the left of the charger. It's
20 the last thing on the coffee table in the sequence next to
21 the watch remote and the Motorola.

22 **Q.** Do you see wording on the black plastic piece you
23 are talking about?

24 **A.** Yes.

25 **Q.** Could you read the wording?

1 **A.** PriPro.

2 **MS. BERKOWER:** Ms. Rohde, do you mind just blowing
3 up that part of the photograph.

4 **BY MS. BERKOWER:**

5 **Q.** So is that the black plastic piece that you and
6 the agents put on to the camera?

7 **A.** Yes, it is.

8 **MS. BERKOWER:** Special Agent Ryan, if you could
9 please display the camera and the black plastic piece to the
10 jury.

11 **BY MS. BERKOWER:**

12 **Q.** Ms. Kennedy, do you see in this photograph before
13 you a radio?

14 **A.** Yes.

15 **Q.** Was that also seized at the guest's house or
16 residence?

17 **A.** Yes, it was.

18 **MS. BERKOWER:** Special Agent Ryan, if you could
19 please hand Ms. Kennedy Government's Exhibit 1B23.1.

20 **THE WITNESS:** Yes.

21 **BY MS. BERKOWER:**

22 **Q.** Do you see that radio that you took a
23 photograph -- in that bag?

24 **A.** Yes, the Motorola. Uh-huh.

25 **Q.** Are the other objects in this photograph in that

1 bag other than the holder for the camera?

2 A. Yes, they are.

3 Q. So could you just take the radio out only, please?

4 A. Certainly.

5 Q. Okay.

6 MS. BERKOWER: And, Special Agent Ryan, if you
7 could display the Motorola radio to the jury, please. Thank
8 you.

9 Now, Ms. Rohde, could you show Government's
10 Exhibit 124, 125 and 126. And you could scroll through them
11 and linger on them for a minute or two so that Ms. Kennedy
12 can see.

13 BY MS. BERKOWER:

14 Q. Ms. Kennedy, are those photographs you took on the
15 day of the search?

16 A. Yes, they are.

17 Q. And what do those photographs show?

18 A. A handgun on a nightstand in the bedroom inside
19 the residence.

20 Q. And is that the way it looked when the FBI entered
21 the home on the morning of the search?

22 A. That is correct.

23 Q. Do you know what time the search started that day?

24 A. Generally -- I don't remember the exact time, but
25 I will say that we usually conduct searches first thing in

1 the morning.

2 Q. And when you arrived at this home, was it still
3 dark out?

4 A. That is correct.

5 Q. And when you left had it already become light?

6 A. Yes.

7 Q. So fair to say that it happened before daybreak on
8 the morning of the search?

9 A. That is correct.

10 Q. Okay.

11 MS. BERKOWER: Now, if we could please show
12 Ms. Kennedy Government's Exhibit 127 and 128 in the same
13 fashion, Ms. Rohde, that you showed those other photographs?

14 BY MS. BERKOWER:

15 Q. Ms. Kennedy, do you recognize those photographs?

16 A. Yes, I do.

17 Q. Could you explain what they are?

18 A. The Smith & Wesson handgun from the nightstand.

19 Q. And did you take those photographs?

20 A. I did.

21 Q. Could you explain what happened between this
22 object, this gun being on the nightstand, to when you
23 photographed it?

24 A. Yes. So I took the first shots of the gun on the
25 nightstand in place. And then the weapon has to be cleared

1 before I can make the close-up shots.

2 Q. And what does it mean for a weapon to be cleared,
3 just very generally?

4 A. Rendered safe.

5 Q. Does that mean that an FBI agent takes -- checks
6 it for ammunition?

7 A. That is correct. Removes any ammunition from the
8 butt of the gun and if there's ammo in the chamber.

9 Q. And this gun, did it have ammunition in it when
10 the FBI agent did that process?

11 A. Yes, it did.

12 Q. How do you know that?

13 A. That is the magazine that was removed from the
14 gun, and that is the round that was from the chamber.

15 Q. And why did you photograph that altogether?

16 A. Protocol.

17 Q. Does that indicate to you that it was all found --
18 the gun was found loaded with that magazine and that round
19 in the chamber?

20 A. That is correct. We also document that on the
21 photo log.

22 MS. BERKOWER: So I think if we could please have
23 Government's Exhibit 127. Special Agent Ryan, if you could
24 hand that up to Ms. Kennedy.

25

1 **BY MS. BERKOWER:**

2 Q. And do you recognize what that is?

3 A. Yes, it is the gun from the nightstand.

4 Q. And prior to coming to court, did you check to see
5 if this gun is still cleared? Let me ask you a different
6 question. Can you tell if this gun has been cleared?

7 A. Yes.

8 Q. How can you tell that?

9 A. The green zip ties in place on the gun indicates
10 it's been cleared by a firearms instructor.

11 **MS. BERKOWER:** All right. And, Special Agent
12 Ryan, if you could please display the gun to the jury.
13 Thank you, Special Agent Ryan.

14 Could you please hand Ms. Kennedy 1B20.1 and
15 1B20.2.

16 **THE WITNESS:** Yes.

17 **BY MS. BERKOWER:**

18 Q. Ms. Kennedy, can you explain what these items are?

19 A. This is the ammunition that was with the Smith &
20 Wesson. One magazine was in the weapon. The round from the
21 chamber and this was the extra magazine that was next to it.

22 **MS. BERKOWER:** And, Special Agent Ryan, could you
23 display those items to the jury.

24 And, Ms. Rohde, if you could pull up in order,
25 just pausing a few moments between so the witness can see

1 and the jury can see, Government's Exhibit 130, 131, 132,
2 133, 134, 137, 138, 144, 145 and 146.

3 **BY MS. BERKOWER:**

4 Q. Now, generally speaking, could you explain,
5 Ms. Kennedy, what these photographs showed?

6 A. Items -- excuse me. Items from the room G or the
7 bedroom in the subject's residence.

8 Q. And is room G the same -- do you label the rooms
9 when you go in to document the search?

10 A. That is correct.

11 Q. Was room G the same room where you found the
12 handgun on the nightstand in the holster?

13 A. Yes.

14 Q. Was the closet -- was this closet -- sorry. Can
15 you explain where this closet was in relation to room G?

16 A. Yes, this is the closet in room G.

17 **MS. BERKOWER:** So, Special Agent Ryan, if you
18 could please hand Ms. Kennedy Government's Exhibit 1B3.

19 **BY MS. BERKOWER:**

20 Q. Ms. Kennedy, do you know what that is?

21 A. Yes, this is bear spray.

22 Q. And where did that come from?

23 A. This is the -- these two canisters were on top of
24 the safe in the closet in room G.

25 Q. And in this Exhibit 130 on the screen in front of

1 you, can you just explain briefly where they were found?

2 A. Yes. You can see the two canisters, that black
3 line at the bottom is the top of the safe, and that is the
4 interior of the closet.

5 MS. BERKOWER: And, Special Agent Ryan, if you
6 could please just display those canisters.

7 BY MS. BERKOWER:

8 Q. Ms. Kennedy, before you do that, actually, can you
9 tell if the canisters have liquid in them?

10 A. They are -- they are heavy.

11 MS. BERKOWER: Now, Ms. Rohde, if you could pull
12 up Government's Exhibit 135 and 136.

13 BY MS. BERKOWER:

14 Q. Ms. Kennedy, could you explain what those exhibits
15 show?

16 A. Yes. This is the long gun that was in the safe in
17 room G in that bedroom.

18 Q. And is one of those -- ask can you explain what
19 the two photos show, why they are different?

20 A. I usually will take a weapon on all sides. I flip
21 it over and also get a serial number.

22 MS. BERKOWER: Now going on to Government's
23 Exhibit 149 and 150, Ms. Rohde.

24 BY MS. BERKOWER:

25 Q. Do you recognize those exhibits?

1 **A.** Yes, I do.

