

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

VS.

DANIEL RAY CALDWELL

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CRIMINAL NO. 1:21-CR-00181

**DEFENDANT’S MOTION TO REVOKE OR AMEND
MAGISTRATE’S ORDER OF PRETRIAL DETENTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant, **DANIEL RAY CALDWELL**, by an through undersigned counsel, pursuant to U.S.C. § 3145(b), and hereby moves this District Court to conduct a de novo review of the facts in this case relating to the Magistrate’s order of March 5, 2021 [Doc. 8, pg. 16 - 23], and revoke this order of Detention. By virtue of this order, Mr. Caldwell is currently detained awaiting the resolution of the above-styled and numbered criminal case. Mr. Caldwell moves this court to release him subject to conditions of release during the pendency of the above-styled and numbered criminal case. Mr. Caldwell would request oral argument to aid in the determination of the motion. In support of this motion, Mr. Caldwell would respectfully show unto the Court as follows.

I.

PROCEDURAL HISTORY

Mr. Caldwell has been charged in a seven-count indictment. [Doc. 5]. On February 22, 2021, detention hearing was held before United States Magistrate Judge Kimberly Priest Johnson. [Doc. 8, pg. 11]. After hearing the evidence and arguments of counsel, the Magistrate

ordered Mr. Caldwell detained, and indicated that it would issue a ruling after it reviewed some additional evidence. *See* Exhibit A, February 22, 2021, Transcript of Detention Hearing at pg. 84, line 24- pg. 85, line 1-6. Following the hearing on February 22, 2021, the court continued the Detention hearing for March 4, 2021, to consider another third party custodian. [Doc. 8, pg. 15], *See* Exhibit B, March 4, 2021, Transcript of Detention Hearing at pg. 1-20.. Judge Johnson issued her findings via a written order of detention filed on March 5, 2021. [Doc. 8, pg. 16-23].

The court's justification for detention was as follows:

“There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses: an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which the maximum term of imprisonment of 10 years or more is prescribed; The defendant has not introduced sufficient evidence to rebut the presumption above, and detention is ordered on that basis; There is clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community; In addition to any findings above or other findings made on the record at the hearing, the reasons for detention include the following: weight of evidence against the defendant is strong, subject to lengthy period of incarceration if convicted, prior criminal history, history of violence or use of weapons, history of alcohol or substance abuse, lack of stable employment, lack of significant community or family ties to the charging district.” [Doc. 8, pg. 16-23].

Mr. Caldwell remains in the custody of the United States Marshals. A status hearing in this cause is currently scheduled for June 2, 2021.

III.

LEGAL AUTHORITY

A. Standard of Review for Detention

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, 107 S.Ct. 2095, 95

L.Ed.2d 697 (1987).

A motion under 18 U.S.C. § 3145(b) for review of a magistrate judge's detention order requires the Court promptly to examine de novo whether there are conditions of release that will reasonably assure the safety of any other person and the community. *United States v. Sheffield*, 799 F.Supp.2d 18, 19–20 (D.D.C.2011); see 18 U.S.C. § 3145(b). “The Court is free to use in its analysis any evidence or reasons relied on by the magistrate judge, but it may also hear additional evidence and rely on its own reasons.” *Id.* at 20 (quoting *United States v. Hanson*, 613 F.Supp.2d 85, 88 (D.D.C.2009)); see also *United States v. Anderson*, 384 F.Supp.2d 32, 33 (D.D.C.2005); *United States v. Karni*, 298 F.Supp.2d 129, 130 (D.D.C.2004) (citing *United States v. Hudspeth*, 143 F.Supp.2d 32, 35–36 (D.D.C.2001)).

The Bail Reform Act of 1984 provides a “regulatory device ... to provide fair bail procedures while protecting the safety of the public and assuring the appearance at trial of defendants found likely to flee.” *United States v. Montalvo–Murillo*, 495 U.S. 711, 719–720, 110 S.Ct. 2072, 109 L.Ed.2d 720 (1990). Under the Bail Reform Act, 18 U.S.C. § 3141 et seq., a judicial officer “shall order” a defendant's detention before trial if, after a hearing, “the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” *Id.* § 3142(e). The judicial officer considering the propriety of pretrial detention must consider four factors: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal Crime of Terrorism, or involves a minor victim or controlled substance, firearm, explosive, or destructive device; (2) the weight of evidence against the person; (3) the history and characteristics of the person, including - (A) the

person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *Id.* § 3142(g).

III.

ARGUMENT

A. The Government wholly failed to carry their burden that Mr. Caldwell should be detained pending trial.

During the detention hearing held on February 22, 2021 and March 4, 2021, the Government's presentation to detain occurred through the testimony of FBI Agent Seth Webb. *See* Exhibit A, pg. 4 -45. His testimony focused on Mr. Caldwell's actions on January 6, 2021 at the United States Capitol Building. *See* Exhibit A, pg. 4 - 19. Agent Webb indicated that Mr. Caldwell would be a danger to the community if he was released based on his criminal history. *See* Exhibit A, pg.18, line 11-14.

Additionally, the Government relied on information from a confidential informant that Mr. Caldwell was a "huge white supremacist" and brought real firearms on a airsoft course. *See* Exhibit A, pg. 10, line 5-25.

The Government indicated that Mr. Caldwell was a risk of nonappearance for several reasons. *See* Exhibit A, pg. 19, line 11-15. First, he was a risk of non appearance because he had

no ties to the District, and he was fired from his job at Texas Instruments. *See* Exhibit A, pg. 19, line 17-21.

It is without a doubt, the following facts are true regarding Mr. Caldwell and January 6, 2021: Mr. Caldwell drove from Texas to the District of Columbia; Mr. Caldwell was present on the capital grounds with 1200 plus supporters of the protest; Mr. Caldwell provided an interview to Pro Publica. The above is facts beyond change.

However, the additional evidence produced by the Government is without merit, conjecture, and conclusory without any substance. This is opposite of the man that stands before this honorable court. Mr. Caldwell is a honorably discharged United States Marine, who served five plus years for his country. Mr. Caldwell is a man that had worked in the semiconductor industry for 25 plus years. He worked for Texas Instruments on two separate occasions. His last stint with Texas instruments he worked for twelve (12) years. He is a dedicated father to three children who has lived the last 10 years in The Colony, Texas.

Mr. Caldwell is not a danger to the community because of his criminal history. Mr. Caldwell has the following criminal convictions: 1) Driving While Intoxicated - 2006; 2) Disorderly Conduct - 2008 (Class C Misdemeanor - same level of offense as a speeding ticket); 3) Driving While Intoxicated and Resisting Arrest - 2014. *See-* Pretrial Service Report. Mr. Caldwell has never been arrested, charged, or convicted of a felony offense until the instance case. *See* Exhibit A, pg. 34, line 12-14. Mr. Caldwell has never been charged with a firearms offense or a crime of violence. *See* Exhibit A, pg. 35, line 5-9. At the hearing, Judge Johnson had concerns about his prior arrest for Assault Causing Bodily Injury - Family Violence against his ex-wife Kambria Caldwell and her serving as a third party custodian. We understand the

court's concern, but for argument purposes Mr. Caldwell and his ex-wife have lived together for the past 5 years raising their children without incident. See Exhibit A, pg. 47, line 11-13.

Mr. Caldwell is not a risk of nonappearance. This position by the Government is conjecture and conclusory. The evidence produced at the hearing indicated an individual that didn't even have a passport and had not left the United States in 12 years. See Exhibit A, pg. 33, line 19-25. Agent Webb testified that the defendant had never before failed to appear in court. See Exhibit A, pg. 35, line 2-4. Also, when he has been given terms and conditions of probation in his prior criminal cases, he has never failed to follow the conditions that led to a revocation of probation. See Pre-Trial Service Report. Furthermore, the Government attempts to make a logical leap that Mr. Caldwell is not from the district and lost his job then he will not appear. The Government did not produce any credible evidence that would support this conclusion.

Judge Johnson even had concerns about the lack of corroboration as it related to Agent Webb's testimony regarding the implication that Mr. Caldwell was a white supremacist, brought firearms to the airsoft course, and his social media. See Exhibit A, pg. 26-31. However, Judge Johnson had concerns about Kambria Caldwell serving as a third-party custodian because of past relationship issues. See Exhibit A, pg. 83, line 17-25, pg. 84, line 1-11. Additionally, Judge Johnson had concerns about Mr. James Caldwell serving as a third party custodian and whether he would be able to enforce conditions of release.[Doc. 8,pg 21-22]. Contrary to Judge Johnson, we believe that James Caldwell can properly serve as a third party custodian.

Lastly, the Pre-Trial Services Report found that there were conditions where Mr. Caldwell could be released.

B. There are conditions which could be imposed to reasonably assure the Mr.

Caldwell's presence and the safety of the community.

This Court has at its disposal a myriad of options that it could utilize to craft a set of conditions which would assure not only the safety of the community, but Mr. Caldwell's continued appearance at any future court settings. Mr. Caldwell would be willing to abide any conditions this Court feels is reasonable, including, but not limited to: the surrender of his passport; GPS monitoring; being released into the custody of a third-party custodian; restrictions on internet usage and communications; home confinement; alcohol and substance abuse counseling, and any other conditions the Court thinks necessary to ensure Mr. Caldwell's compliance.

The conditions listed about would be totally opposite to his current conditions. At present, the defendant has been in solitary confinement for 23 hours a day since he arrived to the district.. His current incarceration status is that which is commonly utilized by those that are serving a sentence on death row.

IV.

CONCLUSION AND PRAYER FOR RELIEF

Mr. Caldwell is not a risk of nonappearance/flight or a danger to the community. A finding to the contrary is and would be improper given the lack of evidence for either. As such, detention of Mr. Caldwell would be improper pursuant to the Bail Reform Act. Therefore, defendant requests that this Court conduct a *de novo* review of the facts and circumstances surrounding the detention of Mr. Caldwell, to then revoke the Detention Order issued on March 5, 2021, and release Mr. Caldwell on a combination of conditions to reasonably assure his appearance and safety to the community.

Respectfully submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Motion was provided to with Mr. James Dennis Peterson and Ms. Puja Bhatia, Assistant United States Attorneys via CMECF/PACER on April 26, 2021.

/s/ John Hunter Smith
John Hunter Smith

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL RAY CALDWELL,

Defendant.

Case No. 4:21-mj-00107-KPJ

Plano, Texas
February 22, 2021
11:26 a.m.

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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WITNESSES FOR PLAINTIFF

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WITNESSES FOR DEFENDANT

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1 (Call to order at 11:26 a.m.)

2 THE COURT: The Court calls case number 421MJ107,
3 United States v. Daniel Ray Caldwell.

4 (Pause)

5 THE COURT: Are both counsel ready to proceed?

6 MS. BATSON: Yes, Your Honor.

7 MR. SMITH: Yes, Your Honor.

8 THE COURT: Mr. Caldwell, please raise your right
9 hand to be sworn.

10 (The Defendant is sworn)

11 THE CLERK: Thank you.

12 THE COURT: All right, Mr. Caldwell, you may have a
13 seat at counsel table.

14 Mr. Smith, before we proceed with the evidence, have
15 you and Ms. Batson as well received a copy of the Pre-trial
16 Services Report that's been prepared in this case?

17 MR. SMITH: Yes, Your Honor.

18 MS. BATSON: And I have, too, Your Honor.

19 THE COURT: All right, any changes or modifications
20 you'd like to suggest to the report at this time?

21 MS. BATSON: Not from the Government, Your Honor.

22 MR. SMITH: No, Your Honor.

23 THE COURT: All right, then Mr. Smith, if you want to
24 have a seat at counsel table with your client.

25 Ms. Batson, you may call your witness?

1 MS. BATSON: Yes, Your Honor, we call Special Agent
2 Seth Webb. Your Honor, may I --

3 THE COURT: Yes.

4 SETH WEBB

5 called as a witness for the Plaintiff/Government, having been
6 duly sworn testified as follows:

7 MS. BATSON: May it please the Court?

8 THE COURT: Yes.

9 MS. BATSON: Counsel.

10 DIRECT EXAMINATION

11 BY MS. BATSON:

12 Q Please state your name for the record?

13 A Seth Webb.

14 Q And how are you employed?

15 A I'm a special agent with the Federal Bureau of
16 Investigation.

17 Q Okay, and you are either the case agent or familiar
18 with the case involving Daniel Caldwell; is that correct?

19 A Yes, ma'am.

20 Q All right, and can you relate the facts please to the
21 Court?

22 A Yes. We have background in this case. On January
23 6th, Congress met in Washington, D.C. in the Capitol building
24 to certify the Electoral College vote for the 2020 presidential
25 election. That meeting convened at around 1 p.m.

1 The Capitol building was closed to the public that day.
2 Permanent and temporary barricades had been placed, doors were
3 locked, and windows were secured. And Capitol police and
4 federal agents were protecting the building.

5 At around 2 p.m., a large crowd gathered around the
6 Capitol building and forced entry past police and barricades,
7 which caused the meeting to be delayed until around 8 p.m.
8 Congress was asked to evacuate and that included Vice President
9 Mike Pence.

10 This case came to our attention on around January 27th
11 when a Twitter user posted two links to two -- posted two
12 videos and screenshots of an individual.

13 And the first video was posted on YouTube titled "Storm
14 the Capitol with Dream Floral", where in that video, around
15 3 -- at approximately three minutes in the video, an unknown
16 male wearing an olive drab and colored hoodie was seen spraying
17 an orange mist propellant toward police barricade line, so much
18 as the filmer of the YouTube video could be heard coughing and
19 gasping for breath.

20 The second video was posted on ProPublica, which is a
21 self-proclaimed investigative journalist website. They
22 chronologicalized (sic) the events that were near around inside
23 the Capitol building that day.

