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I N D E X

GOVERNMENT WITNESS:

Special Agent Emily Franks
By Ms. McFadden 4
By Ms. Costner 30

DEFENSE WITNESS:

Ingrid Hudak
By Ms. Costner 68, 82, 88
By Ms. McFadden 79

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P R O C E E D I N G S

(THE FOLLOWING TRANSCRIPT WAS TAKEN
FROM AN AUDIO RECORDING.)

MS. McFADDEN: Your Honor, the next matter is United States versus Marian Hudak, 1:20MJ262-1. Mr. Hudak is present. He's represented by Ms. Costner. The matter has been calendared for a preliminary examination hearing and a detention hearing.

THE COURT: All right. Are you ready to proceed with the detention hearing, Ms. Costner?

MS. COSTNER: Yes, Your Honor, we are prepared to proceed with both.

THE COURT: Good morning to you. Good morning, Mr. Hudak.

THE DEFENDANT: Good morning.

THE COURT: All right. You can call your witness.

MS. McFADDEN: Thank you, Your Honor. The United States Emily Franks.

(SPECIAL AGENT EMILY FRANKS, GOVERNMENT
WITNESS, WAS SWORN.)

UNITED STATES vs. MARIAN HUDAK 1:23CR231
Preliminary Examination & Detention 6/26/23

DIRECT EXAMINATION

BY MS. McFADDEN:

Q Good morning, Ma'am. Would you just state your name and spell your last name for the record.

A Good morning. Yes, my name is Agent Emily Franks. F-R-A-N-K-S?

Q And, Ms. Franks, how are you employed?

A I'm an agent with the FBI, based out of Charlotte.

Q How long have you been with the FBI?

A I've been with the FBI as an agent since January of 2019, and then with the agency in different positions prior to that.

Q Are you currently assigned to a particular squad?

A I am. Currently I'm assigned to the Civil Rights Public Corruption Squad out of Charlotte.

Q And so you may have alluded to this in the squad name, but what types of cases do you investigate typically?

A I primarily investigate civil rights cases.

Q Special Agent Franks, are you familiar with the defendant in this case, Mr. Hudak?

A I am.

1 **Q** How did he first come to the attention of
2 the FBI?

3 **A** He first came to the attention of the FBI
4 back in March of 2020. It came as a tip from the
5 Concord Police Department. They had encountered
6 Mr. Hudak. In those encounters, he was -- he had
7 burned a couple of flags. He made some comments
8 about going to Seria, and he had been found with
9 multiple weapons, including tac vests, hasp baton,
10 and brass knuckles.

11 **Q** And did the FBI later receive a tip from a
12 victim identified by her initials as A.R., regarding
13 an incident that occurred on October 13th, 2022?

14 **A** Yes, Ma'am. In October of this year we
15 received a tip to the National Operations Center,
16 which was then routed to our office, from A.R.

17 **Q** Did the FBI interview A.R. as a result of
18 that?

19 **A** We did.

20 **Q** Did the FBI also interview an individual
21 identified as J.S. related to that tip?

22 **A** Yes.

23 **Q** Did the FBI obtain surveillance footage
24 from areas relevant to the incident that was
25 described?

1 **A** We did.

2 **Q** What did the FBI learn about what occurred
3 on October 13, 2022, in Concord, North Carolina?

4 **A** On October 13th, at around 3:20, J.S. was
5 driving on Concord Parkway South. In front of him
6 was Mr. Hudak. J.S. recognized his truck as a the
7 truck that he had seen around town before, just
8 because it had a couple of flags on it, including
9 the Confederate flag, as well as stickers and some
10 writings.

11 J.S. was initially startled when he
12 saw the truck, but eventually, traffic caused him to
13 get close. When J.S. and Mr. Hudak were driving
14 next to each other, J.S. and Mr. Hudak made eye
15 contact, and Mr. Hudak yelled -- he yelled the N
16 word and, "Come here, boy."

17 **Q** Did J.S. notice anything in the window of
18 Mr. Hudak's truck at the time?

19 **A** He did. He noticed that there was some
20 knives jammed into the open driver's side window of
21 the car.