2 **Q.** Could you explain what that was --

3 **MS. BERKOWER:** Actually, if you could go back to
4 149.

5 **THE WITNESS:** These are multiple cards, ID cards
6 from the wallet. In the top of the photo montage is the
7 Melrose Hotel key card.

8 **BY MS. BERKOWER:**

9 **Q.** And could you read the writing on that keycard?

10 **A.** Melrose George Washington -- I'm sorry --
11 Georgetown Hotel, Washington, D.C., Remington.

12 **MS. BERKOWER:** Special Agent Ryan, could you
13 please hand Ms. Kennedy Government's Exhibit 1B7.

14 **BY MS. BERKOWER:**

15 **Q.** And could you explain what that is, please?

16 **A.** This is the hotel keycard that is shown in the
17 photo.

18 **MS. BERKOWER:** Special Agent Ryan, could you
19 please display that to the jury.

20 And, Ms. Rohde, if we could go on to Government's
21 Exhibit 150, please.

22 **BY MS. BERKOWER:**

23 **Q.** Ms. Kennedy, do you know what this is?

24 **A.** Yes, I do.

25 **Q.** Could you explain what it is?

1 **A.** Documents found at the residence.

2 **Q.** And do you see wording and a symbol at the top of
3 the document?

4 **A.** I do.

5 **Q.** Could you read what those words say?

6 **A.** Yes. "Texas Three Percenters. Come and take it."
7 There is the silhouette of Texas in the center with Roman
8 numeral III, superimposed over two crossed long guns.

9 **Q.** And going back to the full document, do you see
10 highlighted text on this document?

11 **A.** Yes.

12 **MS. BERKOWER:** Thank you, Ms. Rohde.

13 **BY MS. BERKOWER:**

14 **Q.** Do you see the number 2?

15 **A.** Yes, I do.

16 **Q.** Could you read the words after 2?

17 **A.** "Providing a focus on the education of ourselves
18 and others regarding the constitution, political arena,
19 local laws, preparation and self preservation."

20 **MS. BERKOWER:** And, Ms. Rohde, if you could zoom
21 out for a moment, and go to the first line of the writing on
22 the document.

23 **BY MS. BERKOWER:**

24 **Q.** Do you see the word "mission" there?

25 **A.** Yes.

1 **Q.** And where did the wording you just read from item
2 come underneath -- come in the document? Was it
3 underneath the word mission?

4 **A.** Yes, that is correct.

5 **Q.** And was that highlighting there when you found the
6 document?

7 **A.** Yes.

8 **MS. BERKOWER:** Special Agent Ryan, could you
9 please hand the witness Government's Exhibit 1B6.

10 **BY MS. BERKOWER:**

11 **Q.** And could you explain what that is, please?

12 **A.** This is the Three Percenters mission document that
13 is shown in the photo found at the residence.

14 **MS. BERKOWER:** Special Agent Ryan, if you could
15 please display that to the jury.

16 No further questions, Your Honor.

17 **THE COURT:** Mr. Welch?

18 **CROSS-EXAMINATION OF KARLA KENNEDY**

19 **BY MR. WELCH:**

20 **Q.** Hi, Ms. Kennedy.

21 **A.** Hello.

22 **Q.** My name is Bill Welch. I am going to ask you just
23 a couple questions.

24 **A.** Yes.

25 **Q.** Do you recall how many photographs you took the

1 day of the search?

2 A. Photographs in total, the exact number, I don't
3 recall.

4 Q. Could you give us an estimate?

5 A. I could tell you the number, if I had my photo
6 logs. But the estimate would be around five or six hundred.

7 Q. Five or 600 photographs. And do you know how many
8 items were seized? How many items that we've seen here
9 today, how many items were seized at the house that day?

10 A. The exact number, I don't know.

11 Q. Could you estimate?

12 A. If I had the evidence log, I could tell you. My
13 estimate would be around 30.

14 Q. Around 30.

15 MR. WELCH: Thank you. Pass the witness.

16 THE COURT: All right. May this -- any redirect?

17 MS. BERKOWER: Very briefly, Your Honor.

18 REDIRECT EXAMINATION OF KARLA KENNEDY

19 BY MS. BERKOWER:

20 Q. When you go to the house, what is the purpose of
21 taking photographs?

22 A. To document the scene as we have found it, the
23 evidence that we find and take and then document the scene.
24 And exit photos is how we have left the residence.

25 Q. When you say you took 5 or 600 photos, why did you

1 take that many?

2 **A.** It is not really a lot. It sounds like a lot but
3 it is not a lot. There is a very standard procedure for
4 photographing every room and every item. And so the 5 or
5 600 photos is actually not quite a lot.

6 **Q.** And does the FBI take -- recover and seize every
7 single item of evidentiary interest that you photograph?

8 **A.** No, not always.

9 **Q.** Why is that?

10 **A.** Sometimes they would just want to have a photo
11 documenting it. Oftentimes they don't have to seize it, if
12 they have a photo.

13 **MS. BERKOWER:** No further questions, Your Honor.

14 **THE COURT:** May this witness be excused?

15 **MR. WELCH:** Yes, Your Honor.

16 **THE COURT:** Thank you, ma'am.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Who is the next witness?

19 **MS. BERKOWER:** The government calls FBI Agent
20 Laird Hightower.

21 **COURTROOM DEPUTY:** Please raise your right hand
22 sir. Sir, do you solemnly swear or affirm the testimony you
23 will give to this honorable court and this jury on trial to
24 be the truth the whole truth and nothing but the truth?

25 **THE WITNESS:** I do.

1 **COURTROOM DEPUTY:** You can sit in the second seat.
2 That apparatus in front of you is a microphone. So speak
3 directly into it.

4 **THE WITNESS:** Yes, sir.

5 **DIRECT EXAMINATION OF LAIRD HIGHTOWER**

6 **BY MS. BERKOWER:**

7 **Q.** Good afternoon.

8 **A.** Good afternoon.

9 **Q.** Could you please tell the jury your name and spell
10 it?

11 **A.** Laird Hightower. First name, L-a-i-r-d, last name
12 Hightower, H-i-g-h-t-o-w-e-r.

13 **Q.** Are you employed?

14 **A.** Yes.

15 **Q.** Where do you work?

16 **A.** Federal Bureau of Investigation.

17 **Q.** How long have you been an agent there -- or sorry.
18 What is your job title?

19 **A.** Special agent.

20 **Q.** And how long have you been a special agent?

21 **A.** March 14th will be 23 years.

22 **Q.** Do you have prior law enforcement experience
23 before that?

24 **A.** Yes.

25 **Q.** What is that?

1 **A.** I was employed by the Oklahoma Bureau of Narcotics
2 and Dangerous Drugs as a State Police narcotic agent.

3 **Q.** And what is your current assignment with the FBI?

4 **A.** I am assigned to work domestic terrorism.

5 **Q.** Where?

6 **A.** Dallas.

7 **Q.** In the Dallas field office?

8 **A.** Yes.

9 **Q.** Are you familiar with the investigation into Guy
10 Reffitt?

11 **A.** Yes.

12 **Q.** Why?

13 **A.** Because the lead was assigned to me.

14 **Q.** So are you the case agent for that matter in
15 Dallas?

16 **A.** Yes.

17 **Q.** Now, as the case agent, did you gather and review
18 evidence about the defendant's activities on January 6th?

19 **A.** Yes.

20 **Q.** Did you participate in a search of his house?

21 **A.** Yes.

22 **Q.** Are you familiar with the evidence that was found
23 there?

24 **A.** Yes.

25 **Q.** And did you also review photos and videos from

1 events at the Capitol on January 6th that relate to this
2 defendant?

