

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

UNITED STATES OF AMERICA

v.

THOMAS JOHN BALLARD

Defendant.

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Criminal No. 1:21-MJ-00539-RMM

NOTICE OF FILING

The United States of America, by and through its attorney, the Acting United States Attorney for the District of Columbia, hereby files the attached transcript of the detention hearing held in the Northern District of Texas on August 13, 2021 in support of its Motion to Review and Appeal of Release Order (DE 6).

Respectfully submitted,

CHANNING D. PHILLIPS
Acting United States Attorney
DC Bar No. 415793

By: /s/ Robert Juman
ROBERT JUMAN
Assistant United States Attorney
New Jersey Bar Number 032201993
United States Attorney's Office
Detailee – Federal Major Crimes
555 Fourth Street, N.W.
Washington, D.C. 20530
Telephone: (786) 514-9990
Email: Robert.Juman@usdoj.gov

CERTIFICATE OF SERVICE

On this 17th day of August, 2021, a copy of the foregoing was served upon all parties listed on the Electronic Case Filing (ECF) System.

/s/ Robert Juman
ROBERT JUMAN
Assistant United States Attorney
New Jersey Bar Number 032201993
United States Attorney's Office
Detailee – Federal Major Crimes
555 Fourth Street, N.W.
Washington, D.C. 20530
Telephone: (786) 514-9990
Email: Robert.Juman@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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UNITED STATES OF AMERICA,)	Case No. 4:21-MJ-00542-BP-1
)	
Plaintiff,)	
)	Fort Worth, Texas
v.)	August 13, 2021
)	10:00 a.m.
THOMAS JOHN BALLARD,)	
)	PRELIMINARY HEARING
Defendant.)	DETENTION HEARING
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HAL R. RAY, JR.,
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

For the Government:	J. Stevenson Weimer ASSISTANT UNITED STATES ATTORNEY Burnett Plaza 801 Cherry Street, Suite 1700 Fort Worth, TX 76102 (817) 252-5200
For the Defendant:	Andrea Guisela Aldana ASSISTANT FEDERAL PUBLIC DEFENDER 819 Taylor Street, Room 9A10 Fort Worth, TX 76102 (817) 978-2753
For U.S. Probation:	Molly Mouret
Court Recorder:	Elsherie Moore UNITED STATES DISTRICT COURT 510 W. 10th Street Fort Worth, TX 76102 (817) 850-6664
Transcription Service:	Kathy Rehling 311 Paradise Cove Shady Shores, TX 76208 (972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 FORT WORTH, TEXAS - AUGUST 13, 2021 - 10:05 A.M.

2 THE CLERK: All rise.

3 THE COURT: Thank you. Please be seated. The Court
4 calls for a hearing on the Government's motion for pretrial
5 detention Cause No. 4:21-MJ-542, United States of America
6 versus Thomas John Ballard. Mr. Ballard is present in the
7 courtroom this morning with his attorney, Ms. Andrea Aldana.
8 Ms. Aldana, are you ready to proceed?

9 MS. ALDANA: Yes, Your Honor.

10 THE COURT: The United States is represented by
11 Assistant United States Attorney Jay Weimer. Mr. Weimer, are
12 you ready to proceed?

13 MR. WEIMER: Yes, Your Honor, we are.

14 THE COURT: All right. You may call your first
15 witness.

16 MR. WEIMER: Your Honor, the Government calls Special
17 Agent Beachum.

18 THE COURT: Special Agent Beachum, if you'll step
19 forward, please, to be sworn.

20 (The witness is sworn.)

21 THE COURT: Thank you, sir. Please step over here
22 and have a seat. And be sure you speak up into the
23 microphone.

24 THE WITNESS: Yes, Your Honor.

25 MR. WEIMER: Thank you, Your Honor.

Beachum - Direct

3

1 JIMMY BEACHUM, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. WEIMER:

4 Q Special Agent, can you please state your name for the
5 record?

6 A Special Agent Jimmy Lee Beachum III.

7 MR. WEIMER: And is it all right if he takes his mask
8 off while he's --

9 THE COURT: It is.

10 BY MR. WEIMER:

11 Q And where do you work?

12 A FBI Dallas-Fort Worth resident agency.

13 Q How long have you been working there?

14 A I've been there since July 5th of 2020.

15 Q Have you been involved in the investigation and
16 identification of people involved in the January 6th Capitol
17 riots?

18 A Yes. That's correct.

19 Q And was one of those investigations into the Defendant,
20 Mr. Ballard?

21 A Yes.

22 Q And can you tell the Court how that investigation
23 specifically into Mr. Ballard began?

24 A Sure. So, following the January 6, 2021 protest and riots
25 and unlawful entry of the United States Capitol in Washington,

1 D.C., the FBI put out images of unidentified subjects that
2 participated. They were all labeled. There was also a
3 division of photographs labeled as AFOs, which are Assaults on
4 Federal Officers.

5 One image, Assault on Federal Officer AFO-325, was posted
6 online. The FBI, approximately May 2nd, received a tip
7 stating that an individual had put AFO-325's photograph into a
8 facial search recognition platform and it returned a
9 CliffCares YouTube page. They stated that they felt they had
10 identified who AFO-325 was in the tip. The FBI --

11 Q Wait. Let me stop you for a moment. The AFO-325 image,
12 where was that derived from?

13 A It was from the FBI website.

14 Q And the images that the FBI collected were from various
15 sources, correct?

16 A Yes.

17 Q Body cam video from the police officers?

18 A That's correct.

19 Q Cell phone video from many people that were there at the
20 scene?

21 A Yes.

22 Q Security cam video, et cetera. Correct?

23 A That's correct.

24 Q Okay. All right. What happened -- so, somebody notified
25 the FBI that they thought that the person in that particular

1 image was the same person on the CliffCares YouTube site?

2 A That's correct.

3 Q Okay. What did you do from there?

4 A So, from there, we -- first, we looked at the YouTube
5 site. And the tip also explained that the hat that was worn
6 was a Infowars baseball cap, and the individual matched the
7 description from the YouTube page, the CliffCares YouTube
8 page, and they also were wearing the same hat or a similar hat
9 to what was worn by AFO-325.

10 So then the FBI did a open source search of CliffCares,
11 the name of the YouTube page, and motorcycles, because that
12 YouTube page was dedicated to a motorcycle -- like, fixing
13 tires and motorcycle repairs and a motorcycle page. So, after
14 the search, it returned a Facebook page, a Cliff's -- I
15 believe it was Cliff's Motorcycle Tires Facebook page. And on
16 that page, there was an image of a motorcycle that read Police
17 across the front. An image on the side was recognizable as an
18 Arlington Police Department, an Arlington, Texas Police
19 Department officer's bike.

20 Q And this -- this image was on the Facebook page?

21 A Yes. The publicly -- it was just an open --

22 Q Publicly-available Facebook page for this particular
23 motorcycle repair business?

24 A That's correct.

25 Q Okay.

1 A And being a part of the JTTF, the Joint Terrorism Task
2 Force, we have officers, local and state officers that are
3 part of our task force. And one of our officers was actually
4 -- works for the same department as the individual whose bike
5 was being worked on that we found out by going to the comments
6 under that photograph. And the -- there was an officer who
7 stated, hey, thanks, Cliff, for the repairs on the bike.

8 We went and interviewed that officer, and the officer was
9 willing to meet. We met with the officer. We showed him one
10 image of the unidentified subject, AFO-325. Asked if he knew
11 who this individual was. And he stated he knew that
12 individual as Cliff. Asked if he -- or, how he knew him. He
13 said that this is someone that he had spoken to one day at
14 work that stated that he had a motorcycle tire repair
15 business, and the officer then proceeded to use his business.

16 I asked the officer what contact information he had for
17 the individual, for Cliff, and he gave me a number ending in
18 7148.

19 He also mentioned that he recommended him to other
20 officers in the department, and he gave us a name, so then we
21 followed up with that officer, interviewed him on a separate
22 occasion. He was shown the same image of the AFO-325. He
23 also identified him as Cliff. And he stated that he had used
24 him as recently as May of 2021. And he also gave the contact
25 phone number of 7148.

1 That Facebook page, returned records for that Facebook
2 page returned to a Thomas Cliff Ballard.

3 Q You're talking about grand jury subpoena record?

4 A Yes, sir.

5 Q All right. Grand jury subpoena returns for that Facebook
6 page?

7 A Yes. Legal returns.

8 Q Okay.

9 A Yes, sir. Came back to a Thomas Cliff Ballard, and it
10 also returned to that phone number ending in 7148.

11 We then did a grand jury subpoena for the Verizon phone
12 number ending in 7148, and it came back to a Thomas Ballard
13 living at a Fort Worth residence.

14 That same residence, officers -- I'm sorry. (Pause.) Oh.
15 Officers -- we then obtained a driver's license for Thomas
16 Ballard. And the address that was -- well, the individual on
17 the license matched the description of AFO-325 and of the
18 CliffCares YouTube page and the Facebook, the same individual.
19 And the phone number that was -- the address that was tied to
20 the phone number from the Verizon records was the same address
21 that was on the driver's license.

22 Q And now that you've done all that matching, are you
23 comfortable saying that that Thomas Cliff Ballard that you've
24 been talking about is the same Thomas Cliff Ballard here in
25 the courtroom?

