UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**No. 21-245 (APM)**
	)	
SHANE JENKINS,	)	
	)	
Defendant.	)	
	)	

MOTION TO REVOKE DETENTION ORDER

COMES now the defendant, Shane Jenkins, by and through undersigned counsel, and pursuant to 18 U.S.C. §3145(b), and moves this Honorable Court to revoke the order of detention imposed on March 11, 2021 by the Honorable Andrew M. Edison, United States Magistrate Judge for the Southern District of Texas.

BACKGROUND

On March 5, 2021, Mr. Jenkins was arrested on a complaint alleging charges arising out of the events on January 6, 2021. *See* ECF Dkt. No. 1, 5. A detention hearing was held on March 11, 2021, where the Honorable Andrew M. Edison ordered continued detention based on a finding of dangerousness. *See* ECF Dkt. No. 6, pp. 17-19. In support of the Court's decision, it found the following factors: (1) weight of the evidence, (2) subject to lengthy period of incarceration if convicted, (3) prior criminal history, (4) history of violence or use of weapons, (5) history of alcohol or substance abuse, (6) prior attempt(s) to evade law enforcement, (7) prior violations of probation, parole, or supervised release.[1] *Id.* at pp. 18-19. The Court based

[1] According to the pre-trial services report, Mr. Jenkins's last related charge involving substance

its findings on testimony that was taken during the preliminary hearing and detention hearing on March 11, 2021. *See* Exhibit 1, Transcript. The Court reasoned further in its order for detention, saying:

> "Mr. Jenkins visited the Capitol grounds on January 6. He brought with him a crowbar/hatchet and used it to smash a window at the US Capitol. He then threw nine items –pole, desk drawer, a pipe/metal rod – at law enforcement officers, trying to hurt them for doing their job and trying to protect the symbol of our great democracy and those public servants inside. In short, he put law enforcement officers in danger of significant harm. In my view, Defendant is a danger to the community because he actively participated in a violent insurrection aimed at overthrowing our democracy. In addition, Defendant has a long criminal history – multiple assault charges, DWI, Terroristic threat, drug charges, evading arrest, assault on a public servant, and resisting arrest. He has had parole revoked previously, demonstrating a clear inability to comply with instructions and follow supervision."

See ECF Dkt. No. 6 at pg. 19. The Court relied on the testimony of Special Agent Jeffrey Johannes ("SA Johannes"), who testified that he viewed video surveillance showing Mr. Jenkins (1) smash a window with a tomahawk, and (2) throw objects at officers that struck them. *See* Exhibit 1, Transcript, pp. 18-25. The government did not present the Court with the actual videos, and instead directed SA Johannes to testify regarding his recollection of the videos he viewed at an earlier date as well as still shots taken from the videos. *Id*. Those still shots are also contained in the statement of facts. *See* ECF Dkt. No. 1. SA Johannes further testified that he was taken into custody on March 5, 2021 with no incident and that Mr. Jenkins cooperated with law enforcement during his arrest. *See* Exhibit 1, Transcript, pp. 28-29.

On cross examination, SA Johannes explained that he did not identify any specific officers who were harmed by Mr. Jenkins alleged actions. *Id.* at pg. 31. Further, he testified that

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abuse was in 2013. *See* PSR, ECF Dkt. No. 9. Furthermore, although Mr. Jenkins is facing a range of 0-20 years if convicted, his estimated guideline range is 63-78 months (46-57 months with acceptance).

none of the items that he allegedly threw were recovered into evidence. *Id.* at pg. 38. There was no testimony that Mr. Jenkins used the tomahawk to throw at officers or used it towards any other individual. Further, there was no testimony that Mr. Jenkins ever went inside the Capitol building. *See* Exhibit 1, Transcript. Lastly, SA Johannes testified that Mr. Jenkins was on parole from June 2018 to December 2019 and that he successfully completed that term of parole. *Id.* at pp. 42-43.

The defense then presented David Trickett as a witness, who testified that he observed Mr. Jenkins's transformation and rehabilitation during his last period of incarceration all the way up until the instant offense. *Id.* at pp. 46-63. Mr. Trickett explained that he mentored Mr. Jenkins through his work at C.H.A.R.M. Prison Ministry and that Mr. Jenkins resided there after he was released from his last period of incarceration.[2] *Id.* He further testified that while he resided there, Mr. Jenkins "exemplified extraordinary leadership," and became a mentor to others. *Id.* at pp. 49-50. Mr. Trickett also testified that he would be welcome back at the house if he were released and agreed to be his third-party custodian. *Id.* at pg. 51, 61-63. *See also* Exhibit 2, Letter from David Trickett. Mr. Trickett further testified that he never observed any violent behavior or any behavioral problems while Mr. Jenkins was residing at this facility. *Id.* at pg. 59. Lastly, he testified that Mr. Jenkins was gainfully employed as a roofer before the instant arrest. *Id.* at pg. 60.

After this hearing, the Court did not find that Mr. Jenkins was a risk of flight but did find that the government met their burden of providing by clear and convincing evidence that there were no conditions or combinations of conditions that could reasonably assure the safety of the

[2] David Trickett and his wife founded this ministry to help rehabilitate incarcerated men and women by providing them with housing, job search assistance, food and clothing, transportation, religious studies, and accountability groups. *See* CHARM PRISON MINISTRY - CHARM Prison Ministry

community. *Id.* at pg. 97. On March 24, 2021, Mr. Jenkins was indicted and appeared before the Honorable Magistrate Judge G. Michael Harvey on April 15, 2021, where he was arraigned on charges including: Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, Destruction of Government Property, and Civil Disorder. *See* ECF Dkt. No. 7. On April 21, 2021, Mr. Jenkins appeared for his first status conference before this Honorable Court and his next status conference is scheduled for May 25, 2021. Mr. Jenkins has remained incarcerated at the D.C. Jail, where COVID-19 lockdowns have proven to create harsh conditions for inmates.

I. Standard of Review

Pursuant to 18 U.S.C. §3145(b), this Court has the authority to reconsider a detention order issued by a magistrate judge upon motion by the defense. This Court's review of the magistrate judge's detention order is *de novo*. *United States v. Hunt*, 240 F. Supp. 3d 128, 132 (D.D.C. 2017); *United States v. Karni*, 298 F. Supp. 2d 129, 130 (D.D.C. 2004). The district court must make its own *de novo* determination of the facts with no deference to the findings or legal conclusions of the magistrate judge. *United States v. Koenig*, 912 F. 2d 1190, 1192 (9th Cir. 1990); *United States v. Gaviria*, 828 F.2d 667, 670 (11th Cir. 1987).

II. Governing Authority For Detention Hearings Generally

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Bail Reform Act requires the Court to impose the "least restrictive" means of ensuring the appearance of the person and safety to the community. 18 U.S.C. §3142 (c)(1)(B). Only in "rare circumstances should release be denied," and any "doubts regarding the propriety of release should be resolved in the defendant's favor." *United States v. Gebro*, 948 F.2d 118, 1121 (9th

Cir. 1991).

In order to justify detention, the government must establish by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community, or, by a preponderance of the evidence, that no condition or combinations of conditions will reasonably assure the appearance of the defendant as required. See 18 U.S.C. § 3142 (e-f). "In common parlance, the relevant inquiry is whether the defendant is a 'flight risk' or a 'danger to the community.'" *United States v. Vasquez-Benitez*, 919 F.3d 546, 550 (D.C. Cir. 2019).[3] In assessing whether pretrial detention is warranted for dangerousness, the district court considers four statutory factors: (1) "the nature and circumstances of the offense charged," (2) "the weight of the evidence against the person," (3) "the history and characteristics of the person," and (4) "the nature and seriousness of danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142 (g)(1)-(4).

"Thus, a defendant's detention based on dangerousness accords with due process only insofar as the district court determines that the defendant's history, characteristics, and alleged criminal conduct make clear that he or she poses a concrete, prospective threat to public safety." *United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021). To order a defendant detained, a court must "identify an articulable threat posed by the defendant to an individual or the community," and "detention cannot be based on a finding that the defendant is unlikely to comply with conditions of release absent the requisite finding of dangerousness." *Id*.

III. Argument

a. The government did not prove by clear and convincing evidence that Mr. Jenkins poses an articulable threat to an individual or the community.

[3] The magistrate judge did not find that Mr. Jenkins was a "flight risk" and so this motion only addresses "danger to the community." *See* ECF Dkt. No. 6, pp. 17-19.

The government pointed to Mr. Jenkins's criminal history, prior revocations of parole, and the nature of the instant offense, when it argued that Mr. Jenkins was a "danger to the community." *See* Exhibit 1, Transcript, pp. 82-86. Firstly, the government argued that Mr. Jenkins has a "long history of violence," however included in that history a charge from 1997 that had an unknown disposition. *Id*. at pg. 85. If the disposition is unknown, then the government erred in arguing that this constituted a prior act of violence. Furthermore, the government did not present any facts or circumstances surrounding any of Mr. Jenkins's prior convictions to support its argument that the conduct actually involved violence. The last conviction that, by its title may suggest violent conduct, was a Resisting Arrest conviction from 2013, over 7 years ago.[4] *See* PSR, ECF Dkt. No. 9.

The government also argued that Mr. Jenkins would likely not abide by the conditions of the Court because he has had prior parole revocations. *Id*. at pg. 86. However, the government failed to acknowledge that he successfully completed his most recent term of parole from 7/12/2018 – 12/29/2019. *See* PSR, ECF Dkt. No. 9. The recent successful completion of his parole was undoubtedly due to the rehabilitation efforts testified to by David Prickett. *See* Exhibit 1, Transcript, pp. 46-63. Mr. Jenkins not only abided by the conditions of his last term of parole, but he also did not incur any more offenses for the following year up until the instant arrest. Those circumstances weigh in favor of Mr. Jenkins as it shows that in recent years, he has abided by conditions set by the Parole Commission.

Lastly, the government argued that the nature of the instant offense weighed in favor of detention. In support, the government first provided testimony from SA Johannes that Mr.

[4] The magistrate court also seemed to rely on a prior "Terroristic Threat" misdemeanor charge from 2001 even though the court was not presented with any facts surrounding the case. Mr. Jenkins was 24 years old at the time. He is now 43 years old.

Jenkins was seen on video smashing a window. *See* Exhibit 1, Transcript, pp. 10-12. However, the magistrate court was not provided with the actual video from Twitter which shows Mr. Jenkins beginning to strike the window, however stopping shortly thereafter. In that video, individuals from the crowd "egg" him on to continue striking the window, however he yells back at them, "No, No!" and stops immediately. *See* Exhibit 3, Twitter Video. Next, the government provided testimony from SA Johannes that Mr. Jenkins was seen throwing objects at officers and that those objects struck them. *See* Exhibit 1, Transcript, pp. 18-25. SA Johannes based his testimony on his recollection of body camera footage and photographs from the statement of facts. However, SA Johannes did not provide any support for his assertion that all of these items actually struck the officers in a crowd where multiple individuals were picking up any item they could find to throw.[5]

Notably, SA Johannes testified that Mr. Jenkins was seen with a tomahawk, however there was no testimony that he ever threw that tomahawk or used it against any individual. *See* Exhibit 1, Transcript at pp. 18-19. If Mr. Jenkins had a tomahawk and did not use it against any individual, this tends to show that he did not intend to harm anyone. It is also notable that Mr. Jenkins was not one of the individuals who actually entered the inside of the Capitol building. This shows that he did not have any intention to harm anyone that was inside of the building. Lastly, there has been no evidence produced thus far that Mr. Jenkins made any statements threatening to harm anyone. So although the magistrate court stated in its reasoning that Mr. Jenkins was involved in a "violent insurrection aimed at overthrowing our democracy," there was no evidence presented that he intended to overthrow the government. The *Munchel* Court

[5] The only support that defense counsel has gathered from recent discovery productions is a video that shows a desk drawer land on top of the officers' shields and helmets. There are also videos that show other items being thrown, however it is unclear where they actually land and what the items actually are (including their composition).

disagreed with the district court when it reasoned that the defendants posed a danger because "such conduct threatens the republic itself." *United States v. Munchel*, 991 F.3d 1273 (D.C. Cir. 2021), *See Munchel* Order at pg. 16. The Circuit Court explained that was not an adequate consideration of whether there was an "articulate and identifiable threat." *Id.* Rather, that allegation was just a general concern that their conduct threatened our democracy. Similarly, the magistrate court here cannot rely on that general allegation that Mr. Jenkins "participated in a violent insurrection to overthrow the government," when reasoning he is a danger to the community.

Looking at the specific actions of Mr. Jenkins is vital when comparing his case to other cases where defendants have engaged in more serious conduct, including violence, who have been released. For example, in *United States v. Chad Jones*, 1:21-mj-076, Mr. Jones was released after being charged with assault on a police officer with the use of a deadly or dangerous weapon or infliction of bodily injury. In that case, the government alleges that he used a flagpole to repeatedly strike and break the glass of the doorway where Ashley Babbitt was shot and killed. The government did not request Mr. Jones's detention and Magistrate Judge Harvey released him on special conditions. Further, in *United States v. Vitali Gossjankowski*, 1:21-cr-123, the defendant has been charged with assaulting a federal officer with a dangerous weapon (Taser). The statement of facts in support of the complaint describes that an officer near the defendant suffered a heart attack after being "Tased" multiple times in the neck. The government did not object to his release. Lastly, in *United States v. Mark Leffingwell*, 1:21-cr-005, the defendant was charged with Assault on a Federal Officer for allegedly pushing past a wall of officers and repeatedly punching an officer with a close fist. He was also released on

conditions.[6]

b. There are conditions of release that can reasonably assure the safety of the community.