3 A. Yes.

4 Q. So we are going to talk about each of those
5 things, but I am going to ask you first about something
6 else.

7 A. Okay.

8 Q. So you said you are the case agent in Dallas; is
9 that right?

10 A. Yes, ma'am.

11 Q. Why the FBI in Dallas investigating Mr. Reffitt?

12 A. Because there was a lead that was assigned to me
13 that involved an individual who lived in my area.

14 Q. Were other FBI offices also involved in the
15 investigation into Mr. Reffitt?

16 A. Yes.

17 Q. Which ones?

18 A. FBI Washington field office.

19 Q. And where there other agents assigned to work on
20 that -- on this case from that office?

21 A. Yes.

22 Q. Who?

23 A. FBI Special Agent Tom Ryan.

24 Q. And did other agents from the Washington field
25 office do the forensic examination of the devices found?

1 **A.** Yes.

2 **Q.** Who did that?

3 **A.** FBI Washington field office hard examiner Stacy
4 Shahrani.

5 **Q.** Let's take a step back and talk about the
6 investigation of Mr. Reffitt. Okay? How did the FBI first
7 become aware of Guy Reffitt?

8 **A.** Through a tip that had been submitted to the FBI
9 tip line.

10 **Q.** Was that a phone tip or an online tip?

11 **A.** An online tip.

12 **Q.** Does the online tip system allow the tipster a
13 name and/or contact information for follow up?

14 **A.** Yes.

15 **Q.** Did this tipster provide a name and contact
16 information?

17 **A.** Yes.

18 **Q.** What -- who was -- what was the name of the
19 tipster provided?

20 **A.** Jackson Reffitt.

21 **Q.** When was the tip submitted?

22 **A.** December 24th.

23 **Q.** Of what year?

24 **A.** 2020.

25 **Q.** And after the tip was submitted, what happened to

1 it?

2 **A.** It was reviewed and assigned to the FBI Dallas
3 field office.

4 **Q.** Now, is it fair to say that the FBI gets a large
5 volume of tips through the online tip line?

6 **A.** Yes.

7 **Q.** What happens when a tip comes in to the online tip
8 line?

9 **A.** It is reviewed, analyzed and assigned to the
10 appropriate division for further investigative follow up.

11 **Q.** And what is that initial assessment for?

12 **A.** To determine whether or not it -- there is enough
13 -- there are enough facts as to if the case should be opened
14 as a full investigation.

15 **Q.** When the tip is first assessed, is a determination
16 made about how quickly follow up is required?

17 **A.** Yes.

18 **Q.** Could you explain that?

19 **A.** In the guardian program, we have two different
20 categories basically, a threat to life category and a
21 regular guardian, normal guardian. In that procedure you
22 have up to 90 days to work it, to determine whether or not
23 there are enough facts there to merit a full investigation.

24 **Q.** Now when you say "guardian," do you just mean a
25 tip?

1 **A.** Yes.

2 **Q.** And when you say "an immediate threat to life,"
3 what in particular qualifies as an immediate threat to life?

4 **A.** If the reviewing officials, where the tip was
5 submitted in the guardian program, determine there were
6 enough specific facts to merit a threat to life, then it
7 will be addressed within 24 hours or immediately by case
8 agents in that respected area where the threat tip is
9 assigned.

10 **Q.** And if that's not the case, what happens to the
11 tip?

12 **A.** Then it is reviewed and worked as an ordinary
13 guardian by an agent or task force officer to work in 30-day
14 increments up to 90 days for determination whether or not it
15 should be closed or whether or not it should be opened as a
16 full investigation.

17 **Q.** Now, when did you get -- when did you first see
18 the tip from Jackson Reffitt?

19 **A.** January the 6th of 2021.

20 **Q.** And when you got the tip from Jackson Reffitt,
21 which of those two buckets had it been put into upon intake?

22 **A.** Normal guardian. In fact, it was a preassessment
23 guardian. So it wasn't even a full-fledged guardian. It
24 was just a general guardian.

25 **Q.** When you are referring to guardian, is that

1 effectively the same term as a tip?

2 **A.** Yes.

3 **Q.** So when you read the tip that you received from
4 Jackson Reffitt, what did it say?

5 **A.** It said words to the effect that Jackson Reffitt's
6 father, Guy Reffitt, was higher up in the Three Percenters;
7 that his father was planning to travel from Texas to
8 Washington, D.C.; that he was planning some kind of serious
9 damage; and that there were potential threats to the
10 legislative branch.

11 **Q.** And when you read the tip, did you draw any
12 significance from the reference of the Three Percenter
13 group?

14 **A.** Yes.

15 **Q.** Can you explain what significance you drew?

16 **A.** It is pertinent to the investigations that I work,
17 which is anti-government, anti-authority, militia extremism.

18 **Q.** And what do you understand the term three percent
19 to mean?

20 **A.** Three percent is a term that references the idea
21 that in 1776 only three percent of the minutemen took arms
22 against the British army.

23 **Q.** Do you know whether that is true?

24 **A.** It's unfounded. It's -- no one knows.

25 **Q.** Now, you said that you read the tip as it was

1 assigned to you as a normal investigation. Right?

2 A. Yes.

3 Q. Had the FBI received other tips related to January
4 6?

5 A. Yes.

6 Q. Generally speaking, what was the volume of tips
7 that came in related to January 6th?

8 A. Thousands.

9 Q. And when you read Jackson Reffitt's tip, had the
10 crowd in D.C. already reached the U.S. Capitol?

11 A. Yes.

12 Q. So what did you do when you read it?

13 A. I made a notation in the guardian that I would
14 call Jackson Reffitt to get more details regarding his tip.

15 Q. Did you call him?

16 A. Yes.

17 Q. And were you able to reach him?

18 A. Yes.

19 Q. When did you ask him?

20 A. I told him at that point we would have to postpone
21 a meeting. And he had told me words to the effect that his
22 father did, in fact, travel to Washington D.C.; that his
23 father was higher up in the Three Percenters; that he had
24 video of himself on the steps of the Capitol; and that he
25 had traveled with others.

1 Q. And what did you decide to do at that point?

2 A. Discuss the matter with executive management and
3 make plans to interview Jackson Reffitt in person.

4 Q. Now, you've been an agent you said over 20 years?

5 A. Yes, ma'am.

6 Q. When you make plans to meet with someone, do they
7 always show up?

8 A. Sometimes they do not.

9 Q. In this case, did Jackson show up?

10 A. He did.

11 Q. When did you meet him?

12 A. I met him on January 11th, Monday.

13 Q. So let's talk more about that meeting. Where did
14 you meet him?

15 A. In a parking lot near a restaurant.

16 Q. And why did you meet him there?

17 A. To get more details as to the nature of the tip
18 that he had submitted regarding his father.

19 Q. And why did you meet him there?

20 A. Because it was a closer area to him in the town
21 that he lived; and that particular location was a public
22 place and there were -- it was in an area where there was a
23 lot of people mingling about in the parking lot area.

24 Q. What was your objective for conducting this
25 meeting?

1 **A.** To get more additional details to follow up
2 related to that tip.

3 **Q.** And what did you observe about him when you first
4 saw him?

5 **A.** He was worried. His demeanor appeared concerned,
6 nervous and quiet.

7 **Q.** And what did you talk to him about when you met
8 up?

9 **A.** All the information that he had regarding his
10 father's activities on January 6th.

11 **Q.** Did he show you any news items from the internet?

12 **A.** Yes.

13 **Q.** What did he show you?

14 **A.** He showed me a video clip of his -- who he advised
15 me was his father; and that he had received from his father.

16 **Q.** And what did he tell you -- what did the clip
17 show?

18 **A.** I reviewed the clip and it was of a man who he
19 said was his father; and that it was Guy Reffitt; and that
20 the individual appeared to be high up on a banister railing
21 of a staircase at the U.S. Capitol; and the individual was
22 wearing clothing that was -- I could see in the video -- he
23 told me that was his father.

24 **Q.** Could you tell the color of any of the clothing?

25 **A.** Yes.

1 **Q.** What was the color of the clothing that you saw?