1 A I am.

2 Q Okay. After you obtained all that information, what did
3 you do next?

4 A After we obtained that information, well, we filed a
5 complaint. We obtained an arrest warrant.

6 Q The complaint was filed in D.C., correct?

7 A It was filed in D.C.

8 Q Okay.

9 A Yes, sir. We continued to follow up on Mr. Ballard's
10 public YouTube page, where he stated that he was going to or
11 packing for a Sturgis motorcycle rally and that he would be
12 gone for a while. So we obtained a ping on his cell phone.

13 Q The same cell phone number that you --

14 A On the same 7148 cell phone number. Yes, sir. When Mr.
15 Ballard got back in town, we executed an arrest at the
16 residence, a search -- an arrest and a search and seizure as
17 well. After the arrest, we interviewed Mr. Ballard back at
18 the Fort Worth resident agency.

19 Q Okay.

20 A During the interview, Mr. Ballard stated that he did go to
21 Washington, D.C. He mentioned the clothing worn in
22 Washington, D.C., which matches a photograph from clothing
23 worn by AFO-325. Tan backpack. Infowars hat. He also
24 mentioned that he took a gas mask out there as well.

25 Q Did you show him some still photographs that were pulled

1 out of videos of the event where that suspect was depicted?

2 A Yes, I did. So, I presented four images to Mr. Ballard,
3 and he -- I asked him if he wouldn't mind checking or putting
4 something next to the images where he could identify himself
5 in those images. And he identified two out of the four images
6 as himself.

7 Q Okay. If you could take a look at Government's Exhibit 3,
8 which is in front of you, are those some of the images that
9 you put before the Defendant when you were doing the
10 interview?

11 A That's correct.

12 Q Okay. And are those true and accurate copies of the
13 images that you showed him?

14 A Yes.

15 MR. WEIMER: Your Honor, the Government moves to
16 admit Government's Exhibit 3.

17 THE COURT: Any objections, Ms. Aldana?

18 MS. ALDANA: No, Your Honor.

19 THE COURT: Exhibit 3 is admitted.

20 (Government's Exhibit 3 is received into evidence.)

21 BY MR. WEIMER:

22 Q All right. If you could, on Government's Exhibit 3, the
23 first photo, in the lower right-hand corner, it's very faint
24 on this copy but there appears to be an inked arrow pointing
25 to an individual in a blue cap. Who drew that arrow?

1 A Mr. Ballard.

2 Q And was that to indicate that the individual in the blue
3 cap with the beard is Mr. Ballard?

4 A Yes, that's correct.

5 Q Okay. And then the second photo doesn't seem to have any
6 markings on it. Is that one of the ones that he did not mark?

7 A He did not mark.

8 Q Okay. Is he depicted in that video, based on your
9 investigation?

10 A Yes, he is.

11 Q Which person is he?

12 A He is the individual holding the tabletop above his head,
13 with a baton in his right hand.

14 Q Okay. And based on your review -- this is a still photo
15 from a video, correct?

16 A Yes.

17 Q Based on your review of that video, is that Mr. Ballard
18 throwing that -- is that a still photo of him throwing that
19 table at the officers?

20 A Yes, it is.

21 Q Okay. We'll look at that video in a little bit.

22 The third photograph, the markings here are clearer.

23 There's a black arrow pointing to an individual with a tan

24 backpack and a blue baseball cap, and also a circle and a red

25 arrow that's pointing to a police baton in that same

1 individual's hands. Are those markings that he made?

2 A Yes, they are.

3 Q Okay. And was the purpose of making those markings for
4 Mr. Ballard to indicate to you that that's me in the picture?

5 A Yes.

6 Q Okay.

7 MR. WEIMER: And Your Honor, I don't know if you've
8 seen these, but if you want to just give a copy of that to the
9 judge so he can --

10 THE COURT: Thank you.

11 MR. WEIMER: -- take a look at that.

12 BY MR. WEIMER:

13 Q Now, did you ask -- during this interview, did you ask Mr.
14 Ballard, after he admitted to being there, did you ask about
15 the police baton that was in his hands?

16 A Yes, I did.

17 Q What did he tell you about that?

18 A He stated that he found it on the ground.

19 Q Okay. So he admitted that he had the police baton?

20 A Yes, he did.

21 Q Did you ask him about the video that showed him throwing a
22 table at the officers?

23 A Yes.

24 Q What did he say about that?

25 A He stated that he didn't remember throwing a table.

1 Q Did he deny it, or did he say he didn't remember it?

2 A He said he didn't remember throwing a table.

3 Q Okay. And these photos don't depict it, but did you see
4 also videos of Mr. Ballard hitting police officers with that
5 baton?

6 A Yes, I did.

7 Q Did you ask him about that?

8 A Yes.

9 Q What did he say?

10 A He said he does not remember striking or hitting anyone
11 with the baton.

12 Q Okay. Did he deny it, or did he say he just didn't
13 remember doing that?

14 A He says he does not remember doing it.

15 Q Okay. These still photos -- for instance, the third one
16 that he circled the individual in the blue baseball cap and
17 the tan backpack carrying a police baton -- that's also taken
18 from a video, correct?

19 A That's correct.

20 Q And in the full video, can you see that same individual
21 using the police baton to hit police officers?

22 A Yes, you can.

23 Q Okay. Now, during the course of your interview, did you
24 also ask Mr. Ballard about whether or not he had access to
25 firearms?

1 A Yes.

2 Q What did he tell you?

3 A That many years ago he received tactical training through
4 a militia here in Texas that he is no longer a part of. He
5 also mentioned that he carries a pistol, open-carried a
6 pistol.

7 Q Okay. When you were reviewing -- did you ask him about
8 the CliffCares YouTube page?

9 A Yes.

10 Q Did he admit that that's his page?

11 A Yes. He said it was his motorcycle page.

12 Q Okay. And that page is mainly to advertise a motorcycle
13 business, motorcycle repair business, correct?

14 A Yes. Just all things motorcycle, is --

15 Q And it's his page, and he's depicted --

16 A Yes.

17 Q -- in it frequently?

18 A Yes.

19 Q Did you review the videos on the -- on that YouTube page?

20 A Yes, I did.

21 Q Did you ever see him with a firearm?

22 A Yes. He's open-carrying on his right hip in almost every
23 video.

24 Q Okay. Now, during the course of your discussions with Mr.
25 Ballard, did you -- did he also make some statements about an

1 incident that occurred between him and his neighbors?

2 A Yes, he did.

3 Q What happened there?

4 A He briefly mentioned that a dog was --

5 Q Well, first of all, how did that kind of come up?

6 A We were just on our way back from the arrest, on our way
7 back to the resident agency. And Mr. Ballard had just
8 mentioned an -- his neighbor's dog was loose one day and that
9 --

10 Q This is what he told you?

11 A Yes.

12 Q Uh-huh.

13 A And that there were some kids in the neighborhood and that
14 there was a dog loose and that the dog was of a decent size.
15 And he felt that the kids feared for their safety, but then
16 the dog was advancing towards him, and he shot and killed the
17 dog.

18 Q What was his reaction when he was telling you about having
19 shot and killed the dog?

20 A It was --

21 Q How was he behaving? Was he sad about it or --

22 A It seemed very nonchalant. No, it didn't seem like there
23 was sadness behind it.

24 Q Okay. And based on his description, this is something
25 that happened outdoors with kids around. Correct?

1 A Outdoor. Yeah. Yes.

2 Q All right. In connection with the arrest of Mr. Ballard,
3 did you also obtain a search warrant for his house?

4 A Yes.

5 Q And did you find any items that would confirm your
6 identification of Mr. Ballard as the same person in these
7 photos and videos?

8 A Yes, we did.

9 Q What did you find?

10 A We found the Infowars baseball cap that Mr. Ballard -- or,
11 he's wearing in the pictures and he stated that he wore. We
12 found the tan backpack. And within the backpack we found
13 gloves that Mr. Ballard is wearing in the photos and the gas
14 mask that Mr. Ballard mentioned he took with him.

15 Q Okay. We haven't seen the gas mask in these photos. Did
16 he -- were there some videos in which you could see him
17 carrying or wearing a gas mask?

18 A Yes. That's correct.

19 Q And did you ask him about that?

20 A I did.

21 Q What did he tell you about the gas mask?

22 A He stated that he did not bring the gas -- he brought the
23 gas mask but he didn't bring it with any malicious intent
24 towards law enforcement. He stated that he brought it because
25 he had heard that Antifa would be present. And I asked if he

1 bought it for that reason, and he said no, he already owned it
2 just from like prior work with paint and things of that
3 nature.

4 Q Okay. Was that gas mask another thing that helped you
5 confirm the identification of him in the videos and
6 photographs?

7 A Yes, that's correct.

8 Q And you did find that at the house?

9 A Yes.

10 Q During the search of the house, did you see any evidence
11 that there were guns present in the house?

12 A Yes.

13 Q What did you see?

14 A There was a gun safe vault in Mr. Ballard's -- locked in
15 his room.

16 Q And it was locked?

17 A Yes.

18 Q Did you all open it at the time?

19 A No, we did not.

20 Q Did you also obtain a search warrant for Mr. Ballard's
21 cell phone?

22 A Yes, we did.

23 Q And is that the same cell phone that's assigned to the
24 number that you've been giving us the last four digits of?