Mr. Jenkins acknowledges that his criminal history does place him in a different position than many defendants who were released (albeit for more serious conduct) who did not have much of a criminal history. However, there are conditions that can assure the safety of the community if Mr. Jenkins is released. The *Munchel* Court emphasized that courts have the ability to "disable the arrestee from executing that threat." *Id.* He has already shown that with proper rehabilitation and steady employment, that he can abide by conditions. The allegations arising out of January 6, 2021 involve a large group of individuals who clearly fed off of each other and could not have engaged in that same conduct in another setting. The Court could set conditions that include: (1) no travel, (2) no use of social media, (3) GPS monitoring, (4) and participation in the High Intensity Supervision Program. If Mr. Jenkins is released on strict conditions, is employed, and continues to participate in the C.H.A.R.M. Prison Ministry program, the court will be assured that he presents no risk to the community.

c. Conditions at the D.C. Jail have created a harsh environment for inmates and the COVID-19 pandemic will continue to create inevitable delays.

In *United States v. Gregory Williams*, 1:20-cr-054 (ABJ), the Court reconsidered its determination that detention was appropriate in light of the *Munchel* decision and because of the "unusually harsh nature of incarceration during the pandemic." *See* ECF Dkt. No. 105. Mr. Jenkins has been incarcerated since March 5, 2021, mostly at the D.C. Jail. Up until just

[6] *See also United States v. Gina Bisignano*, 21-CR-036 (CJN) (alleged to be a "leader" of the insurrection and allegedly exclaimed, "We need weapons!" while pushing against the police line); *United States v. Christopher Alberts*, 1:21-cr-026 (CRC) (found carrying a fully loaded handgun and a bullet-proof vest).

recently, Mr. Jenkins was subject to a 23 hour lockdown. At the present time, inmates are now subject to a 22 hour lockdown. As psychology professor Craig Haney pointed out when interviewed by the Washington Post, there are many psychological and physical harms that prolonged isolation can cause, including: depression, anxiety, heart disease, diabetes or hypertension, and exacerbation of any existing mental illness. *See* D.C. jail coronavirus lockdown: Inmates confined to their cells 23 hours a day for a year - The Washington Post.

Although there have been promising developments that will hopefully lead to the re institution of in person court hearings, the pandemic continues to be cited as a reason to toll time in pending criminal cases. This will inevitably affect Mr. Jenkins's case and he will likely be detained under the above harsh conditions for longer than the typical time it would take for a criminal case to be completed. This delay was also a consideration for the Court in *Williams* to revisit its prior order of detention. *United States v. Gregory Williams*, 1:20-cr-054 (ABJ).

CONCLUSION

For the above reasons, Mr. Jenkins respectfully requests that the Court revoke the order of detention in this matter and release him on strict conditions of pre-trial release.

Respectfully submitted,

A. J. KRAMER
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/s/

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	**4:21-MJ-443-1**
	§	
V.	§	**10:11 A.M. TO 12:20 P.M.**
	§	
SHANE JENKINS	§	**MARCH 11, 2021**

DETENTION HEARING AND PRELIMINARY EXAMINATION
VIA VIDEO CONFERENCE
BEFORE THE HONORABLE ANDREW M. EDISON
Volume 1 of 1 Volume

APPEARANCES: (All parties appeared via video conference)

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ALSO IN ATTENDANCE:
Mr. Shane Jenkins

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

VOLUME 1
(DETENTION HEARING and PRELIMINARY EXAMINATION)

March 11, 2021

ALPHABETICAL

(The following proceedings held via video conference.)

THE COURT: Good morning. This is United States District Court for the Southern District of Texas. I'm Judge Andrew Edison presiding. We are here today on the criminal docket for Thursday, March 11, 2021. The first matter we have for us today is Case Number 4:21-MJ-443-1, United States v. Shane Jenkins.

Could I have introductions of counsel, please. Let's start with the government.

MS. WINTER: Good morning, Your Honor. Heather Winter for the United States.

THE COURT: Good morning, Ms. Winter.

And for Mr. Jenkins.

MR. HESTER: Dennis Hester, Your Honor. Good morning.

THE COURT: Hello, Mr. Hester.

In Houston, can you hear me, Mr. Jenkins?

CASE MANAGER: Your Honor, they are muted.

THE COURT: And there is nothing -- this is -- I have never had this, Mr. Bostic. It does not allow me. Every other time it allows me to put a -- it doesn't allow me to do anything.

CASE MANAGER: Give me one moment.

MR. HESTER: Your Honor, while we are waiting, I communicated with the Court earlier that I have a hearing

with Judge Lake beginning at 11:15. And so far I have done pretty well in not overlapping my hearings; but if that happens here, I'm not sure what the protocol is, if we stop here so I can appear in Judge Lake's court or --

10:12:39 THE COURT: I'll make sure I have Mr. Bostic call Judge Lake's chambers right now and let him know, and I'll let him make the call.

MR. HESTER: Thank you, Your Honor.

THE COURT: Let me do one thing to see if this

10:13:23 works. I'm going to leave, and I will -- Mr. Bostic, are you there?

CASE MANAGER: Yes, sir. I'm here.

THE COURT: I'm going to be right back. I'm going to leave the meeting and make you the host. Okay.

10:14:47 THE MARSHAL: We just figured it out. Never mind.

THE COURT: I have got that. That was my fault. You should have sound in Houston. Mr. Jenkins, can you hear me loud and clear, sir?

10:14:58 THE DEFENDANT: Yes, Your Honor. I can.

THE COURT: Okay. Terrific.

My understanding, Counsel, is that we are here today on a detention hearing. Am I correct?

MS. WINTER: Yes, Your Honor.

10:15:09 THE COURT: Is the government ready to proceed?

MS. WINTER: We are.

THE COURT: Is the defense ready to proceed?

MR. HESTER: Yes, Your Honor. I believe it's both a detention hearing and preliminary hearing for probable cause.

10:15:20

THE COURT: Okay. I'll let the government proceed. If you would, call your first witness.

MS. WINTER: Yes, Your Honor. The government calls Special Agent Jeffery Johannes, and he is appearing via Zoom and is visible on the screen.

10:15:32

THE COURT: Agent Johannes, could you please raise your right hand, sir.

AGENT JOHANNES: (Complying.)

THE COURT: Do you swear the testimony that you are about to give in this court proceeding today is the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Please proceed.

SPECIAL AGENT JEFFREY F. JOHANNES,

having been first duly sworn, testified via video link as follows:

DIRECT EXAMINATION

BY MS. WINTER:

10:15:49

Q. Would you please state your name for the record, sir.

A. My name is Jeffrey F. Johannes. The last name is spelled J-o-h-a-n-n-e-s.

Q. And how are you employed?

A. I am currently employed as a special agent with the Federal Bureau of Investigation at the Washington, D.C. field office.

Q. How long have you been an FBI agent?

A. Approximately 17 years.

Q. And as part of your duties with FBI, are you currently and have you been investigating the riots that took place at the U.S. Capitol on January 20 -- excuse me, January 6th, 2021?

A. I am.

Q. During the course of this investigation was there an individual here in Houston that you worked concurrently with FBI Houston field office?

A. Yes, there is.

Q. And is that individual Shane Jenkins?

A. Yes.

Q. I want you to tell the Court what was happening at the U.S. Capitol on January 6th, 2021.

A. On January 6th, 2021, at the United States Capitol was the confirmation of the electoral college by the U.S. Senate and as well as the House of Representatives that was presided over by Vice President Michael Pence.

Q. And due to the certification of the vote on that date, was the U.S. Capitol restricted in terms of who was allowed and had authority to enter the U.S. Capitol grounds?

10:17:24 **A.** Yes, it was.

Q. Were there actual physical permanent and temporary security barriers that were surrounding the U.S. Capitol?

A. Yes, there were.

Q. And U.S. members of congress, including the vice

10:17:39 president, were present there conducting their official duties?

A. Yes.

Q. Were U.S. Capitol police there to ensure order and to maintain the restrictions and barriers around the U.S.

10:17:56 Capitol that day?

A. Yes, they were.

THE COURT: Ms. Winters, before we go further, I think we have become so accustomed to using Zoom that I forgot to say one thing at the outset. I want to make

10:18:06 sure that I have the agreement from both sides that we are going to proceed today with this preliminary hearing and detention by video as opposed to all being in the courtroom, obviously trying to reduce the spread of COVID.

Do I have that agreement on behalf of the government,

10:18:17 Ms. Winter?

MS. WINTER: Yes, Your Honor.

THE COURT: Mr. Hester, on behalf of the defendant?

MR. HESTER: Yes, Your Honor.

10:18:23 THE COURT: I apologize. Please proceed.

MS. WINTER: Thank you, Your Honor.

BY MS. WINTER:

Q. And, Agent Johannes, do you know whether the U.S. Capitol was closed to members of the public that day?

10:18:34 **A.** Yes, it was.

Q. All right. Can you tell the Court at approximately 1:00 p.m. in D.C. what happened on January 6th, 2021?

A. At approximately 1:00 p.m., several individuals that we classified as protesters and later some of them

10:18:52 classified as rioters entered the grounds of the United States Capitol and proceeded to force their way inside the United States Capitol with the intent of disrupting the certification of the electoral college.

Q. And were they able to get past the Metropolitan Police

10:19:10 Department and the U.S. Capitol Police that were there to secure the building?

A. Yes, they were.

Q. And, specifically, did this occur around 2:00 p.m.?

A. Yes, it did.

10:19:21 **Q.** What did the members of congress and the vice

president have to do at that time?

A. They were forced to temporarily put a hold on the certification process of the electoral college; and they also had to escape, for lack of a better term, to safety to secure confines within the capitol, the U.S. Capitol complex.

Q. And I know we have all seen a lot of news coverage, but can you describe for the Court generally the number of protesters and rioters as compared to the number of police and how the rioters and police were outfitted that day when the confrontation occurred?

A. To the best of my knowledge, the -- we have -- there was approximately anywhere between 300 to 500 or possibly more protesters that were at the U.S. Capitol. There was not -- we don't have a confirmed number just yet.

And at first, due to the -- your question about the equipage of the police departments, initially the indications were it was to be a protest, which is protected under the First Amendment. However -- and, therefore, there was no indications of any type of riot or violence that were anticipated that afternoon. So, therefore, the police officers at the U.S. Capitol Police and the Metropolitan Police Department were police equipped with their standard patrol gear, for the most part.

Later on, however, when the confrontation and the riots occurred after 2:00 p.m., the officers had to basically engage in suppressing, and for lack of a better term, that riot with just whatever gear that they had on at that time.

10:20:59

Q. And would you say that the crowd outnumbered the number of police there at the capitol that day?

A. Yes.

Q. And at around 2:00 p.m. they forced entry and were able to get past the U.S. Capitol Police and the Metropolitan Police Department in order to force entry into the capitol?

10:21:12

A. Yes, they were.

Q. And did the individuals there have authority to go into the capitol at that time?

10:21:28

A. No, they did not.

Q. All right. Now, I want to turn your attention to January 18th, 2021 and a tip that was received by the Houston field office. Can you generally describe what the tipster provided, what information was provided by that tipster to the FBI?

10:21:43

A. The tipster provided information that they viewed online through social media, as well as social media videos and social media photographs, that were publicly available where they captured an image of an individual

10:21:59

breaking into a -- or busting, I should say it correctly -- what appears to be smashing the window to one of the capitol -- one of the capitol windows. And a tipster, through their own online research, provided us a
10:22:20 name of -- in that tip of Shane Jenkins.

Q. Did the tipster say whether or not he or she knew Mr. Jenkins?

A. They said that they did not.

Q. So they provided the FBI images and social media sites
10:22:36 of Mr. Jenkins related to videos and images from the U.S. Capitol riot on January 6th?

A. That is correct.

Q. In particular, did they provide a screenshot of a video showing Mr. Jenkins pulling out a crowbar or a
10:22:52 hatchet and smashing the window of the left tunnel in the lower west terrace area of the U.S. Capitol?

A. Yes, they did.

Q. And did they provide a picture that depicted Mr. Jenkins and any distinctive characteristics about him?

10:23:10 **A.** Yes, they did.

Q. And could you describe for the Court what are some of those specific characteristics that helped the FBI identify Mr. Jenkins?

A. The specific characteristics that we -- that were
10:23:23 provided that we observed, as well, was the tattoos.

Specifically, there was a tattoo under the -- on the right side -- under the right eye that appears to be a, for lack of a better term, fleur-de-lis. The same symbol that they use for the New Orleans Saints.

10:23:43 And then, also, there is a tattoo under the neck of Mr. Jenkins that says, and I quote, "Momma Tried," unquote, written on his neck as a tattoo.

Q. And what about on his hands? Did he have tattoos on his hands, as well?

10:23:56 **A.** Yes. There were tattoos on his hands, and we also observed there were tattoos on his wrists.

Q. And with respect to Mr. Jenkins' appearance, can you describe for him any other distinctive characteristics with respect to facial or hair?

10:24:11 **A.** The -- yes. We observed that he had a beard that was red in color, and he also had no hair.

Q. Now, did this tipster also provide the specific Twitter and Facebook account used by Mr. Jenkins in public social media online?

10:24:30 **A.** Yes, they did.

Q. Did FBI then, with this information provided by the tipster, review the social media accounts of Mr. Jenkins?

A. Yes, we did.

Q. Were those accounts of Mr. Jenkins publicly available?

10:24:45 **A.** Yes, they were.

Q. And when you looked at specific accounts of Mr. Jenkins, including Twitter and Facebook, were you able to identify him and compare it to the information provided by the tipster?

10:25:00 **A.** Yes. Once we looked at the social media accounts of Mr. Jenkins, we were able to match up the same tattoos and, also, there were several photographs that indicated that he was present on -- at the U.S. -- on the capitol grounds on January 6th, 2021, as well as the clothing that

10:25:19 was also matching that was provided -- that also matched the clothing that was provided us by the tipster.

Q. So the publicly available either profile pictures or photographs and videos that Mr. Jenkins posted on his Twitter and Facebook accounts appeared to be the same

10:25:41 person that the information was provided to the FBI from the tipster?

A. Yes.

MR. HESTER: Excuse me, Your Honor. Objection to the characterization that Mr. Jenkins posted these photos.

10:25:52 There has been no evidence of that.

THE COURT: Let's rephrase the question, Ms. Winter.

MS. WINTER: Yes, Your Honor.

BY MS. WINTER:

10:25:59 **Q.** The photographs and videos that you observed on

Mr. Jenkins' profile, were they the same and did they depict the same person from the information that was provided to you by the tipster?