2 **A.** There was a neon or bright blue jacket. The man
3 that he said was Guy Reffitt, he was wearing a black
4 tactical bump-style helmet, with a GoPro-type video camera
5 mounted on top of the helmet, at the front of the helmet.
6 And he was holding a water bottle and had white-rimmed
7 sunglasses.

8 **Q.** Did Jackson Reffitt also provide you with
9 screenshots from his phone?

10 **A.** Yes.

11 **MS. BERKOWER:** Ms. Rohde, if you could pull up
12 Exhibit 212.1 and 212.2.

13 **BY MS. BERKOWER:**

14 **Q.** Were these the screenshots that he provided to
15 you?

16 **A.** Yes.

17 **Q.** Did you talk to him about the photographs in
18 Government's Exhibit 212.2?

19 **A.** Yes.

20 **Q.** What did he say about those photographs?

21 **A.** He stated that these were screenshots that were
22 sent to him by his father. And Jackson Reffitt identified
23 the circle on the photo as his father, and advised he had
24 received this, and his father was talking about his
25 activities on January the 6th.

1 **Q.** Now, did he give you any audio recordings?

2 **A.** Yes.

3 **Q.** What audio recordings did he give you?

4 **A.** Jackson Reffitt told me that late on the night of
5 the 8th, to the early morning hours of the 9th, he made six
6 covert recordings, of his own initiative, of family
7 discussions where his father discussed his activities on
8 January the 6th.

9 **Q.** Did he also tell you about a conversation he had
10 had with his father and sister earlier that day?

11 **A.** Yes.

12 **Q.** And what did he tell you about that conversation?

13 **A.** He told me, Jackson Reffitt told me words to the
14 effect that earlier in the day that his father had told him
15 words to the effect that if Jackson were to turn him in or
16 report him to law enforcement that if that line was crossed,
17 he would have no other choice but to do his duty, because
18 the family is put in jeopardy and do what is best for the
19 country and do what he had to do.

20 **Q.** Throughout this conversation, what was Jackson's
21 demeanor?

22 **A.** Worried, concerned.

23 **Q.** Did you take him seriously?

24 **A.** Yes.

25 **Q.** Why?

1 **A.** Because of the nature of the tip I had admonished
2 him about telling the truth. It was a federal offense to
3 lie to agents. And just due to the gravity of the
4 situation, I took him very seriously.

5 **Q.** And did the material that he provided to you
6 impact how seriously you took him?

7 **A.** Yes.

8 **Q.** Could you explain why?

9 **A.** Because the information that was provided was the
10 beginning of a full conversion to a full investigation
11 regarding this matter.

12 **Q.** Did the materials he provided, like the
13 screenshots and the recordings, corroborate or contradict
14 what he was telling you?

15 **A.** Corroborate.

16 **Q.** Now five days later on January 16th, were you part
17 of a team of agents that executed a search warrant at
18 Mr. Reffitt's house?

19 **A.** Yes.

20 **Q.** As the case agent, did you have the opportunity to
21 walk through the different rooms of the house?

22 **A.** Yes.

23 **Q.** So we're going to talk in a moment about some of
24 the evidence that you found there. But when you first got
25 to the house, did you place someone under arrest?

1 **A.** Yes.

2 **Q.** Who?

3 **A.** Guy Wesley Reffitt.

4 **Q.** Do you see him here in the courtroom?

5 **A.** Yes.

6 **Q.** Could you point him out by something he's wearing?

7 **A.** Yes. He has some sunglasses, and it looks like a
8 charcoal suit coat.

9 **MS. BERKOWER:** Your Honor, I ask the record
10 reflect that the witness has identified the defendant.

11 **THE COURT:** So reflects.

12 **BY MS. BERKOWER:**

13 **Q.** And as part of that arrest, did you search his
14 person?

15 **A.** Yes.

16 **Q.** Did you find a cell phone?

17 **A.** Yes.

18 **Q.** And are you familiar with that as what's been
19 admitted into evidence as Government's Exhibit 1B4?

20 **A.** Yes.

21 **Q.** Was that phone later examined by the CART team at
22 WFO?

23 **A.** Yes, ma'am.

24 **MS. BERKOWER:** Now, if we could please show -- the
25 Court's brief indulgence.

1 Mr. Hopkins, if you could take down the screen for
2 a moment, please.

3 And, Ms. Rohde, for the Court, counsel and witness
4 only, if you could please show Government's Exhibits 160,
5 161 and 162.

6 **BY MS. BERKOWER:**

7 **Q.** Special Agent Hightower, do you recognize those
8 photos?

9 **A.** Yes.

10 **Q.** Are they photos you took on the day of arrest?

11 **A.** Yes.

12 **MS. BERKOWER:** I'd ask to admit these exhibits.

13 **THE COURT:** Any objection?

14 **MR. WELCH:** No, Your Honor.

15 (Government's Exhibits 160, 161 and 162 were admitted
16 into evidence.)

17 **MS. BERKOWER:** And, so, if we could go back to
18 160, please, and publish to the jury.

19 **BY MS. BERKOWER:**

20 **Q.** Could you explain what this photo is?

21 **A.** That is a booking photo, a front facial photo for
22 booking purposes.

23 **Q.** Was that taken the day you arrested the defendant?

24 **A.** Yes.

25 **Q.** Going on to the next exhibit, could you explain

1 what this shows?

2 **A.** They are -- it is a photograph of a leg --
3 Mr. Reffitt's lower leg, and it appears to show bruising or
4 welting.

5 **Q.** And what day was the arrest?

6 **A.** That would have been January the 16th.

7 **Q.** So how many days after January 6th is that?

8 **A.** Ten days.

9 **MS. BERKOWER:** And going on to 162, please.

10 **BY MS. BERKOWER:**

11 **Q.** Could you explain what this photo is?

12 **A.** That is a picture of Mr. Reffitt's stomach area.

13 **Q.** Why did you take that?

14 **A.** There was a noticeable bruising or welting on his
15 lower abdomen.

16 **Q.** All right. Now, based on your experience, your
17 involvement in the search of the defendant's house, are you
18 familiar with some of the items that were found in his
19 truck?

20 **A.** Yes.

21 **MS. BERKOWER:** Special Agent Ryan, if you could
22 please hand Special Agent Hightower Government's Exhibit
23 1B13.1. And, Ms. Rohde, if you could please pull up
24 Government's Exhibit 112.

25 **THE COURT:** Ms. Berkower, are we going to go

1 through all of these exhibits with the agent?

2 **MR. NESTLER:** No, Your Honor, just a few of them.

3 **BY MS. BERKOWER:**

4 **Q.** Special Agent Hightower, as part of your
5 investigation, did you examine front of this helmet?

6 **A.** Yes.

7 **Q.** What did you see there?

8 **A.** It is a mounting bracket that appears on the front
9 of the helmet.

10 **MS. BERKOWER:** And, Special Agent Ryan, if you
11 could hand Special Agent Hightower Government's Exhibit
12 1B22.

13 **BY MS. BERKOWER:**

14 **Q.** Special Agent Hightower, what do you have as 1B22
15 in your hand?

16 **A.** It is a Kodak Orbit360, EcoPro-style [sic]
17 Camera.

18 **Q.** And as part of your investigation, did you assess
19 whether or not this camera would fit onto the helmet?

20 **A.** I did.

21 **Q.** What did you learn?

22 **A.** It does.

23 **Q.** Could you demonstrate that please?

24 **A.** Yes.

25 **MS. BERKOWER:** Special Agent Ryan, would you mind

1 displaying that to the jury?

2 **BY MS. BERKOWER:**

3 Q. Now, Special Agent Hightower, when you were
4 examining that helmet, did you find any eye protection on
5 it?

6 A. Yes.

7 Q. Where did you find eye protection on it?

8 A. The eye protection is hidden underneath and it
9 rotates out from underneath just like that.

10 Q. When you say "just like that," are you indicating
11 that Special Agent Ryan just lowered the eye protection on
12 the helmet?