25 A Yes, sir. 7148.

1 Q During your search of that phone, did you see any evidence
2 that there were actually guns in that gun safe?

3 A Yes. In the photo gallery of the phone, there were
4 pictures of the open safe with a handgun and you could see the
5 barrel of a rifle and magazines as well.

6 Q Okay. Were there other pictures on that cell phone of Mr.
7 Ballard with guns?

8 A Yes, there were.

9 Q What kinds of pictures did you see?

10 A Just a picture of Mr. Ballard at what appeared to be a
11 range with an assault rifle. Pictures of Mr. Ballard standing
12 in the middle of a street with a -- I don't want to say it
13 wrong -- a -- I believe it was Do Not Comply -- a riot shield,
14 walking with a group of individuals with an assault rifle.
15 Yeah.

16 Q Did you see, on your search of Mr. Ballard's cell phone,
17 any what we call memes or jokes or anything like that of a
18 racist nature?

19 A I did.

20 Q What kinds of things did you see?

21 A So, there were multiple. There were -- the -- one of them
22 was -- it looked like -- well, it was from the Mexican side of
23 the wall, and it was little children, it said, Please let us
24 in, please let us in, America, so that we can be victims of
25 white supremacy.

1 There was a photo of Mr. Ballard sitting on a bench next
2 to a Rosa Parks statue, smiling, holding his assault rifle.

3 And there was a meme with information on the symbolism of
4 the pound symbol and its relation to the swastika and Nazi
5 symbolism.

6 Q Okay. Did you also see anything on his phone that related
7 to the overthrow of the government?

8 A Yes.

9 Q Okay. Can you take a look at Government's Exhibit 2? Is
10 that a screen shot of a message that you found on his phone?

11 A Yes, it is.

12 Q And is that in the same condition you saw it when the
13 screen shot was taken?

14 A Yes, it is.

15 MR. WEIMER: Your Honor, the Government moves to
16 admit Government's Exhibit 2.

17 THE COURT: Any objection, Ms. Aldana?

18 MS. ALDANA: Yes, Your Honor. We have no idea which
19 contact the screen shot was taken, who had sent it, who
20 received it. I'm not sure about the rest of the conversation
21 here.

22 THE COURT: I think that goes to the weight, not the
23 admissibility. I overrule your objection. It will be
24 admitted.

25 MR. WEIMER: Thank you, Your Honor.

1 (Government's Exhibit 2 is received into evidence.)

2 BY MR. WEIMER:

3 Q And this was a screen shot you took during the search,
4 your execution of the search warrant of the phone?

5 A Yes, sir.

6 Q Okay. It's dated January 7th. And in the upper center of
7 the photograph it says January 7th. Is that a date from the
8 phone itself?

9 A Yes. That's from the phone itself.

10 Q And go ahead and read the message. It's very short.

11 A (reading) The Constitution actually says you can legally
12 overthrow your Government if they are tyrannical.

13 Q Okay. And if you'd like, you can just hand a copy of that
14 to the judge so he can take a look at it.

15 Now, you mentioned earlier that Mr. Ballard told you that
16 he had been involved in a militia at some point; is that
17 right?

18 A That is correct.

19 Q What did he tell you about that?

20 A He stated that it had been approximately ten -- or, seven
21 to ten years, and that he left due to just he didn't agree
22 with a lot of the internal drama that was taking place within
23 the militia.

24 Q Okay. Now, during the course of your investigation, I
25 think we've already discussed, you viewed a number of videos

1 of the January 6th riots, correct?

2 A That's correct.

3 Q Some of them publicly available. Body cam videos.

4 Security cam videos. And videotaping by people with cell
5 phones. Correct?

6 A Correct.

7 Q Now, in preparation for that hearing today, did the
8 Government prepare a CD of some short clips of those videos?

9 A Yes, they did.

10 Q As well as some still photographs taken from those longer
11 videos?

12 A Yes, that's correct.

13 Q And if you'd look in front of you, there's a CD marked
14 Government's Exhibit 1. Are there five videos and four
15 photographs on that CD --

16 A Yes, there --

17 Q -- that are taken from those longer videos that you
18 viewed?

19 A Yes, there are.

20 Q And are all those videos true and accurate clips of longer
21 security and body cam videos, publicly-available videos that
22 you've seen?

23 A Yes, they are.

24 Q And all of those relate to the riots on January 6th,
25 correct?

1 A Yes, they do.

2 MR. WEIMER: Your Honor, the Government would move to
3 admit Government's Exhibit 1.

4 THE COURT: Any objection, Ms. Aldana?

5 MS. ALDANA: No, Your Honor.

6 THE COURT: Government Exhibit 1 is admitted.

7 (Government's Exhibit 1 is received into evidence.)

8 MR. WEIMER: And Your Honor, at this time we'd like
9 to go ahead and play several short videos, if that's all right
10 with the Court.

11 THE COURT: Fine by me, unless you have any
12 objections, Ms. Aldana.

13 MS. ALDANA: No, Your Honor.

14 MR. WEIMER: Okay. Let's start with the first one.
15 Okay.

16 (Video recording played and concluded, 10:28 a.m.)

17 BY MR. WEIMER:

18 Q All right. In this video, we see a number of people,
19 large group of people assembled outside an entryway. There's,
20 on the left-hand side, a broken window and some people there.
21 And then there's a red circle drawn on that left-hand side of
22 the video. What does that red circle denote?

23 A That red --

24 THE WITNESS: Your Honor, would you like me to stay
25 seated?

1 THE COURT: Sure.

2 THE WITNESS: Okay.

3 THE COURT: I'm watching it on a monitor up here, so

4 --

5 THE WITNESS: So, the red circle identifies Mr.

6 Ballard in the video. He actually just moved behind the

7 individual --

8 MR. WEIMER: You can get up and point. That's fine.

9 THE WITNESS: He's actually just moved behind this
10 individual in the --

11 MR. WEIMER: Go ahead and hit play.

12 (Video recording played, 10:29 a.m.)

13 THE WITNESS: And that's the tan backpack.

14 MR. WEIMER: There we go.

15 (Video recording concluded, 10:29 a.m.)

16 BY MR. WEIMER:

17 Q Okay. So, yeah, go ahead and point.

18 A Right here, the tan backpack and the baseball cap with the
19 hooded sweatshirt.

20 Q Okay. And this is the first video in -- chronologically,
21 the first video in the sequence we're about to watch?

22 A That's correct.

23 MR. WEIMER: Okay. Go ahead and finish it out.

24 (Video recording played and concluded, 10:30 a.m.)

25 MR. WEIMER: All right. Let's take a look at the

1 next one.

2 BY MR. WEIMER:

3 Q And the next one is marked 4:47 p.m. And that's -- that's
4 the approximate local time that this took place, correct?

5 A Yes.

6 (Video recording played, 10:30 a.m.)

7 BY MR. WEIMER:

8 Q And, again, is the red circle highlighting Mr. Ballard?

9 A Yes.

10 Q And there, that red circle that showed on --

11 MR. WEIMER: Pause for a second.

12 (Video recording concluded, 10:31 a.m.)

13 BY MR. WEIMER:

14 Q There, that red circle that showed on the screen when the
15 camera moved to depict an individual fitting that description,
16 was that Mr. Ballard again?

17 A Yes, it was.

18 Q And just so we're aware, here, this is -- this is more of
19 a close-up to that same entryway that we saw a wider shot of
20 earlier, correct?

21 A Yes.

22 Q And within that entryway, there's a group of police
23 officers trying to stop people from coming into the Capitol
24 building; is that right?

25 A That's correct.

1 MR. WEIMER: Okay. Go ahead.

2 (Video recording played, 10:31 a.m.)

3 MR. WEIMER: Okay. Go ahead and pause.

4 (Video recording concluded, 10:31 a.m.)

5 BY MR. WEIMER:

6 Q And what we just saw there, was that Mr. Ballard throwing
7 the table at the police officers?

8 A Yes, it is.

9 Q Okay. And so I don't have to ask again and again,
10 throughout the sequence of these videos we're going to see
11 that red circle. Is that always circling Mr. Ballard?

12 A Yes.

13 Q It's not circling anybody else in these particular set of
14 videos, correct?

15 A No.

16 MR. WEIMER: Okay. Go ahead.

17 (Video recording played, 10:32 a.m.)

18 BY MR. WEIMER:

19 Q And did he just throw something else at the police
20 officers?

21 A Yes, he did.

22 (Video recording concluded, 10:32 a.m.)

23 BY MR. WEIMER:

24 Q Aldo in that video, could you see something in his hands?

25 A Yes.

1 Q What was that?

2 A The baton.

3 MR. WEIMER: Let's go to the next video. And the
4 next one begins at 4:50 p.m. local time.

5 (Video recording played, 10:33 a.m.)

6 BY MR. WEIMER:

7 Q What are we seeing here?

8 A (faintly) Well, we're seeing Mr. Ballard holding a baton
9 and striking (inaudible) police (inaudible) inside a cone
10 (inaudible).

11 (Video recording concluded, 10:330 a.m.)