A. Yes, they did.

10:26:11 MR. HESTER: Your Honor, objection to the characterization that it's Mr. Jenkins' profile. There has been no evidence of that.

THE COURT: I'll ask Ms. Winter to rephrase. Rephrase the question.

10:26:24 BY MS. WINTER:

Q. Mr. Johannes, were you aware of and provided information from FBI Houston field office on the date of Mr. Jenkins' arrest, including arrest booking photos of Mr. Jenkins?

10:26:38 **A.** Yes.

Q. And I know --

MS. WINTER: If I could ask him to please pull his mask down, Your Honor, in the court.

BY MS. WINTER:

10:26:45 **Q.** Are you able to identify Mr. Jenkins from the arrest photos to a person who is appearing here today?

THE COURT: Let me ask the defendant if you would please lower the mask for one moment, please, sir.

THE DEFENDANT: (Complying.)

10:27:02 BY MS. WINTER:

Q. Do you recognize Mr. Jenkins, Agent Johannes?

A. Yes. That appears to match the information that we have of Mr. Shane Jenkins.

THE COURT: Okay. You can put on the mask, sir. Thank you very much.

10:27:14

MS. WINTER: And, Your Honor, will the record please reflect that he has identified the defendant in the courtroom?

THE COURT: Let the record so reflect.

10:27:22

BY MS. WINTER:

Q. Now, Agent Johannes, based on your observation of the defendant here today, as well as photos received from the date of his arrest, is Mr. Jenkins that's here today and from the date of his arrest the same Mr. Jenkins that's

10:27:37

depicted in the profile pictures of his Facebook account at Facebook.com/Shane.Jenkins.7?

A. Yes, it is.

Q. And is Mr. Jenkins appearing here today in court, as well as from the photos of his arrest, the same person

10:27:56

that is the profile of Shane Jenkins on Twitter@RedTattoo179?

A. Yes, it is.

Q. Now, could you please describe for the Court what you observed that was publicly available to view from these

10:28:15

two Facebook and Twitter accounts associated with

Mr. Jenkins.

A. What we were able to view from the public accounts were videos and photographs taken by, again, you know, whoever was utilizing, you know, that Facebook, the photographs of -- which included photographs of Mr. Jenkins being present at the capitol that day, which again, you know, included what -- several self images which also matched up with the same images that we saw from witness one, as well.

Q. Can you describe for the Court from those images what was Mr. Jenkins wearing in the pictures that appear to be from the date of January 6th at the capitol riots?

A. Yes. The clothing that we observed Mr. Jenkins wearing on that date was a red Nautica brand, beanie-style cap; a light blue, hooded sweatshirt with the words "1776" on the front in the chest area surrounded by what -- you know, surrounded by stars. On top of that was a black-colored jacket. And, also, at times we saw Mr. Jenkins wearing a black-colored or dark-colored balaclava, which covers part of your face and your -- and head. And we also saw some type of vegetal or some type of camouflage pants as well as a dark-colored backpack.

Q. And despite who may have posted these particular photos and videos, is there any doubt that this is Mr. Jenkins at the U.S. Capitol riot?

A. No, it's not.

Q. And, in fact, the picture posted on his Facebook account wearing the clothes you just described with the tattoos and facial beard, as shown on Page 2 of the statement of facts, he posts or whoever posts associated with the picture says, "A historic day. A turning point for America"; is that correct?

A. That is correct.

Q. All right. I want to turn your attention now to after you have identified Mr. Jenkins, based on the tip and based on FBI's review of his social media accounts, the further investigation done of other videos posted surrounding the property destruction at the U.S. Capitol on that day, specifically on Twitter.

A. Yes. There were other videos posted by other social media users that depicted the violence from various angles that occurred at the U.S. Capitol; and, specifically, what we were observing was the lower terrace area or the tunnel entranceway, which the best way to kind of equate that would be where the president would walk out of during an inauguration.

So that area, there were several videos that were publicly -- that were publicly made or were publicly posted on line in which we observed several individuals committing acts of violence against the members of the

Metropolitan Police Department and U.S. Capitol Police. And in several of those videos we did capture Mr. Shane Jenkins engaged in such activities.

Q. And this specific area where Mr. Jenkins was located at the lower west terrace tunnel, was this area cordoned off and restricted to the public?

A. Yes, it was.

Q. Was this area specifically being guarded and kept secure by the capitol police?

A. Yes, it was.

Q. So tell us about the videos that you located and found where you were able to identify Mr. Jenkins. What was he doing?

A. So the videos we observed from social media matched up with the clothing, as well as the tattoos, that were provided by witness one, as well as, also, the social media accounts that were attributed to Shane Jenkins where we observed him at various areas -- in the same area as the lower terrace where at times he is proceeding to walk up towards the -- the right left front window of -- again, excuse me. I don't know the specific name of the window. But there was a window right next to a lower terrace entranceway where he -- where we observed him walking up, retrieving a -- what was a tomahawk-type instrument, put on a pair of black gloves, and proceed to smash that

window. We saw that on a -- one social media video.

And then on several other social media videos from different angles we saw Mr. Jenkins retrieving items from the ground right at -- during the -- at the same time that other protesters, i.e., rioters are engaged in violence against the police department -- against the Metropolitan Police Department and the Capitol Police where he is taking up items from the ground and throwing them at those officers. The location is the west -- the lower terrace tunnel.

10:33:09
10:33:25

Q. Great. And before we get there, I want to take us back to the images where he is retrieving a tomahawk or a hatchet in order to break the window. Is this from a backpack that he is carrying?

A. Yes, it is.

10:33:38

Q. And is he distinctive and again wearing the same red Nautica beanie and blue hooded sweatshirt?

A. Yes.

Q. In addition to retrieving a weapon from his backpack in order to smash the U.S. Capitol window, did he also put on gloves prior to using that weapon to smash the window?

10:33:54

A. Yes, he did.

Q. Are you able to tell, before he puts on gloves, the hand tattoos that are known to be hand tattoos that Mr. Jenkins possesses?

10:34:13

A. Yes. They matched.

Q. And I want to refer the Court and you to the two images on the statement of facts, Page 3, the two screenshots at the top.

10:34:29 Does the first image show that he has no glove on as he is retrieving the tomahawk?

A. Yes, it does.

Q. And then in the second image can you see him using that tomahawk to break the window at the lower west

10:34:43 terrace capitol window?

A. Yes, it does.

THE COURT: And, Ms. Winter, let me ask you. When you talk about the statement of facts, you are obviously referring to the statement of facts that was

10:34:53 attached to the criminal complaint, correct?

MS. WINTER: Yes, Your Honor. And I apologize. I realize the pages were not numbered; but I did send to your case manager, just so you could have an accessible copy, the statement of facts attached to the criminal

10:35:08 complaint, yes, Your Honor.

THE COURT: Let's do this. Let's mark as Exhibit 1 to this hearing the statement of facts.

And, Mr. Hester, you have a copy of that, correct?

MR. HESTER: Yes. Yes, Your Honor.

10:35:21 THE COURT: And just so the record is clear, the

other thing, I'm going to mark as Exhibit 2 to this hearing, and make sure it's under seal, is the pretrial report for Mr. Jenkins. So just so it's clear, you can refer to Exhibit 1, which will be the statement of facts.

10:35:33 MS. WINTER: Thank you, Your Honor.

BY MS. WINTER:

Q. Agent Johannes, did the architect at the capitol do a valuation of the approximate amount of damage that was done by Mr. Jenkins in smashing that window?

10:35:49 **A.** Yes, they did.

Q. Approximately how much is the replacement value of that window?

A. $1,500.

Q. And as is shown in Government's Exhibit 1, the

10:36:00 statement of facts, Page 3, there are additional photos depicting clear face shots of Mr. Jenkins; is that correct?

A. There is.

Q. Were these retrieved from videos and images that you

10:36:14 have all investigated of the scene on that date?

A. Yes.

Q. Now I want to turn your attention -- I know you referred to it earlier, but I want to take us to around 4:30 p.m. the day of the capitol riots. You said that

10:36:32 going through video and body-worn camera footage during

your investigation you were able to identify Mr. Jenkins based on his clothing?

A. Correct.

Q. Now, tell the Court approximately how many objects did Mr. Jenkins throw at Capitol Police and the Metropolitan Police Department?

A. At this time, there are nine -- we observed nine objects.

Q. Okay. And I want to refer you to Government's Exhibit Number 1, the statement of facts, on Page 4. Is this the type of body-worn camera footage that you observed Mr. Jenkins in?

A. Yes.

Q. Can you please describe for the Court, which they can see, but describe for the record the police and their posture and the crowd and their posture?

A. This -- at this time when -- at this specific screenshot from a body-worn camera was at the time when there was ongoing violence committed against the members of the Metropolitan Police Department and U.S. Capitol Police.

At this time, the posturing for the police department was to retrieve any helmets that they can to protect themselves from not only, you know, items being thrown at them, clubs, but also from any type of items being thrown

at them, as well. So they were, basically, in the posture, as well, is that they are in a defensive mode where they are trying to hold back the protesters and the rioters from entering -- further entering the capitol through the lower terrace entranceway.

10:38:09

So at this stage, they are in a defensive mode and they are, for lack of a better term, engaged in acts of violence against them.

Q. And they are in full riot gear at this point with helmets and shields?

10:38:21

A. Not every officer had a helmet and shield, but the ones who are -- that were posted up front did have helmets. Not everybody had a shield. Some of these shields were taken away, captured -- again, "captured" used for lack of a better term -- by members -- by the protesters and the rioters.

10:38:33

Q. And as you can see in the photographs in the Government's Exhibit Number 1, on Pages 4 and 5, you can identify Mr. Jenkins kind of front and center among the crowd; is that correct?

10:38:48

A. That is correct.

Q. And you testified that he threw approximately nine objects?

A. At this time, that is the number that we have.

Q. And can you describe for the Court what types of

10:38:58

objects Mr. Jenkins threw at the police at that time?
A. The objects that appear to us, based on that video, are several poles which appear to be metallic and/or wooden. We have, also, a flag, a white flag with a -- as
10:39:20 well as a -- a white flagpole with a flag attached to it that was thrown at the officers. And we also have a desk drawer that appeared to be picked up and thrown at the officers as well.
Q. And did several of these objects appear to be large
10:39:35 metal objects?
A. Yes, they did.
Q. And when he threw these objects, did they strike the officers?
A. Yes, they did.
10:39:43 **Q.** And the type of objects that were thrown by Mr. Jenkins, if they were thrown with force at these officers, did it have the potential to inflict serious bodily injury?
A. Yes. Yes.
10:39:57 MR. HESTER: Objection. Calls for a legal conclusion.
THE COURT: Overruled.
BY MS. WINTER:
Q. That was a yes, Agent Johannes?
10:40:03 **A.** Yes. That is correct.

Q. And in the three photographs in Government's Exhibit Number 1 on Pages 4 and 5, Mr. Jenkins is literally seen -- at four, five, and six, I should say, you can see on four different occasions he is holding a large metal object in this posture of throwing them at the police?

10:40:24

A. That is correct.

Q. Now, I want to take you to other images that FBI has discovered. Are there other images later that evening that were identified, based on body-worn camera, of Mr. Jenkins in Washington, D.C.?

10:40:46

A. Yes. There was video recordings made by at least one officer that we observed that had personal or public -- personal interaction with Mr. Jenkins later that evening, approximately 9:45 p.m., outside of the Embassy Hotel in Washington -- in Washington, D.C.

10:41:06

Q. And the night of the capitol riots or that day did Washington, D.C. impose a curfew on its citizens?

A. Yes. That's correct. The mayor of D.C. issued a curfew from 6:00 p.m. to 6:00 a.m. from the night -- from the night of January 6th to the morning of January 7th.

10:41:26

Q. All right. And the images of Mr. Jenkins on Pages 6 and 7 of Government's Exhibit Number 1, approximately what time were those images obtained from the police officer's body-worn camera?

A. It was -- according to the body-worn camera, the

10:41:39

images were captured at 9:49 p.m.

Q. After the imposition of the curfew?

A. That is correct.

Q. What was Mr. Jenkins doing or why did -- were the officers trying to enforce the curfew when they -- when they encountered Mr. Jenkins?

A. Yes. Correct. According to the audio that was also recorded on the video body-worn camera, Mr. Jenkins attempted to leave the Embassy Suites Hotel, whereupon he was confronted by officers of the Metropolitan Police Department where they -- where they directed him to return back to the hotel.

Q. And can you describe for the Court the clothing that's being worn by Mr. Jenkins at approximately 9:49 p.m. that night past curfew?

A. Yes. The clothing matches the clothing that we saw earlier on other video and photographs of both law enforcement and social media, minus the dark, the black jacket. And, specifically, we have the blue-hooded sweatshirt with the words -- with the letters -- with the numbers "1776" across the front surrounded by a field of stars as well as a red beanie and camouflage-type trousers -- correction -- a red Nautica-style beanie, as well as wearing black gloves.

Q. And these were the same objects or items of clothing

that were observed in your investigation from videos of him at the capitol as well as those posted on his social media?

A. That is correct.

10:43:15 **Q.** All right. Now I want to take you to the date of March 5th, 2021. Is that the date that Mr. Jenkins was arrested here in Houston, Texas?

A. That is correct.

Q. Were you a part of the team that arrested and searched

10:43:31 the residence of Mr. Jenkins?

A. No. I was not.

Q. Have you spoken with the Houston field agents who were a part of that takedown?

A. Yes, I have.

10:43:41 **Q.** So on the morning of March 5th, 2021, did the agents arrive at Mr. Jenkins' residence?

A. Yes, they did.

Q. Do you know what kind -- who owns that residence or anything about that specific residence?

10:43:59 **A.** From what I understand, it's owned by a prison ministries type organization. I don't know -- I do not recall the specific name at this time.

Q. Okay. And do other people live there along with Mr. Jenkins?

10:44:12 **A.** From what I understand, that is correct.