13 MR. WELCH: Objection.

14 THE COURT: Let's move it along.

15 MS. BERKOWER: Now, Special Agent Ryan, if you
16 could please hand Special Agent Hightower Government's
17 Exhibit 1B1.

18 **BY MS. BERKOWER:**

19 Q. Special Agent Hightower, do you recognize that?

20 A. Yes, I do.

21 Q. What -- and is that a vest that was seized from
22 the defendant's house?

23 A. Yes.

24 Q. How much does it weigh?

25 A. Approximately 22 pounds.

1 Q. And why is it so heavy?

2 A. The ballistic panels located inside of the vest.

3 Q. Did you, as part of your investigation, take those
4 panels out?

5 A. Yes.

6 Q. And what did you find them to be?

7 A. They are Level III+ rated.

8 Q. What does that mean?

9 A. That means they are designed to defeat pistol and
10 rifle bullets.

11 **MS. BERKOWER:** And, Special Agent Ryan, if you
12 could please show the vest to the jury.

13 **BY MS. BERKOWER:**

14 Q. Now, Special Agent Hightower, are you familiar
15 with a rifle that was found at the defendant's house?

16 A. Yes.

17 **MS. BERKOWER:** Special Agent Ryan, if you could
18 you please hand the witness Government's Exhibit 1B29.

19 **BY MS. BERKOWER:**

20 Q. Prior to coming to court today, Special Agent
21 Hightower, did you check this firearm to see whether it was
22 cleared?

23 A. Yes.

24 Q. How can you tell?

25 A. I can tell because there is no source of

1 ammunition, and there are zip ties in the injection port
2 area, which render it safe and inoperable.

3 **Q.** And was this the firearm found in Mr. Reffitt's
4 house?

5 **A.** Yes.

6 **MS. BERKOWER:** Special Agent Ryan, could you
7 please display it to the jury?

8 **BY MS. BERKOWER:**

9 **Q.** Now, Special Agent Hightower, were you aware of
10 whether a handgun was found in Mr. Reffitt's house?

11 **A.** Yes.

12 **Q.** Did you see that handgun in the home when you were
13 there for the search?

14 **A.** Yes.

15 **Q.** When you observed the handgun, was it inside of
16 anything?

17 **A.** Yes.

18 **Q.** What was it inside of?

19 **A.** The holster.

20 **MS. BERKOWER:** And, Ms. Rohde, if you could please
21 pull up Government's Exhibit 126.

22 **BY MS. BERKOWER:**

23 **Q.** Is this what you observed in the defendant's
24 house?

25 **A.** Yes.

1 **MS. BERKOWER:** And, Ms. Rohde, could you zoom in
2 on the center.

3 **BY MS. BERKOWER:**

4 **Q.** Now, Special Agent Hightower, when you observed
5 this in the defendant's house, were you ever able to make
6 observations about the holster in particular?

7 **A.** Yes.

8 **Q.** Did you recognize the holster?

9 **A.** Yes.

10 **Q.** What did you recognize it to be?

11 **A.** A Blackhawk SERPA CQC concealment sportster-type
12 holster.

13 **Q.** Let's talk now about how you knew it to be that
14 kind of holster. Do you have personal experience with that
15 kind of holster?

16 **A.** Yes.

17 **Q.** Do you own it?

18 **A.** Yes.

19 **Q.** How many do you own?

20 **A.** Two to three.

21 **Q.** Where did you get them?

22 **A.** I purchased them.

23 **Q.** Was it a store available to the general public?

24 **A.** Yes.

25 **Q.** Have you used it in connection with your job as a

1 FBI agent, that type of holster?

2 **A.** Yes.

3 **Q.** Have you used that holster outside of work?

4 **A.** Yes.

5 **Q.** What do you use it for outside of work?

6 **A.** To carry authorized pistols for off-duty or duty
7 use.

8 **Q.** And based on your experience using this type of
9 holster, does it have any distinctive features on its
10 exterior?

11 **MR. WELCH:** Objection.

12 (Discussion at sidebar.)

13 **MR. WELCH:** The objection is, we are getting into
14 his experience, Your Honor. I think this is getting into
15 something that we were to get at pretrial. Experience is
16 going to be leading into expertise. They said they not are
17 not --

18 **THE COURT:** No.

19 (Multiple speakers.)

20 **MR. WELCH:** -- [unintelligible] -- as an expert.

21 **THE COURT:** He -- I think she's been leading him
22 and she's -- correct me if I'm wrong -- but I think she's
23 gotten out all she is going to get. And she is not going
24 into his position as a firearms trainer or anything like
25 that. And this is based on his personal, firsthand

1 experience of carrying this holster. Am I correct,
2 Ms. Berkower?

3 **MS. BERKOWER:** Yes, Your Honor.

4 I am trying to follow very closely to questions
5 and the subject matter that we said we would have him
6 testify about in our motion.

7 **THE COURT:** Okay. I would suspect now that you
8 are about to get into the distinctive features and then this
9 will end?

10 **MS. BERKOWER:** That's right.

11 **THE COURT:** All right. Overruled.

12 (Discussion at sidebar concluded.)

13 **THE COURT:** You may proceed.

14 **MS. BERKOWER:** Thank you.

15 **BY MS. BERKOWER:**

16 **Q.** Based on your experience using this type of
17 holster, does it have any distinctive features on its
18 exterior?

19 **A.** Yes.

20 **Q.** What distinctive features does it have on its
21 exterior?

22 **A.** A matte black finish. It has autolock retention
23 device, which is an L-shaped paddle. And it has a hip
24 paddle mounting attachment.

25 **Q.** Do you see the L-shaped finger retention device

1 you just mentioned in this photograph?

2 **A.** Yes.

3 **Q.** Could you explain where you see it?

4 **A.** It is in the middle, the top end of the holster,
5 and it is what appears to be an L-shaped paddle for an index
6 finger to press.

7 **Q.** And do you also see -- you said there is a hip
8 mounting paddle?

9 **A.** Yes.

10 **Q.** Do you see that in this photograph?

11 **A.** Yes.

12 **Q.** Could you explain where?

13 **A.** It is at the bottom portion of the photograph, and
14 it is the attachment for the mounting platform to put on to
15 your pants belt or your pants. It is at the lower portion
16 of the photograph.

17 **Q.** Now, let's talk about some additional
18 investigative work you did after the day of this search. As
19 part of your investigation, did you review photos and videos
20 of events at the Capitol on January 6th of 2021?

21 **A.** Yes.

22 **Q.** Did you review footage showing the defendant?

23 **A.** Yes.

24 **Q.** So let's talk now about a very specific video that
25 you reviewed.

1 **MS. BERKOWER:** And, Ms. Rohde, if you could please
2 pull up Government's Exhibit 202, which is already in
3 evidence, and play until 11 seconds on the video. And,
4 Mr. Hopkins, if we could please have the --

5 **COURTROOM DEPUTY:** It is --

6 **MS. BERKOWER:** Thank you.

7 (Played audio.)

8 **MS. BERKOWER:** If you can stop the video here in
9 the interest of time.

10 **BY MS. BERKOWER:**

11 **Q.** Special Agent Hightower, are you familiar with
12 this video?

13 **A.** Yes.

14 **Q.** Does it show the defendant on the steps of the
15 Capitol on January 6th?

16 **A.** Yes.

17 **MS. BERKOWER:** Now, Mr. Hopkins, if we could take
18 down the public view for a minute. And, Ms. Rohde, if you
19 could pull up Government's Exhibit 202.1 for the Court,
20 counsel and witness only.

21 **BY MS. BERKOWER:**

22 **Q.** Special Agent Hightower, do you know what this is?

23 **A.** Yes.

24 **Q.** Well, let me ask you if you know where it came
25 from?

1 **A.** Yes.

2 **Q.** Did it come from Government's Exhibit 202?

3 **A.** Yes.

4 **Q.** And how did it come from Government's Exhibit 202?

5 **A.** It is a still image taken from the video.

6 **Q.** From reviewing Government's Exhibit 202, is it
7 accurate?