12 BY MR. WEIMER:

13 Q Is this approximately the same time but a different --
14 video from a different angle?

15 A Yes. This is from -- the same time but from body cam
16 footage.

17 Q Okay. The same time as what we just saw, but this is a
18 police officer's body cam footage?

19 A That's correct.

20 Q And, again, the circle, although we're seeing it kind of
21 through a clear riot shield, that circle is depicting Mr.
22 Ballard?

23 A That's correct.

24 Q Okay.

25 MR. WEIMER: Go ahead.

1 (Video recording played and concluded, 10:33 a.m. to 10:34
2 a.m.)

3 MR. WEIMER: Okay. And let's go on to the next one.
4 And this one is -- begins at 4:51 p.m. local time.

5 (Video recording played and concluded, 10:34 a.m.)

6 BY MR. WEIMER:

7 Q Now, at this point, we can see -- there's some kind of
8 flashing light or strobe light near the entrance to this
9 corridor. Did you see any evidence that Mr. Ballard had a
10 flashing light or strobe light with him?

11 A (faintly) I believe that he was holding a gold flashlight
12 type object in his hand, yes.

13 MR. WEIMER: Can you go to that picture?

14 BY MR. WEIMER:

15 Q Let me show you a still photograph also from Government's
16 Exhibit 1. And this is a still photograph or a still captured
17 from one of the videos. Is that Mr. Ballard in the lower
18 left-hand corner?

19 A Yes, that's correct.

20 Q And in his hands is there some kind of light or
21 flashlight, strobe light, something like that?

22 A (faintly) Yes. It's like a copy (inaudible).

23 Q Okay.

24 MR. WEIMER: Let's go back to the video.

25 (Video recording played, 10:36 a.m.)

1 MR. WEIMER: And stop right there.

2 (Video recording concluded, 10:36 a.m.)

3 BY MR. WEIMER:

4 Q At this point, do you see people in the crowd passing up
5 some kind of pole --

6 A Uh, --

7 Q -- towards the front? People in the back of the crowd
8 passing that up towards the front?

9 A Yes, I do.

10 MR. WEIMER: Okay. Keep going.

11 (Video recording played, 10:36 a.m.)

12 BY MR. WEIMER:

13 Q And at this point, we can see people throwing things at
14 the police officers?

15 A Yes.

16 Q This is the same time, but footage from a different angle,
17 correct?

18 A Yes. This is --

19 Q Body cam?

20 MR. WEIMER: All right. Hold on a sec.

21 (Video recording concluded, 10:37 a.m.)

22 BY MR. WEIMER:

23 Q And at that point, did you see some kind of pole --

24 A Right.

25 Q -- coming in through the exit?

1 A Yes.

2 Q And hitting the officers?

3 A Yes.

4 Q All right. Let's go ahead and take a look. Did you see a
5 still photograph from a different angle of Mr. Ballard
6 throwing that pole?

7 A Yes.

8 MR. WEIMER: All right. Let's put that up.

9 BY MR. WEIMER:

10 Q This one's not circled, but can you identify Mr. Ballard
11 in this photograph? You can go ahead and point, but also for
12 the record kind of describe where he is.

13 A (faintly) Yes. So Mr. Ballard is right here in the
14 center of the -- the image, with the pole appearing to be in
15 his left hand. There's like a (inaudible) gray that's holding
16 the pole.

17 Q And he's just about -- and it looks like he's in the -- in
18 the motion --

19 A Motion.

20 Q -- of throwing it?

21 A Yes. That's correct.

22 Q And he is facing the camera, so we can see his -- his full
23 face in this --

24 A Yes, you can.

25 Q -- photograph?

1 MR. WEIMER: Okay. We'll go back to the --

2 (Video recording played and concluded, 10:38 a.m. to 10:39
3 a.m.)

4 MR. WEIMER: All right. And let's go on to the next
5 one.

6 BY MR. WEIMER:

7 Q And this is going to be the last video clip that we've
8 got. It's -- begins, I believe, at 4:59.

9 (Video recording played, 10:39 a.m. No audible sound.)

10 BY MR. WEIMER:

11 Q And, again, we see people in the crowd throwing things at
12 the police officers, and Mr. Ballard basically in the center
13 of the video, also throwing something, correct?

14 A Yes.

15 Q And is this also a body cam at the same time that we just
16 saw?

17 A Yes, that's correct.

18 Q Different angle, but the same time?

19 A Yes.

20 Q And here, Mr. Ballard is going to be in kind of the lower
21 right-hand corner.

22 A Yes.

23 Q And is that him throwing something at the officers?

24 A Yes, it is.

25 Q And again throwing something else?

1 A (no audible response)

2 Q Were you able to -- on that last video, where we saw two
3 different angles of him throwing things at the officers, were
4 you able to determine what it was he was throwing at them on
5 that occasion?

6 A It appeared -- we already --

7 Q You can go ahead and have a seat. We're done with the
8 videos.

9 A We had already saw white tables, wooden tables being
10 thrown into the tunnel, and it appeared to be a broken white
11 wooden piece from the table.

12 Q Okay.

13 (Conclusion of video recording, 10:41 a.m.)

14 BY MR. WEIMER:

15 Q All right. And that's all the videos we're going to go
16 over, but did you also observe many more minutes of video of
17 Mr. Ballard in the entirety of those videos?

18 A Yes, I did.

19 Q Was it pretty clear to you, based on your review of those
20 videos, that that was him depicted and him circled in red on
21 those videos?

22 A Yes, it was.

23 Q Okay. And, again, when you interviewed him, he admitted
24 that -- he admitted that that was him in some of the photos,
25 but told you he didn't remember any of the assaults on the

1 officers?

2 A Yes, that's correct.

3 Q Okay. Thank you very much, sir.

4 A Thank you.

5 MR. WEIMER: Pass the witness, Your Honor.

6 THE COURT: Ms. Aldana, do you have any questions --

7 MS. ALDANA: Yes, Your Honor.

8 THE COURT: -- for Agent Beachum?

9 MS. ALDANA: Yes, Your Honor, I do.

10 CROSS-EXAMINATION

11 BY MS. ALDANA:

12 Q Special Agent Beachum, there were speeches that occurred
13 earlier that day, correct?

14 A That's correct?

15 Q On January 6th?

16 A Yes, that's correct.

17 Q Including former President Trump?

18 A Yes.

19 Q And presumably his last event, correct?

20 A Yes.

21 Q How -- approximately how many individuals do you know were
22 present here on this lawn?

23 A More than I could count.

24 Q Do you have an estimation?

25 A I do not.

1 Q Five hundred? Less than five hundred?

2 A I don't -- I would say more, but I don't have an
3 estimation.

4 Q Okay. And there are other individuals with police gear,
5 correct?

6 A Can you -- can you be more detailed?

7 Q Other individuals with shields, helmets?

8 A Are you asking if they brought them on their own or if --

9 Q No. We saw other individuals with police gear aside from
10 Mr. Ballard --

11 A Yes.

12 Q -- that were not police officers, correct?

13 A Yes.

14 Q There was gear that was scattered about, correct?

15 A Not to -- I mean, the only reason I would believe that is
16 because I was told that, but I don't have information that
17 there was just scattered law enforcement gear laying around.

18 Q We do see other people with other weapons, correct?

19 A We do.

20 Q With bats?

21 A Yes.

22 Q Hockey sticks?

23 A Yes.

24 Q A lot of people swinging things, correct?

25 A Yes.

1 Q And there was debris that was crowd-surfed from the back
2 of the crowd, correct?

3 A Yes.

4 Q To the front?

5 A Yes.

6 Q And there was more debris after individuals had broken
7 windows leading indoors, correct?

8 A Yes.

9 Q In your Statement of Facts, you mention that there are
10 both permanent barriers and also temporary barriers. Correct?

11 A Yes.

12 Q And those temporary barriers, I assume, are movable?

13 A Yes. There were barriers that are movable, yes.

14 Q And we see Mr. Ballard was in a large crowd, correct?

15 A Yes.

16 Q So is it possible by the time he reached that lawn those
17 temporary barriers have been removed?

18 A That is possible.

19 Q By other individuals, presumably?

20 A That is possible.

21 Q I want to talk a little bit about this citizen tip,
22 Witness 1, that led you all to identification. Witness 1 ran
23 a photo through a public facial recognition program?

24 A Yes.

25 Q And public meaning anyone can access it?

1 A Yes.

2 Q Including the FBI?

3 A Yes.

4 Q And I assume the FBI has their own facial recognition
5 system?

6 A Yes.

7 Q But that was not used to identify Mr. Ballard at that
8 point?

9 A No, it was not.

10 Q Okay. And Mr. Ballard has public social media, correct?

11 A Yes.

12 Q Including long-form YouTube videos?

13 A Yes.

14 Q And the tip came in in May 2nd, 2021; is that correct?

15 A Approximately. That's correct.

16 Q And what date did you arrest Mr. Ballard?

17 A I believe Tuesday, August the 10th, 2021.

18 Q And help me with my math. That's what, four months? May
19 to August? Approximately five months?

20 A Yes.

21 Q And how many months from the time that you arrested him to
22 the date of these events?

23 A Sorry. That was three months. Sorry, what was your
24 question?

25 Q You're right. Three months. Excuse me. How much time

1 had elapsed from the day of these events and Mr. Ballard's
2 arrest?