24 This video that's in question was around 4 p.m. titled
25 around -- or near the Capitol. It depicted an unknown

1 individual male, clean shaven, wearing a multi cam or
2 camouflage hat with sunglasses on his head.

3 He had an olive drab and colored 5.11 brand hoodie on.
4 There was a sticker above his left breast in black letters. It
5 was an orange sticker that read "Guns Save Lives". The
6 individual was wearing camouflage trousers. And the individual
7 also had a backpack or assault pack on his back.

8 In the video, the subject's words were 10 minutes after we
9 started storming, a large fight broke out where -- and a female
10 was hit in the neck. And she -- they tried to assist the
11 female. And then, the police went their way and they took her
12 for medical assistance.

13 The individual also stated at the end of the video that
14 pepper spray was going around, that the individual warned
15 police that he -- if the police sprayed him again, that he
16 would return fire or return spray, to which the police officer
17 did. And the individual said that he sprayed police back,
18 hitting around 15 of them.

19 Q Okay, so the information you just testified to about
20 him being near in his words the girl that was shot and that
21 they took her out for medical assistance and he sprayed about
22 15 officers?

23 A Yes.

24 Q That's from the ProPublica interview; is that
25 correct?

1 A Correct.

2 Q Okay, and did you have an opportunity to review the
3 video in which the Defendant is releasing the spray?

4 A Yes, in the YouTube video, you can see the same very
5 similar male, white male, with the same clothing spraying
6 approximately three minutes of that YouTube video, spraying
7 toward police an orange mist or propellant.

8 Q Okay, and do you see in that particular video the
9 police spraying at him?

10 A No, you do not.

11 Q Okay, but in his statement, he's saying the police
12 sprayed at him and he responded?

13 A In the ProPublica video, yes, to two unidentified
14 females behind the camera.

15 Q Okay, but that's not borne out by the video? That's
16 not shown in the video? It's not borne out by the video?

17 A No.

18 Q Okay, go ahead.

19 A Okay, also in the ProPublica video, the individual
20 reaches down for his leg, revealing the top of the assault
21 pack, which was screenshot enhanced.

22 And there was a black and colored patch with white
23 bordering, which was later identified to be an American
24 Military Simulation patch.

25 To my knowledge, American Military Simulation is a sponsor

1 of Airsoft events, where individuals shoot plastic projectiles
2 at each other in military-style competition.

3 So, we were able to see that patch. It was also posted in
4 that Twitter, the enhancement of that patch.

5 Shortly thereafter the Tweet was posted, a continuing
6 confidential human informant gave me a name and a number of an
7 individual.

8 The name, he had no additional information, but the name
9 of the individual given was Daniel Caldwell and a AT&T
10 telephone number.

11 I started -- at that time, I started open base -- open
12 source checks on that phone number, revealing a Daniel Ray
13 Caldwell living in The Colony, Texas.

14 After that, we -- so then American Military Simulation is
15 a very unique patch. So I began canvassing the metroplex for
16 paintball shops and aerosol shops to try to get someone to
17 identify that patch, a third-party to identify it.

18 Also in my open source checks, I pulled Mr. Caldwell's
19 driver's -- Texas driver's license photo. I visually confirmed
20 that those were the same individuals from the screenshot of
21 ProPublica video and the driver's license.

22 Mr. Caldwell out of The Colony, Texas had a gray beard in
23 the driver's license photo.

24 This was around February 2nd. Also, in the ProPublica
25 video, there was the letter "R" in the background of one of the

1 columns, which was identified by Washington field office as
2 being the Renaissance Hotel located in Arlington, Virginia.

3 So agents from Washington field office went, served legal
4 process on the Renaissance for individuals named Daniel
5 Caldwell that might have stayed there on or around January 5th
6 and 6th.

7 That yielded positive results for an individual that
8 stayed there on the -- January 5th named Daniel Caldwell. So
9 in my canvassing, I identified one witness, who was able to
10 identify the American Military Simulation patch.

11 That individual was also shown the screenshot from the
12 ProPublica video. He confirmed that he knew that individual
13 and had for three or four years, did not know the individual's
14 true name because in Airsoft, they use code name for call
15 signs.

16 Without any identifications on the photo, I showed him Mr.
17 Caldwell's -- the -- sorry, the witness stated in that photo
18 the last time he had seen him, the individual in question had a
19 beard.

20 I then showed him Mr. Caldwell's driver's license, where
21 he has a beard. And he confirmed it was the same individual in
22 the ProPublica video as it was in the driver's license photo
23 that did not have any identifiers on it.

24 After that, I requested legal process to AT&T for --

25 Q Well, before you move on to the legal process, in the

1 conversation that you had with that particular witness, and he
2 indicated that he knew the Defendant Mr. Caldwell, did he
3 indicate to you anything in particular about Mr. Caldwell and
4 his beliefs?

5 A The witness believed that Mr. Caldwell was a white
6 supremacist and was in his words a complete wacko, given his
7 time and had seen the individual, because he did not know his
8 true name at that time.

9 Q But he had known him for about three to four years?

10 A Three to four years and --

11 Q And described him as a huge white supremacist and a
12 wacko?

13 A Yeah.

14 Q All right. And then, did he also indicate that at
15 the time -- at certain times when they met at the
16 Airsoft -- what is it range -- that Mr. Caldwell brought real
17 firearms, actual firearms?

18 A Yes, witness stated when I asked witness if there's
19 anything else we should know about the individual, he stated
20 that the individual would be armed.

21 And when I asked him the follow up on that, what he meant
22 by that, he said that the individual had brought real firearms
23 to an Airsoft field, where they have replica weapons and had
24 been admonished several times to return the actual firearm to
25 his vehicle.

1 Q Okay, and then, of course, why would that cause
2 concern bringing in an actual firearm to such a event?

3 A You can pull the wrong weapon, you think you're
4 firing at a plastic projectile, and you fire a real firearm at
5 another individual.

6 Q Okay, and he had to be admonished according to this
7 witness numerous times?

8 A According to the witness several times.

9 Q Okay. All right, go ahead. Then you were saying you
10 served legal process?

11 A Yes, I served legal process through AT&T for
12 geolocation data on Mr. Caldwell's cell phone, which would
13 confirm his location, his home of residence, and his place of
14 employment.

15 We also verified that with Texas Workforce Commission,
16 which revealed Texas Industry (sic) as his place of employment.

17 We served legal process to them and they provided his work
18 schedule. We then -- I then submitted for a arrest warrant via
19 complaint, a search warrant of his residence, and a search
20 warrant for his phone.

21 We apprehended Mr. Caldwell in the early morning hours of
22 February 10th. In a search incident to arrest, I seized the
23 5.11 olive drab in color hoodie.

24 During the search warrant, during daylight hours at his
25 residence, the assault pack with the unique patch was found

1 inside the residence with the patch still attached.

2 Multiple -- several trousers and baseball hats with the
3 multi cam, camouflage pattern were seized that were in question
4 in the videos.

5 During -- Mrs. Caldwell was also present during the
6 search. She was asked what mode of transportation Mr. Caldwell
7 took to Washington, D.C. She stated he drove, but that she did
8 not want to talk about it further.

9 I ran a locate analysis report on Mr. Caldwell's Toyota
10 Tundra registered in Texas. It revealed a hit going east on I-
11 30 near Texarkana around 9 a.m. on January 5th.

12 Mrs. Caldwell was also shown the screenshot from the
13 ProPublica video and she confirmed that that was Mr. Caldwell.

14 MS. BATSON: Okay, and he was also present at the
15 Renaissance, right, like you said?

16 A Correct.

17 Q Later on and then also, the videos show him there at
18 the Capitol?

19 A Correct --

20 Q And then based on his own words, he was inside the
21 Capitol?

22 A Correct. In the ProPublica video, he stated after we
23 started storming, a huge fight -- a large fight broke out and a
24 female was hit in the neck, which I believe to be Ashli
25 Babbitt, who was shot inside the Capitol.

1 This was not entering from outside the Capitol, going
2 through a window into the Capitol building. This was already
3 within. So for him to be present, he must have been inside the
4 Capitol.

5 Q Okay, now --

6 A And we also ran facial recognition. I submitted Mr.
7 Caldwell's driver's license photo to a facial recognition
8 software Washington has with no reference to the ProPublica
9 video. And it yielded results to the ProPublica video, saying
10 that was the same individual.

11 Q Okay. Now you indicated that during the course of
12 the search warrant, you recovered items of clothing that were
13 consistent, that he was -- worn in the video?

14 A Yes.

15 Q He wore in the video. Also, in the video, was he
16 wearing any type of eyewear?

17 A Yes, in both videos, so in the YouTube video, where
18 the individual is spraying police with the propellant, the
19 sunglasses are on the eyes of the female.

20 These sunglasses are not your normal just block the sun
21 out. These are what we refer to as eye pro. They wrap around
22 the eye more and protect the eye from liquids or objects from
23 getting poked in the eye from either angles.

24 And in the ProPublica video, those same sunglasses were on
25 the top of the baseball hat of the individual.

1 Q Okay. And were you able to find that eyewear as of
2 yet?

3 A No.

4 Q Okay, and in your discussions with Mr. Caldwell, was
5 he asked about any firearms?

6 A During transport, I advised Mr. Caldwell that we were
7 not going to talk about the circumstances of the case, but that
8 a search warrant was going to be executed on his residence and
9 asked if there was anything that agents there need to know
10 about that were dangerous or firearms.

11 And he stated that there are 12 to 13 firearms locked in a
12 safe in his residence and they are multiple Airsoft weapons
13 throughout the residence.

14 Q Okay, but and the firearms are still at the
15 residence. They were not taken?

16 A Correct, those were not seized.

17 Q Okay, now do you see the person here in the courtroom
18 today who was -- you identified in the videos identified as
19 Daniel Caldwell, who the wife said was in fact Daniel Caldwell
20 and that you arrested and spoke to that day?

21 A Yes.

22 Q And can you point him out and describe an article of
23 clothing that he's wearing?

24 A Yes, ma'am, he's wearing a black and gray Denton
25 County Correction Center jumpsuit.

1 MS. BATSON: Okay, Your Honor, may the record reflect
2 that the witness has identified the Defendant Mr. Caldwell?

3 THE COURT: Yes, it will so reflect.

4 MS. BATSON: Thank you.

5 BY MS. BATSON:

6 Q Now as you indicated in the course of the events, the
7 Defendant through his own words was inside the Capitol when the
8 Ms. Babbitt --

9 A Yes, ma'am.

10 Q -- was shot?

11 A The subject stated about 10 minutes after we started
12 storming, a large fight broke out and a female was shot in the
13 neck.

14 Q Okay, now the ProPublica interview was some time
15 after that incident, is that correct?

16 A Yes, ma'am.

17 Q In that particular ProPublica interview, did Mr.
18 Caldwell appear to be remorseful about what had happened?

19 A No.

20 Q And about someone getting shot?

21 A No.

22 Q And how would you characterize his demeanor from what
23 you observed?

24 A Normal, not happy or sad, just normal.

25 Q Okay, after the riots on January 6th of 2021, did

1 this Defendant delete his social media?

2 A Yes.

3 Q Okay, now you indicated that his wife was interviewed
4 at the time and confirmed that it was her husband in the video
5 or in the picture?

6 A Yes.

7 Q And that he had travelled to D.C.?

8 A Yes.

9 Q Was she also asked about whether or not he had ever
10 been in trouble with law enforcement?

11 A Agents asked Mrs. Caldwell if he ever been involved
12 in something like this before. I was not present, didn't know
13 the context of that. She said no.

14 The agent then asked her if he's ever been in trouble with
15 law enforcement before and she stated no.

16 Q Okay, and did you subsequently find out that that was
17 not accurate?

18 A Yes.

19 Q Okay. Now based on your complaint affidavit, you
20 have submitted that there's probable cause for the Defendant to
21 have committed several violations.

22 Starting with the violation Title 18, United States Code
23 §1752(a) to enter a restricted building or grounds without
24 lawful authority and impede and disrupt orderly conduct of
25 Government business, why do you believe that this Defendant has

1 violated that particular statute?

2 A In the Defendant's own words, he was near or present
3 when Ashli Babbitt was shot. That -- upon review of that
4 footage, it is well within a stairwell on a -- at least a
5 second floor that happened inside the Capitol.

6 The shooting did not take place from outside with someone
7 trying to get inside. It was inside going through another
8 barricaded doorway, which is inside the Capitol.

9 Q And as you stated, there was Government business
10 being conducted that was interrupted?

11 A Correct, it was closed to the public that day.

12 Q Okay, and then as far as Title 40, United States
13 Code, §5104, which makes it a crime to engage in disorderly or
14 disruptive conduct at a place or grounds in the Capitol
15 building, same thing?

16 A Yes.

17 Q Okay. And as far as Title 18, United States Code,
18 §231(a)(3), it makes it unlawful to commit or attempt to commit,
19 obstruct, or impede, or interfere with any law enforcement
20 officer lawfully engaged in performance of their duties.

21 What probable cause do you have to believe that Mr.
22 Caldwell violated that particular statute?

23 A So, in both videos, the YouTube video approximately
24 three minutes, you can see Mr. Caldwell spraying at police that
25 are barricading anyone from entering the Capitol building with

1 an orange and colored mist, a propellant.

2 And then in the ProPublica video, the same individual, Mr.
3 Caldwell, admits that he warned an officer if he was sprayed
4 with pepper spray, that he would return the spray. And then,
5 he did so and sprayed around 15 officers.

6 Q Okay. And then, also, for the violation of Title 18,
7 United States Code §111(a)(1), which makes it a crime to
8 forcibly assault, resist, impede the law enforcement officer,
9 same thing?

10 A Yes.

11 Q Okay, now based on your limited investigation of Mr.
12 Caldwell, do you believe that he would be a danger to the
13 community if he were released?