8 **A.** Yes.

9 **MS. BERKOWER:** Your Honor, I'd ask to admit
10 Government's Exhibit 202.1.

11 **THE COURT:** Any objection?

12 **MR. WELCH:** No objection, Your Honor.

13 **THE COURT:** It's admitted.

14 **MS. BERKOWER:** May we publish it?

15 **BY MS. BERKOWER:**

16 **Q.** Now, Special Agent Hightower, do you see an item
17 in the defendant's rear pants pocket?

18 **A.** Yes.

19 **Q.** And do you see a dark item above what's in the
20 defendant's rear pants pocket?

21 **A.** Yes.

22 **Q.** What does that dark item appear to be?

23 **A.** A Blackhawk SERPA CQC concealment sportster-type
24 holster.

25 **Q.** How can you tell that?

1 **A.** By the features that I observed.

2 **Q.** So in particular, which of those features do you
3 see here?

4 **MS. BERKOWER:** And, Ms. Rohde, if you could
5 please, actually, zoom in on that area of the photograph.
6 Actually, it might be better without that.

7 **THE WITNESS:** I see a matte black finish. I see
8 an auto lock retention device. It's an L-shaped paddle.
9 And I see a paddle attachment that is mounted on the
10 holster.

11 **BY MS. BERKOWER:**

12 **Q.** Does it look like something is inside of the
13 holster?

14 **A.** Yes.

15 **Q.** What color is the item that you see there?

16 **A.** It is a silvery, metallic, linear object.

17 **MS. BERKOWER:** Going back to the full photograph,
18 Ms. Rohde. Thank you.

19 **BY MS. BERKOWER:**

20 **Q.** Do you see another dark object to the right of the
21 holster that you just described?

22 **A.** Yes.

23 **Q.** What do you see there?

24 **A.** I see what is black -- what are black plastic zip
25 cuffs.

1 **Q.** And based on your knowledge of this investigation,
2 do you know whether any zip cuffs were found at the
3 defendant's residence?

4 **A.** Yes.

5 **Q.** Were they?

6 **A.** Yes.

7 **MS. BERKOWER:** Now, Ms. Rohde, if we could take
8 that down and pull up Government's Exhibit 203 in evidence.
9 Thank you. Just play a few seconds of this.

10 (Played video.)

11 **MS. BERKOWER:** Ms. Rohde, you can stop it there.

12 **BY MS. BERKOWER:**

13 **Q.** Special Agent Hightower, are you familiar with
14 this video?

15 **A.** Yes.

16 **Q.** Did you review it before you came to court?

17 **A.** Yes.

18 **MS. BERKOWER:** And if we could take this down for
19 the public. And, Ms. Rohde, if you can pull up Government's
20 Exhibit 301 -- excuse me 203.1. Oh, I think we need the --
21 yeah. Thank you.

22 **BY MS. BERKOWER:**

23 **Q.** Special Agent Hightower, are you familiar with
24 what this is?

25 **A.** Yes.

1 **Q.** What is it?

2 **A.** It is an image of -- taken from the video.

3 **Q.** And does this exhibit have a series of still shots
4 from the video?

5 **A.** Yes.

6 **Q.** Are they accurate depictions of what's in the
7 video?

8 **A.** Yes, ma'am.

9 **MS. BERKOWER:** Your Honor, I'd ask to admit and
10 publish this Exhibit 203.1.

11 **THE COURT:** Any objection?

12 **MR. WELCH:** No, Your Honor.

13 **THE COURT:** They're admitted.

14 (Government's Exhibit 203.1 admitted into evidence.)

15 **MS. BERKOWER:** And, Ms. Rohde, if you could go to
16 slide 35 and scroll through to slide 41.

17 **BY MS. BERKOWER:**

18 **Q.** Special Agent Hightower, if you could watch as the
19 slides progress. Special Agent Hightower, in that series of
20 slides, did you observe a dark item on the defendant's rear
21 waist area?

22 **A.** Yes.

23 **Q.** What does that item appear to be?

24 **A.** A holster.

25 **Q.** Did it appear that the holster had something

1 inside it?

2 A. Yes.

3 Q. What color was the object that you saw?

4 A. A silvery, metallic, linear object.

5 MS. BERKOWER: Ms. Rohde, if you could please go
6 to slide 59 and play through the slides to slide 68.

7 BY MS. BERKOWER:

8 Q. Special Agent Hightower, did you observe anything
9 in the defendant's waist area in that series of slides?

10 A. Yes.

11 Q. What did you observe?

12 A. What appeared to be a holster.

13 Q. And did it look like it had something inside of it
14 at that time?

15 A. Yes.

16 Q. What color was the item that you saw there?

17 A. Silvery, metallic, linear object.

18 MS. BERKOWER: Now, Special Agent Ryan, if you
19 could hand Special Agent Hightower what has been marked as
20 Government's Exhibit 55?

21 BY MS. BERKOWER:

22 Q. Special Agent Hightower, are you familiar with
23 what this is?

24 A. Yes.

25 Q. What is it?

1 **A.** It is a Blackhawk SERPA CQS concealment
2 sportster-type holster, with paddle attachment.

3 **Q.** And how did the FBI get this?

4 **A.** Purchased it.

5 **Q.** To be clear, it was not taken from the defendant's
6 house?

7 **A.** That is correct.

8 **Q.** Was any of the -- was any holster seized or
9 collected on the day of the search?

10 **A.** Not to my knowledge.

11 **Q.** So if you could pick up the Government's Exhibit
12 55 and could you -- do you see a finger retention device on
13 this holster?

14 **A.** Yes.

15 **Q.** Could you point it out, please?

16 **MS. BERKOWER:** Let the record reflect you are
17 pointing to an L-shaped piece on the front of Government's
18 Exhibit 55.

19 **BY MS. BERKOWER:**

20 **Q.** Now, could you explain by demonstrating how that
21 L-shaped paddle works?

22 **A.** The index finger of the strong hand, the side that
23 the holster is on, presses the L-shaped paddle, which
24 releases the locking mechanism inside of the holster,
25 allowing the pistol to be drawn.

1 Q. And what color is this holster?

2 A. Matte black finish.

3 Q. Do you also see a mechanism on this holster to
4 attach it to the wearer's clothing?

5 A. Yes.

6 Q. Could you explain what attachment it has?

7 A. It is a hip paddle mounting attachment. And it
8 allows the individual to attach this inside the pants or
9 between the pants and the belt on your pants.

10 Q. And could you demonstrate how that works?

11 A. Yes. Would you like me to remove my jacket to do
12 this?

13 Q. Yes, please.

14 **MS. BERKOWER:** And for the record, Special Agent
15 Hightower slid the hip paddle on to his belt on his right
16 side.

17 **BY MS. BERKOWER:**

18 Q. And, Special Agent Hightower, I see that you
19 actually have a holster on your left side; is that right?

20 A. Yes, ma'am.

21 Q. Why is that?

22 A. I am left handed.

23 Q. And are you required to carry a firearm in
24 connection with your job as a special agent for the FBI?

25 A. Yes, ma'am.

1 **Q.** Now, before coming to court today, did you become
2 familiar with item 1B27 in evidence?

3 **A.** Yes.

4 **Q.** And did you determine whether or not that item --

5 **MS. BERKOWER:** And, Special Agent Ryan, if you
6 wouldn't mind getting that item for Special Agent Hightower
7 from the well of the court. It's the Smith & Wesson.

8 **BY MS. BERKOWER:**

9 **Q.** Special Agent Hightower, are you familiar with
10 1B27?

11 **A.** Yes.

12 **Q.** What do you know it to be?

13 **A.** I know it to be a Smith & Wesson SD .40 caliber
14 pistol.

15 **Q.** Where did it come from?

16 **A.** This pistol came from the residence --

17 **THE COURT:** Agent, could you keep your voice up,
18 please?

19 **THE WITNESS:** This pistol came from the residence
20 at 1409 Laura Drive.