3 A Um, --

4 Q I'll let you do the math.

5 A I would say about seven months.

6 Q What time of day did that arrest occur?

7 A The arrest occurred about 6:00 a.m.

8 Q And why did the FBI conduct that arrest at 6:00 a.m.?

9 A Because we knew that Mr. Ballard would be home.

10 Q You're aware that he works the night shift?

11 A We are aware.

12 Q Do you know what time he goes into that night shift?

13 A Approximately, yes.

14 Q What is the approximate time?

15 A Around 8:00 in the evening.

16 Q And around what time does he return?

17 A On that day, I believe Mr. Ballard returned at
18 approximately 5:00-something in the morning.

19 Q And how did the FBI enter the home?

20 A I was not on the entry, but the SWAT team executed the
21 arrest.

22 Q How did they execute it? Can you be more specific?

23 A I don't have all the details. I'm not part of the SWAT
24 team. I don't have all the details of the entry.

25 Q Do you know if they knocked first?

1 A I do not believe they knocked first, but I -- I mean, just
2 based on what I know about SWAT being utilized, I do not
3 believe that they knocked first.

4 Q Did they use a flash bang?

5 A I believe so.

6 Q Multiple flash bangs?

7 A That, I do not know.

8 Q What kind of vehicles were around the home?

9 A I know there were a few marked units. I'm assuming the
10 SWAT vehicles, so SUVs.

11 Q So, a large armored vehicle?

12 A Maybe. I'm sorry. I'm just not -- I'm not SWAT, so I
13 don't --

14 Q That's okay.

15 A So I'm not sure.

16 Q Would you happen to know the last time Mr. Ballard had
17 slept when you arrested him?

18 A I do not.

19 Q Or the last time he ate?

20 A We asked Mr. Ballard when we talked to him if he was
21 rested enough and if he was hungry and needed any food, and he
22 informed us that he was okay and he was good to go, he didn't
23 want any food and he had enough rest. Even in the middle of
24 speaking with Mr. Ballard, we asked again and he said he was
25 okay.

1 Q Okay. Let's talk a little bit about your conversation
2 with Mr. Ballard. When did he sit down to speak with your
3 agents?

4 A Mr. Ballard sat down to speak with us when we got -- after
5 we left his house and we got back to the Fort Worth resident
6 agency that morning.

7 Q Around what time?

8 A I would say approximately 7:00 o'clock.

9 Q In the morning?

10 A Yes.

11 Q All right. What were the names of the agents who he spoke
12 to?

13 A Myself, Special Agent Beachum. And Special Agent Webb.

14 Q Was he Mirandized?

15 A Yes, he was.

16 Q And he waived his rights and spoke without an attorney,
17 correct?

18 A That's correct.

19 Q Was it recorded?

20 A Yes.

21 Q Did he seem forthcoming?

22 A Yes.

23 Q For 7:00 o'clock in the morning?

24 A Yes. He did.

25 Q If you wouldn't mind, give me another minute.

1 (Pause.)

2 Q Special Agent, you had testified that Mr. Ballard owns a
3 gun safe --

4 A Yes.

5 Q -- that was locked?

6 A Yes.

7 Q Are you aware that he has a concealed carry license?

8 A Yes.

9 Q And I'm new to Texas, so forgive me, but it is lawful to
10 carry a holstered weapon with a concealed carry license in
11 Texas?

12 A It is.

13 Q And it's recommended gun safety that you keep all weapons
14 locked when not in use?

15 A It is.

16 Q And he does not have kids, correct?

17 A Correct.

18 Q That you know of, of course?

19 A Not to my knowledge.

20 Q You also mentioned that there are more files of videos and
21 photos of this event with Mr. Ballard?

22 A Yes, that's correct.

23 Q Would you happen to know how many files or the space,
24 gigabytes, megabytes?

25 A No, I do not.

1 Q Or the length of time? How many hours there's left to
2 watch?

3 A I do not.

4 Q Do you anticipate receiving more footage, more evidence?

5 A We -- I mean, we receive so many tips daily that it is
6 possible.

7 Q Today you're still receiving tips about this event?

8 A Not about Mr. Ballard specifically, but we receive tips on
9 individuals, even individuals that are currently under
10 investigation. So I could tell you that no, we wouldn't, and
11 then we could receive something the next day.

12 Q Of course. All right. You --

13 THE COURT: Ms. Aldana, I'm sorry, I have to
14 interrupt at this point. I have a setting at 11:00 a.m. that
15 I have to go attend to. It should not take very long to
16 complete, but I'll need to recess the proceedings at this time
17 until I complete that other task.

18 We'll be in recess.

19 THE CLERK: All rise.

20 (A recess ensued from 10:50 a.m. until 11:28 a.m.)

21 THE CLERK: All rise.

22 THE COURT: Thank you. Please be seated. We're back
23 on the record. Ms. Aldana?

24 MS. ALDANA: Yes, Your Honor. I don't have any more
25 questions for this witness.

1 THE COURT: All right. Do you have any redirect, Mr.
2 Weimer?

3 MR. WEIMER: Very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. WEIMER:

6 Q Agent Beachum, you were asked a couple questions about why
7 it took three months between the time that you got a tip
8 relating to Mr. Ballard and the eventual arrest. Do you
9 remember that?

10 A Yes, I do.

11 Q You've been involved in a number of cases of people that
12 were suspected and eventually charged with crimes related to
13 the January 6th Capitol riots, correct?

14 A Yes, that's correct.

15 Q And you get a lot of tips, don't you?

16 A Yes.

17 Q You can't make an arrest just based on a tip?

18 A No.

19 Q You have to go through verification to make sure that the
20 tip is accurate and that you have other evidence to show that
21 the person in the video is actually who the "tipee"
22 identified, correct?

23 A Yes, that's correct.

24 Q And you set about that as soon as you got the tip with
25 respect to Mr. Ballard, correct?

1 A Yes, that's correct.

2 Q Also, during part of that three-month period, Mr. Ballard
3 had left the state. Is that true?

4 A Yes, that's correct.

5 Q How long was he gone?

6 A He was gone, I believe, a little over a week.

7 Q And for practical reasons, safety reasons, you all wanted
8 to wait to execute the arrest until he returned here, correct?

9 A Yes, that's correct.

10 Q Thank you very much.

11 MR. WEIMER: No further questions, Your Honor.

12 THE COURT: All right. Agent Beachum, you may step
13 down.

14 (The witness steps down.)

15 THE COURT: Do you have any other evidence you wish
16 to offer, Mr. Weimer?

17 MR. WEIMER: Your Honor, we would simply proffer the
18 report from Pretrial Services and then we would rest, Your
19 Honor.

20 THE COURT: All right. Ms. Aldana, do you have any
21 evidence you wish to offer?

22 MS. ALDANA: Yes, Your Honor. I'd like to call Ms.
23 Jill McCauley to the stand.

24 THE COURT: Ms. McCauley, if you'll step forward,
25 please, to be sworn.

McCauley - Direct

42

1 (The witness is sworn.)

2 THE COURT: Thank you, ma'am. Please be seated. And
3 I can tell you're a little soft-spoken, so please speak up
4 into the microphone so we can hear you and also so that your
5 testimony can be recorded.

6 JILL MCCAULEY, DEFENDANT'S WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MS. ALDANA:

9 Q Ms. McCauley, I know this may be difficult for you, so
10 take pauses as needed, okay? How do you know Mr. Ballard?

11 A He's my boyfriend.

12 Q For how long?

13 A Off and on for the past 12 years.

14 Q Okay. And you two currently live together, correct?

15 A Yes.

16 Q Where do you all live?

17 A In Fort Worth. Do you want an exact address?

18 Q Sure.

19 A I mean -- 8517 Auburn Drive.

20 Q And how long have you all lived there together?

21 A I've lived with him for the past two years there.

22 THE COURT: You're going to need to pull the
23 microphone closer to you. We don't have a court reporter, so
24 it has to be recorded. Anyway, so please be sure you're close
25 enough to speak into it.

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Ms. Aldana?

3 BY MS. ALDANA:

4 Q How many jobs does Mr. Ballard have?

5 A Two.

6 Q What's his primary job?

7 A He has his motorcycle business, and then he works at night
8 for Domino's distribution center.

9 Q And what does he do there?

10 A Maintenance.

11 Q What are the hours of his night job?

12 A Roughly 8:00 to 5:00.

13 Q 8:00 p.m. to 5:00 a.m.?

14 A Eight -- yes, uh-huh.

15 Q And what are the hours that he works on his motorcycle
16 business?

17 A Roughly 1:00, 2:00, to whenever he leaves to go to
18 Domino's.

19 Q All right. And in those spare hours in the day, I imagine
20 he sleeps --

21 A Yes.

22 Q -- a little bit? What do you all do on the weekends?

23 A Just depends. We spend time together.

24 Q And do you all take road trips, too?

25 A Yes.

1 Q Does he have a valid passport?

2 A I don't know.

3 Q And I actually want to talk a little bit about the arrest.

4 You were present in the house, correct?

5 A Yes, ma'am.

6 Q And what was the first thing you saw or heard when you

7 knew something was unusual?

8 A Several flash bangs being thrown into the yard. And then

9 pounding on the door.