Q. Was Mr. Jenkins present when agents and officers arrived?

A. Yes, he was.

Q. And was he taken into custody based on the federal arrest warrant?

A. He was.

Q. Did agents also search the residence pursuant to a federally-issued search warrant?

A. Yes, they did.

Q. Were there items of evidentiary value or of note that were seized -- found and seized by the agents?

A. Yes, there was.

Q. All right. If you'll take us through those items that appear to be the items that he used in Washington, D.C.

A. So the items that were seized within -- specifically inside the closet of Mr. Jenkins included a Nautica red beanie; a blue, hooded sweatshirt; a blue and black hooded jacket; a black balaclava; as well as a matching-type camouflage trousers; dark, black-colored backpack. Also retrieved and located was a phone, a laptop, as well as two tomahawks.

Q. And these tomahawks, did they appear to be the same type of the one that was used to smash the U.S. Capitol window?

A. Yes, they do.

Q. And the clothing you described that was found in Mr. Jenkins' closet, did that appear to be the same clothing that was seen being worn by Mr. Jenkins at the U.S. Capitol on January 6th?

10:45:53 **A.** Yes.

Q. And while the agents arrested him, did Mr. Jenkins make any statement to the agent?

A. He made a statement that he did fly to D.C. on American Airlines -- to Washington, D.C. via American

10:46:12 Airlines.

Q. And is that consistent with your investigation of the flight that he took to Washington, D.C. on January or prior to the January 6th capitol riot?

A. It is.

10:46:28 MS. WINTER: Your Honor, there is nothing else at this time. I'll pass the witness.

THE COURT: Mr. Hester.

MR. HESTER: Yes, Your Honor. Thank you.

THE COURT: By the way, Mr. Hester, FYI, I know

10:46:38 you have that hearing in front of Judge Lake; and Mr. Bostic is reaching out to Judge Lake's chambers. So I'll let you know as soon as we hear something. Don't worry. I'll make sure, if we don't hear anything, you tell me what time you need to go to get over there; and

10:46:54 we'll make sure we accommodate you.

MR. HESTER: Thank you, Your Honor. And I'm also working on getting coverage for that hearing, if that's necessary, with another attorney from my office.

THE COURT: Just feel free to stop me if you need to take a break or to coordinate on that. I do not mean to in any way, shape or form cause you heart palpitations over that.

MR. HESTER: I appreciate it, Your Honor.

CROSS-EXAMINATION

BY MR. HESTER:

Q. Agent Johannes, good morning, sir.

A. Good morning.

Q. No one was harmed in this case, right?

A. Could you be more specific, please.

Q. You haven't talked to an officer who says that Mr. Jenkins inflicted any injury on him, right?

A. I have not spoken to a specific officer and, as well, to let you know, a lot of the officers were injured on that day.

Q. Yeah. I'm not talking about what other people did. I'm talking specific to Mr. Jenkins. Have you spoken to a single officer who was hurt by anything you allege Mr. Jenkins did?

A. I have not had a conversation with any of the -- any officers that specifically were injured by Mr. Jenkins.

Q. Do you even know if any officer was injured by Mr. Jenkins?

A. In the context of that question, though -- and this is something that has come up several times in our investigation -- is that the officers do -- a lot of these officers do not know specifically who harmed them, due to the chaos, for lack of a better term, that was occurring at that time.

So I cannot honestly say I do not know if there were any officers that were specifically hurt by Mr. Jenkins, due to the number of assailants and the number of violence and due to the number of acts that were committed that day, if that helps answer your question, sir.

Q. Not really. My question is whether you have spoken to an officer who has identified Mr. Jenkins and said, yes, that man inflicted an injury upon them.

A. I have not.

Q. Yes or no?

A. No.

Q. No. There is no evidence he ever entered the actual capitol building, is there?

A. Not at this time.

Q. Have you spoken, law enforcement or otherwise, to any single witness who actually saw Mr. Jenkins in Washington, D.C.?

A. I have not personally.
Q. So the evidence in this case that he was there, if I'm correct, are the photos in your complaint. That's part of it, right?
10:49:25 **A.** Correct.
Q. Okay. Many of which were taken off of social media, right?
A. Yes, sir.
Q. Okay. Specifically, the photograph of the person
10:49:40 breaking the window with the hatchet was taken off of Twitter, right?
A. From my understanding, yes.
Q. Was that taken off of Mr. Jenkins' alleged Twitter account?
10:49:53 **A.** No, sir.
Q. Okay. Have you talked to the person who posted that image?
A. No, I have not.
Q. Have you talked to the person who took that picture?
10:50:07 **A.** I have not.
Q. And you agree with me, it's in your complaint, the picture of the individual actually breaking the window doesn't show a face, right?
A. From the angle that -- from the video that we have at
10:50:26 that time -- at this time, it does not show a specific

face; but you can see facial features.
Q. Okay. Other of these pictures that do show his face were also taken from social media, right?
A. Correct.
10:50:47 **Q.** Have you tracked down the people who created those social media accounts?
A. No. We have not.
Q. Have you talked to any one of them?
A. I -- I personally have not.
10:50:59 **Q.** Okay. Now, this case against Mr. Jenkins, these charges, from what I understand, initiated with a person who we will call witness one; and that's how they are referred to in your complaint, correct?
A. Correct.
10:51:19 **Q.** And this person, you testified, claimed not to know Mr. Jenkins, right?
A. That is correct.
Q. Okay. What investigation have you done to confirm or deny that claim that this person doesn't know Mr. Jenkins?
10:51:34 **A.** I don't understand your question, sir. Are you asking us have we investigated the tipster?
Q. Right. And the claim that -- specifically, have you investigated the claim that this tipster doesn't know Mr. Jenkins or has no history with him?
10:51:51 **A.** No, we have not.

Q. Okay. So if that person has some ax to grind with Mr. Jenkins, you wouldn't know that, right?

A. No, sir.

Q. And you agree someone can -- anyone can create a social media profile under anybody's name, right?

A. I can't attest to every social media platform.

Q. Well, I mean, do you use -- do you use Twitter or Facebook?

A. No, I do not.

Q. And your court --

MS. WINTER: Judge, I need to object. Judge, I think we get the point. And Mr. Jenkins has waived identity for purposes of this hearing. It's only the detention.

THE COURT: Objection is overruled.

MS. WINTER: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Hester.

BY MR. HESTER:

Q. Certainly you have investigated other cases involving Twitter and Facebook, right?

A. I have.

Q. Okay. And in the course of your investigations are you saying you haven't learned that anyone can create a Facebook profile under anybody else's name?

A. I'm sure it can be done, but I can't -- I can't

100 percent say for every -- again, for every social media platform and for every individual I have investigated that they created a fake platform.

Q. So what steps have you taken, as of today, to confirm that these social media profiles actually belong to Mr. Jenkins?

A. The ones that are attributed to his name?

Q. Yes, sir.

A. The investigation is ongoing. But we have abilities of determining the location of where those items were posted.

Q. Okay. But as of today, all you have done is look at the profiles, right?

A. Correct.

THE COURT: I just want to be clear. The photos that come from an alleged Facebook account or Twitter account for Mr. Jenkins are simply the two photos on Page 2 of Exhibit 1, correct? I mean, all the other pages -- all the other photos, as I understand it, come from other sources, third parties or whoever, but aren't from those specific Twitter and Facebook pages, whoever the creator of those is, correct?

THE WITNESS: From my understanding, yes, Your Honor.

MR. HESTER: Sorry, Your Honor. I was following

along with the complaint.
BY MR. HESTER:
Q. Let's talk about the window damage. Okay. You testified that an architect at the capitol testified that
10:54:44 the replacement value of that window is $1,500?
A. Correct.
Q. Okay. Does that include the cost of labor to actually repair the window?
A. I cannot answer that.
10:55:00 **Q.** Or do you know?
A. I do not know.
Q. Okay. Do you know -- do you know whether or not that includes the cost to transport the window --
A. I do not know that answer.
10:55:09 **Q.** -- from where it's from to the capitol?
A. I do not know, sir.
Q. What is the value of the actual glass, the glass itself that was broken? Do you know?
A. I do not know, sir.
10:55:28 **Q.** You talked about the capitol grounds being restricted that day. At what time did that occur?
A. At what time did the restriction begin?
Q. Yes, sir.
A. I -- I do not know the specific time, but I assumed it
10:55:47 would probably match up with the time of the beginning of

the proceedings for the certification of the electoral college.

Q. Okay. That's your assumption? You don't know specifically when those barriers were put in place?

10:55:57 **A.** I cannot give you an exact time, sir.

Q. On a typical day are these areas open to the public?

A. I can't -- I can't answer for every area of the capitol.

Q. Well, let's talk about the areas where this person

10:56:15 alleged to be Mr. Jenkins is seen on these photographs. On a typical day, are those areas open to the public?

A. Can you be more specific of which areas?

Q. I'm talking about the capitol grounds -- the capitol grounds that are in your photographs that you put in your

10:56:35 complaint.

A. Are you talking about the grounds outside of the building or the actual building entranceway, lower terrace area?

Q. Well, he didn't enter the building. So I'm talking

10:56:46 about the grounds outside of the building.

A. To the best of my knowledge, the area that -- where the photos in the -- that are in the statement of facts is a secure area.

Q. At all times?

10:56:59 **A.** I cannot --

MS. WINTER: Your Honor, I'm going to object to this because, again, we're only trying to establish probable cause as to January 6th, 2021.

THE COURT: Well, I'm going to give Mr. Hester some leeway. I'm going to overrule the objection.

Please proceed, Mr. Hester.

BY MR. HESTER:

Q. So you don't know one way or the other whether those areas on a typical day are restricted or not; is that correct?

A. I do not know.

Q. Yes, sir. Let's talk about the items that this person alleged to be Mr. Jenkins is seen throwing on these videos. Any of those items recovered as evidence in this case?

A. Not that I'm aware of at this time.

Q. Okay. So when you testified that they appear to be metal objects, you haven't actually held these items, right?

A. No, I have not.

Q. And, to your knowledge, no law enforcement agency has held these items, right?

A. You are -- can you repeat that question again, sir? I'm sorry. You cut out.

Q. No problem. To your knowledge, no law enforcement

agent has held these items, correct?
A. I cannot answer that. There were many law enforcement agencies present on that day.
Q. I'm just asking within your knowledge, do you know of
10:58:28 any law enforcement agency that's recovered any of those items as evidence?
A. I know some items have been recovered, yes.
Q. Some of the items that Mr. Jenkins was allegedly seen throwing have been recovered? Is that your testimony?
10:58:42 **A.** I cannot answer that.
Q. You can't answer that?
A. No, sir.
Q. I'm asking in your personal knowledge do you know if any of those items have been recovered by law enforcement
10:58:53 agents?
A. Not by my personal knowledge at this time.
Q. Okay. You have to agree with me -- I mean, a plastic object can look like metal on a video, right?
A. I cannot -- I can't answer that 100 percent.
10:59:18 **Q.** Well, I mean, these are -- what is -- what do these metal items look like? They're a metal pipe or rod, according to your complaint, right?
A. Correct.
Q. Okay. What color is it?
10:59:33 **A.** There is white. There is black. We see what appear

to be wooden color. There were other items. Just to add, to maybe help answer your question, on all the other videos, the numerous other videos that I reviewed related to this violence, I have seen similar objects that were
10:59:51 used by other rioters that day that appear to be metal and matching that description. I cannot say it's the same one, but the perception would be that a lot of these that were being thrown were metal objects.

Q. And, Agent Johannes, I'm not talking about what you
11:00:07 have seen anybody else do other than Mr. Jenkins. Is that fair?

A. That is fair.

Q. Okay. And so what other people do is really not relevant. Okay? Do you agree with me?

11:00:21 **A.** I agree, yes, sir.

Q. Okay. And so specific to any of these items that you saw allegedly Mr. Jenkins use, you haven't recovered them, right?

A. To the best of my knowledge, I personally do not know
11:00:39 that they have not been recovered.

Q. Okay. And a white rod could be plastic, couldn't it? Isn't that in the realm of possibility?

A. I can't answer for every rod, plastic rod in the country, sir. I'm sorry.

11:00:56 **Q.** I'm not asking you to. I'm asking you to answer as to

the ones you see in these photographs. Isn't it possible --

A. I cannot answer that.

Q. -- that those could be plastic?

11:01:05 **A.** It is possible.

Q. You talked about the gear that the officers were wearing in these photographs in your complaint. Do you agree with me that it appears -- and let me refer to a specific page for you on Government's Exhibit Number 1.

11:01:45 Looking at Page 4, sir, on Government's Exhibit Number 1 --

A. Okay.

Q. -- does it appear to you that all of the officers in that photo are wearing helmets?

11:01:55 **A.** Yes. It does appear that way, but I cannot --

Q. And you could even --

A. I was going to say that every officer is wearing a helmet --

Q. Okay.

11:02:08 **A.** -- but there are other videos at the same time where officers are not wearing helmets.

Q. Well, do you see any in this photograph in your complaint that were not wearing helmets?

A. Due to the damage that was received upon that camera,

11:02:21 I can't give you 100 percent that not -- that not

everybody is wearing a helmet.

Q. But you don't see anybody not wearing one, do you?

A. I can't -- again, I cannot -- it's a possibility that there were officers that were not wearing helmets that day. I cannot tell you every officer from that video or from that image.

Q. I'm simply asking you what you see in this photograph.

A. I see several officers wearing several helmets.

THE COURT: Hey, I'll let you go on as long as you want. I mean, I can see the photo, too. I mean, it's pretty clear everyone in the picture that I can see has a helmet. Whether that's relevant or not, I guess we'll figure out. I mean, I don't think you need to --

MR. HESTER: Yes, Your Honor.

THE COURT: I'm going to give you leeway, but I don't think we need to belabor the obvious.

MR. HESTER: Thank you, Your Honor. I'll move on.

BY MR. HESTER:

Q. And the same as to the following page, Page 5. It appears those officers are wearing helmets, correct?

A. Yes.

Q. In the course of this investigation, did you speak with a parole officer who knew Mr. Jenkins?

A. I did not personally. An agent out of the FBI Houston

office did.

Q. All right. Did you learn that Mr. Jenkins was on parole from June 2018 to December 2019 and successfully completed that term of parole? Are you aware of that?

11:03:50 **A.** From my understanding, yes.