14 A Yes.

15 Q And why?

16 A Off his criminal history. And my interaction with
17 Mr. Caldwell is very short time. It was cordial, but it was
18 less than an hour of time.

19 And I know from training and experience, everyone has
20 three personalities. There's the public that everyone sees
21 that you want to put your best foot forward. There's the
22 private that only those closest to you and your significant
23 other know. And then, there's the secret that only you know.
24 Given his past, that would lead me to believe that.

25 Q Okay, what about the fact that he brought a weapon to

1 what was supposed to be a peaceful protest?

2 A Yes, Mr. Caldwell brought a unidentified propellant
3 to a peaceful protest, not only brought it, but then used it
4 against officers and federal agents doing their job.

5 Q Okay, and would this indicate to you that by his use
6 of that propellant against law enforcement officers, that
7 there -- he doesn't have respect for authority?

8 A Correct.

9 Q Or law enforcement?

10 A Yes.

11 Q Okay, and as far as a risk of nonappearance, do you
12 believe if he were released, there could be a possibility
13 he -- that he would not appear in the district where the
14 charges are brought?

15 A Yes.

16 Q And why is that?

17 A The subject has no ties to that district that we know
18 of. It may also be an issue of finances to travel to those
19 court appearances.

20 Q He's lost his job; is that correct?

21 A Correct.

22 Q Okay, and when you said he has no ties to D.C., while
23 he was there, he stayed at a hotel?

24 A Correct.

25 Q Not with family or anything like that?

1 A Yes.

2 Q And then, you said a review of his -- you reviewed
3 his criminal history?

4 A Yes.

5 Q Okay, and in that review of his criminal history, did
6 you see where the Defendant has faced any significant jail or
7 prison time?

8 A No.

9 Q Okay, but by the nature of the charges here, he
10 is --

11 A Yes.

12 Q -- facing time?

13 MS. BATSON: Your Honor, I'll pass the witness.

14 THE COURT: All right, thank you.

15 Cross-examination?

16 CROSS-EXAMINATION

17 MR. SMITH: May I proceed, Your Honor?

18 THE COURT: Yes.

19 MR. SMITH: May I take off my mask, Your Honor?

20 THE COURT: You may.

21 MR. SMITH: Thank you.

22 BY MR. SMITH:

23 Q Good morning, Agent Webb. I guess it's probably good
24 afternoon now.

25 A Yes, sir, good morning.

1 Q As you said earlier, you could tell that he's not
2 appropriate for release because of the three personalities?

3 A Correct.

4 Q Those same three personalities apply to you, too, as
5 well, don't they?

6 A Yes.

7 Q Okay, so today, we're getting the personality of the
8 public view?

9 A Yes.

10 Q Correct? Okay. I want to go through and the
11 Government kind of tried to qualify your investigation as
12 pretty limited. Sounded like you did quite a bit of work on
13 this case?

14 A Yes.

15 Q Okay, so it wouldn't be limited, would it?

16 A No.

17 Q Okay, now on -- this all occurs as a result of
18 January 6th --

19 A Yes.

20 Q -- 2021. And I think everyone in this courtroom has
21 seen all the multiple videos. It's been on TV, fair to say?

22 A Yes.

23 Q Okay. You indicated that you had used a very
24 sophisticated means of facial recognition; is that correct?

25 A Yes.

1 Q And correct me if I'm wrong, there are cameras in the
2 Capitol, correct?

3 A Correct.

4 Q And many individuals that had been picked up for
5 alleged charges that occurred on January 6th of 2021 was
6 discovered through facial recognition inside the Capitol,
7 correct?

8 A Correct.

9 Q You did not discover my client via facial recognition
10 inside the Capitol, did you?

11 A No, sir.

12 Q Okay, you have no information to tell this Court that
13 he was inside the Capitol, do you?

14 A Other than his geolocation off his cell phone, I do
15 not.

16 Q Okay, now there were how many people on the grounds
17 that day at the Capitol?

18 A Over 1,200 I believe.

19 Q Okay. So all 1,200 of those people are going to have
20 geolocation to the Capitol, correct?

21 A Correct.

22 Q So, for moments of clarity, you indicated that he had
23 to be in the Capitol because he talked about Ashli Babbitt
24 being shot, correct?

25 A Correct.

1 Q People can talk about things that they have heard and
2 observed within their very near proximity, correct?

3 A Correct.

4 Q And through your extensive investigation, one of the
5 things through facial recognition was that you ever discovered
6 via on the camera in the Capitol, correct?

7 A Can you repeat the question?

8 Q You never discovered him inside the Capitol?

9 A No, it is a separate facial recognition that needs to
10 be conducted from the Capitol police that's inside, so.

11 Q Okay, you never did that?

12 A No, sir.

13 Q You have no information to tell them, tell this
14 Honorable Court that he specifically was inside that, do you?

15 A No, sir.

16 Q Okay, because when individuals are shot, that's going
17 to cause people to talk, correct?

18 A Correct.

19 Q And when he was sharing about being shot, that was
20 about this individual being shot, that was hours later at the
21 Renaissance Hotel, correct?

22 A Yes, two hours approximately.

23 Q Two hours later, where lots of people were and people
24 had been talking, correct?

25 A Correct.

1 Q And when you talk about entry into the Capitol, I
2 have watched many of shows and videos of that day where
3 officers were just standing by and letting people walk in,
4 weren't they?

5 A Yes.

6 Q Okay. So as you -- you discovered this, it started
7 out with the Twitter and through a confidential informant that
8 identified you to him; is that correct?

9 A Correct.

10 Q All right, and you then took his driver's license
11 photo and then started tracking him that way, correct?

12 A Correct.

13 Q And there was some significant identifying
14 information and you talked about the patch that was for the
15 Milsoft, correct?

16 A American Military Simulation, yes, sir.

17 Q Okay. And that is something that adults and children
18 are involved in, is that correct?

19 A Correct.

20 Q It is actually a fairly big industry and for
21 sport -- it's kind of a sporting event in a sense, correct?

22 A Yes.

23 Q And they have stores. Matter of fact, they have a
24 store right up here by 121 and Sam Rayburn, don't they?

25 A I believe so.

1 Q And it's pretty popular in this area, correct?

2 A Yes.

3 Q And this is something that outdoor enthusiasts enjoy?

4 A Yes.

5 Q Those that are in the -- that were in the military
6 enjoy?

7 A Correct.

8 Q Like yourself? You were in the military?

9 A Yes.

10 Q Correct? Like myself, I was in the military. And
11 like Mr. Caldwell, he is within the military United States
12 Marine Corps for five and a half years, correct?

13 A Yes.

14 Q And you were able to confirm that through part of
15 your investigation, right?

16 A Correct.

17 Q And he had an Honorable Discharge from the United
18 States Marine Corps?

19 A Correct.

20 Q And he's also receiving disability from his service
21 in the United States Marine Corps, correct?

22 A Correct.

23 Q Okay. And so, this patch was significant. And that
24 led you to this other individual, this unidentified person that
25 you showed them the driver's license photo, but with not the

1 name, correct?

2 A Correct.

3 Q And this individual didn't know his name, correct?

4 A Correct.

5 Q Because you explained to the Court that a lot of
6 people don't know names because they use call signs or
7 something along those lines; is that correct?

8 A Yes.

9 Q And this individual indicated that they had been
10 around him or known him three to four years?

11 A Yes.

12 Q Now as a trained investigator, when someone is around
13 someone for three to four years, and they have very strong
14 opinions and beliefs about somebody and how they feel about
15 them, isn't it unusual that they don't know their name?

16 A Yes.

17 Q Okay, and if we apply those three personalities, you
18 know, that you talked about, we talk about those three
19 personalities when you're interviewing somebody, they're
20 probably going to want to give you the face of someone that can
21 be as most helpful as they can, right?

22 A Correct.

23 Q And sometimes people like to get involved in the
24 drama, don't they?

25 A Yes.

1 Q And they want to incite things and tell stories that
2 might be a little bit greater than what they really are,
3 correct?

4 A I can't speak on that.

5 Q It's kind of like the voluntary firefighter that
6 always wants to be -- tell the big stories. And so, in this
7 case, this individual that you gathered this information from
8 that said, one, he was a white supremacist, correct?

9 A Correct.

10 Q A wacko, correct?

11 A A complete wacko, yes.

12 Q And that he would bring firearms to these Milsoft
13 events?

14 A Correct.

15 Q Now let's go through that. When we talk about the
16 white supremacy, did you ever take and as a trained
17 investigator, you like to corroborate information, correct?

18 A Correct.

19 Q Did you ever corroborate the information that he was
20 a white supremacist?

21 A No, that's speculation off the witness.

22 Q Okay, did she give you any examples of how he was a
23 white supremacist, other than he's a white supremacist?

24 A Yes.

25 Q Okay, and did you follow up on those particular

1 incidents?

2 A No.

3 Q Okay, now as part of your investigation, you made a
4 comment to Ms. Batson that he deleted his social media, right?

5 A Correct, that's what we were informed of.

6 Q Who informed you of that?

7 A I do not recall.

8 Q Matter of fact, my client didn't even have a Facebook
9 presence, did he?

10 A No.

11 Q He didn't even have a Twitter presence, did he?

12 A Not to my knowledge.

13 Q He didn't have a Snapchat presence, did he?

14 A Don't recall.

15 Q He didn't even have a LinkedIn presence, did he?

16 A I believe he did.

17 Q Okay, did you check out that LinkedIn page?

18 A I did not.

19 Q All right. So as it relates to social media and your
20 investigation of him, did you have him associate and connected
21 with white supremacist groups, hate groups of any kind on
22 social media?

23 A No.

24 Q And those three personalities we come to again, as
25 you sit here today, agent, you didn't find anything regarding

1 social media associated with him, did you, sir?

2 A No.

3 Q So, then, how could have deleted social media?

4 A I was told that he had deleted his social media.

5 Q Okay, you were never provided any evidence that he
6 ever had social media, were you, sir?

7 A No.

8 Q And that would be that fair answer, wouldn't it sir?

9 A Yes.

10 Q Instead of saying that he deleted social media,
11 correct?

12 A Yes.

13 Q Okay, and you would recant what you've previously
14 said, right, about that he deleted social media?

15 A I was still told he deleted social media.

16 Q Okay.

17 A That fact stands.

18 Q Okay, well, what fact was there that he ever had
19 social media?

20 A I don't have any.

21 Q You have also no other -- no evidence that he is
22 associated with white supremacy, other than this witness,
23 correct?

24 A Correct.

25 Q But you never went and corroborated any of her

1 information either, did you?

2 A No.

3 Q Now it strikes me as unusual that someone, assuming
4 your witness that said he would bring firearms to these Milsoft
5 events, correct?

6 A Correct.

7 Q That these are sanctioned events, aren't they?

8 A Some.

9 Q Okay, especially these big ones that produce that
10 patch that you're talking about?

11 A Yes.

12 Q People come from all over the country, right?

13 A Yes.

14 Q In these type of events, what do you think would
15 happen to somebody if they truly did bring a weapon? Do you
16 think they would be asked to leave?

17 A I can't speak on that.

18 Q Okay, did you ever corroborate the information that
19 he would bring firearms to these events?

20 A No, but there will be follow up investigative --

21 Q Well, I appreciate that, but my question was did you
22 ever corroborate that?

23 A No.

24 Q And where was this alleged event take place at?

25 A Sanger, Texas.

1 Q Okay. Did you ever go to Sanger?

2 A No.

3 Q Did you ever ask or is there anybody else who can
4 confirm your information?

5 A I do not recall.

6 Q So, after you get this information, after you
7 interview this person, now you start working on your complaint,
8 correct? And you're taking it all in together?

9 A Correct.

10 Q Right? So this happened, alleged event, was in
11 January 6th, 2021 and we're now I think you applied for it
12 around middle of February; is that correct?

13 A Correct.

14 Q February 2nd?

15 A Approximately.

16 Q Okay, so during that period of time, did Mr. Caldwell
17 try to flee the area?

18 A Not to my knowledge.

19 Q Okay, he was still going to work at T.I., right?

20 A Yes.

21 Q And that is where you arrested him at, correct?

22 A Yes.

23 Q And did he provide any resistance at all?

24 A No.

25 Q He was very cooperative, wasn't he?

1 A Yes.

2 Q Courteous?

3 A Yes.

4 Q And you had never met Mr. Caldwell prior to that day?

5 A No.

6 Q So when you talked about your three personalities,
7 you don't even really know what his personalities are, do you,
8 sir?

9 A No.

10 Q Okay. But he cooperated with you and then you go
11 back to his home in The Colony where he lives with his wife,
12 correct?

13 A Yes.

14 Q And their son, right?

15 A Ex-wife, yes.

16 Q And he told you that they had firearms there,
17 correct?

18 A Yes.

19 Q And they were locked up in his safe?

20 A Yes.

21 Q And were they there?

22 A We did not confirm the safe is there.

23 Q Okay, did they cooperate with you during the process?

24 A Yes.

25 Q Okay, and you subsequently took him into custody,

1 right?

2 A Yes.

3 Q As part of your search warrant, you were taking items
4 that he was wearing on January 6th, correct?

5 A Yes.

6 Q All right, did you find any type of dispenser for
7 pepper spray or some type of spray there?

8 A No.

9 Q Did you find the sunglasses?

10 A No.

11 Q Because that's what they are, they're sunglasses,
12 right?

13 A Very specific kind of sunglasses, yes.

14 Q And just like Oakleys, they wrap around, too,
15 correct?

16 A Right for eye protection.

17 Q Right. And so now, we have him in custody, correct?

18 A Correct.

19 Q And we start looking at things about Mr. Caldwell.
20 And we start trying, as part of your investigation, you learn
21 that Mr. Caldwell did not have a passport, correct?

22 A Correct.

23 Q You learned the last time he went out of the country
24 was over 12 years ago, correct?

25 A Correct.

1 Q And you learned as part of your investigation that he
2 had never been in the Texas Department of Corrections, correct?