10 Q Did you see Mr. Ballard in handcuffs?

11 A I did.

12 Q Was he struggling?

13 A No.

14 Q Was he resisting?

15 A No.

16 Q Was he cussing at the officers?

17 A No, ma'am.

18 Q You're aware that you all own weapons, correct?

19 A Yes.

20 Q Or he owns weapons, at least? And it's kept locked in a

21 gun safe?

22 A Yes, ma'am.

23 Q At all times?

24 A All times.

25 Q Are you able to remove those weapons from the home --

1 A Yes, ma'am.

2 Q -- if he's released on condition?

3 A Yes, ma'am.

4 Q And they can stay out of the home for a long period of
5 time?

6 A Yes, ma'am.

7 Q Does Mr. Ballard do any drugs?

8 A No.

9 Q In your presence?

10 A No.

11 Q Does he smoke?

12 A No.

13 Q Does he drink much?

14 A No. Socially, on occasion.

15 Q All right. Were you aware that Mr. Ballard went to the
16 event on January 6th?

17 A No.

18 Q Did he mention anything before that date?

19 A No.

20 Q Did he mention anything after that date?

21 A No, ma'am.

22 Q You don't even like politics, correct?

23 A No.

24 Q Are you registered to vote?

25 A No, ma'am.

1 Q So you two have not had any discussions about political
2 matters?

3 A No.

4 Q Especially the riots that happened January 6th?

5 A No, ma'am.

6 MS. ALDANA: I don't have any further questions, Your
7 Honor.

8 THE COURT: Mr. Weimer?

9 MR. WEIMER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WEIMER:

12 Q Ma'am, is it -- is it Ms. McCauley?

13 A Yes.

14 Q Is that how you say your last name? Thank you. What
15 kinds of guns do you all have in the house?

16 A There's a couple of rifles, like two shotguns, and two
17 handguns.

18 Q And is Mr. Ballard in the habit of carrying a gun when he
19 goes out of the house?

20 A Yes.

21 Q He's -- he has a YouTube channel, right?

22 A Correct.

23 Q And on his YouTube channel, you can see he almost always
24 has a gun on him, right?

25 A Correct.

1 Q Is that the way it is for him when he's not on the YouTube
2 channel, just when he's going about his business?

3 A Correct.

4 Q Did you ever know that he was involved in any militia
5 groups?

6 A I was not.

7 Q When did you start dating him?

8 A We just got back together like two years ago.

9 Q When was the first time you started dating him?

10 A Like in 2009.

11 Q Okay. And you didn't know that he was involved in any
12 militia groups back then?

13 A No, sir.

14 Q Or any since then?

15 A No, sir.

16 Q Did you know that he was going up to Washington, D.C. on
17 January 6th?

18 A No, sir.

19 Q He didn't tell you about that?

20 A No, sir.

21 Q When did you first find out that he had been there?

22 A When our house got raided.

23 Q So he never even mentioned it after he got back?

24 A No, sir.

25 Q I know you said you're not into politics, but did you ever

1 see news reports about the riots in D.C. --

2 A Of --

3 Q -- just on the news on TV?

4 A Of course.

5 Q Okay. And he never mentioned -- when you were watching

6 those, he never mentioned to you, oh, I was there?

7 A No, sir.

8 Q Were you here when Agent Beachum testified?

9 A Yes, sir.

10 Q Did you hear his testimony about an incident when Mr.

11 Ballard shot a dog in the yard?

12 A Yes.

13 Q Were you there when that happened?

14 A No, sir. I was at work.

15 Q Had you ever heard about that before?

16 A Yes.

17 Q Did he tell you?

18 A He did.

19 Q Did any of your neighbors ever tell you about that?

20 A No, sir.

21 Q Has he ever fired a gun outside before or after that that
22 you know of?

23 A No, sir.

24 Q Were you aware of his arrest for evading arrest in 2010?

25 A No, sir.

1 Q Were you aware of his arrest for unlawful carrying of a
2 weapon in 2013?

3 A No, sir.

4 MR. WEIMER: No further questions, Your Honor. Pass
5 the witness.

6 THE COURT: Any follow-up, Ms. Aldana?

7 MS. ALDANA: Yes, Your Honor, briefly.

8 REDIRECT EXAMINATION

9 BY MS. ALDANA:

10 Q Ms. McCauley, where are you from?

11 A From Texas.

12 Q Oh.

13 A I'm from Abilene.

14 Q Abilene? And I'm not from Texas. Is it common for
15 individuals to carry weapons here in Texas?

16 A Oh, yeah.

17 Q You did not know that he went to Washington, D.C.?

18 A No, ma'am.

19 Q If he's under government conditions, will you know his
20 whereabouts at all times?

21 A Yes.

22 MS. ALDANA: No further questions, Your Honor.

23 THE COURT: Thank you, Ms. McCauley. You may step
24 down.

25 (The witness steps down.)

1 THE COURT: Do you have any other evidence you wish
2 to offer, Ms. Aldana?

3 MS. ALDANA: No, Your Honor. Just argument.

4 THE COURT: All right. The State rests? I mean, the
5 Defendant rests? Do you rest?

6 MS. ALDANA: Yes, Your Honor.

7 THE COURT: Does the Government close?

8 MR. WEIMER: Yes, Your Honor, save argument.

9 THE COURT: And does the Defendant close other than
10 for argument?

11 MS. ALDANA: Yes, Your Honor.

12 THE COURT: Mr. Weimer, I'd be pleased to hear from
13 you.

14 MR. WEIMER: Thank you, Your Honor.

15 Your Honor, first of all, we have the matter of probable
16 cause. I think that's a fairly easy question here. First of
17 all, we have video, we have photographs, clearly depicting the
18 Defendant not only at the riots on January 6th but in the act
19 of assaulting officers, as he is charged.

20 In addition to that, of course, he admitted to being at
21 the riots and identified himself in those videos. And while
22 he professed forgetfulness when it came to the assaults, he
23 did pick himself out of the same videos that depict him doing
24 those assaults.

25 So, probable cause is quite clearly established. I think

1 the issue here that the Defense is raising relates primarily
2 to the issue of detention.

3 Your Honor, I would inform the Court, for the sake of
4 consistency here, there have been quite a few of these cases
5 prosecuted in Washington, D.C. Of course, people are arrested
6 around the country, many of them here in Texas, but many in
7 other places. The chief judge, Judge Howell in Washington,
8 D.C., in the District of D.C., issued a case called *United*
9 *States v. Chrestman*, and that's -- the citation is 2021 WL
10 765662, and that's District of D.C., February 26, 2021. In
11 recognition of the fact that these cases are numerous, and in
12 an attempt to try to establish some consistency, Judge Howell
13 set forth six factors to consider with respect to issues like
14 detention with respect to the seriousness of the offense. And
15 those factors are -- I'll go through them -- I believe really
16 all but potentially one of them mitigate in favor of
17 determining that this is a very serious offense and calls for
18 detention.

19 First is whether the Defendant has been charged with a
20 felony or misdemeanor. Here, the Defendant is charged with
21 multiple felonies.

22 Second, whether the Defendant engaged in planning prior to
23 arriving at the Capitol. Clearly, he did. He brought a gas
24 mask with him. That came from home. We don't know exactly
25 where he got the police baton. But clearly, there was

1 planning involved before he arrived, and he came prepared to
2 engage in conflict, not just do a peaceful demonstration.

3 Third, whether he carried or used a dangerous weapon
4 during the riot. That's quite clear. We see him with the
5 baton, hitting the officers.

6 Fourth, whether he coordinated with other participants
7 before, during, or after the riot. That one is debatable.
8 It's not clear that he coordinated with anybody. There's some
9 coordination within the crowd. We would argue that they're,
10 you know, trying as a group to break through the police lines,
11 but it's not clear that he, at this point, that he coordinated
12 prior to arriving in D.C.

13 Fifth, whether he assumed a formal or de facto leadership
14 role in the assault by encouraging others' riot or misconduct.
15 That, we do believe is present. He is at the front lines of
16 the riots, trying to break through the police lines, hitting
17 them with a baton, throwing things at them, using a strobe
18 light to distract them, and basically taking a role at the
19 front of the lines in a leadership manner.

20 Sixth, the nature of the Defendant's words and movements
21 during the riot, including whether he damaged or attempted to
22 damage federal property, threatened or confronted federal
23 officials or law enforcement, or otherwise promoted or
24 celebrated efforts to disrupt the electoral vote count during
25 the riot. Well, that's clear, again. He assaulted the

1 officers and clearly was one of the most culpable people at
2 those riots.

3 So, Your Honor, based on those factors, and for the sake
4 of consistency, we believe that this is certainly one of the
5 more egregious acts of people that were at the January 6th
6 riots, and that would mitigate heavily in favor of detention.

7 The Defendant's personal history also mitigates heavily in
8 favor of detention. He has a prior conviction for evading
9 arrest. That's obviously of great concern when it comes to
10 his willingness to adhere and his -- ensuring his availability
11 at trial.

12 He also has a very violent history, Your Honor. He shot a
13 dog in public with children nearby. He seems to show no
14 concern or remorse for that act, no concern for the people
15 that he put in danger, and volunteered that fact as though it
16 were nothing.