Q. At the time of his arrest --

THE COURT: Mr. Hester.

MR. HESTER: Yes, Your Honor.

THE COURT: Mr. Hester, let me interrupt you real

11:03:57 quick. I just received a message from Mr. Bostic that I think Mr. Austin was going to cover that hearing before Judge Lake for you. So I just wanted to make sure that you were at ease and you can proceed with this hearing.

MR. HESTER: Thank you, Your Honor.

11:04:13 BY MR. HESTER:

Q. And we're almost done, Agent Johannes. But at the time of arrest was -- do you have any information that Mr. Jenkins tried to flee?

A. I do not have any information.

11:04:29 **Q.** And you mentioned that he actually spoke with officers. Do you have any information that he was anything less than cooperative with the agent?

A. I do not have that information.

Q. In fact, have you heard that he completely submitted

11:04:45 to their authority?

A. From what I understand, yes. Again, I was not present. But from what I understand, there was no violent confrontation, if that helps answer your question.

Q. Yes, sir. Thank you.

11:05:00 MR. HESTER: And I'll pass the witness, Your Honor.

THE COURT: Ms. Winter, any further questions with this witness?

MS. WINTER: Just briefly, Your Honor.

11:05:08 **REDIRECT EXAMINATION**

BY MS. WINTER:

Q. Agent Johannes, regardless of whose social media posts are on the ones that -- or whoever posted on the Facebook and Twitter accounts associated with Mr. Jenkins, are the

11:05:26 images from the capitol, as well as those social media posts, clear and visible for you to observe?

A. Yes, they are.

Q. And do they depict the person that was arrested on March 5th, 2021, that being Mr. Jenkins?

11:05:46 **A.** Yes, they do.

Q. Did Mr. Jenkins, on the date he was arrested, admit to flying to Washington, D.C.?

A. Yes, he did.

Q. And to be clear, as of 1:00 p.m. on January 6th, 2021,

11:06:05 do you -- do you know that barriers and restrictions were

in place and the capitol was closed to the public?
A. Yes, they were.
Q. And they remained that way for the rest of the day?
A. Correct.
11:06:20 **Q.** And whether or not -- and again, the Court can observe the photographs in Government's Exhibit Number 1. Whether or not a flagpole or a rod is metal or plastic, if the pointed end is thrown towards an officer, does it have the ability to seriously injure or maim that officer?
11:06:41 MR. HESTER: Objection. Calls for a conclusion. Objection.
THE COURT: Overruled.
MS. WINTER: Nothing further, Your Honor.
THE COURT: Okay. Mr. Hester, anything further
11:06:50 with Agent Johannes?
MR. HESTER: No, Your Honor.
THE COURT: Agent Johannes, you can step down from the proverbial witness stand.
Ms. Winter, do you have any additional witnesses or
11:07:00 proffers at this time?
MS. WINTER: No, Your Honor. We rest.
THE COURT: Okay. Mr. Hester, on behalf of the defendant, do you have witnesses or proffers to make at this time?
11:07:07 MR. HESTER: Yes, Your Honor. I have one

witness. I call David Trickett, who is on the line.

THE COURT: Mr. Trickett, if you could turn on your video, please, sir.

MR. TRICKETT: Yes, sir, Your Honor.

11:07:27 THE COURT: Will you raise your right hand, sir.

MR. TRICKETT: (Complying.)

THE COURT: Do swear that the testimony you are about to give in this court proceeding, even though we are doing it by video, will be the truth, the whole truth, and nothing but the truth just the same as if you were in a courtroom live and in person so help you God?

THE WITNESS: Yes, sir, I do.

THE COURT: You may proceed, Mr. Hester.

DAVID TRICKETT,

having been first duly sworn, testified via video link as follows:

DIRECT EXAMINATION

BY MR. HESTER:

Q. Mr. Trickett, introduce yourself, please.

11:07:41 **A.** My name is David Trickett.

Q. And I don't think you need to spell your name for the court reporter because it's on the screen, but what do you do for a living, sir?

A. My profession is I am the founding director of Christ

11:07:57 Hope, a reconciliation ministry also known as CHARM Prison

Ministry. I'm also a chaplain and player development coach at the high school and also hold a real estate license in Houston, Texas.

Q. Okay. And in connection with your work with CHARM Prison Ministries, do you mentor individuals coming out of prison?

A. Yes, sir, I do.

Q. And how many individuals at any one time do you mentor?

A. Oh, over the course of the ministry and the life-span of the ministry we have had probably at least -- several hundred men have come out of the prison system and through our transitional living facility. But on the inside, I have the responsibility and the privilege of mentoring and discipling men on the inside of prison as well.

Q. And what is your general success rate with these men, would you say?

A. Well, there is not an actual number that has been quantified yet; but to tell you of the men that have gone through our transitional facility, we are less than a 10 percent recidivism rate of men returning back to prison as opposed to a state rate of 65 to 70 percent.

Q. And how do you know Shane Jenkins?

A. I met Shane Jenkins at a ministry event on the inside. I got to know him individually. I witnessed his

conversion, along with his transformation over a year period while he was still incarcerated. And then he would eventually come to one of our transitional facilities and come to live for a couple of years here.

11:09:40 **Q.** And today or prior to his arrest, where did Mr. Jenkins live?

A. He currently lived at the 8526 address on High Crest in one of our facilities.

Q. Okay.

11:09:53 **A.** I say "facilities" but that's really not a good term. They are homes. We don't want anything to be identified really with a facility. It really is a home. We're teaching men coming out of prison how to -- how to live this life that they proclaim to -- to be walking in now in

11:10:08 a home atmosphere so that they can then translate that to their home with their children and with their wives and with whatever family they intend to make.

Q. Yes, sir. And how close do you live to where Mr. Jenkins was living prior to his arrest in this case?

11:10:24 **A.** I live one block away.

Q. Okay.

A. All eight of our transitional facilities are within -- within a mile of my residence. I feel it's very important that myself and the other staff members, the men that are

11:10:36 managers in the houses, are all in close proximity because

from day-to-day you have got questions that need to be answered. When you really want to disciple someone, you really need to be hands on and walking alongside them.

Q. And at his home does Mr. Jenkins live alone or with other people?

A. He -- he has six other roommates at the home he is living at currently.

Q. And have you observed his relationship with those roommates?

A. Yeah. I observe everybody's relationship. That's what we base a lot of our discipleship on. Can they carry out relationships with people and be serving and be loving; and it's part of their growth, their new growth in Christ.

Q. And inside of your program, what is Mr. Jenkins like with his roommates and with other participants in the program?

A. You know, he has definitely shown himself to be -- prior to him living at this address, he lived at an address across the street for the first year he was here. And he exemplified extraordinary leadership, extraordinary serving leadership because we don't qualify a leader based on what he can tell someone else to do. We qualify that on what he is willing to do himself and if he is willing to get down and get dirty and love his brothers and serve

them in that capacity.

And he has exemplified that for a year while living there. And then we -- we felt that it would be good in our -- and in our best interest to hire him on staff, in which then he did that on a daily basis as a staff member for another year.

Q. Okay. So he started out as a resident and then moved up as a staff member; is that correct?

A. Correct. That's correct.

Q. And at some point did he begin mentoring others?

A. He did. That's part of the role as a big brother, as a -- as a house leader. Before he even came on staff, that was what we witnessed in his life that gave us the -- you know, hey, this guy would be a great staff member. And, you know, he understood the dynamic of servant leader, of leading by example so that others might follow, instead of pointing the finger and making them do it. So --

Q. Did he -- did you observe a difference he made in some of the residents' lives?

A. I mean, absolutely. I mean, he was a mentor to many. I mean, obviously, he also worked at a -- what would you call it? A partnership ministry with our church, Houston First Baptist, where he worked with the youth there.

I watched several of the boys that he mentored. We

watch -- these are kind of at-risk youth that would come in and, you know, only really come over to the church to play basketball. And I watched him over a time of six months to a year just really walk alongside these kids.

11:13:26 All three of these boys, which I would have told you several years, from knowing those kids three or four years, they probably would not have graduated. Graduated high school. One went on to college. Another went into the Marine Corps. I'm not sure what the other boy did.

11:13:39 But I just watched him serve them.

He has also come to the high school in which I coach, done bible studies there, shared his -- his testimony of what not to do. I tell people all the time there is two types of wisdom. There is man's wisdom, which we learn

11:13:50 from our mistakes, and God's wisdom, which we learn from others. He is trying to teach them, obviously, to do it God's way; not to do it the way he did it in his younger years because it wasn't fruitful.

Q. Yes, sir. If Mr. Jenkins is released on bail, will he

11:14:06 be allowed to live back in that house?

A. He will.

Q. And was that solely your decision, or did you have to run that by a board?

A. I had to ask all of our ten board members; but also, I

11:14:17 felt like it was -- I had the responsibility, also, not to

just ask the board but to ask the men that he lived with. Obviously, that arrest that morning caused a little bit of trauma to the men that live there.

Although, I will say that every single one of them -- 11:14:30 and this was the words of the arresting officer, the lead arresting officer, because I was there talking with him throughout the whole process, that he has never seen a bunch of guys so respectful and so helpful in an arrest, which I think there was -- there was probably more of an 11:14:44 expectation of resistance, including Shane.

And I think that everything they asked for, we gave them. We gave them exactly what they wanted, what they asked for. We're not trying to be against the law. We are trying to work with the law. I mean, it's part of 11:14:58 being -- part of that walk with Christ.

So in asking his roommates and the board, there was a resounding yes from everyone. We want to continue to have Shane a part of our team and love him and walk him through this season.

11:15:12 **Q.** So if I have your testimony correct, on the date of his arrest he and others in the house all cooperated with the FBI and allowed them to do what they needed to do?

A. Absolutely.

Q. Okay.

11:15:26 MR. HESTER: And, Your Honor, if I could have

permission -- or I believe I already have permission to share my screen. I would like to introduce a few photographs through Mr. Trickett.

THE COURT: That's fine. If you would also forward a copy of those to Mr. Bostic so we could enter those in the record.

MR. HESTER: Yes, sir. I may be having some technical difficulties here because I'm not seeing them.

THE COURT: I have given you the right.

MR. HESTER: Yes, sir. One moment. Okay.

BY MR. HESTER:

Q. And, Mr. Trickett, can you see my screen here?

A. I can, sir.

Q. Okay. Do you see this first photograph?

MR. HESTER: And, Your Honor, I have provided these to Ms. Winter; and my understanding is there is no objection to their admission.

THE COURT: Ms. Winter, is that correct?

MS. WINTER: That's correct, Your Honor.

THE COURT: Have you provided them to Mr. Bostic?

MR. HESTER: I will provide them to Mr. Bostic immediately, Your Honor.

THE COURT: How many photos are there?

MR. HESTER: There are five.

THE COURT: Exhibits 1 through --

MR. HESTER: Exhibits 1 through -- Defendant's Exhibit Numbers 1 through 5, Your Honor.

THE COURT: Are you going to have any other exhibits entered in?

11:16:57 MR. HESTER: This is all, Your Honor.

THE COURT: Okay. We'll do -- just so the record is clear, previously we had Exhibits 1 and 2. One being the statement of facts, and two being the pretrial report. We'll just call those the Government's Exhibit Numbers 1

11:17:17 and 2. And now I'm admitting Defendant's Exhibit Numbers 1 through 5.

MR. HESTER: Thank you, Your Honor.

BY MR. HESTER:

Q. Mr. Trickett, in Defendant's Exhibit Number 1 will you

11:17:32 describe to me what is happening in this photograph?

A. So we have -- as part of the ministry, obviously, to help the men grow in their knowledge of more -- so more than their knowledge of the word but just the putting it into -- into practice. We do more than just teach them

11:17:47 the bible. We want to actually show them how to live it out.

And, you know, many of you are familiar with the scriptures in which John:13 where Jesus washed the disciples' feet just showing them the fact that he wasn't

11:17:59 above them. That he was with them. And if any man was

worthy of the kingdom, he needed to first be a servant.

So we have as part of a practice in our ministry about once every few months we -- where the leadership of the ministry washes the feet of the residents, just in reflection, obviously, of Jesus but also it is just a representation of this is what we're about. We are here to serve you.

What we don't want them ever to confuse is what they've confused all their life, this issue of authority over them as opposed to serving with them because, obviously, with -- you know, with inmates, obviously, there is this us and them kind of deal.

And, hopefully, in their walks with Christ they have grown to understand that authority is on their side and for them. The boundary lines are -- have fallen in places, but the law is good, for our good, not for our bad.

So just this is, again, a picture of us as staff and ministry leaders in the ministry washing our residents' feet.

Q. And is this Mr. Trickett -- if you can see my mouse -- wearing the bluish-green T-shirt here?

A. No. That's Mr. Jenkins. Mr. Trickett is next to him in the white hat.

Q. I'm sorry. I apologize. You are Mr. Trickett. You

are right next to Mr. Jenkins here, correct?
A. I have a little bit more hair. Not much more but a little bit.
Q. I apologize for that.
11:19:22 **A.** That's okay.
Q. Defendant's Exhibit Number 2, my understanding, is Mr. Jenkins with his Sunday school class; is that correct?
A. That's correct. All of our men not only attend our bible studies throughout the week, we all attend Houston
11:19:35 First Baptist Church in which the men are, based on their age and where they fit in, whether married or not married, fit in with the Sunday school class there. This is his Sunday school group, probably a lunch outing or an outing they were all at; but this is the members of his Sunday
11:19:52 school class.
Q. And Defendant's Exhibit Number 3, is this Mr. Jenkins with his two daughters?
A. Yes. Yes, sir, it is.
Q. And what do you know about Mr. Jenkins as a father?
11:20:08 **A.** Well, I know that he takes the responsibility very, very seriously. He takes care of all his financial responsibilities. He visits the children that he can. It's my understanding that he has a couple of children that the -- you know, that the reconciliation process is
11:20:24 still in the works, you know.

And again, that's part of the ministry that we do here. First, obviously, reconciliation with God and then reconciliation with family. And, you know, sometimes that takes time. You know, there are sometimes, you know, things there that prohibit it.