3 A Yes.

4 Q You learned that he'd never been in the Federal
5 Bureau of Prisons, correct?

6 A Correct.

7 Q And you learned that he had never been convicted of a
8 crime of moral turpitude, correct?

9 A I don't understand the question.

10 Q Do you know what a crime of moral turpitude is?

11 A No.

12 Q Okay. You learned that he'd never been convicted of
13 a felony, correct?

14 A Correct.

15 Q Okay, and at this time, you'd been an agent with the
16 FBI for about a year; is that right?

17 A About 18 months, yes.

18 Q 18 months. You learned that he had worked in the
19 semiconductor industry for over 12 years, correct?

20 A Correct.

21 Q And matter of fact, he had been in the semiconductor
22 industry for over 25 years, right?

23 A I believe with his military experience, yes.

24 Q Okay, you learned he had lived in the same location
25 for over 10 years, plus years, correct?

1 A I don't know.

2 Q Okay, you learned as part of your investigation that
3 he never had a failure to appear in court, correct?

4 A Correct.

5 Q You learned as part of your investigation he never
6 had any type of firearms offenses against him?

7 A Correct.

8 Q Or crimes of violence?

9 A He was never charged with any crimes of violence.

10 Q You told the Court that one of the reasons you don't
11 believe he is appropriate to be released is that he wouldn't
12 show up in the District of Columbia, correct?

13 A Yes.

14 Q Of the 1,200 people that were at the Capitol, a very
15 large percentage of people have been arrested now, correct?

16 A Yes.

17 Q Many of those people weren't from the District of
18 Columbia either, were they?

19 A No, they were not.

20 Q Matter of fact, people that work in the District of
21 Columbia don't even live in the District of Columbia, do they?

22 A No.

23 Q You have been involved in the arrest of other Capitol
24 rioters from January 6th of 2021, correct?

25 A Correct.

1 Q And those individuals had no connection to the
2 District of Columbia either, did they?

3 A Not to my knowledge.

4 Q Not to your knowledge? And they were released,
5 correct?

6 A Correct.

7 Q Okay, and one of the reasons is that you said, well,
8 he lost his job and he doesn't have any money to get up there?
9 What are you basing that on?

10 A What am I basing what on, sir?

11 Q You said -- you told the Court that he lost his job,
12 he had no money, he wouldn't be able to get up there?

13 A He -- I said it could be a factor in him getting to
14 the Court.

15 Q But you haven't conducted any investigation or have
16 any independent evidence to support that?

17 A Yes.

18 Q That --

19 A Through his pre-trial release, it shows his finances.

20 Q Okay. As an adult, have you ever known people, their
21 family, to help other -- help out their adult children?

22 A Yes.

23 Q Okay, and that's really not one of the things that
24 you look at as an investigator, is it?

25 A No.

1 Q Okay, the issues at the Capitol is the issues at the
2 Capitol, that would be taken care of at another day. You went
3 over those statutes, correct?

4 A Yes.

5 Q But what I'm trying to figure out is what you
6 testified to today. You never corroborated any of this
7 information that paints my client in a negative light, though,
8 did you?

9 A At that -- not at that time, no.

10 MR. SMITH: I have no further questions. Thank you,
11 Your Honor.

12 THE COURT: Thank you.

13 Redirect?

14 MS. BATSON: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BATSON:

17 Q Agent Webb, you are not the primary case agent on
18 this case, correct?

19 A I am.

20 Q You're the local case agent?

21 A I'm the case agent.

22 Q Okay, here locally, correct?

23 A Correct.

24 Q Okay.

25 A For here and the District, well, I'm the primary case

1 for the Texas case.

2 Q Locally?

3 A Correct.

4 Q Okay. And so, there is a limited investigation, but
5 there's more investigation to follow?

6 A Absolutely.

7 Q Okay, now Mr. Smith asked you about his client not
8 being inside the Capitol?

9 A Correct.

10 Q Correct? And let's discuss the wording that Mr.
11 Caldwell used during his ProPublica interview. Do you recall
12 what he said?

13 A Yes.

14 Q Okay, and can you relay that to the Court?

15 A 10 minutes after, we started storming.

16 Q Storming the Capitol, right?

17 A He did not say the Capitol. He said -- that's
18 where -- those were his words around 10 minutes after we
19 started storming.

20 Q Okay, then a large fight broke out?

21 A Yes, a large fight broke out.

22 Q Uh-huh.

23 A And I think maybe he said a girl was hit in the neck.

24 Q Okay. And then, what happened after she was hit in
25 the neck?

1 A Everyone stopped and backed up. They tried to assist
2 her. Then someone grabbed her and they took off and then they
3 grabbed their guns and took off. These were -- that is
4 somewhat of what he said.

5 Q Paraphrasing what he said?

6 A Paraphrasing what he said.

7 Q But based on his own statements, do you believe he
8 was inside the Capitol?

9 A Yes.

10 Q Okay. Now Mr. Smith also asked you about you facial
11 recognition. Now you're not employed with the Capitol Police?

12 A No.

13 Q Okay, so that -- did you say that facial recognition
14 is separate?

15 A It is separate.

16 Q And had -- do you know if that's been done?

17 A No.

18 Q For this Defendant yet?

19 A No, they have to manually go through. It's not a
20 database they can just upload a photo to --

21 Q Okay.

22 A And ask -- they have the Capitol Police Officer has
23 to go through and find video evidence of that person. It's not
24 the same.

25 Q Okay. And Mr. Smith also asked you about the videos

1 where it appears that some of the police or Capitol Police or
2 whoever was out there were letting people just walk in?

3 A Yes.

4 Q Do you remember that? Okay, but in Mr. Caldwell's
5 own words, he says -- he uses the word stormed?

6 A Yes.

7 Q He doesn't say they let us walk in. He says we
8 stormed the Capitol?

9 A Correct.

10 Q Does that sound like somebody who was just let in?

11 A No.

12 Q Okay, now you've indicated that there was a type of
13 particular eyewear that Mr. Caldwell was wearing; is that
14 correct?

15 A Yes.

16 Q And what is the significance of that particular
17 eyewear?

18 A There are military-style issued eye pro or eye
19 protection that just keep debris from hitting your eye when
20 you're going through woods, keeping sticks from getting into
21 your eye, or projectiles from hitting your eye, (indiscernible)
22 --

23 Q It's for protection?

24 A Yes.

25 Q Okay, and would you consider the fact that these are,

1 are they Oakleys or are they the special designed one?

2 A I cannot confirm.

3 Q Okay. The -- presence of these particular types of
4 protective eyewear, would that indicate to you that he was
5 coming prepared?

6 A It states he wanted to keep something out of his
7 eyes.

8 Q Okay, and when he expelled that mist, that spray, you
9 said that there were people coughing?

10 A Yes, the filmer of the YouTube video is -- doubles
11 over right before. It shows Mr. Caldwell coughing and gasping
12 and using profanity, using -- just trying to get his -- get
13 air.

14 Q Okay, but again, probably none of it went in the eyes
15 because of the eyewear?

16 A I can't confirm.

17 Q Okay. Now Mr. Smith asked you about whether the
18 Witness 1 knew Mr. Caldwell for three to four years. Now the
19 witness didn't say anything that they hung out or went out to
20 eat or anything like that, had lunch?

21 A No.

22 Q Or saw each other outside of these Airsoft events?

23 A No.

24 Q Okay, but he knew he was a white supremacist?

25 A That's what the witness stated.

1 Q And Mr. Smith asked you if there was an example that
2 this witness gave you?

3 A Yes.

4 Q And you indicated, yes, there was?

5 A Yes, I asked him why he believed Mr. Caldwell was a
6 white supremacist.

7 Q And what was his response?

8 A The witness stated that being in a position the
9 witness was in, he was able to invite a African-American
10 teenager out to these Airsoft events or tournaments. And he
11 was -- gave -- the African-American was poor. So he gave him
12 gear and equipment.

13 And like the witness stated that Mr. Caldwell asked
14 witness why he always brings this f'ing "N" word around to
15 these events.

16 Q Okay, he said f'ing "N" word?

17 A Yes.

18 Q Okay. Now Mr. Smith asked you about whether or not
19 Mr. Caldwell fled, continued to go to work and went home. Do
20 you recall that --

21 A Yes.

22 Q -- line of questioning? Did you have any indication
23 that Mr. Caldwell knew he was under investigation?

24 A No.

25 Q Okay, and Mr. Smith also asked you about the fact

1 that several of the Capitol rioters don't live in the District,
2 right? But do you -- are you aware of their financial
3 situations, the other Capitol rioters?

4 A Yes. The ones that we charged?

5 Q Or any of them?

6 A Not all of them.

7 Q Okay, and the ones that you know, have any of them
8 lost their jobs?

9 A Yes.

10 Q Okay, and were they detained or released?

11 A Released.

12 Q Were they charged with misdemeanors?

13 A All misdemeanor charges.

14 Q Okay, those that had been charged with felonies have
15 all been detained as far as you know?

16 A To my knowledge, yes.

17 Q Okay, and in this particular case, Mr. Caldwell has
18 been charged with two felonies?

19 A Yes.

20 Q Okay.

21 MS. BATSON: I'll pass the witness, Your Honor.

22 THE COURT: Any other questions, Mr. Smith?

23 MR. SMITH: Just a few follow up, Your Honor.

24 RE CROSS-EXAMINATION

25 BY MR. SMITH:

1 Q Go back to these Milsim events. These are very
2 specific type of events, correct?

3 A Yes.

4 Q And it's a very small community of people, correct?

5 A Very.

6 Q And likewise, it's such a small community of someone
7 that's been doing it for three or four years, they wouldn't
8 know someone that they despise so much, does that make sense?

9 A No.

10 Q Okay. Also, as part of your investigation, you
11 learned -- I'm assuming you have learned that officers, Capitol
12 Police, those who are out there also were shooting people with
13 rubber bullets, correct?

14 A Correct.

15 Q Okay. Now when he says someone was shot, you don't
16 know specifically if that was the person that got shot inside
17 the Capitol or one of these other individuals that was shot
18 with a rubber bullet?

19 A Correct.

20 Q Okay. Matter of fact, we do know that in the area he
21 was at, Mr. Caldwell was shot with a rubber bullet, right?

22 A Correct.

23 Q And you learned that as a part of your investigation?

24 A Correct.

25 Q So wherever that was, there could be other people

1 shot with rubber bullets too, correct?

2 A Yes.

3 Q Okay. And the last thing Ms. Batson started out with
4 is let's look at what he said, when we started storming. Do
5 you recall that?

6 A Yes.

7 Q Now did that we, those 1,200-plus people, right, is
8 that from the moment when President -- former President Trump
9 said let's go? Is that when they started storming when they
10 started walking up there? What spot was it?

11 A No.

12 Q Because it's all in the term of use. You've used the
13 words peaceable protest. If someone says they're storming,
14 they're walking up there, right?

15 A I don't know.

16 Q You don't know?

17 A I don't know which -- yeah.

18 Q In other words the bottom line is you don't know
19 either when we started storming, where that was from, do you?

20 A No.

21 Q Okay, thank you very much. I pass the witness.

22 MS. BATSON: No further questions.

23 THE COURT: All right, thank you, sir. You may step
24 down.

25 Ms. Batson, do you have any other witnesses?

1 (Witness is excused)

2 MS. BATSON: No, Your Honor.

3 THE COURT: All right, Mr. Smith, do you wish to call
4 any witnesses?

5 MR. SMITH: I do, Your Honor. We'd call Mrs.
6 Caldwell.

7 THE COURT: All right, Mrs. Caldwell, if you'll
8 please come up to the witness stand?

9 KAMBRIA CALDWELL

10 called as a witness for the Defendant, having been duly sworn
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q Good morning, ma'am.

15 A Good morning.

16 Q Could you please introduce yourself to the Court?

17 A My name is Kambria Ann Caldwell.

18 Q And how old are you, ma'am?

19 A 47.

20 Q And how do you know the gentleman sitting next to me?

21 A He's my ex-husband.

22 Q Okay, and how long have you known him?

23 A For 27 years.

24 Q Okay, and where do you live?

25 A In The Colony, Texas.

1 Q And how long have you lived there?

2 A For 27 years.

3 Q And in that 27-year period of time that you've lived
4 there, how long has Mr. Caldwell lived there?

5 A Well, it's been broken up. So, we were married for
6 14 years. And then, he was gone until 2015 or '16 and moved
7 back in.

8 Q Okay, so you all were married, divorced, and now you
9 cohabitate together, correct?

10 A Yes, sir.

11 Q And you have lived in that cohabitation since about
12 2016?

13 A Yes, sir.

14 Q Did you and Mr. Caldwell have children?

15 A Yes.

16 Q How many children?

17 A We have three.

18 Q And what are their age ranges?

19 A Our oldest daughter is 25, our middle daughter is 19,
20 and our son just turned 15 last week.

21 Q Okay, now I believe your middle daughter is in the
22 United States Air Force; is that correct?

23 A She is.

24 Q And your son is a freshman in high school?

25 A Yes.

1 Q And you know Daniel better than anybody else in this
2 courtroom. What kind of father is he?

3 A Excuse me. Dan has been very intentional with being
4 a father. He and I together have made it our mission and our
5 passion to give them a better life than what we've had. So
6 he's been very intentional about that.

7 So, he's very engaged, he's very hands-on. He has a very
8 precious relationship with each one of our kids. He is their
9 disciplinarian when it's necessary. He follows through with
10 what he says he's going to do.

11 He has created special times with them, like they all go
12 to dinner with Landon (phonetic) every Thursday night. He's
13 their biggest cheerleader and he always shows up, so.

14 Q Because one of those things of that connection and
15 that is the parent and Landon's, Daniel and Landon's
16 connection, was being involved in this Milsoft community; is
17 that correct?