21 **BY MS. BERKOWER:**

22 **Q.** And was it the firearm seen in the photograph that
23 you looked at earlier, 124, 125, 126 --

24 **A.** Yes.

25 **Q.** And also 127 and 128?

1 **A.** Yes.

2 **Q.** Before coming to court today, did you check to
3 ensure that this firearm was rendered safe?

4 **A.** Yes.

5 **Q.** Can you tell if it's rendered safe?

6 **A.** Yes.

7 **Q.** How?

8 **A.** No source of ammunition, the chamber is empty. NS
9 the zip ties holding the slide back render it inoperable.

10 **Q.** And before coming to court, did you also
11 demonstrate whether Government's Exhibit 1B27 would fit into
12 the holster that is Government's Exhibit 1B55?

13 **A.** Yes.

14 **Q.** What did you determine?

15 **A.** That it will fit.

16 **Q.** Could you demonstrate how that works?

17 **A.** Yes.

18 **Q.** And, Special Agent Hightower, did you hear a noise
19 when you inserted the firearm into the holster?

20 **A.** Yes.

21 **Q.** Do you know what that noise was?

22 **A.** Yes.

23 **Q.** What was it?

24 **A.** That is the autolock retention device engaging the
25 locking mechanism inside of the holster, to give an audible

1 click, that you know the weapon is locked into the holster.
2 It can only be drawn from the holster, if the L-shaped
3 paddle autolock retention device is engaged.

4 Q. Can you demonstrate how the firearm would be
5 removed from this holster?

6 A. Yes.

7 Q. And for the record, can you explain what you did
8 to get it out --

9 THE COURT: Ms. Berkower, I think everyone can see
10 this. Let's move on.

11 BY MS. BERKOWER:

12 Q. Special Agent Hightower, in order to render the
13 firearm safe, what did you have to do with the slide or the
14 silver part of the gun?

15 A. Lock the slide to the rear using the slide stop
16 lever.

17 Q. And if you had not done that, and the slide were
18 closed, would the gun be longer or shorter or the same
19 length as it is right now?

20 A. It would be shorter, because the slide would come
21 down and be this length, instead of the overall length that
22 it is now. It would be shorter.

23 MS. BERKOWER: I'll pass the witness, Your Honor.

24 THE COURT: Mr. Welch.

25 CROSS-EXAMINATION OF LAIRD HIGHTOWER

1 **BY MR. WELCH:**

2 **Q.** Good afternoon, Agent Hightower.

3 **A.** Good afternoon.

4 **Q.** My name is Bill Welch. I am also going to ask you
5 some questions.

6 How did you acquire Government's Exhibit 202, the
7 Emily Molli video that we just looked at?

8 **A.** The Emily Molli video was prepared by the
9 government.

10 **Q.** Was prepared by the government. Okay. How did
11 you acquire Government's Exhibit 202.1, which was a
12 screenshot that you just looked at?

13 **A.** It was prepared by the government.

14 **Q.** Likewise, would you say the same about
15 Government's Exhibit 202, the other screenshot from the
16 Emily Molli video?

17 **MS. BERKOWER:** Your Honor, objection.

18 (Discussion at sidebar.)

19 **THE COURT:** What in the world is the objection to
20 him asking --

21 **MS. BERKOWER:** It's not in evidence, Your Honor,
22 that particular item he just asked about was not introduced
23 into evidence.

24 **MR. WELCH:** I thought they were all -- I thought
25 we agreed, and that's what we moved in.

1 **MS. BERKOWER:** We moved 202.1. I don't believe we
2 moved in 202.2. If he wants to introduce it, that's fine.

3 **MR. WELCH:** No, that's fine.

4 **THE COURT:** Did you ask about 1 already?

5 **MR. WELCH:** I did ask about 1 already.

6 **THE COURT:** All right. Let's go.

7 **MR. WELCH:** I'll move on.

8 (Discussion at sidebar concluded.)

9 **BY MR. WELCH:**

10 **Q.** Agent Hightower, I believe you did review the
11 other video, which was Government's Exhibit 200; is that
12 right? That was another video we looked at a moment ago.

13 **A.** May I see the video?

14 **MR. WELCH:** Could you run it again for him,
15 please?

16 (Played video.)

17 **MR. WELCH:** Thank you.

18 **BY MR. WELCH:**

19 **Q.** Does that refresh your recollection?

20 **A.** Yes.

21 **Q.** How did you acquire that one to review?

22 **A.** This was the video clip -- I can't remember.

23 **Q.** Okay. You can't remember. I'm going to turn your
24 attention now to Government's Exhibit 55, that Blackhawk
25 holster you were wearing a moment ago. You mentioned it was

1 purchased.

2 **A.** Yes, sir.

3 **Q.** Who purchased it?

4 **A.** The government.

5 **Q.** Do you know who specifically?

6 **A.** I do not know who purchased it.

7 **Q.** Do you know whose idea it was to purchase it?

8 **A.** No.

9 **Q.** It wasn't your idea?

10 **A.** No.

11 **Q.** Somebody in the government had the idea to
12 purchase it?

13 **A.** Yes.

14 **Q.** Now, I'm going to turn your attention to your
15 initial meeting with Jackson Reffitt back on -- I believe it
16 was January the 11th of 2021.

17 During that meeting, Jackson Reffitt told you
18 about what his father had said to him that morning.
19 Correct?

20 **A.** Yes.

21 **Q.** And did you -- other than opening a general
22 investigation, did you reclassify this to something that
23 would have been an immediate threat to life?

24 **A.** No.

25 **Q.** Why not?

1 **A.** There was not enough specific details as to a
2 threat to life that needed an imminent intervention by FBI
3 agents.

4 **Q.** Did you learn during that interview that my
5 client, Guy Reffitt, rants a lot?

6 **A.** I don't recall that he had mentioned that
7 specifically.

8 **Q.** Did you learn during that interview whether my
9 client had income at that time?

10 **A.** Yes.

11 **Q.** And what did you learn?

12 **A.** As I recall, the mother and the sister were the
13 primary breadwinners.

14 **Q.** Were you present -- I believe you said you were
15 but just to make sure I got my facts straight, were you
16 present several days later when there was a search of my
17 client's home and he was arrested?

18 **A.** Yes.

19 **Q.** Do you recall how many items were seized during
20 that search?

21 **A.** No, sir.

22 **Q.** Do you have an estimate?

23 **A.** I would be guessing and I'm not -- I shouldn't
24 guess.

25 **Q.** Would it be fair to say more than 25?

1 **A.** Less than 25. Maybe 20 is a better number.

2 **Q.** Okay.

3 **A.** But, again, that won't be an accurate. I am just
4 estimating.

5 **Q.** Did you learn -- did you speak with Jackson
6 Reffitt again or did somebody speak with Jackson Reffitt
7 again on the day of the search?

8 **A.** Yes.

9 **Q.** Did he not come to the house during the search; is
10 that right?

11 **A.** Yes.

12 **THE COURT:** Yes, he did not come to the house?

13 **THE WITNESS:** Yes, he came to the house.

14 **THE COURT:** He did come to the house.

15 **MR. WELCH:** Court's indulgence, please.

16 **BY MR. WELCH:**

17 **Q.** During your investigation, did you have occasion
18 to speak to a Capitol police officer by the name of Shauni
19 Kerkhoff on or about March 22nd, 2021?

20 **A.** Yes.

21 **Q.** Did you, during that interview, learn whether my
22 client had made any statements to her?

23 **MS. BERKOWER:** Your Honor, objection.

24 (Discussion at sidebar.)

25 **THE COURT:** You're not going to get into the

1 defendant's statements.

2 **MR. WELCH:** No, I am just going to ask whether he
3 learned that she heard him make any statements. I believe
4 he is going to say that she did not say that, but I just
5 want to confirm it.

6 **THE COURT:** But if he did make statements, you're
7 not going to ask --

8 **MR. WELCH:** Then I'm not going to ask what it was.