11:20:35

But these are two of his daughters that he visits regularly and financially supports and, yes.

Q. And, Mr. Trickett, are you a father yourself?

A. I am. I have two children, a senior in high school at Houston Christian and a 14-year-old about to become a freshman at Houston Christian High School.

11:20:51

Q. Has Mr. Jenkins been around your children?

A. Mr. Jenkins, since the time he was here, really has become part of our family. Again, not just the CHARM family but my personal family. He has watched my children. He has picked them up from school. He and my son have a very, very strong relationship, in which I trust.

11:21:06

Let me just tell you. We do prison ministry. Me and my wife are very guarded at times. You know, obviously, we know that at any time a man coming out of prison can, you know, show the face but not walk the walk. That's why, you know, it takes a little time before trust is granted and freedom to pick up my children is granted. So we certainly trust him on all counts.

11:21:22

11:21:37

Q. And Defendant's Exhibit 4, my understanding is that this was a wedding that Mr. Jenkins served as the best man in?

A. That's correct.

11:21:51 **Q.** And is this you in the photograph, Mr. Trickett?

A. It is. We co-facilitated and did the wedding together with two of the -- that's another staff member that's reading his part. We co-did the wedding of Mr. Bryan Townsend, who has been Shane's -- Shane's -- I don't want 11:22:13 to call it roommate, but they have been together since prison.

I met them two together in prison. And they were tight as a glove then. They've held each other accountable. And they are really close. Even when they 11:22:24 came out, they were roommates at one point, lived in the same house; and it's just been an iron sharpening iron relationship between the two of them.

Q. And when was this wedding?

A. This was, oh, I guess, three or four months ago maybe. 11:22:45 I can -- November. November? I think November. The first week in November.

Q. Okay. And Defendant's Exhibit 5, is this Mr. Jenkins down here in the bottom left corner wearing the Dallas Cowboys hat?

11:23:02 **A.** Yeah. Yes. That's him.

Q. And who are these people he is with?

A. They are residents and staff of our bible study. This was a -- we took a photo of us gathering together. Part of our church -- part of a series in our church was
11:23:21 difference makers and they highlighted our ministry and these men for the difference they were making in the community and making in the church and just their walk. That's definitely been highlighted.

So it's staff and residents of our -- of our house at
11:23:33 that time. That was a couple of two years ago. So, obviously, we were about half of what -- what we are now. At that time, we had five houses; and now we have eight.

Q. So this is when Mr. Jenkins would have first joined you and the group of men that he was with, correct?

11:23:51 **A.** He was -- he was already on staff at this point. So he had been there a little over a year at that time.

Q. Mr. Trickett, have you ever observed Mr. Jenkins be violent with you or with any of his fellow residents?

A. Absolutely not.

11:24:12 **Q.** Have you had any behavioral problems with him in this time?

A. Very submissive. Very humble. He is very confident in the Lord, but he is very humble. He takes correction very well.

11:24:28 **Q.** And what does Mr. Jenkins do for income?

A. Well, like I said, I mentioned he was on staff with us for a year. He went back to Dallas to tie up loose ends with his family. He had a home in Dallas that he -- that he thought he was going to go back and live in. And in the interim, he worked in the oil field. He just realized that his house was in Dallas, but his home was here in Houston with his family at CHARM. So he sold that house and returned back.

And so -- now, since being back, he worked with a roofing company for several months and made a very good income there. But one of our guys on staff here takes a lot of our guys with entrepreneurial skills and helps them start their own business. So they basically branched off of that roofing company and started their own roofing company, which was just recently started prior to this -- prior to this incident.

Q. What do you know about Mr. Jenkins' work ethic?

A. Does it -- does it hard, does it unto the Lord, does it in half the time as most people. He is a hard worker. He really is.

Q. So you mentioned he is a partial owner --

A. With attention -- with attention to detail and always -- what I have noticed about him is a lot of our -- a lot of our work here in the ministry is with others, church members and different things. There is always a

phone call back of how pleasant and how -- how genuine and how thankful they are, not just for the mood but just for the change in behavior.

Q. Do you also know Mr. Jenkins' business partner with that job?

11:26:00

A. I do. Again, as I said, he was -- he was on staff with prison fellowship for 20-plus years in the prison. He was also a parole officer for a number of years. And then, we hired him on staff, I guess, four to five years ago; and he has been on staff with us ever since. He handles public relations and also helps grow these men from the business side of things.

11:26:13

Q. And would Mr. Jenkins be able to immediately start working if he were released?

A. After speaking with Mr. Dorsett, absolutely. Every -- all the -- all the contacts are in place and the things that he was doing before are still there. Yes, he would have immediate employment.

11:26:26

Q. And, Mr. Trickett, have you and I discussed what a third-party custodian is and what that means?

11:26:40

A. We did.

Q. And what does that mean to you? Would you explain that to the Court?

A. Well, if I have got it correctly -- if I have got it correct, it will be my job to oversee his day-to-day

11:26:49

events, make sure that he is not only doing what we require of him here at the ministry but what the law requires of him, what the courts require of him, which is kind of my role I have now, obviously, with many of these men being on parole, making sure they make it to their appointment, make sure they make it to parole, make sure none of them are late, and just making sure of that.

And then, also, then my civic duty is if any of them do get out of line -- and I'm very clear with all the men here. If you get out of line, I'm not your friend anymore. I have got an obligation, per scripture, to -- now, don't get me wrong. If it's -- if it's small sin that we're dealing with, it's not breaking the law, then we deal with it from that level. But if it's breaking the law, obviously, I have got a duty to the public to -- to make sure that they are reported to their parole officer and the police.

Q. And would you familiarize yourself with any conditions of release that this Court placed on Mr. Jenkins?

A. Well, yes. I mean, obviously, I would have to.

Q. And you are willing to act as a third-party custodian and report his violation of any of those conditions to the Court?

A. Yes, sir.

Q. Having said that, are you confident that Mr. Jenkins

will follow any conditions the Court places on him?

A. I do.

Q. Okay. Why?

A. Just watching his character over the years. I mean, just watching anything that we have asked of him, he has done it. Again, I wasn't -- I wasn't present in Washington, D.C., and I'm not even going to try to get into what happened and what didn't happen.

But all I can testify to is his character around me, around my wife, around my children, around other staff members here, around other, you know, church members, different things that he has had the opportunity to be engaged around; and it's been nothing but servant leader.

MR. HESTER: Thank you, sir.

And I'll pass the witness, Your Honor.

THE COURT: Ms. Winter, any questions?

MS. WINTER: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. WINTER:

Q. Mr. Trickett, first, I want to commend you for your work. It sounds like you do some really excellent work with these men.

A. Thank you. It's an honor, and it's humbling.

Q. I agree. How long -- I want to be clear. How long have you known Mr. Jenkins both inside and outside of

prison?

A. You know, again, I apologize that my -- my dates kind of run together. Things seem like yesterday to me. But it -- I guess I met him -- gosh, I can't -- I met him maybe four years ago in prison at the Carol Vance Unit in Sugar Land, Texas.

Q. Were you aware of why he was in prison at the time?

A. Over time of getting to know him, I did know, yes.

Q. Okay. And are you aware that he was released then on -- or before I go there, were you aware in 2016 his parole was revoked?

A. No. I did not know that. I mean -- well, I mean, I'm sure -- yes. I mean, I have known most of his history prior to him meeting us. I mean, bits and pieces are still a little bit in the air. I mean, I don't know all the details. But I'm sure that that was --

I mean, because, here again, let me just testify to this: My parole was revoked numerous times, too, because I didn't know how to follow the law. I just didn't know how to obey. My identity was wrapped up in things of the world versus the things of God. And, you know, that was 22 years ago, and God has put me on a different path.

But learning to walk that over the 22 years has taken some incredible accountability, some incredible mentors in my life to show me, you know, this is what it looks like

with skin on.

So I'm aware to some degree but not fully.

Q. Okay. But I guess my question is: You met him after he was imprisoned after his parole was revoked?

11:30:40 **A.** Yes, ma'am. That's correct.

Q. Okay. And he was then released in December of 2019?

A. That's correct.

Q. And he then went to live at your facility?

A. Correct.

11:30:52 **Q.** Okay. And so he has only been out of prison for approximately 14 months?

A. No. That can't be right.

Q. Well, if he was released in December of 2019 and he was arrested in March of 2021, we have 12 months of 2020,

11:31:17 plus if you give him December --

A. Ma'am, again, like I said, my dates do run together. I'm just trying to backtrack on some photos that would just verify what the dates were because I want to be sure that I'm giving you right information.

11:31:33 THE DEFENDANT: Could I clarify for the Court?

THE COURT: No, not yet. I'll leave you a chance to talk to your attorney, and we'll take a break before we go any further.

A. I believe his parole ended -- his mandatory

11:31:45 supervision ended in '19. But again, let me -- let me --

let me clarify just from photographs that I have.

THE COURT: Hold on. Hold on. Hold on.

THE WITNESS: Sure.

THE COURT: This is not rocket science. I mean, is there a date that he got let out? Let me see the piece of paper.

MS. WINTER: Yes, Your Honor. Let me clarify.

THE COURT: There is no controversy. There is a date he got out. What is it?

MS. WINTER: The date that he was released -- and this is my -- this is my fault -- was July of 2018. His parole was --

THE WITNESS: That's correct. That's correct, ma'am. Sorry about that. Again -- and, believe me, these dates -- a lot of these dates run together when you are dealing with -- with 50 men at one time it is, you know, like I said, to me I still remember things 20 years ago like they were yesterday and I can't remember what happened five minutes ago.

THE COURT: Here is what I want to do, Mr. Trickett. I want to let Ms. Winter ask the questions; and if you would, let her ask the questions. And then, you please just respond to the questions.

THE WITNESS: Yes, sir, Your Honor.

THE COURT: If there are additional questions,

then Mr. Hester will ask them.

THE WITNESS: Yes, sir, Your Honor.

MS. WINTER: Thank you, Your Honor.

BY MS. WINTER:

11:32:48 **Q.** When did Mr. Jenkins become a mentor or become staff at CHARM?

A. Again, exact dates -- well, he became -- he became -- like I said, he lived in the house for several months, showed his leadership qualities. He then moved to what we

11:33:06 call a house manager, house big brother, not being employed by CHARM but -- and not being staff. But I don't know. Anywhere between eight months and a year after he was there he came -- came on staff.

Q. And he has been mentoring others?

11:33:19 **A.** Yes.

Q. And the 10 percent recidivism that you mentioned regarding your program, were they on the same programming with respect to the worship and Sunday school and bible-based type instructions?

11:33:39 **A.** Yes. Yes, they were.

Q. Okay. And with respect to how many men you were overseeing at this time, you said -- how many houses do you currently have of parolees?

A. We currently have eight at the time. When Shane was

11:33:53 living in the residence, we had six.

Q. Okay. And -- and so eight houses or eight residents in one house?

A. No. We had -- we had eight residences -- we have eight residences right now. Eight individual homes. In each house there is five or six, maybe seven guys. There are two men --

Q. So any -- you are supervising or working with approximately 40 men?

A. Well, the ministry is working with 40 men. I usually to my -- obviously, I couldn't -- I can't be responsible for the discipleship of 40 men. What I do is I try to -- I have several staff members in which under the staff members have men that they work with. And then, they work with -- you know, kind of the branch effect.

Now, obviously, I speak to the multitude. I speak to all of them on bible study nights and group and, you know, as they -- as they move from their orientation house. We have two houses, their kind of orientation, and it gets them on their feet for the first 30 days. And we make sure that it's a fit. Are they -- are they who they said they were when they were in prison?

I mean, we get some guys that come here that put on the mask real well when they are in prison. And when they got out, we realized this may not be for you. I mean, they don't want to follow rules. They don't want to do

what we ask them to do.

Q. Well, I want to -- I want to focus on your interactions with Mr. Jenkins. How frequently were you with Mr. Jenkins?

11:35:08 **A.** Me and Mr. Jenkins, from the time that he was here, were pretty close, day-to-day activity. I mean, he was directly under my supervision and him, along with one other guy, were under my supervision.

Q. Okay. And in January of 2021 did you know that he was

11:35:22 planning a trip to D.C.?

A. I did know that.

Q. Did he express any dissatisfaction or any discord with the outcome of the election?

A. I mean, he was -- he -- the person that he wanted to

11:35:39 win did not win. Yeah. So, I mean, that would be --

Q. So he talked about going to D.C.?

A. Yes. He was going to go and stand in solidarity with the people there that were, obviously, for the other party.

11:35:52 **Q.** Do you monitor the social media accounts of your residents?

A. We do up to a certain -- I mean, obviously, if there is stuff that is -- that we believe is bad, we monitor. Now, obviously, like I said, Shane had just come back to

11:36:10 the ministry here recently. And, yes, I monitored his

stuff, yes.

Q. What do you mean he had just come back to the ministry recently?

A. Well, like I said, he left and went to Dallas to live and to take care with his home up in Dallas, sold his house. He was working in the oil fields at that time and trying to work out the details with his ex-wife with his house and trying to sell.

Well, he thought possibly at that time he was going to work in the oil fields and live in that house. But as he quickly figured out that he really missed family and home down here. And so he sold that house and moved back to Houston.

So when he moved back to Houston, he moved back in our residence, which in and of itself shows a lot of humility on his part for a guy that could have, like, said I had it all together and I'm moving on. Saw the need for --

Q. How long -- how long was he separated from your ministry, approximately?

A. A few months, six months maybe.

Q. Do you know how many children Mr. Jenkins has?

A. Yes.

Q. How many?

A. I believe. Five maybe.

Q. Okay. But you know that he interacts with two of his

daughters?
A. Two of his daughters and one of his sons, yes.
Q. Okay. Now, with respect --
A. Frequently. I don't know if he talks to the other
11:37:23 ones or not. I know that it was a process and something
he is trying to work through, for sure.
Q. Did he express to you any intent with his trip to D.C.
to protest with any weapons or to confront law
enforcement?
11:37:38 **A.** Absolutely not.
Q. And have you seen the social media posts since January
of 2021 since the capitol riot?
A. Well, obviously, since this was all brought to light,
I have seen several posts and different things; but at the
11:37:56 time, I hadn't seen anything that -- that he was breaking
the law. No. I did not see anything like that.
Q. And would you agree with me if a person was on the
west -- the capitol tunnel entrance at the lower west
terrace with a tomahawk breaking a capitol window that
11:38:16 that would be unlawful?
MR. HESTER: Objection to relevancy. Calls for a
legal conclusion as to --
THE COURT: Overruled.
MR. HESTER: -- the situation.
11:38:28 **A.** Again, I'm not familiar with the lay of the land up

there. So what the west is and where that is. But -- but I would definitely agree that breaking a window would not be something that I would advise anybody to do. I would be strongly against that.