18 A Yes.

19 Q That is something that they did together?

20 A Yes, every other weekend.

21 Q And you've been in the courtroom and you've heard the
22 testimony from someone from the Milsoft community said he was a
23 white supremacist. You've known Daniel for 27 years. Is that
24 true?

25 A No.

1 Q Did -- do you know did Daniel have a social media
2 presence?

3 A No.

4 Q Was he on social media at all?

5 A No.

6 Q And you probably know Daniel better than any of us
7 from head to toe? Does he have any tattoos or emblems that are
8 symbolic to those in the white supremacists?

9 A No.

10 Q Were you shocked when you heard that?

11 A Yes.

12 Q Is someone of Daniel's very good friends African-
13 Americans?

14 A Yes.

15 Q Hispanics?

16 A Yes.

17 Q People that he had -- he'd worked with at T.I.?

18 A Yes.

19 Q Your husband, I'm sorry I call him your husband. You
20 all still together. He's been -- he was employed for several
21 years with T.I.?

22 A Yes.

23 Q On two separate instances?

24 A Yes.

25 Q As a result of his arrest, he was terminated; is that

1 correct?

2 A Yes.

3 Q We heard FBI Agent Mr. Webb indicate that he wouldn't
4 have any money to go to D.C. Is that a concern?

5 A No.

6 Q Since you and Mr. Caldwell have been back living
7 together, is alcohol an issue?

8 A Pardon me?

9 Q Is alcohol an issue?

10 A No.

11 Q Is drugs an issue?

12 A No.

13 Q Do you believe Daniel to be the kind of individual if
14 he's given instructions, he follows them?

15 A Yes, sir.

16 Q Okay. It's my understanding that Daniel is disabled
17 through the VA. It's form of disability income?

18 A Yes.

19 Q But he's also in the process of trying to get some
20 additional services through the VA; is that right?

21 A Yes, he is.

22 Q And what is that for?

23 A It's for traumatic brain injury.

24 Q Okay, and he actually had an appointment that he
25 missed as a result of his arrest; is that correct?

1 A Yes.

2 Q Is that something that is important to Daniel and
3 important for his ongoing health?

4 A Yes.

5 Q I believe you met with a member of the U.S. Probation
6 Office about a week and a half ago on February 12th?

7 A Yes, I did.

8 Q Did they explain to you what a third-party custodian
9 was?

10 A She did.

11 Q Are you willing to serve as a third-party custodian
12 for Mr. Daniel Caldwell?

13 A Yes, I am.

14 Q And do you believe that if he was given conditions of
15 release, he would follow those?

16 A Yes, I do.

17 Q If he would not follow those conditions, what would
18 you do?

19 A I would contact the Court immediately.

20 Q It's my understanding at some point in time, there
21 were firearms inside the house? Is there still firearms in the
22 home?

23 A No, they've been removed.

24 Q And you've removed those in the hope and anticipation
25 of his release?

1 A Yes.

2 Q Thank you very much. I pass the witness.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MS. BATSON:

6 Q Hi, Ms. Caldwell.

7 A Hi.

8 Q The interview with the probation officer indicates
9 that your husband is estranged from some family members due to
10 a family disagreement? Are you aware of that?

11 A I don't recall ever saying that. I mean, I know he's
12 estranged from them, but not due to a disagreement.

13 Q Okay, I'm sorry, that's probably a bad question.
14 Your husband reported that he's estranged from his mother,
15 his -- and two of his brothers because of a family
16 disagreement. Do --

17 A I'm his ex-wife, but --

18 Q I'm sorry?

19 A I'm his ex-wife.

20 Q Right, but you've known him for 27 years and better
21 than anybody according to his counsel. So, is that a true
22 statement?

23 A Yes.

24 Q It is?

25 A I'm just trying to recall what unfolded. So, I'm not

1 recalling the incident. So, that's what I'm having the problem
2 with is remembering what happened. So, I'm hesitant to answer
3 that.

4 Q Okay.

5 A I don't remember.

6 Q So you don't know what caused the estrangement?

7 A Right.

8 Q Okay, how long has this -- have they been estranged?

9 A Oh, it's been several years. It's been a lot of
10 years.

11 Q When you say several, more than 10?

12 A I want to say it's approximately -- I don't know, I
13 really don't know.

14 Q Okay, so you don't know how long they've been
15 estranged or the cause of the estrangement?

16 A Correct.

17 Q Okay.

18 A And it's been a long time, it's been a long time.

19 Q Okay, and so again, no idea of why?

20 A I mean, I can guess, but I don't feel comfortable
21 doing that. Like I would have to go back and look at -- I
22 would just have to try and recall it. I apologize.

23 Q Okay, all right. Now you indicated that I think you
24 were surprised that your husband was being called a white
25 supremacist?

1 A Yes, ma'am.

2 Q Okay, have you ever heard your husband use racial
3 comments?

4 A No.

5 Q Okay, ma'am, I remind you you're under oath.

6 A Yes, ma'am.

7 Q Okay, I'll ask you again. Have you heard your
8 husband use racial comments?

9 A No.

10 Q Okay, do you have any African-American friends?

11 A Yes.

12 Q Okay, who are they?

13 A Do I personally or does he?

14 Q Well, let me ask you this. Do you all have any
15 African-American friends that would come over to the house for
16 dinner?

17 A No.

18 Q Okay. And you do -- do you have any African-American
19 friends?

20 A I do.

21 Q Who are they?

22 A Shauntessa (phonetic).

23 Q Okay, last name?

24 A Her last name's Russell (phonetic).

25 Q Okay, who else?

1 A Larry Tidwell (phonetic).

2 Q Larry Tidwell?

3 A Yes, ma'am.

4 Q Okay, does he work with your husband?

5 A No.

6 Q Okay.

7 A That's all that come to mind right now.

8 Q Okay, what about your husband's friends?

9 A Sammy Edwards (phonetic).

10 Q Sammy Edwards?

11 A Uh-huh.

12 Q Is this a co-worker?

13 A He's an ex-coworker. He's no longer working with
14 him.

15 Q Okay, so Mr. Edwards worked at T.I.?

16 A He did.

17 Q Okay. Is Mr. Edwards no longer there because your
18 husband's no longer there either? So is Mr. Edwards still
19 employed at T.I., his former employer?

20 A Yes.

21 Q Okay, and who else?

22 A Larry Tidwell?

23 Q And how do you know Mr. Tidwell?

24 A We've known him for 24 years.

25 Q Okay, and how do you know him?

1 A From work.

2 Q At T.I.?

3 A Uh-huh.

4 Q Okay, does he still work there?

5 A No.

6 Q Okay, anybody else?

7 A No.

8 Q Okay. Okay. Now Ms. Caldwell, when you were
9 interviewed by law enforcement, you indicated that your husband
10 had not been in any trouble with law enforcement and had no
11 prior run-ins with law enforcement? Do you recall that?

12 A Ma'am, I don't recall them asking that question. If
13 they asked me that question, I would have been truthful and
14 told them that, yes, he has. So I don't recall him asking me
15 that question at all.

16 Q Okay, you don't recall them asking you --

17 A (Indiscernible.)

18 Q -- whether he'd been in trouble with law enforcement?

19 A They did not ask me that question.

20 Q Or run into law enforcement? You don't recall either
21 one of those questions?

22 A No.

23 Q Okay.

24 A I would have no problems giving them the truth about
25 that, because it's public information. So I would have told

1 the truth.

2 Q Okay, and what is the truth?

3 A Is that he has.

4 Q And what do you know his criminal history to consist
5 of?

6 A He's had a few DUIs. And then, he and I had a
7 altercation that involved the police coming over.

8 Q Okay, the altercation in which the police came
9 over --

10 A Yeah.

11 Q -- what were the circumstances surrounding that?

12 A It was just -- it was an altercation that that he and
13 I got into, so.

14 Q Okay, and what happened? I reviewed the offense
15 report, but so that the Court knows, what happened during that
16 altercation?

17 A Well, we had been going through a lot, of you know,
18 things, a lot of issues. And so, it was kind of all coming to
19 a point where we were both very heated. So it just escalated
20 and it just -- it was -- so I had to call 911. And there was a
21 911 interference.

22 And so, at the time when they came, they were going to
23 actually probably arrest both of us, but they ended up
24 arresting Daniel for 911 interference.

25 Q Okay, so what were the circumstances regarding the

1 interference with the 911 call?

2 A I could not find some of my personal belongings, and
3 so, I was trying to find them. And so, I thought they were in
4 Daniel's backpack.

5 So when I went to go grab his backpack, he became very
6 upset. So we had a tug-of-war with the backpack.

7 Q Okay, and according to your statement to police at
8 the time, he grabbed you, correct?

9 A He did not grab me. He grabbed the backpack.

10 Q Okay.

11 A He never put his hands on me.

12 Q He didn't grab you?

13 A No, ma'am.

14 Q Okay, did he subsequently throw you on the table, the
15 kitchen table?

16 A No, he was --

17 Q Okay, how did you end up on the kitchen table?

18 A It wasn't the kitchen table, ma'am.

19 Q Or a table?

20 A Yeah, it was a table in the living room.

21 Q Okay, how did you end up on that?

22 A By him grabbing the backpack. During this whole
23 altercation, he never put his hands on me. So, he's never been
24 violent or never -- we never got in anything like that before.
25 So it was totally out of the norm of his character and I should

1 have let go of the backpack.

2 Q Okay, and Ms. Caldwell, now again, you're under oath.

3 A Yes, ma'am.

4 Q Do you recall signing a statement with the police
5 indicating that you did believe further physical violence would
6 occur?

7 A No.

8 Q You don't recall that?

9 A Never.

10 Q The incident happened February 21st of 2008?

11 A Yes, ma'am.

12 Q Okay.

13 A I don't recall saying that I feared further violence
14 from him.

15 Q Do you remember going in on February 25th and
16 speaking with the police?

17 A Yes, ma'am.

18 Q Okay, and it would have been on -- at that time,
19 where you initialed next to the form that said you believed
20 that further violence would occur? Do you not recall that?

21 A I -- that was a long time ago. I don't.

22 Q Okay.

23 A I'm sorry.

24 Q All right. Do you recall requesting a protective
25 order?

1 A Yes, ma'am.

2 Q Okay, okay, and do you recall saying that he became
3 very violent, slammed you on the table, and straddled you so
4 you couldn't move?

5 A Yes, ma'am.

6 Q Okay, and that he used his strength to pick you, set
7 you back down, pick you up again?

8 A Yes, ma'am.

9 Q And that when you tried to call 911, he yanked the
10 phone up out of the wall?

11 A Yes, ma'am.

12 Q And that it was your oldest daughter that had to call
13 911 on her cell phone?

14 A Yes, ma'am.

15 Q Okay, Mr. Smith asked you about your husband being
16 disabled, but he is able to work?

17 A Yes, ma'am.

18 Q Okay, and he -- until recently, he had the job at
19 T.I. for 12 years and one month?

20 A Yes, ma'am.

21 Q Okay, how many times has he been seen for this, the
22 TBI?

23 A He hasn't been seen. He has his appointment the day
24 he got arrested.

25 Q Okay, so he had the TBI in 1991. So, for 30 years,

1 he had not seen anybody or had any appointments for the TBI?

2 A I'm -- not that I'm aware of.

3 Q Okay. Now, ma'am, you indicated I think that you
4 worked for a nanny service?

5 A Yes, ma'am.

6 Q Okay, and you're working from home?

7 A Yes, ma'am, but I also go in the field as well.

8 Q You go in the field?

9 A As well, yes.

10 Q Okay.

11 A A caregiver's not able to meet one of our clients and
12 I go and I'm the caregiver.

13 Q Okay, how often would you say you go in the field?

14 A It just depends. I mean, every day's different, so
15 it just depends when I'm -- when I can't find someone to go
16 cover, then I'll go cover.

17 Q Okay.

18 A So, I mean, sometimes it can be three times a week.
19 Sometimes it won't be for a whole month. It just -- it
20 depends.

21 Q Okay. And your finances aren't listed on here, but
22 how much do you make a month?

23 A I make -- it depends, because I work on call. So my
24 checks vary, but --

25 Q Just what -- a range?

1 A 4-.

2 Q I'm sorry?

3 A 4,000.

4 Q 4,000 a month?

5 A Uh-huh.

6 Q Approximately? Okay. Now your husband, according to
7 the Pre-trial Services Report, had about \$35,000 in between the
8 checking and a savings account. Were you aware about that?

9 A No, ma'am.

10 Q Okay, do you have any money saved up in a savings?

11 A Yes, ma'am.

12 Q No?

13 A Yes, I do.

14 Q Okay, how much?

15 A About 20-.

16 Q 20,000?

17 A Uh-huh.

18 Q I'm sorry?

19 A In my savings, I have 20-.

20 Q Accessible?

21 A Yes, ma'am.

22 Q Okay. Now you indicated to Mr. Smith that there were
23 firearms at the residence, but they're no longer there?

24 A Yes, ma'am.

25 Q Okay, how many firearms was it?

1 A There was probably two of them that I -- they're gone
2 as well. There was 16 guns, I believe, and then 13 rifles.

3 Q And where are they?

4 A They're in storage.

5 Q Where?

6 A I mean, I'm sorry, take that back. They are actually
7 with my daughter's husband out of his house.

8 Q So, they're not in storage?

9 A No, I put something else in storage. I apologize.

10 Q And this would be your daughter, which daughter?

11 A Carissa (phonetic) Caldwell.

12 Q Carissa, the 25-year old?

13 A Threadgill (phonetic) now. Yes, ma'am.

14 Q Okay, and where do they live?

15 A They're in the process of moving into a trailer on
16 Brent (phonetic) Threadgill's parents' property, because
17 they're moving from McKinney to Whitewright.