9 **THE COURT:** All right.

10 **MS. BERKOWER:** And part of the objection is it's
11 outside of the scope of the direct, Your Honor. But if that
12 is what he is going to ask, we can live with that.

13 (Discussion at sidebar concluded.)

14 **MR. WELCH:** The objection was overruled. Correct?

15 **THE COURT:** Overruled.

16 **BY MR. WELCH:**

17 **Q.** If you remember the question, go ahead and answer
18 it. If you need me to repeat it, I will.

19 **A.** If you could please repeat the question.

20 **Q.** I'll be happy to.

21 When you interviewed Officer Shauni Kerkhoff of
22 the Capitol police on or about March 22nd, 2021, did you
23 learn from her whether my client had made any statements to
24 her?

25 **A.** I do not recall.

1 **Q.** Did you not -- I'm going to turn your attention
2 back to those -- to Government's Exhibit 202, I believe, and
3 202.1. And isn't it true that you previously reviewed them
4 and said that they appeared suspicious, but you couldn't say
5 for certain what they showed?

6 **A.** I do not understand your question.

7 **Q.** Today was not the first time that you had looked
8 at Government's Exhibit 202 and 202.1, the Emily Molli video
9 and the screenshot from it. Today is not the first time you
10 seen those. Correct?

11 **A.** That is correct, sir.

12 **Q.** When had you looked at them previously?

13 **A.** I'm not aware of the specific date but several
14 times.

15 **Q.** Several times. Would you have looked at them back
16 in June of last year?

17 **A.** Yes.

18 **Q.** And when you looked at them back then, did you say
19 that they appeared suspicious, but you couldn't say anything
20 for certain about them?

21 **A.** Based on the first image that I observed at that
22 time, that is correct.

23 **MR. WELCH:** Court's indulgence.

24 I'll pass this witness, Your Honor.

25 **THE COURT:** Ms. Berkower?

1 **MS. BERKOWER:** Ms. Rohde, if you could please pull
2 up Government's Exhibit 202.1, which is in evidence. And,
3 Mr. Hopkins, could you please present it to the jury? Thank
4 you.

5 **REDIRECT EXAMINATION OF LAIRD HIGHTOWER**

6 **BY MS. BERKOWER:**

7 **Q.** Special Agent Hightower, Mr. Welch was just asking
8 you questions about this exhibit. Do you remember being
9 asked about that?

10 **A.** Yes. Yes.

11 **Q.** Did you first see this image around June of 2021?

12 **A.** Not -- there was an image I saw before this one.

13 **Q.** And prior to -- prior to June 2021, had you been
14 looking for images of the defendant?

15 **A.** Yes.

16 **Q.** And prior to seeing this image, had you been able
17 -- or excuse me. I will withdraw that question and
18 rephrase.

19 Was there a time when you were not able to
20 determine or to make an opinion about the dark object on the
21 back of Mr. Reffitt's pants?

22 **A.** Yes.

23 **Q.** Could you explain why that was the case?

24 **A.** Because at the time the image that I was viewing
25 was obscured by the jacket. So I was seeing minimal of an

1 object and could not make a definitive determination as to
2 what that object was that I was looking at.

3 Q. Were you also looking at lower-quality images and
4 videos?

5 A. Yes. They were very granular, lacking clarity.

6 Q. When you saw an image with this clarity, was your
7 ability to draw observations about the dark object on the
8 back of Mr. Reffitt's pants enhanced?

9 A. Yes.

10 Q. Why?

11 A. Because it was clear to me what the features were
12 of what I was looking at, and I knew what I was looking at
13 because of my familiarity.

14 MS. BERKOWER: Nothing further, Your Honor.

15 THE COURT: All right. May this witness be
16 excused?

17 MR. WELCH: Yes, Your Honor.

18 THE COURT: All right. Thank you, sir.

19 So, ladies and gentlemen, it is now almost 4:00.
20 So we are going to adjourn for the day. Mr. Nestler?

21 MR. NESTLER: I was indicating to Mr. Hopkins to
22 turn off the monitors.

23 THE COURT: Oh, sorry. Okay.

24 So we are going to adjourn until 9:30 Monday
25 morning. I know I've admonished you many, many times not to

1 talk about the case, read about the case, do any
2 investigation about the case. But this is especially
3 important now that we have a longer break, and we are going
4 to be apart over the weekend.

5 It's critical that you don't say anything at all
6 about this case. And by anything, I mean anything relating
7 to witnesses, exhibits, attorneys, the defendant or anything
8 else related to this case. And this is very important that
9 you not say anything, even to one another. Because it's
10 critical that you wait until the case is over. To share
11 information, you have to wait until your deliberations to
12 say anything about the case to each other or it could
13 potentially result in a mistrial. So please, please be very
14 careful.

15 Also, same goes true for things you might read in
16 the newspaper or hear on TV or see on the internet. Very
17 important that you don't do it. We've all been through five
18 long days, and we want to make sure that the case gets to
19 you without any issues.

20 So I think with any luck, we should be able to
21 conclude the government's case on Monday. Is that right,
22 Mr. Nestler?

23 **MR. NESTLER:** Yes, Your Honor.

24 **THE COURT:** All right. So I hope you have a great
25 weekend. I hope you get some rest, and we will see you back

1 in the courtroom on Monday morning at 9:30.

2 **COURTROOM DEPUTY:** All rise --

3 **THE COURT:** Oh, and if you see or hear anything,
4 please report it to Mr. Hopkins.

5 (Jurors exited the courtroom.)

6 **COURTROOM DEPUTY:** Parties may be seated.

7 **THE COURT:** All right. So, Mr. Nestler, the
8 government has Agent Ryan, the two Capitol police officers
9 and then Peyton --

10 **MR. NESTLER:** Peyton Reffitt. Yes, Your Honor.
11 We believe we will rest before lunch on Monday morning.

12 **THE COURT:** All right. Great.

13 So, Mr. Welch, if you have any witnesses to share
14 consistent with the pretrial order, please let Mr. Nestler
15 know.

16 **MR. WELCH:** We do not.

17 **THE COURT:** All right. Okay. Very well.
18 Anything else we need to address?

19 **MR. NESTLER:** Just scheduling, Your Honor. If we
20 rest before lunch on Monday, and the defense does not call
21 any witnesses, how Your Honor wanted to handle the charging
22 conference, and what we should expect after that.

23 **THE COURT:** I think if there is no defense case,
24 then I think it would make sense to do that Monday
25 afternoon.

1 **MR. NESTLER:** Yes, Your Honor.

2 **THE COURT:** And that shouldn't take a long time,
3 given all the hard work we've done already on it. So I
4 don't want to be overly optimistic, but perhaps we can do
5 the -- begin the closings or I could, at a minimum, instruct
6 the jury the substantive instructions before the closing,
7 because I will do that before your closings.

8 **MR. NESTLER:** Yes, Your Honor. That sounds
9 perfect.

10 **THE COURT:** Do you have an estimate how long
11 closings are expected be?

12 **MR. NESTLER:** We expect about an hour for our
13 closings, Your Honor.

14 **THE COURT:** Mr. Welch?

15 **MR. WELCH:** Fifteen minutes.

16 **THE COURT:** Okay. We will see what time we end on
17 Monday. Maybe we can do some work over the lunch hour.
18 Make sure you have enough time for lunch, but maybe we can
19 break it in two and make it go more quickly -- the charging
20 conference, that is.

21 **MR. NESTLER:** Yes, Your Honor. Thank you.

22 **THE COURT:** Okay. Have a good weekend, everyone.

23 **MR. NESTLER:** You too.

24 (Proceedings concluded at 3:58 p.m.)

25

C E R T I F I C A T E

I, **Lorraine T. Herman, Official Court
Reporter**, certify that the foregoing is a true and correct
transcript of the record of proceedings in the
above-entitled matter.

March 5, 2022

DATE

/s/Lorraine T. Herman