17 He was involved with a militia group.

18 He routinely carries weapons. And while that's legal, it
19 does give reason for the Court to be concerned about his
20 propensity or ability to do something violent.

21 And, of course, most importantly, we see him assaulting
22 police officers, uniformed police officers, on multiple
23 occasions.

24 So he clearly has a violent history. He has access to
25 guns, quite a few of them.

1 And Your Honor, finally, we would note that the messages
2 on his phone are important because it shows that he has no
3 respect for the law to the extent he disagrees with the law.
4 The only law he respects is the law that he believes in, that
5 he agrees with.

6 He says the Constitution actually says you can legally
7 overthrow your government if they are tyrannical. Of course,
8 it says no such thing. But in his mind, if the government is
9 doing something that he doesn't like, it's right and proper
10 for him to do acts of violence to try to stop the government.

11 Your order, if the Court were to issue any kind of order
12 releasing him, would only mean anything to him to the extent
13 that he agreed with it. If he felt that your order was unfair
14 or unjust or preventing him from doing whatever it was that he
15 wanted to do, he gives himself moral license to reject and
16 ignore that order.

17 Your Honor, it's clear here that there is no combination
18 of conditions that can ensure the safety of the community. We
19 have a violent individual committing a serious offense with a
20 history of evading arrest, and we would ask that he be
21 detained.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Weimer.

24 Ms. Aldana, I'd be pleased to hear from you.

25 MS. ALDANA: Yes, Your Honor. Thank you. And

1 unfortunately for Judge Howell in D.C., he does not trump the
2 Bail Reform Act, and there are conditions --

3 THE COURT: I'm sorry, he's not what?

4 MS. ALDANA: He does not trump the Bail Reform Act.
5 And there are conditions of release that would reasonably
6 assure the safety of the community and ensure Mr. Ballard's
7 appearance for future -- at future hearings, be it via Zoom or
8 in Washington, D.C.

9 In an individualized assessment of Mr. Ballard's
10 dangerousness, Mr. Ballard has no violent felonies, or any
11 conviction, for that matter, for which he received more than
12 probation. It's my understanding that this excessive -- or
13 rather, this evading arrest charge stemmed from excessive
14 speeding, and it's more than ten years old. And speaking of
15 probation, he successfully abided by and completed those
16 requirements as appointed by the Court.

17 Mr. Ballard has no ties to any extremist organizations and
18 no post-January 6 criminal behavior that would otherwise show
19 him to pose a danger to the community within the Bail Reform
20 Act. His arrest was peaceful, without incident, and he has
21 cooperated to the best of his ability with law enforcement and
22 FBI.

23 No one is at risk if he is allowed to continue working his
24 two jobs until trial or sentencing.

25 He does not use drugs. He has the means and earnest

1 willingness to appear in court. And he is not some master
2 schemer or organizer planning an attack. Mr. Ballard had
3 eight months of watching other individuals be prosecuted for
4 acts committed that day, and he did not run and he did not
5 hide. In fact, we can watch exactly what he was doing on his
6 public YouTube channel. He carries a gun, he rides
7 motorcycles, and he takes road trips with his girlfriend. And
8 the FBI waited for him to return from that two-week multi-
9 state trip before they arrested him. There is no articulable
10 threat to the community.

11 The events that occurred on January 6 were unlike anything
12 any of our generations have ever experienced. The political
13 climate was unique, to say the least. And that day was a
14 once-in-a-lifetime event where a mob mentality took hold.
15 There is no risk of these events repeating themselves in the
16 near future, and certainly even less risk of Mr. Ballard being
17 in a similar environment, under an ankle monitor, working his
18 two jobs, in his home here in Fort Worth.

19 Since January 6th, he has remained quiet, peaceful, and
20 going about his life. And in fact, the remainder of his free
21 time here will be selling his assets so that in the event that
22 he's serving a long period of time his girlfriend can be okay
23 financially.

24 And these Capitol cases are dragging on, in part because
25 of the voluminous videos and photos that the FBI continues to

1 receive. And that's in Mr. Ballard's best interest, because
2 there could be mitigating or exonerating evidence in those
3 photos and videos that they continue to receive. If he is out
4 on conditions, there is less chance or less pressure on speedy
5 trial concerns as the FBI continues to collect footage of that
6 day.

7 So, Your Honor, Mr. Ballard will not flee, he will not be
8 a danger to the community, and we ask that you find such.
9 Thank you.

10 THE COURT: Thank you, Ms. Aldana.

11 The issue of probable cause has been established in my
12 mind. There is probable cause to believe that a criminal
13 offense has occurred as alleged in the complaint and that Mr.
14 Ballard committed that offense. I therefore do find that he
15 should be bound over for trial in front of the United States
16 District Court for the District of Columbia, and I'll enter
17 the appropriate order directing that he be transferred there
18 as required by Rule 5.

19 The issue on detention is a narrow issue, and it's the
20 issue that the Court considers any time a criminal defendant
21 is brought in here. And that's not to make a judgment that is
22 reserved to the United States District Judge as to guilt or
23 innocence, except to the extent that the facts and
24 circumstances of the alleged offense impact the questions that
25 this Court has to decide at this point. And those questions

1 are: Is there a condition or combination of conditions that
2 the Court can place on the Defendant that would reasonably
3 assure his or her attendance at future settings in the case,
4 and are there conditions or combinations of conditions that
5 could be placed on the Defendant that would reasonably assure
6 his or her actions in the future that would not be a danger to
7 another person or the community? Those are different
8 questions from the underlying question of guilt or innocence
9 on the charges that have been brought. And the evidence here
10 is such in my mind that there are conditions that can be
11 placed on Mr. Ballard that will reasonably assure his
12 appearance at future settings in the case and that will
13 protect another person or the community.

14 Now -- and I have prepared an order, or will prepare an
15 order, and let you all look at it. But I want to address a
16 couple of things. And one is the comment that was made by the
17 Assistant United States Attorney that Mr. Ballard will ignore
18 whatever orders the Court places. You need to understand
19 that, in entering the order, that's not permissible. And so
20 if you violate the terms and conditions provided in the order
21 setting release, then the Government will move that the order
22 be revoked and will bring it back in front of me, or by that
23 time may take it to the appropriate magistrate judge or United
24 States district judge where this case is pending. And that
25 will be disposed of as all such actions are, and that is that

1 the Court will enforce its order.

2 And those restrictions that are placed upon a defendant
3 are done so to be sure, as best the Court can, that the
4 defendant appear for trial or for other hearings and that he
5 not be a danger to any other person or the community. And
6 that applies whether it's to Mr. Ballard or any other person
7 charged with a federal crime who comes before the Court.

8 And I'm sorry. Mr. Weimer, do you have a request?

9 MR. WEIMER: Yes, Your Honor. I didn't want to
10 interrupt the Court, but I've been instructed by the District
11 of D.C. that they are planning to appeal any ruling releasing,
12 so we would like to get a brief stay on this order so that
13 they can file the appropriate motions in their District Court.

14 THE COURT: All right. Ms. Aldana, do you have any
15 response to that?

16 MS. ALDANA: Not at this time, Your Honor.

17 THE COURT: All right. I will grant the Government's
18 request for a stay. What that means is that I will review a
19 proposed order and let the parties look it over, I'll enter
20 that order ordering that you be released pending further
21 proceedings in the case, subject to that order, Mr. Ballard.
22 And then I will enter a stay of that order so that the
23 Government can appeal my decision and take it up with the
24 Court in the District of Columbia where this case is pending.

25 So we'll be in brief recess to prepare the order.

1 THE CLERK: All rise.

2 (A recess ensued from 11:53 a.m. to 12: 18 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Thank you. Please be seated.

5 Ms. Aldana, have you and your client gone over the order
6 setting conditions of release?

7 MS. ALDANA: Yes, Your Honor. And if I may, I would
8 like to enter an objection to the stay.

9 THE COURT: Well, let's talk about the order first.

10 MS. ALDANA: Sure.

11 THE COURT: Do you have any objections to the order
12 setting conditions of release?

13 MS. ALDANA: No, Your Honor.

14 THE COURT: Mr. Weimer, does -- I understand the
15 Government doesn't agree and you won't be waiving your right
16 to object to the Court's entry of this order or otherwise
17 prejudicing any appeal that you might make, but do you have
18 any objections to the form of order if that indeed is allowed
19 to go forward?

20 MR. WEIMER: No, Your Honor, we don't have any
21 objections to the form of the order.

22 THE COURT: All right.

23 MR. WEIMER: Of course, as you noted, the Government
24 plans to appeal the ruling itself, but the order appears to be
25 in the proper form, Your Honor.