18 Q Okay, and so, there's 19 firearms total?

19 A Yes, ma'am.

20 Q All right, and they're with your daughter?

21 A And two of them are mine.

22 Q Okay, a handgun and -- which ones are yours?

23 A Two handguns.

24 Q Okay, so 17 firearms belong to your husband? Is that
25 about right?

1 A I think so, yeah.

2 Q Okay.

3 A I think that's right.

4 Q Okay. All right, I believe that's all I have, Your
5 Honor, thank you.

6 THE COURT: All right, redirect?

7 REDIRECT EXAMINATION

8 BY MR. SMITH:

9 Q Sammy Edwards, who is he?

10 A He's Dan's -- one of his close friends.

11 Q He's an African-American man?

12 A Yes, he is.

13 Q You said Sammy Edwards used to work at T.I.?

14 A Yes.

15 Q But that's really not how him and Mr. Caldwell
16 socialize together, correct?

17 A Huh-unh.

18 Q How do they socialize together?

19 A They would go to D-14 and Airsoft together and then,
20 they went to the Milsim event.

21 Q This same --

22 A Uh-huh.

23 Q -- event where this individual said he was a white
24 supremacist?

25 A Yes.

1 Q Okay. You made a comment something else was in
2 storage. And that something else that's in storage is ammo,
3 correct?

4 A Yes.

5 Q I know it's -- some of the questions you were asked
6 earlier about that what occurred in 2008, those are scabs. And
7 having to talk about and hear about, just pulling off that
8 scab, right?

9 A Yes, sir.

10 Q You were asked about things that you had said and
11 what you had told officers?

12 A Yes.

13 Q Matter of fact, all the stuff was resolved through
14 what a criminal offense, it's a Class C called a disorderly
15 conduct?

16 A Yes.

17 Q And part of that is when spouses fight, it's not
18 always one way?

19 A Correct.

20 Q It was some both ways going on?

21 A Yes.

22 Q And that after time had cooled, you went and shared
23 really what occurred?

24 A Uh-huh.

25 Q Is that correct?

1 A Yes.

2 Q Okay, thank you very much. I pass the witness.

3 MS. BATSON: Just one follow-up, Your Honor.

4 RECROSS-EXAMINATION

5 BY MS. BATSON:

6 Q Ma'am, right after this incident that happened on the
7 21st, you went to talk to the police on the 25th, you filed for
8 divorce in between that time; is that correct?

9 A I went to file for divorce the next day.

10 Q The 22nd?

11 A It was -- yeah, it was after he was arrested, I went
12 and filed for divorce the next day.

13 Q All right, thank you.

14 MR. SMITH: No further questions.

15 THE COURT: I have just a few questions.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And it's on that same issue just because
18 it was a question that I had in looking at the Pre-trial Report
19 and putting together the dates that you were married and then
20 divorced, was that incident, the incident that gave rise to the
21 assault causing bodily injury, family violence charge what
22 prompted your divorce?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Had he ever been violent with you before
25 that incident?

1 THE WITNESS: Never.

2 THE COURT: So, just out of the blue for the first
3 time since you've known him, he acted violently?

4 THE WITNESS: Well, I would say leading up to that,
5 there was a lot of tension. There was -- I mean, there was a
6 lot of things going on that he was unemployed, he was
7 live -- he was working from Pennsylvania. So he was not home
8 very often. There was a lot of factors that played into what
9 led up to that day.

10 THE COURT: And I think your husband's counsel asked
11 you some questions sort of insinuating that you were at fault
12 in this as well.

13 I think you testified you filed for divorce the next
14 day. You never -- I mean, you went forward with the divorce,
15 correct?

16 THE WITNESS: So I filed for divorce the next day.
17 However, for three years, we did not make that divorce final.
18 So it stayed in the position where we were trying to work
19 things out and see if we can reconcile and, you know. So
20 I -- it was a while before we finalized it.

21 THE COURT: All right, but nevertheless, you
22 ultimately did, correct?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Did you know that he was going to
25 participate in the January 6th event at the Capitol?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: What did he tell you about it?

3 THE WITNESS: Well, he said he wanted to go and he
4 gets off on Wednesday mornings. And so, he went to the one
5 here in Dallas. And so, I think that (indiscernible) is going
6 to be the same. He had a great time at the one here in Dallas.

7 So I wanted to go with him. I had back surgery in
8 December, so I wasn't able to go. He asked his dad to go and
9 then he asked a few friends. So it was a last-minute decision
10 to go.

11 THE COURT: Did he have or ever talk to you about
12 intentions at that time to actually storm the Capitol?

13 THE WITNESS: No, ma'am.

14 THE COURT: Did he talk to you about it when he got
15 home?

16 THE WITNESS: Yes, he did.

17 THE COURT: And --

18 THE WITNESS: He got hit with a rubber bullet, so
19 yeah, I mean.

20 THE COURT: So he told you he got hit with rubber
21 bullets. What else did he tell you?

22 THE WITNESS: I mean, he just mentioned that it got
23 out of hand. And before that happened, I mean, he met some
24 really nice people.

25 I mean, he walked there with someone from the hotel.

1 So, he made a friend and he was enjoying it on the front half.
2 He mentioned that the agents were being aggressive and that's
3 it, that's all I remember.

4 THE COURT: So I know you said a minute ago that you
5 had wanted to go, but were unable to because of a medical
6 issue.

7 At least as to the allegations that had been made by
8 the Government, and that is that he went into the Capitol, that
9 he shot pepper spray at law enforcement, do you have an issue
10 with that conduct if it's true?

11 THE WITNESS: Absolutely.

12 THE COURT: I'm asking you this specifically because
13 of the February 22nd, 2008 incident. I know that you're being
14 proffered as a third-party custodian.

15 Do you believe that you really can supervise your
16 husband or your ex-husband? I mean, do you believe that he
17 would listen to you and if you had to -- I mean, you're
18 basically responsible for him as a third-party custodian. Do
19 you think that you're able to do that?

20 THE WITNESS: Yes, ma'am. I mean, I've seen him and
21 his character. And when he has gotten, you know, in situations
22 with the DUI and having to go to probation officer, and having
23 to own up to his responsibilities, he's always complied.

24 And I don't feel at this point he would do anything
25 else to cause pain or suffering to his son and his daughters.

1 So this has been devastating for them.

2 And I believe that he would not put them through
3 anything more. He would comply and he would follow the rules.

4 THE COURT: And I hear you and I hear what you've
5 said about him as a father, but what about to you?

6 THE WITNESS: He is very respectful to me. Very
7 respectful. And he does listen, he does, but I feel -- I don't
8 know because I wish I would (indiscernible) or told him not to
9 go, because he would have listened.

10 But I didn't know all that was going to happen. I
11 did not foresee any of that was going to happen. So he does
12 listen and he would not be in my house for the last six years
13 if he didn't. Like we wouldn't be back together if he didn't,
14 so.

15 THE COURT: All right, thank you. You may step down.

16 (Witness is excused)

17 THE COURT: Mr. Smith, do you want to call any other
18 witnesses?

19 MR. SMITH: No, Your Honor, we rest and close.

20 THE COURT: Ms. Batson, I've seen -- I've obviously
21 read the complaint and the allegations in the complaint.
22 However, I've not seen the two videos that are at issue. Do
23 you have those?

24 MS. BATSON: I don't have them, Your Honor. I have
25 not seen them, but the case agent has them.

1 (Counsel confer)

2 MS. BATSON: Oh, it's on a disk at the office. We
3 can supply to the Court.

4 THE COURT: I also have not seen a copy of the
5 offense report that we've discussed. And I don't know if there
6 was any amendment that was later made to it, but I would also
7 like to see that.

8 MS. BATSON: The 2008 offense?

9 THE COURT: The 2008 offense report.

10 MS. BATSON: Okay, I can -- Your Honor, if we could
11 submit the disk and the offense report first thing in the
12 morning?

13 THE COURT: Yes.

14 MS. BATSON: Okay.

15 THE COURT: Mr. Smith?

16 MR. SMITH: Can I respond to that, the question about
17 the offense report?

18 THE COURT: Yes.

19 MR. SMITH: I know there's not going to be an
20 amendment or a supplement to the offense report. It's based on
21 what he pled to.

22 And you have a Class A misdemeanor assault causing
23 bodily injury, family violence charge. And you heard the
24 witness testify that both of them probably could have got
25 arrested or was going to get arrested, but they didn't that

1 night.

2 In my experience of 20 years of doing this, there's a
3 reason why it was reduced down to what it was for disorderly
4 conduct out of Denton County, Texas, which is a very strong
5 prosecution county. That typically does not happen.

6 So there would not be an amendment, but I anticipate
7 that there was something that occurred that led to that.

8 THE COURT: Well --

9 MR. SMITH: And that's --

10 THE COURT: I also just say based on my own personal
11 experience with those types of cases, it is common for the
12 female to subsequently either try to take responsibility or at
13 least take some responsibility for actions that were not hers.

14 MR. SMITH: And I've seen that as well, Your Honor.
15 I don't know other than what has been -- what was -- how the
16 case was resolved.

17 And that's all I can say regarding that and the
18 witness' testimony about I heard her say that both could have
19 been arrested that night, so.

20 THE COURT: Okay, all right, I want to see those
21 things that Ms. Batson's going to get to me. I'll review them
22 tomorrow.

23 So, I suspect -- I will definitely rule on this issue
24 this week. If the motion is -- will be granted, then I'll
25 issue an opinion.

1 If I'm going to deny the motion and release Mr.
2 Caldwell on conditions, obviously, you'll need to come back and
3 Ms. Caldwell will come back.

4 Let me ask you one other question before we adjourn,
5 Mr. Smith. I know that, you know, based on at least what's
6 been reported in the Pre-trial Report, there is some
7 estrangement with some family members and not with others.

8 Is there another third-party custodian that you're
9 aware of, that you might be able to offer?

10 MR. SMITH: Yes, Your Honor. That would be his
11 father, who lives in Eustace, Texas and his sister that lives
12 in Eustace, Texas with --

13 THE COURT: Where do they live?

14 MR. SMITH: Live down by the Kaufman County.

15 THE COURT: Okay.

16 MR. SMITH: They -- Daniel has been estranged from
17 his mother and two brothers for several years and -- but
18 he -- I believe the Pre-trial Services Report indicates that he
19 speaks with his father daily.

20 His sister, I think, also daily. And he has another
21 brother who's in medical school at Jackson -- in Jackson,
22 Mississippi he speaks to monthly.

23 THE COURT: Why don't we do this? Why don't counsel
24 go ahead and make their closing arguments? And then, that way,
25 we don't necessarily have to come back. We can review the

1 additional evidence and then, that will be it.

2 So, Ms. Batson, if you want to go ahead and present
3 closing argument, please?

4 MS. BATSON: Yes, Your Honor.

5 And, Your Honor, I understand what the Court just
6 said, but if you are inclined to release, as I've discussed
7 with Mr. Smith, my directive from D.C. is to appeal and ask the
8 Court for a stay.

9 And so, I would ask that we do come back to Court, so
10 I can make an appropriate motion or request at that time,
11 unless --

12 THE COURT: Or I could notify, counsel.

13 MS. BATSON: Okay, all right, okay, Your Honor, and
14 just before I begin, I just wanted to remind the Court that
15 this is a presumption case. It's a crime of violence
16 under -- he's charged with a violation of 18, 231 and as well
17 as 111.

18 And definition of crime of violence that we're
19 relying on is under Title 18, 3156(a)(4)(B), which is
20 incorporated in the -- in 18.3142(f)(1). So we are alleging
21 that it is a crime of violence.

22 As the Court heard today from the agent, this
23 Defendant brought a weapon spray to a peaceful protest. He
24 was -- he utilized that spray against law enforcement, although
25 his statement was that he used the spray because officers

1 sprayed him first. That is not borne out by the video.

2 He indicated in the ProPublica video that he sprayed
3 at least 15 officers. And as Agent Webb indicated, this
4 indicates to him a lack of respect for law enforcement.

5 The fact that the Defendant engages in these Milsoft
6 events, which are events for military tactics, he engages in
7 these types of events pretty much on a regular basis.

8 And as Agent Webb stated that there was a particular
9 individual that he met that indicated that this Defendant is
10 wacko, a complete wacko, and he believed to be a white
11 supremacist.

12 And even gave an example of the incident in which
13 this Defendant did in fact use a real -- the "N" word. He
14 brought fire -- according to that witness, he brought real
15 firearms to the event to the range and had to be admonished
16 that those were not appropriate to be there.

17 There's no doubt that the Defendant was there in D.C.
18 Based on his own words, it puts him inside the Capitol. If he
19 was standing next to the woman that got shot by all videos and
20 by all evidence, that happened inside the Capitol when the
21 Capitol Police shot her.

22 And I understand, Your Honor, you've read the
23 complaint and you can see the words that Mr. Caldwell used in
24 relation to that event that puts him inside the Capitol.

25 The fact that he uses the word "storming the Capitol"

1 and that he was next to that woman who was shot, squarely
2 places him inside.

3 The fact that the spray that he did use was used to
4 incapacitate and affected the breathing, you can hear people
5 coughing on there. I believe the agent said even Mr. Caldwell
6 was coughing on there.

7 He has -- even though the firearms are not currently
8 according to his ex-wife, are currently not in the residence,
9 he indicated that he did have numerous weapons at his
10 residence.

11 The search warrant was executed. They found clothing
12 that was consistent with what he wore in the videos while he
13 was in D.C., as well as that assault pack.

14 The agent went over the probable cause that he
15 believed existed for each of the four charges that Mr. Caldwell
16 has, is indicated by an interview with the wife he did travel
17 there and she did testify to that.

18 Your Honor, I submit that based on the fact that this
19 Defendant did bring a weapon to supposed peaceful protest, did
20 use it against law enforcement, assaulting the police, storming
21 the Capitol, going inside, never turning around and saying I'm
22 not going to be a part of this, shows that he is a danger to
23 the community.