11:38:40 BY MS. WINTER:

Q. Well, do you agree with me that taking issue with an election and attending a peaceful protest, does that require a tomahawk or weapon to take to the protest?

A. I don't know his thinking on that. Me, personally, I

11:38:58 wouldn't. But I know several people that I know that would take that just because if things got -- you know, things -- things all start out to be peaceful, and that's what I have said. I have had this conversation with my guys here.

11:39:10 You know, you can start something out to be peaceful. But all it takes is one person to ignite a flame. And then you have got followers and you have got others that do things. And if going into a situation you know this to be true, to have some kind of protection weapon, I can

11:39:24 maybe understand that. Me, personally, I would not.

Q. And, Mr. Trickett, you mentioned that you try to teach your men about it's not us versus them, law enforcement is not bad, that we all are --

A. Yeah.

11:39:41 **Q.** -- trying to sort of do this together. Would you

agree with me that throwing objects at police is against your teachings and against your programming?

A. Ma'am, again, I don't -- I don't -- I don't know all the witness in this case; but, absolutely, we would not try to commit harm to any police officer. That would be against everything that we teach. We would stand in solidarity with them. I mean, again, we work with police officers here, washing police cars, serving them in whatever way we can.

Q. During Mr. Jenkins' role as a mentor or as a leader in your program, did he ever talk with his mentees about his dissatisfaction with the election?

A. No. I try to keep that -- I try to keep politics out of our biblical teaching. Obviously, every man has a right to his opinion and a right to how he stands and what he wishes to be true or how he voted. That's why we vote. But that's not in our biblical teaching. We try to refrain from politics, so to speak, in that.

Now, I do believe down the road, as you grow in your faith, politics all ties into, you know, your walk with Christ. I mean, there is a responsibility to both.

Q. Did Mr. Jenkins ever comment or make statements to you about his -- about a desire to overthrow the government?

A. No. No, ma'am.

Q. Did he ever make statements to his mentees about a

wish or a desire to overthrow the government?
A. Not that I know of, ma'am.
Q. Did he ever make statements to you about taking violent means and -- because of his dissatisfaction with the election?
11:41:19
A. No, ma'am.
Q. And would you support anyone in your program using violence or weapons to demonstrate that they are not happy with the election?
11:41:34
A. No, ma'am.
Q. Okay. Did you know Mr. Jenkins to possess that tomahawk or hatchet that was found at your residence that morning?
A. No, I did not, ma'am. No, I did not.
11:41:49
Q. Are residents allowed to have weapons of any kind, knives?
A. Yes, they are. They are allowed to have -- I mean, as long as they've exhibited, obviously, a behavior that is -- that is not harming. They are not allowed to have any
11:42:02
guns or anything like that. I mean, it's -- it's -- I guess a case-by-case basis as they grow in the ministry, so to speak. I mean, any new guy coming out, we really monitor what they have in their possession and what they don't have in their possession.
11:42:17
But if it's legal by the law standpoint to have a

knife, yes, they are allowed to have a knife. I mean, many of our guys are construction workers and workers and they all have knives.

Q. So would you agree with me that if the evidence shows that Mr. Jenkins took a hatchet to the U.S. Capitol, broke a window, threw metal objects at police officers and violated a curfew, is that consistent with your ministry?

A. No, ma'am.

Q. Is that something that you would continue to support, knowing now of Mr. Jenkins?

A. Support? Absolutely not. But teach and help grow through that, there is a better way and a different way to handle your situation, absolutely. This is what we are called to do. Walk through this season.

Q. But you -- were you aware that he intended, planned or committed any of these acts?

A. No.

MS. WINTER: Nothing further, Your Honor.

THE COURT: Mr. Hester, anything further?

MR. HESTER: No, Your Honor.

THE COURT: Okay. Mr. Hester, anything -- well, first of all, Mr. Trickett, thank you very much. You may step down from the proverbial witness stand, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: Any further proffers or witnesses,

Mr. Hester?

MR. HESTER: No, Your Honor.

THE COURT: Okay. So we are left with argument. Ms. Winter, I will let you begin. Are you ready now or do you want to take a minute-or-two break?

11:43:32

MS. WINTER: I'm ready.

THE COURT: Let me do this. I do want to make sure I give Mr. Hester -- I know there was something that Mr. Jenkins wanted to say. I do want to make sure that Mr. Hester has an opportunity to talk to him before closing argument. In fact, I'll re-open the testimony if there is something else, after Mr. Hester has had an opportunity to talk with his client. So I'll go off the record, and can you arrange to get the phone number there and we can call and --

11:43:43

11:43:58

MR. HESTER: Yes, Your Honor. I'll call the cell phone in the courtroom right now.

THE COURT: Okay. I'm going to mute -- put it on mute so we can't, at least, hear the cell phone and what is happening there.

11:44:12

MR. HESTER: Thank you.

THE COURT: And we'll go off the record for a couple of minutes. Mr. Hester, just let me know. I'll be here. So let me know when you are ready to proceed, sir. We are off the record for a moment.

11:44:24

(Recess from 11:44 a.m. to 11:47 a.m.)

THE COURT: Let's go back on the record. Mr. Hester, have you had an opportunity to talk to your client?

11:47:17 MR. HESTER: I have, Your Honor. Thank you very much.

THE COURT: Is there anything additional, in terms of proffer or testimony, that you would like to make?

11:47:25 MR. HESTER: No, sir.

THE COURT: Hold on one second. Let me make sure in Houston that they -- can you hear me loud and clear in Houston?

THE MARSHAL: We can hear you loud and clear.

11:47:40 THE COURT: Okay. Then, Ms. Winter, let's have argument, please, and proceed.

MS. WINTER: Yes, Your Honor.

THE COURT: Let's just do this. Let's do one at a time. So let's start with probable cause.

11:47:50 MS. WINTER: Your Honor, I think the evidence is overwhelming as to probable cause with respect to the testimony of Agent Johannes. He has testified about the tip that called in and specifically identified Mr. Jenkins through additional investigation by FBI.

11:48:10 They found numerous videos, including social media

websites, affiliated with Mr. Jenkins showing exactly what he wore on the day of January 6th, a very distinctive red beanie, blue hoodie, gloves, the tattoos, the beard, the shaved head.

11:48:30 Your Honor, I think the evidence certainly meets the standard of probable cause that he was there on the capitol that day and he retrieved the hatchet from his backpack, smashed a capitol window, and was throwing objects at police as they were trying to protect the

11:48:47 capitol that day.

THE COURT: Mr. Hester, do you have any objection on the probable cause?

MR. HESTER: I do have argument on that, Your Honor.

11:48:55 THE COURT: Okay. Proceed.

MR. HESTER: So, first, on the damage to federal property charge, the 1361, at best that's a misdemeanor because you heard testimony that there was -- the replacement cost is $1,500. But the statute speaks to

11:49:15 damage, the actual damage. So the replacement cost --

THE COURT: Wait. Say that again. I thought you went out for a second. So I want to make sure that the record is clear exactly what you are saying.

MR. HESTER: Yes, Your Honor. The statute speaks

11:49:28 to damage exceeding $1,000 to make it a felony.

So the testimony the Court heard is that the replacement cost of the window is $1,500. Not the actual damage to the building. So the damage would be the broken glass. The replacement costs includes labor, transporting the window, and all of those additional costs. And, at best, the agent didn't even know what was included in the replacement costs when I asked him.

So there is -- there is no evidence that damage caused by whoever this was who broke that window exceeds $1,000. So, at best, that's a misdemeanor. So the government hasn't shown probable cause for the felony offense charged under 1361.

On the assault charge, Your Honor, an assault -- again, at best, this is a simple assault, a misdemeanor assault that -- and the government hasn't proven that this is a felony assault. But I don't even think it's a misdemeanor assault because an assault is a willful intent to inflict injury upon another person.

The officers in those photographs are fully shielded, wearing helmets. No weapon has been recovered. I know the agent said that he believes they are metal. Really, that's just speculation because there is no weapon in this case. There is -- and in order to --

THE COURT: I don't understand. What do you mean there is no weapon? So the photos of him holding a

flagpole and to have whatever object it is, a drawer, over his head is not a weapon?

MR. HESTER: There is no weapon recovered is what I should have said, Your Honor. There is no weapon --

11:51:26 THE COURT: So what? I mean, who cares if a weapon was discovered. I mean, the fact that there is a large gathering of people and he throws things -- I mean, the photos speak volumes. The fact that he throws things at police officers, simply because you can't find them

11:51:41 means you can't prosecute? Is that your position?

MR. HESTER: Well, let me explain what I -- what I mean a little better and, hopefully, it will make better sense, Your Honor.

In order to prove that this is a dangerous weapon, the

11:51:55 government has to prove that it's capable of inflicting grave bodily harm. That's what the case law says. Okay. I don't know how you do that based on photographs of items that could very well be plastic items. And there is no videos of him slamming down items on officers that have

11:52:16 been submitted into evidence.

It seems to me that the photographs show the person lobbing these items, which very well could be plastic, which very well could be incapable of inflicting grave bodily harm on officers who are in full riot gear, who are

11:52:35 wearing helmets, who have protective shields, who have

pads on their bodies.

So that's my argument as to why it's not a felony assault, Your Honor; and at best, it's a misdemeanor assault, which would be a willful attempt to inflict injury upon the person of another.

11:52:52

THE COURT: Okay. Go ahead. I'm sorry.

MR. HESTER: As for the entering on restricted buildings or grounds, the agent couldn't give us a time when the -- when the capitol grounds became restricted on that day. I think that clearly, at some point, the statute speaks to a place where the president or another person protected by secret service is performing their official duties and entering that area without permission.

11:53:08

Mr. Jenkins, though, didn't enter the capitol building. There is no evidence that he entered the capitol building. Is it grounds which, I admit, is included in the statute? Probably. But -- but given the fact that there is no testimony about the times that these grounds became restricted, I don't think the government has proven probable cause on that count either.

11:53:33

11:53:51

So we would ask the Court to dismiss all of these counts because there is no probable cause for them.

THE COURT: Okay. Ms. Winter, I'll give you a chance to respond.

MS. WINTER: Yes, Your Honor. I heard testimony

11:54:07

and you are the judge and can judge for yourself. But we specifically -- Agent Johannes specifically testified that the cost to repair the damage that was inflicted on the U.S. Capitol was valuated currently at $1,500. It's
11:54:25 Mr. Hester who -- and, again, Mr. -- or Agent Johannes didn't know the exact dimensions of how that number was actuated. But again, that's the figure that is the testimony that is the damage that is currently for the window at the U.S. Capitol, which Mr. Hester, who is
11:54:46 talking about labor and transportation, something that Mr. -- that Agent Johannes did not testify to. He testified to the $1,500 figure.

As Your Honor mentioned, with respect to the objects being thrown by Mr. Jenkins, these images were obtained
11:55:01 from body-worn camera of the officers that were there. You can see Mr. Jenkins is at the forefront of those protesters, has those objects that are being thrown at the officers, certainly able to injure them, maim them in any respect, metal or plastic, especially the flag poles and
11:55:23 the pipes that are pointed, elongated. They are all being thrown. They are being overwhelmed by these protesters.

And Mr. Jenkins specifically, as the agent testified to, threw nine objects, four of which you can see in those photographs. And they did, as the agent testified, have
11:55:42 the potential to seriously harm those officers. And, in

fact, many officers were harmed.

As to whether or not it was Mr. Jenkins in particular, again, the scene is a massive investigation, as the Court knows. But we know that Mr. Jenkins threw objects capable of inflicting serious bodily harm.

11:56:03

And third, as to the restricted area, I followed up with Agent Johannes on that. At all times that Mr. Jenkins is present and visible in the photograph, at a timestamp at 4:33, at 2:00 when the protesters forced their way through the barricades, at all times Agent Johannes testified that was a restricted area.

11:56:21

So with respect to the arguments posed by the defense, there is certainly sufficient and the government would maintain overwhelming probable cause as to each of the charges alleged in the complaint.

11:56:37

THE COURT: Mr. Hester, I'll give you the last word, if there is anything else you would like to add.

MR. HESTER: Well, Your Honor, I think I have said everything I need to say about the other charges. I'll just remind the Court that you heard testimony about the cost to repair that window, not about the cost of the damage to that window. And that was the government's evidence to you, Judge. They gave you no evidence about the damage to that window and what that caused.

11:56:49

THE COURT: Okay. Well, thank you very much.

11:57:08

Let me say, based on the evidence that I heard today, that I find that the government has demonstrated probable cause that the defendant has committed the acts to which he has been charged in the complaint. So I'm going to find the 11:57:25 probable cause finding has been satisfied by the government. So now let's talk about the detention issue.

And, Ms. Winter, I'll let you begin and just walk through for me. First of all, let me start, is this a risk of flight?

11:57:39 MS. WINTER: Your Honor, primarily danger to the community, but we would submit that evidence has been shown that he is a risk of flight, just given his history of evading, given the fact that he has now -- is now facing six felony charges, up to 20 years in prison, and 11:57:59 just given that he is clearly at odds with the government, does not believe in the outcome of the election, does not agree with the current administration, and was willing to commit violence in order to express those beliefs.

And so, while we recognize and I think that our 11:58:18 stronger position is that he is a danger to the community, we are also moving under the risk that he -- that he could flee, Your Honor, just given the very different change in circumstances, his history, and just his position with respect to our current government.

11:58:35 THE COURT: Okay. Is this a presumption case?

MS. WINTER: It is not a presumption case, Your Honor.