1 THE COURT: All right. Thank you.

2 Mr. Ballard, have you had an opportunity to go over the
3 order setting conditions of release with your lawyer?

4 THE DEFENDANT: Yes, I have.

5 THE COURT: Is this your signature on Page 3 of the
6 order?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In going over the order with Ms. Aldana,
9 did she instruct you regarding the penalties and sanctions
10 that might apply in the event that you violate any of the
11 terms and conditions of the order?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that there are serious
14 penalties and consequences of disobeying an order setting
15 conditions of release?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that, as part of this
18 order setting conditions of release, you will need to
19 surrender all of your firearms?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You also will be prohibited from any
22 indirect or direct contact with anyone involved in the
23 insurrection at the U.S. Capitol and any protest participants.
24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You will be on home detention, which
2 means that you'll have to stay at your residence at all times
3 except for employment, education, religious services, medical,
4 substance abuse, or mental health treatment, attorney visits,
5 court appearances, court-ordered obligations, or other
6 activities approved in advance by the Pretrial Services Office
7 or your supervising officer. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you understand that you will have to
10 have a GPS monitor on your body as part of the conditions for
11 release?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that, though you are
14 permitted to travel in the Northern District of Texas and to
15 the District of Columbia, that if you were to go to the
16 District of Columbia you'd be restricted from entering the
17 U.S. Capitol or the grounds of the Capitol?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about any of
20 the provisions in this order setting conditions of release, --

21 THE DEFENDANT: I don't.

22 THE COURT: -- Mr. Ballard?

23 THE DEFENDANT: I don't.

24 THE COURT: All right. I will enter the order. I'm
25 directing that it be entered.

1 Now, I want to hear from you, Ms. Aldana, on your
2 objections regarding the stay of the order.

3 MS. ALDANA: Yes, Your Honor. We object to the stay.
4 The Court has the ability to deny the request and release Mr.
5 Ballard on these conditions. We know exactly where he will
6 be. It's my understanding that the appeal will be filed
7 today, but we don't have a timeline as to when it'll actually
8 be decided. And so until we know, Mr. Ballard suffers the
9 consequence of a stay when he could be out on conditions.

10 THE COURT: All right. Anything else?

11 MS. ALDANA: No, Your Honor.

12 THE COURT: Do you want to respond to that, Mr.
13 Weimer?

14 MR. WEIMER: Just briefly, Your Honor. It would be a
15 very short stay. I've spoken to the AUSAs in D.C. They will
16 file the appeal within the next two hours or so. Once the
17 District Judge in D.C. rules on it, we'll have finality
18 pending that. And this really is a D.C. matter. We believe
19 that there should be a stay entered so that the D.C. Court can
20 make the final determination on this issue. And we don't
21 believe it will take very long.

22 THE COURT: All right. Well, I will grant the stay.
23 I do want to state on the record, pursuant to the Bail Reform
24 Act of 1984, 18 U.S.C. Section 3142(g), the particular factors
25 that I considered in coming to my decision with regard to the

1 order setting conditions of release.

2 The first factor is the nature and circumstances of the
3 offense charged, including whether the offense is a crime of
4 violence, a federal crime of terrorism, or involves a minor
5 victim or a controlled substance, firearm, explosive, or
6 destructive device. Clearly, the facts suggest that the
7 nature and circumstances of the offense charged are very
8 serious and disturbing, and that factor certainly militates in
9 favor of detention.

10 The second factor is the weight of the evidence against
11 the Defendant, and it's my conclusion that the weight of the
12 evidence against Mr. Ballard is strong. That factor also
13 militates in favor of detention.

14 The third factor is the history and characteristics of the
15 person, including his character, physical and mental
16 condition, family ties, employment, financial resources,
17 length of residence in the community, community ties, past
18 conduct, history relating to drug or alcohol abuse, criminal
19 history, and record concerning appearance at court
20 proceedings. And then (b), whether at the time of the arrest
21 or the offense the defendant was on probation, parole, or
22 other release pending trial, sentencing, appeal, or completion
23 of sentence for an offense.

24 The evidence that the Court heard today and that also I
25 took notice of as requested by the Government in the Pretrial

1 Services report indicates that Mr. Ballard owns his home here
2 in Fort Worth, where he lives with Ms. McCauley, who was a
3 witness. He holds down two jobs. He has a mortgage which he
4 pays. He owns property, including a truck and a motorcycle,
5 apparently. He has a retirement account, a personal checking
6 account. He pays his bills. He does have financial resources
7 that indicate that he is -- he has ties to the community and
8 ties to continuing on with his job and meeting his
9 commitments. He indicates that he has been a resident of this
10 part of Texas for a good number of years.

11 He does have some criminal history, including criminal
12 history that is questionable in the Court's mind, an evading
13 arrest and an unlawful carrying of a weapon. However, both of
14 those charges are when he was in his twenties: one charge in
15 2010, one charge in 2013. There's no indication that he did
16 not successfully complete the probation that he received for
17 those offenses, nor is there any indication that he pleaded
18 guilty to a felony, since there was no suggestion that he was
19 in unlawful possession of a firearm or ammunition.

20 There's no history of drug or alcohol abuse that was
21 presented to the Court. The evidence from Ms. McCauley was
22 that Mr. Ballard occasionally uses alcohol and to her
23 knowledge is not a user of illegal drugs.

24 There's no suggestion that he's failed to appear at any
25 court proceedings. There's no evidence that at the time of

1 the offense back in January, or when he was arrested, he was
2 on probation, parole, or other release.

3 The evidence with regard to possession of firearms and
4 wearing a firearm as shown on video does not indicate that
5 they're not conditions that Mr. Ballard would not comply with.
6 You have a right to bear arms in this country unless you are a
7 convicted felon or unless there are conditions that are placed
8 by the Court that say you cannot. And there's no indication
9 that Mr. Ballard would not comply with those conditions that
10 are contained therein.

11 The evidence with regard to shooting the dog is disturbing
12 to the Court, but it's unclear from the evidence presented
13 that that was an unprovoked shooting. And so I can think of
14 at least one instance from literature where a man shot a dog
15 in the presence of children and others, and I think that he
16 was not viewed as a threat to society as a result. And I just
17 don't have enough evidence based on that incident to make a
18 decision whether that shows that Mr. Ballard is such a danger
19 to another person or the community that the conditions that
20 the Court places upon him would not be effective in protecting
21 other people and the community.

22 He does have -- apparently has evidence -- there's
23 evidence presented that he has a history of being a member of
24 a militia group. That's also disturbing to the Court. But
25 the indication from what he told Agent Beachum was that he was

1 no longer a member of the militia and had some disagreements
2 with them. So I don't think the fact that you belonged to
3 such a group in the past necessarily means that the conditions
4 would not apply to see that you would be reasonably likely to
5 appear at future settings or that you would be a danger to
6 another person or the community.

7 The final factor to be considered is the nature and
8 seriousness of the danger to any person or the community that
9 would be posed by release. And on balance, after considering
10 all of the factors under 18 U.S.C. § 3142(g), while the Court
11 recognizes all of the above, on balance I have to conclude
12 that the conditions that I propose be placed upon Mr. Ballard
13 would reasonably assure his appearance at future settings in
14 the case and would protect other people and the community.

15 So I will enter my order based on those findings that he
16 be released after processing. I will date that today. I also
17 will order that my order setting conditions of release be
18 stayed to afford the United States the opportunity to appeal
19 my order. And Mr. Ballard, you'll remain in custody pending
20 resolution of that appeal.

21 I also need to state on the record that I withdraw my
22 previous order appointing counsel in this case and requiring
23 you to make a financial contribution toward the counsel
24 appointed. That type of order really is more appropriate for
25 proceedings that will go on in this Court from this point

1 forward. This case will not. This is a D.C. case. And so I
2 do not require you to make a payment for the counsel that you
3 have received up to this point. I think that's a matter that
4 needs to be taken up with the magistrate judge and the
5 district judge in the District of Columbia, since they're the
6 ones that would be enforcing any order for you to pay your
7 lawyer.

8 You clearly do have resources to pay a lawyer and you need
9 to hire a lawyer, but I think that that's a matter that needs
10 to be taken up with, as I said, the judges involved in this
11 case in the District of Columbia.

12 Is there anything else we need to take up, or any other
13 issue we need to address with regard to Mr. Ballard at this
14 time? Mr. Weimer?

15 MR. WEIMER: No, Your Honor, I don't believe so. And
16 just for the record, the Court ordered the stay to maintain in
17 effect until the resolution of the appeal to the District
18 Court?

19 THE COURT: Yes. Or any appeal to the extent that
20 that order might be appealed beyond that. I order that my
21 order setting conditions of release be stayed pending a
22 resolution of any appeals of that order.

23 MR. WEIMER: Thank you, Your Honor. No further
24 issues.

25 THE COURT: Anything on behalf of the Defendant, Ms.

1 Aldana?

2 MS. ALDANA: No, Your Honor.

3 THE COURT: All right. Then, Mr. Ballard, given the
4 order of stay, I order that you be remanded back to the
5 custody of the United States Marshal pending resolution of the
6 appeal of my order.

7 We'll be in recess at this time.

8 THE CLERK: All rise.

9 (Proceedings concluded at 12:33 p.m.)

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CERTIFICATE

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I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

23

/s/ Kathy Rehling

08/16/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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15
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18
19
20
21
22
23
24
25

INDEX

PROCEEDINGS						2
WITNESSES						
Government's Witnesses	Direct	Cross	Redirect	Recross		
Jimmy Beachum	3	31	40			
Defendant's Witnesses	Direct	Cross	Redirect	Recross		
Jill McCauley	42	46	49			
EXHIBITS						
Government's Exhibit 1					Received	21
Government's Exhibit 2					Received	18
Government's Exhibit 3					Received	9
RULINGS						57
END OF PROCEEDINGS						69
INDEX						70