24 The fact that he does not have ties to D.C., that
25 he's now lost his job, may not have the financial means to get

1 there, it is a factor to show that there is a risk of
2 nonappearance.

3 And although Ms. Caldwell was presented as a suitable
4 third-party custodian, I submit to the Court that she's not.
5 Although she didn't recall making the statements to law
6 enforcement that her husband had never had any run-ins with law
7 enforcement or never been in trouble, the fact of the matter is
8 is that he has.

9 And as the testimony showed in 2008, there was an
10 incident in which she felt that she had to call the police.
11 And as a result of that incident, she did sustain injuries.

12 In her statement on the 25th, she outlined those
13 injuries and described the pains that the injuries caused her.
14 The Defendant impeded the 911 call, which led to his
15 conviction, a \$300 fine.

16 I believe Mr. Smith said it was a Class C misdemeanor
17 charge or whatever, but the fact of the matter is the incident
18 did happen and Ms. Caldwell was the victim.

19 I mean, we just believe, Your Honor, that she is not
20 a suitable third-party custodian. She divorced him right after
21 that incident. And as she indicated, the divorce was pending
22 for three years, but they did go ahead and get through the
23 divorce.

24 Granted, they're perhaps they're trying to work it
25 out. He is living with her, but they are still divorced at

1 this time and not currently married. And we just don't believe
2 she's a good third-party custodian. Thank you.

3 THE COURT: Thank you.

4 MR. SMITH: First and foremost, I disagree with the
5 representation Ms. Batson made. Of the four allegations
6 against Mr. Caldwell, I believe one of those is a presumption
7 case. The other three are not. The one that is would be 18
8 U.S.C. §111(a)(1).

9 First and foremost, let's talk about items beyond
10 change. Yes, he was in D.C. on January 6th.

11 THE COURT: Wait, Mr. Smith, I want to keep up with
12 you. And I'm -- my -- you've got me thinking now about what
13 you've just said, so let me look back at the complaint just a
14 moment.

15 MS. BATSON: And Your Honor, I have two cases that I
16 can cite to the Court for the 231 crime of violence.

17 THE COURT: Okay.

18 MS. BATSON: U.S. v. Watkins, 940 F3d. 152, pin cite
19 is 167. It's a 2019. And it's the 2nd Circuit. And then,
20 U.S. v. Radenbush (phonetic). And I only have the Westlaw
21 cite, because this was February 2021. And it's Westlaw 371782.

22 THE COURT: And what year was it, I'm sorry?

23 MS. BATSON: The last one was 20 -- February 2021.

24 THE COURT: Okay.

25 MS. BATSON: And these were supplied to me by

1 our -- my supervisor in the appellate --

2 THE COURT: Okay, all right, thank you.

3 MS. BATSON: Okay.

4 MR. SMITH: May I proceed, Your Honor?

5 THE COURT: Yes, thank you.

6 MR. SMITH: In my review, I did not see that. And if
7 that's the case, I do agree that 111(a)(1), it is a presumption
8 case.

9 THE COURT: Okay.

10 MR. SMITH: Facts don't change. Yes, he was in D.C.
11 on January 6, 2021. Don't tell me, show me. When the
12 questions of storming, all we hear is rhetoric and words all
13 the time.

14 This is what we know. What we know from the Agent
15 Webb beyond change is he was at the Capitol. He has no
16 evidence to suggest that he was inside the Capitol, zero.

17 He wanted to tell you that he deleted all his social
18 media. He didn't even know if he had any social media.

19 Did they ever go and confirm this -- and corroborate
20 this information from one person? Does it make sense that
21 someone knows someone for three or four years, thinks they're a
22 racist, and don't even know their name? Doesn't pass the smell
23 test.

24 THE COURT: But let me ask you this, Mr. Smith,
25 because I don't disagree with you that the investigation at

1 least into -- for purposes of the issue of detention seems a
2 bit lacking in terms of really no corroboration.

3 But isn't it true that as to the presumption
4 offenses, regardless if he was in the Capitol or not in the
5 Capitol, there is sufficient evidence that he pepper sprayed
6 officers?

7 MR. SMITH: Listen, that charge, the 111 charge, can
8 be charged in three different ways. That charge can be charged
9 as a misdemeanor with punishment less than one year. It can be
10 charged with punishment range up to 8 years. It can be charged
11 with punishment range up to 20 years.

12 What we have not heard is that the 15 officers,
13 whether someone said they sprayed it, but okay, is there a
14 complainant that is actually affected by the spray?

15 And who are those 15 people? And who are those
16 individuals? We haven't heard that. We haven't heard that
17 someone was injured. We haven't heard that someone was -- met
18 the requirements of that. We haven't seen an actual
19 complaining witness.

20 THE COURT: Right, you're saying that that -- that
21 you have to have someone that was injured for this particular
22 offense?

23 MR. SMITH: Well, I think that to meet the elements
24 of the offense, you do. And that elements of 111 is that
25 impeded -- if I may? Assaulting, resisting, or impeding. And

1 you'd have to have a specific person.

2 THE COURT: Well, but to assault --

3 MR. SMITH: You'd still have to have a complaining
4 witness that there was an assault that occurred.

5 THE COURT: Well, isn't there evidence that an
6 assault occurred? I mean, isn't there a video showing the
7 assault?

8 MR. SMITH: There's a video. The video, you can make
9 anything in the world look the way you want to look. But I
10 think we're going afar from the Court asking me question. I
11 want to kind of swing back to that, instead of having --

12 THE COURT: Well, it's important to me, because I
13 understand some of these other issues that you dispute. And
14 you know, maybe there is a question about evidence, but for
15 these particular things, which make up the presumption
16 offenses, I don't really see that they're disputed.

17 MR. SMITH: That's why I want to get back to that.

18 THE COURT: Okay.

19 MR. SMITH: That question, because you asked me
20 let's -- and I don't mean to sound like I'm arguing with the
21 Court, because I don't want to. I believe what the Court said,
22 the Court said I see your point on these other issues.

23 THE COURT: Uh-huh.

24 MR. SMITH: Regarding issues that come up on terms of
25 release, let's just assume that I'm thinking, okay, Smith, the

1 Court assumes I'm seeing what you are.

2 Now the question is now because of this offense,
3 should we release him? I think that's the question the Court
4 had.

5 And our position is this. One, as we stand here
6 today, we believe that there are factors that this Court could
7 put in place to overcome that presumption, to overcome the
8 presumption of concern for, one, safety of the community, the
9 safety to ensure that he will be in the District of Columbia,
10 to ensure that he will comply with all the terms and conditions
11 that this Court may put on him.

12 And I believe the Pre-trial Services Report makes a
13 pretty extensive list of items that it would require out of Mr.
14 Caldwell.

15 And we believe if those put here in play -- those
16 items are put in place, those items can provide the Court the
17 opinion and the concern and the safety to ensure that he will
18 abide by all those.

19 And I don't know if that answers the Court's
20 question. I would --

21 THE COURT: Well --

22 MR. SMITH: I'm not here -- I didn't think -- not to
23 debate the facts --

24 THE COURT: Right.

25 MR. SMITH: -- of the -- of January 6th.

1 For purposes of release, I believe that there are
2 conditions that the Court can put in place. And the history of
3 Mr. Caldwell of his 48 years, 47 years of his life reflects
4 someone that, one, served his country, received an Honorable
5 Discharge, took an oath, followed that oath when he joined the
6 military, worked for T.I., a very respected organization for a
7 total of about 23 years, and as a result, he lost his job as a
8 result of his arrest.

9 A lot of information. There's a lot of testimony
10 about 2008. Relationships go back and forth. All I know is
11 right now, we have Ms. Caldwell that's had this man in her home
12 since 2016.

13 They've been raising their children together. And we
14 heard from her that the Daniel Caldwell she knows would follow
15 all instructions that the Court would place. And he does
16 respect her. And so --

17 THE COURT: Well, let me tell you the way I see that
18 issue. And it was a question I had before this hearing
19 started.

20 Ms. Caldwell readily answered your questions. She
21 did not Ms. Batson's questions. I understand that issue, that
22 particular issue, the 2008 incident, is not something that
23 anyone would want to revisit.

24 And so, I understand those questions are difficult,
25 but it seems to me -- I don't get the sense that there is the

1 type of relationship between Mrs. Caldwell and Mr. Caldwell
2 that may be necessary for a third-party custodian, particularly
3 when there is male Defendant and a female person who would be
4 the custodian, given the history.

5 I do not deny, and what I see is someone who a
6 parent, who is trying to give as normal of a life as possible
7 to their children, but that is different. That's respectable
8 and I see -- I believe that that is the case from both of them.

9 But there are different issues when you're talking
10 about a proper third-party custodian and that's really my
11 concern here.

12 MR. SMITH: And we would be happy to provide his
13 father to this Court. Because he has lived with his wife for
14 so many years, I say why, because they still live under the
15 same house with his ex-wife for so many years, that would
16 be -- that is where his -- where he lives and that's where his
17 home is and that's where they make their home together.

18 But I understand and respect the Court's concern.
19 And we can provide his father. Because of the weather and
20 I'm -- things that occurred last week, it's a little more
21 challenging to get his father here today.

22 THE COURT: All right, thank you, Mr. Smith.

23 MR. SMITH: Thank you.

24 THE COURT: Like I said, I realize that we were
25 supposed to have this hearing last week and because of weather,

1 we couldn't.

2 So, I will -- I'll look at the evidence that's
3 submitted tomorrow and issue a ruling.

4 Ms. Batson, if I don't call the parties back, I will
5 let the -- let both counsel know prior to issuing any ruling,
6 okay? All right, we'll stand adjourned.

7 (Proceedings concluded at 1:17 p.m.)

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CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

CH

April 15, 2021

Chris Hwang
Transcriber

Date

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL CALDWELL,

Defendant.

Case No. 4:21-mj-00107-KPJ

Plano, Texas
March 4, 2021
9:45 a.m.

TRANSCRIPT OF CONTINUED DETENTION HEARING
BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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WITNESSES FOR PLAINTIFF

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
n/a				

WITNESSES FOR DEFENDANT

James Caldwell	4	7	10	
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1 (Call to order at 9:45 a.m.)

2 THE COURT: The Court calls case number 421MJ107,
3 United States v. Daniel Ray Caldwell.

4 MR. TATUM: William Tatum for the Government.

5 MR. SMITH: John Hunter Smith for Mr. Caldwell.

6 THE COURT: Good morning.

7 MR. SMITH: Good morning, Your Honor.

8 THE COURT: Mr. Caldwell, please raise your right
9 hand to be sworn.

10 (The Defendant is sworn)

11 THE CLERK: Thank you.

12 THE COURT: All right, we're here today, sir, for a
13 continuation of your detention hearing. At the first detention
14 hearing that we had, the Government presented its witness,
15 which was the case agent or at least one of the case agents.

16 Mr. Smith offered a third-party custodian, which the
17 Court found was not a suitable third-party custodian in this
18 case.

19 Mr. Smith, it's my understanding you wish to offer
20 another third-party custodian?

21 MR. SMITH: That -- that's correct, Your Honor.

22 THE COURT: Okay. All right, you may have a seat at
23 counsel table.

24 Mr. Caldwell and Mr. Smith, you may call your witness
25 when you're ready?

1 MR. SMITH: We call James Caldwell.

2 THE CLERK: Raise your right hand.

3 JAMES CALDWELL

4 called as a witness for the Defendant, having been duly sworn
5 testified as follows:

6 THE CLERK: You can have a seat, please, sir. And if
7 you could your name and spell it for the record?

8 THE WITNESS: James Caldwell, C-A-L-D-W-E-L-L.

9 THE CLERK: Thank you.

10 MR. SMITH: May I proceed, Your Honor?

11 THE COURT: Yes, thank you.

12 MR. SMITH: Thank you.

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q Good morning, sir. I know you introduced yourself to
16 the Court. How old are you, sir?

17 A 68.

18 Q Oh, and where do you live?

19 A In Eustace, Texas.

20 Q And what is that address?

21 A 212 West Henderson.

22 Q And is that a house or an apartment?

23 A House.

24 Q Okay, who lives there?

25 A My wife and daughter.

1 Q And your wife's name?

2 A Barbara (phonetic).

3 Q And what's Barbara do?

4 A She's a school teacher.

5 Q And your daughter?

6 A She's a heart monitor at --

7 Q Okay, where does she work?

8 A At Trinity Mother Frances in Tyler.

9 Q And how old is she?

10 A She's 27.

11 Q Okay, and you're retired; is that correct?

12 A Correct.

13 Q And what are you retired from?

14 A Trucking.

15 Q Okay, when you were a trucker, how long did you do
16 that?

17 A It was over 40 years.

18 Q And I believe that you in some capacity worked with
19 the United States Postal Service; is that correct?

20 A Correct, I hauled mail for them.

21 Q And how long did you do that?

22 A A couple years.

23 Q Okay, and prior to your years of trucking, what did
24 you -- what else have you done?

25 A I'm a United States Army Veteran.

1 Q Okay.

2 A Disabled Vet.

3 Q Okay, were you in Vietnam?

4 A Yes, sir.

5 Q Okay, thank you for your service, sir.

6 A Thank you.

7 Q The -- you are aware that allegations have been made
8 against your son; is that correct?

9 A Yes.

10 Q And you're aware of the requirements that if he's
11 released, that would be placed on you as a third-party
12 custodian?

13 A Yes, sir, I do.

14 Q Have you had an opportunity to talk to me about those
15 --

16 A Yes, sir.

17 Q -- requirements?

18 A Yes, sir.

19 Q If this Honorable Court found that it was appropriate
20 to release him to your care, would there -- in the home where
21 you live now, is there any firearms?