THE COURT: Okay. Let's talk danger to the community. Why do you think he needs to be detained pending trial?

11:58:47

MS. WINTER: Yes, Your Honor. Again, consistent with the pretrial services recommendations, Mr. Jenkins has really led a life-long history, a life-long -- led a life of crime, I should say. He has been in and out of the criminal justice system for the last 25 years. He is a 43-year-old man who was just released in 2018 and had only been off of parole for barely -- for right over a year when he committed these violent offenses.

11:59:03

I think you can see, from Mr. Jenkins' criminal history, not only is he anti-authoritarian and resistant to authority, police, and now the United States government, but he has a long history of violence going back to 1997.

11:59:27

It's only worth noting, although the disposition is unknown, he was charged with felony murder. He has multiple assault charges, including assaults of public servants, assaults of police officers. He also, Your Honor, even while in prison, refused to obey by the rules and was convicted of a property crime while in prison in 2007.

11:59:45

12:00:07

In addition to his violent history, criminal history, he also has a history showing an unwillingness and inability to comply with supervision. He was given ten years deferred adjudication on an assault, on a drug charge, and he was revoked. He was revoked based on another assault causing bodily injury in 2002.

12:00:27

And as recently as 2016, after being paroled for evading and possession of a controlled substance, he was revoked again for assaulting a public servant, resisting, and possession of a controlled substance, Your Honor.

12:00:51

Again, I appreciate Mr. Trickett and his willingness and efforts to try to reform and to work with these men; but Mr. Jenkins is not one of his success stories, Your Honor. It's clear that he handles a lot of men, that he was completely unfamiliar with Mr. Jenkins' plan to go to D.C. and the purpose for his plan to go to D.C. and the extent to which Mr. Jenkins went, which are very clear, very obvious, overwhelming evidence that Mr. Jenkins was at the capitol, that he had a backpack which contained at least gloves and a weapon, a tomahawk or hatchet or whatever you want to call it, a bladed weapon.

12:01:13

12:01:35

He put gloves on prior to pulling out the weapon and shattering a window at the capitol after he had been -- after officers had attempted to hold him at bay in order to maintain safety and security around the capitol on the

12:01:57

date that the election was being certified.

He made it past officials and, restricted or not, which we have established it was fully restricted, he is on a window, shattering it with a tomahawk.

12:02:17 You then see him throw, according to Agent Johannes, approximately nine items at police who are being overwhelmed by protesters that are in riot gear in order to try to contain these protesters. And Mr. Jenkins is distinctively and clearly front and center at the head of 12:02:35 those protesters throwing objects and striking, as Agent Johannes said, striking those officers.

Additionally, Your Honor, there is even more video evidence that comes out of the body-worn camera later that night. After the curfew had already been imposed and 12:02:54 implemented, Mr. Jenkins is -- again, he is flagrantly disobeying the law. They are telling him it's a curfew, to go in. And there he is confronting officers, Your Honor.

And given the fact that he has posted all of this, he 12:03:12 is clearly proud of it, he said it was a historic day for America. It's very clear that he is the person in the videos and the person in these social media and is proud of his behavior.

And as much as Mr. Trickett would like to help 12:03:27 Mr. Jenkins, he was totally unaware that he had planned

and premeditated and come prepared to violently protest in Washington, D.C. on January 6th. And he does not -- he cannot fully say that he can manage Mr. Jenkins, especially in light of the fact that he has 20 years -- 12:03:51 25 years of significant violent felony convictions and revocations under his belt.

And consistent with probation or pretrial services, Your Honor, the government does not believe there are any combination of conditions that can assure his appearance, 12:04:05 one, or that can protect the community in this case.

THE COURT: Mr. Hester.

MR. HESTER: Yes, Judge. Every one of those concerns can be addressed by conditions of release. If you believe the government's case and he went up to D.C. 12:04:23 and did these things, that's not Houston. That was not at the ministry that he is a part of. That's not with Mr. Trickett.

Where he -- where you heard testimony today, he makes a huge difference in people's lives with Mr. Trickett, 12:04:37 with the residents there. He is a positive influence on them. They are a positive influence on him. He has never exhibited any violent tendencies which -- at the ministry.

And Mr. Trickett is willing to be a third -- his third-party custodian, willing to report him to the Court 12:04:59 if he violates any condition.

And all of the government's concerns, again, can be addressed by conditions. Keep him in Houston. He can't leave Houston. Give him a curfew. Give him an ankle monitor. He probably shouldn't go to any political rallies or use social media.

12:05:15

All of these will reasonably assure that he is not a danger to the community. And the government has to prove that he is by clear and convincing evidence, not just a preponderance, Your Honor. So all of this can be addressed by conditions.

12:05:34

Your Honor, you have to consider the strength of the case. I think there are some defenses that I have already explained to the Court and argued in the probable cause portion.

But what Mr. Jenkins needs to be doing now is getting out. He needs to be working. He has a job waiting for him. He runs a business. He supervises people. He needs to be working. He needs to be earning money. He needs to be working with a lawyer he hires from D.C. to defend him of these charges.

12:05:48

12:06:07

And he is ready to be out and focus on defending himself on this case, to stay in Houston, to not attend any political rallies, to not become involved in any situation like this, and to follow the rules of the ministry that has been offered to him.

12:06:27

And I think if you impose all those conditions, he is not going to flee. He is not a danger to the community. I know his -- his criminal history is a little complicated but he -- he was successful -- most recently successfully
12:06:48 completed parole, a year and a half term of parole from July 2018 to December 2019. So he has been out of prison for over two years now without any incidents until this arrest.

The pretrial report shows he successfully completed
12:07:08 drug treatment. He hasn't used a drug or taken a drink of alcohol in eight to nine years. And that's in the pretrial report, Judge. So he completes programs that he is involved in, and he has a history of doing that.

The criminal history is a little complicated; but his
12:07:28 last arrest, the last time he was arrested on the outside was 2013. So eight years ago. And what happened, Judge, with that was he was on parole on two different cases. He violated the parole on one case. He went into custody. And then I know the pretrial report shows that his parole
12:07:50 was revoked again in 2016. He was actually in custody when that parole actually got revoked for the 2013 offense.

So long story short, the last time he violated the law was 2013. So he has a history most recently of completing
12:08:15 a year and a half term of parole successfully. He has

most recently a history of mentoring others and being a positive influence on others, of working, of starting his own business, of employing other people and being a value to this community. He is not a flight risk. He is not a danger. You should release him on whatever conditions you think are appropriate. And Mr. Trickett is fully prepared to know those conditions and enforce them if he has to.

THE COURT: Okay. Thank you very much, Mr. Hester.

Anything further, Ms. Winter?

MS. WINTER: Your Honor, just as a final word with respect to Mr. Hester's argument that his last arrest was in 2013, I would just like to point out the arrest was for assault on a public servant, resisting arrest; and again, given his history of violent behavior, anti-police, anti-authority behavior, it's only clear that he is escalating.

And that Mr. Trickett is -- he is basically leading two separate lives, according to the difference between his criminal history, his behaviors on January 6th, and the planning that took place in order to do that and what Mr. Trickett knows about him, Your Honor.

So I do think that we have shown that he is a danger. His violence has escalated. The evidence in this case is overwhelming. The nature of these offenses are very

serious, up to 20 years for at least six felony offenses, Your Honor, and there are no conditions that are going to make the community safe or for his appearance.

THE COURT: Thank you very much for the presentation of evidence and the argument. I want to take a minute to go off the record here for a second.

For those -- I know we are running a little late, and I apologize to everyone. Give me about a minute, minute and a half, to let me get my ducks in a row and then let me come back and give you my decision. So we are off the record for a second.

(Recess from 12:10 p.m. to 12:13 p.m.)

THE COURT: We are back on the record.

Counsel, again, thank you for your argument.

This matter obviously comes to the Court today on the government's request to detain the defendant, Mr. Jenkins, pending the trial of this case. And to be clear, at the outset, let me say what happened at the United States Capitol on January 6th was horrible. It was unpatriotic. I think on behalf of all Americans I could say it was truly shocking to watch on television. Absolutely heart-breaking to think that there are those in society that believe that storming the U.S. Capitol, the symbol of our precious but fragile democracy, is somehow a good idea. That is not how Americans act. That is not how

democracy works. We do not participate in an insurrection trying to overthrow our government simply because our preferred candidate did not win.

Now, admittedly, I am not here today to decide whether Mr. Jenkins is guilty or innocent of the charges that have been brought against him. In fact, Mr. Jenkins is fully entitled to a presumption of innocence. That is very important to me and to our justice system as a whole. But, of course, I am entitled to consider the strength of the government's case against him in deciding whether or not he should be released pending the trial of this matter. And to be clear, the government has sought detention on two bases.

First, the government is asking that he be detained because the government believes that he is a risk of flight. In order to show that, the government must establish by a preponderance of evidence that no conditions or combination of conditions will reasonably assure the defendant's presence as required.

In a nutshell, I do not believe the government has met its burden. There is nothing that tells me, from the evidence that I have heard, that he is a risk of flight, other than these very serious charges, that he has lived with his family and lived in the area for a considerable amount of time. So I do not find that the government has

shown by a preponderance of the evidence that -- and I think there are conditions that could be imposed in connection with -- on the risk of flight.

So that turns to the question of whether or not he is a -- Mr. Jenkins is a danger to the community; and as we are aware, on the danger to community issues the government has a higher burden. That is, it must show by clear and convincing evidence that no conditions or combination of conditions will reasonably assure the safety of the community.

I don't think this is a close case. Let's make sure we are all on the same page. Mr. Jenkins, from the testimony I heard, admitted that he flew to D.C. on January 6th or for the January 6th event. Mr. Trickett readily acknowledged that Mr. Jenkins had visited the D.C. area on January 6th. Based on the clear, unmistakable photographs and videos from multiple sources, Mr. Jenkins visited the capitol grounds on January 6th.

He apparently fully engaged to -- fully expected to engage in violence of some sort. How else do you explain that he happened to have what has been labeled today as a small crowbar, a hatchet, or a tomahawk in his backpack. There is video evidence that he pulled the weapon out of the bag, used it to smash a window at the United States Capitol.

But even more alarming and telling is the evidence that he threw items at law enforcement officers. And the evidence I have heard was that there were nine objects, several poles -- metallic, wooden, a white flag pole with
12:17:16 flag -- and a desk drawer. There is an old adage that a picture tells a thousand words, and that is the case here. This is not paper mache that was being thrown. You can tell from the photos that these look like objects that could hurt someone.

12:17:30 And whether it's -- we don't ask judges or jurors to leave their common sense at the door, and I'm not going to do that either. It is clear from looking at those photographs that they -- that there was an intent or at least -- yeah, an intent to cause harm or cause damage to
12:17:50 individuals.

And I understand that the officers might have been wearing helmets, but that doesn't escape the fact that you had these objects being thrown at them. Officers were simply trying to do their job, protect the symbol of our
12:18:04 great democracy in the U.S. Capitol, and trying to protect the public servants who are inside.

Obviously, hurling words is permissible, if not encouraged, in our free society. But the nine items that were thrown here, that is not right. And to me, that
12:18:22 really indicates a threat of violence, of concern, by

putting the brave members of our law enforcement community at significant risk of physical injury.

I heard the argument during the testimony that no one was harmed here or that we don't know if any particular officer was harmed. I don't think that's relevant to the inquiry. Simply because someone shoots a weapon into a group of people, simply because someone isn't hurt or isn't hit doesn't mean that isn't a real danger, a real threat to the community.

12:18:54 In my view, a person who actively participates in a violent insurrection aimed at overthrowing our democracy is indeed a danger to the community. But as with the old saying, "Wait. There is more."

In addition, Mr. Jenkins here has a long criminal

12:19:10 history. There are multiple assault charges over the years, DWI, terroristic threat, drug charges, evading arrest, assault on a public servant, resisting arrest. He has had his parole revoked previously. Clearly demonstrated, in my view, an inability to comply with

12:19:30 instructions and follow supervision. He flagrantly has disobeyed the law, whether it's from the previous criminal prosecutions, which really is a laundry list over the years, or ignoring the curfew that night of January 6th in D.C.

12:19:46 In a nutshell, I have no assurance and I do not think

there are any conditions or combination of conditions that I could impose here that would protect the safety of the community. And as a result, I find that the government has met its burden to show by clear and convincing
12:20:01 evidence that no conditions or combination of conditions will reasonably assure the safety of the community. As a result, I'm going to order that Mr. Jenkins be detained pending the trial of this case.

With that said, is there anything else, Counsel, that
12:20:14 we need to address today? Let me start with the government, Ms. Winter.

MS. WINTER: No, Your Honor. Thank you.

THE COURT: Mr. Hester, on behalf of the defendant?

12:20:23 MR. HESTER: No, Your Honor.

THE COURT: Okay. Well, thank you again very much. I wish everyone much health and safety.

Mr. Jenkins, I'm going to remand you to the custody of the United States Marshal to be, I believe, transported up
12:20:35 to the District of Columbia for further proceedings and find that you should be detained pending the trial of this matter.

Thank you very much. You all are excused. Have a good day, and I will call my next matter.

(Proceedings concluded at 12:20 p.m.)

Date: May 2, 2021

COURT REPORTER'S CERTIFICATE

I, Laura Wells, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Laura Wells

Laura Wells, CRR, RMR

C.H.A.R.M.
CHRIST'S HOPE AND RECONCILIATION MINISTRY

May 8, 2021

Re: Shane Jenkins

To Whom It May Concern:

This letter serves to verify that I, David Trickett is of sound mind and body and offer the following as true and correct:

I am the Founding Director of Christ's Hope and Reconciliation Ministry. On March 11th I testified in federal court here in Houston on behalf of Shane Jenkins. The favorable testimony in its entirety as it relates to C.H.A.R.M. supporting Shane Jenkins still remains the same. We are here as his family and will provide a home for him and continue in discipling him in the time while he awaits his court dates and beyond.

Please feel free to contact me for any additional information. Thank you.

In His love and service,

David A. Trickett
Founding Director
C.H.A.R.M. Prison and Transitional Ministry

[redacted]