22 A No, sir.

23 Q Any ammunition?

24 A No, sir.

25 Q Any destructive explosive devices?

1 A None at all.

2 Q Is there any alcohol?

3 A No, sir.

4 Q Okay. Since you are retired, you will be able to be
5 with your son 24/7?

6 A He'll get tired of me being on him.

7 Q Okay, would you ensure that your son would comply
8 with all terms and conditions?

9 A Absolutely.

10 Q And if he did not, what would you do?

11 A I would call the Court.

12 Q Okay, and also prior to your son's incarceration, he
13 was working with the VA?

14 A Correct.

15 Q For some health issues?

16 A Yes, sir.

17 Q Is that something that you would assist him with as
18 well?

19 A Absolutely. Absolutely.

20 Q Thank you very much, sir. I pass the witness.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. TATUM:

24 Q Good morning, sir.

25 A Good morning.

1 Q How often -- prior to this whole situation occurring
2 with your son on January 6th, how often did you communicate
3 with him?

4 A Everyday, it seemed like.

5 Q And leading up to the events of January 6th, did he
6 tell you that he was going to the Capitol?

7 A Yes.

8 Q Did he tell you what he was going to do there?

9 A Just going to a rally.

10 Q Did he give you any more detail than that?

11 A No, sir.

12 Q After January 6th, did he tell you what he had done
13 at the Capitol?

14 A No, sir.

15 Q Did he mention that there was a riot?

16 A I saw it on TV.

17 Q You saw it on TV? What was your understanding of his
18 role in it?

19 A Just couldn't believe it.

20 Q And did he tell you that he had used a pepper spray
21 or mace and sprayed Capitol Police?

22 A No, sir.

23 Q Prior to him getting charged, did he tell you about
24 any of his conduct at the Capitol?

25 A No, sir.

1 Q Okay, so it's fair to say that he's kept some things
2 from you, correct?

3 A Yes.

4 Q Do you think that your son has a problem with
5 authority?

6 A No.

7 Q Are you familiar with the details of his driving
8 while intoxicated arrest in Denison?

9 A Yes.

10 Q And did you know that he had to be restrained at the
11 hospital when they tried to serve a warrant for a blood draw?

12 A No.

13 Q Did you know that when he went to the jail, that he
14 had to be restrained because he was fighting so much, and they
15 eventually had used a taser?

16 A No.

17 Q And did you know that he fought so much at the
18 hospital, that he broke the hospital bed?

19 A No, sir.

20 Q And so, when we talk about a problem with authority,
21 there's several things that you don't know that your son has
22 done in regards with authority figures; isn't that correct?

23 A I guess so.

24 Q Now, you yourself as third-party custodian, you're
25 going to be in a position of authority, aren't you?

1 A Yes, sir.

2 Q In this situation. And you're going to be the one
3 that's going to try and make your son confirm or conform, not
4 confirm, with the conditions that are set by the Court,
5 correct?

6 A Correct.

7 Q And from what I told you, it does appear that your
8 son has a problem with authority, doesn't he?

9 A I believe he would respect me not to have that issue.

10 MR. TATUM: I'll pass the witness, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SMITH:

13 Q During Daniel's 48, 49 years, has he ever not
14 followed your authority?

15 A No, sir.

16 Q Thank you very much. I pass the witness.

17 MR. TATUM: Nothing further, Your Honor.

18 THE COURT: All right, Mr. Caldwell, I have a few
19 questions for you.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Mr. -- your son indicated and it's set
22 forth in the Pre-trial Services Report that our Pre-trial
23 Services Officer prepares that your son has been estranged from
24 his mother and his brothers, Tim and David, for some time. Do
25 you know what the basis of that is?

1 THE WITNESS: Not really. I mean, his mother's -- I
2 don't know how to explain it. I know his brother cheated him
3 out of like \$7,000. So that was an issue there with the
4 brother.

5 The mother, you can't ever get the truth from her.

6 THE COURT: I'm sorry, I didn't hear you?

7 THE WITNESS: You can't ever get the truth from her.
8 I mean, she's -- I think she does medication and has no control
9 of it.

10 THE COURT: Okay, I also wanted to ask you about a
11 charge back in 2008. It was assault causing bodily injury to
12 a -- to family violence. Do you know about that?

13 THE WITNESS: Yes.

14 THE COURT: Okay, what's your understanding of what
15 happened?

16 THE WITNESS: Just a break up, family -- between his
17 wife and him.

18 THE COURT: Okay. Other than that incident, are you
19 aware of any other incident either as an offense or something
20 that was not ever charged regarding violence with your son?

21 THE WITNESS: No, ma'am, not that I recall.

22 THE COURT: My last question is you answered in
23 response to one of Mr. Smith's questions that you knew your son
24 was receiving some treatment from the VA.

25 THE WITNESS: Yes, he just --

1 THE COURT: Can you tell me about that?

2 THE WITNESS: Just recently, he's applied for
3 disability through the VA, PTSD and the head wound that he's
4 gotten.

5 THE COURT: Okay, and when you say recently, what's
6 the time frame on that?

7 THE WITNESS: Oh.

8 THE COURT: Since he's been charged?

9 THE WITNESS: No, no.

10 THE COURT: Prior to the --

11 THE WITNESS: Yeah, long before that.

12 THE COURT: Prior to the riot?

13 THE WITNESS: Yes, yes. Yes, ma'am.

14 THE COURT: All right, thank you, sir. You may step
15 down.

16 THE WITNESS: Thank you, ma'am.

17 (Witness is excused)

18 MR. SMITH: We rest.

19 THE COURT: All right, thank you.

20 I know at our last hearing, we -- counsel made some
21 closing remarks.

22 Mr. Tatum, I know you weren't here at that first
23 hearing. So I want to give both counsel an opportunity to make
24 final remarks before we conclude today.

25 Mr. Tatum?

1 MR. TATUM: May I go first, Your Honor? Your Honor,
2 in this case, and specifically with regards to the third-party
3 custodian, I don't think a -- the issue is so much about a
4 specific third-party custodian. I just think whoever would be
5 able to come up here and say that they can watch the Defendant.

6 Even the Defendant's father, that he talks to every
7 day, doesn't know about his issues with authority because the
8 Defendant has hidden those.

9 His DUI arrest in Denison, as I was asking the father
10 about, he was so violent at the hospital, had to be restrained,
11 broke the gurney. And then, when we got to the jail, again,
12 had to be restrained, had to be tased to bring him under
13 control.

14 THE COURT: And which offense was this? Because that
15 was the first time that I've heard that.

16 MR. TATUM: This was the -- I believe it's 2013.

17 THE COURT: Okay.

18 MR. TATUM: The 2013, October 2013 arrest for driving
19 while intoxicated and was resisting arrest, which I believe is
20 in the Pre-sentence Report.

21 THE COURT: Yeah, it's -- the offense is, but those
22 particular facts surrounding the offense are not.

23 MR. TATUM: And so, based upon that, Your Honor, and
24 also upon the conduct on January 6th, I think it does show he
25 has a problem with authority with following the rules.

1 And in both these situations and including his
2 assault and family violence case, it shows that he's violent.
3 And he is willing to fight, use that violence against
4 authoritative figures.

5 I know this is his father. His father doesn't think
6 he has a problem with authority, but once again, he's going to
7 be in a position where someone's going to be telling him what
8 to do.

9 And his past comments have just shown that not only
10 does he not do that, he's willing to get violent about it.

11 The Defendant in this case, he is charged with
12 several felonies in relation to his conduct at the Capitol
13 January 6th.

14 As far as safety to the community, he has a violent
15 past. He did engage in violence on January 6th.

16 And as far as the flight risk, the offense occurred
17 up in Washington, D.C., well out of our district. And now that
18 the Defendant's been indicted, I think there is a evidence of
19 him being a flight risk, Your Honor.

20 And I think when you take all of these things
21 together, that --

22 THE COURT: Wait, what is the evidence that he would
23 be a flight risk?

24 MR. TATUM: Well, my understanding is when a person's
25 been indicted, it creates an issue of flight risk, Your Honor.

1 And this being an offense that occurred out of district, far
2 out of district, up in Washington D.C., whether or not he's
3 going to be willing to return to that district to face those
4 charges.

5 That, in addition to the violence, Your Honor, I
6 believe, shows there is a safety to the community issue. There
7 is flight risk issue and we think he should be detained.

8 THE COURT: Well, let me ask you this. In terms
9 of -- I mean, as you know, the Court can construct conditions,
10 then that's what I'm supposed to do.

11 If he was on -- essentially detained at his father's
12 residence, and he was not permitted to drink any alcohol,
13 wouldn't that be sufficient in terms of both the both issues,
14 danger to the community and flight risk?

15 I mean, flight risk, I suppose Mr. Smith didn't ask
16 his father, but I think he can probably address this issue when
17 he stands up about making sure his son appears and gets to all
18 court appearances in D.C., which there will be one soon, given
19 that he's just been indicted.

20 But it seems that he's had issues with violence when
21 alcohol is involved. And, you know, the Capitol incident
22 happened in -- with a mob and I would say incitement, et
23 cetera.

24 And so, I guess my question is if he's confined to
25 his father's residence, is there really still the risk of

1 danger and flight?

2 MR. TATUM: I think the risk at the point, Your
3 Honor, is danger to the community. And I believe it will be
4 the first time that he either wants to drink alcohol and wants
5 to violate the rules. And someone's going to have to tell him,
6 no, you can't do that.

7 I think based on his past conduct, that we know about
8 his response to that, it's either going to be either violence
9 or just not care, not follow instructions, not follow orders.

10 And I think that's based upon his prior assault,
11 family violence, his conduct during the driving while
12 intoxicated, and his conduct on January 6th.

13 I think that would be a concern when somebody says
14 you cannot do this and that's going to be his reaction I think
15 is what goes to the danger to the community, Your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Smith?

18 MR. SMITH: Thank you, Your Honor. I want to address
19 the DWI from 2008. He was charged with DWI and resisting
20 arrest. I'm fully aware of this case because I represented him
21 on it.

22 The resisting arrest was dismissed. And the
23 resisting arrest came from at the time when they were trying to
24 stick a needle in his arm.

25 And some people have issues with that. And that's

1 where the problem became. Right, wrong, or indifferent, but
2 that's the -- how the case was resolved was a dismissal of the
3 resisting.

4 Counter to Mr. Tatum's point, he -- that is an
5 example of him being placed on probation and where he complied
6 with the terms and conditions and followed them.

7 Mr. Tatum's issues was, well, you can give him
8 conditions, but that doesn't mean he won't follow them. And I
9 think there's proof of that, that he will follow the
10 conditions.

11 THE COURT: Were there conditions? I know oftentimes
12 it's different for state versus federal in terms of what is
13 required on probation or release, were there conditions in that
14 case?

15 MR. SMITH: In any DUI case in Grayson County, and
16 Mr. Johnson, can speak to this as well, an individual who's
17 placed on probation, if he had a blood alcohol level of over a
18 .15, he's going to be required to have a deep lung device on
19 his vehicle if he drives.

20 He's going to be required to abstain from any and all
21 alcohol consumption. He's going to be required to report once
22 a month to Probation. He's going to be required to give a UA
23 test.

24 Sometimes they get it once a month. Sometimes they
25 don't. They're going to be required to do community

1 supervision. They're going to be required to do a number of
2 different things. That -- those are the standard items.

3 If someone drifts afar while on Probation, they may
4 have him go to an outpatient counseling. I do not believe that
5 occurred in this case. I believe he successfully completed all
6 requirements.

7 THE COURT: Okay, thank you.

8 MR. SMITH: As it relates to issue for release, Your
9 Honor, we believe the Court can craft conditions of release
10 that would ensure the community of the safety of the community
11 and ensure his appearance in the District of Columbia.

12 I would say it's -- in my research, if he's going to
13 be held somewhere and is transferred from here, he will be held
14 outside of the District of Columbia, where they will be housing
15 him.

16 So I just find it humorous, there's really no
17 place -- no one lives in the District of Columbia. And he
18 would be there.

19 And he has his family that should show up and would
20 ensure that his presence is there.

21 THE COURT: And have you confirmed that with Mr.
22 Caldwell, that he would in fact ensure his court appearances in
23 D.C.?

24 MR. SMITH: Yes, Your Honor.

25 THE COURT: One thing I did not ask Mr. Caldwell

1 about was his son's relationship with the others in the house,
2 his wife, and his daughter. Can you speak to that?

3 MR. SMITH: I can, Your Honor. And I wanted to
4 address one thing. I don't think it was real clear when they
5 were talking about the strained relationship with the mother.

6 She has an addiction to pills. And she has
7 committed -- attempted to commit suicide in the past and it's
8 strained the family.

9 And it is a divided family. Mr. Caldwell is
10 in -- has a second family. His sister, Sarah (phonetic), which
11 is his half-sister and his brother, they have a very good
12 relationship.

13 My client speaks with his sister and with the father
14 on a weekly basis and sometimes daily. He speaks monthly with
15 his brother, who's in medical school in Jackson, Mississippi on
16 a monthly basis.

17 THE COURT: Okay. All right, thank you.

18 MR. SMITH: Thank you, Your Honor.

19 THE COURT: All right, counsel, given the issues, I'm
20 going to -- I want to consider a few things. I'm going to
21 issue -- make a decision by tomorrow.

22 So you will be aware of this, I know that the
23 Government intends to seek a stay if I do recommend release.
24 And so, we'll have to go through that process at that time.

25 But I'll make a decision by tomorrow. And then, I'll

1 let counsel know so that the Government can make its objection
2 if it wants to do that, okay?

3 MR. SMITH: Thank you, Your Honor.

4 MR. TATUM: Yes, Your Honor, thank, you.

5 THE COURT: All right, we'll stand adjourned.

6 MR. TATUM: May I be excused?

7 THE COURT: Yes, thank you.

8 (Proceedings concluded at 10:06 a.m.)

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CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

CH

April 15, 2021

Chris Hwang
Transcriber

Date