22 **Q** And this was on Concord Parkway South, is
23 that correct?

24 **A** Yes, Ma'am.

25 **Q** And that's a facility provided and

1 administered by the State of North Carolina, is that
2 right?

3 **A** Yes.

4 **Q** Now after J.S. and Mr. Hudak first
5 encountered one another, what did Mr. Hudak do next?

6 **A** So J.S. attempted to drive away.
7 Mr. Hudak then -- he noticed that Mr. Hudak was
8 following him in his rearview. Mr. Hudak then
9 pulled around J.S.'s car, impeding his driving
10 ability, and Mr. Hudak then got out of the car and
11 banged on J.S.'s window. He pointed his finger and
12 said, "Come here," N word, and, "Hey, come here."

13 **Q** And did J.S. feel threatened enough to
14 reach for a pistol that he had in his car?

15 **A** He did.

16 **Q** Did Mr. Hudak then get back into his
17 truck?

18 **A** He did.

19 **Q** Did he follow J.S. back to his apartment
20 complex in Concord?

21 **A** Yes, he did.

22 **Q** What, if anything, did J.S. do while
23 Mr. Hudak was pursuing him in his truck?

24 **A** While Mr. Hudak was pursuing him, J.S.
25 called his girlfriend, A.R., on the phone, and told

1 her to call 911, the guy with the truck with the
2 rebel flags was following him, and also to bring his
3 rifle downstairs.

4 **Q** And was A.R. at their shared residence at
5 that time?

6 **A** She was.

7 **Q** Was she there with her small child?

8 **A** She was.

9 **Q** Did she call 911?

10 **A** She did.

11 **Q** And then what did she do? Did she leave
12 the apartment?

13 **A** She left the apartment and brought the
14 rifle out to the parking lot to J.S.

15 **Q** And so when she was out there, what did
16 she see?

17 **A** So she ran out in the parking lot and gave
18 him his rifle. At that point, she saw Mr. Hudak
19 pull into the parking lot, followed by an
20 unidentified person in a black Cadillac.

21 **Q** And how did Mr. Hudak and the unidentified
22 person position their vehicles?

23 **A** They pulled into the apartment parking lot
24 and positioned their vehicles to block both the
25 entrance and the exit of the parking lot.

1 **Q** Did surveillance footage from the
2 apartment complex capture this event?

3 **A** It did.

4 **MS. McFADDEN:** Your Honor, may I approach?

5 **THE COURT:** You may.

6 **BY MS. McFADDEN:**

7 **Q** Special Agent Franks, I'm handing you what
8 is marked for identification as Government's
9 Exhibits 1 through 29. I've previously provided a
10 copy of these to Ms. Costner, as well as to the
11 Court.

12 If you could take a look at
13 Government's Exhibit 1, and let me know if you
14 recognize that image.

15 **A** I do.

16 **Q** What is featured in Government's Exhibit
17 1?

18 **A** So you see Mr. Hudak's truck parked to the
19 right. Mr. Hudak is standing in between -- near the
20 black Cadillac, and then the black Cadillac,
21 blocking the entrance and exit to the apartment
22 complex parking lot.

23 **Q** Did both J.S. and A.R. report that they
24 saw Mr. Hudak with a handgun?

25 **A** They did.

1 **Q** And did they say that Mr. Hudak said
2 something related to having a gun?

3 **A** He said that he would shoot J.S. and he
4 later said that he was going to shoot A.R.

5 **Q** Did he yell anything else at J.S. and A.R.
6 at some time?

7 **A** He did. He said, "I will kill you," N
8 word. "I will shoot that black," B word, "I know
9 where you live, and I will be back."

10 **Q** And after A.R. gave J.S. his rifle, what
11 did she do next?

12 **A** A.R. got back -- got into J.S.'s car and
13 drove down the parking lot to get out of the
14 situation.

15 **Q** Did J.S. yell to Mr. Hudak that he had
16 called the police?

17 **A** He did.

18 **Q** And did Mr. Hudak leave the parking lot?

19 **A** Umm, he did, and he -- he did.

20 **Q** Did he drive along the street running
21 parallel to the parking lot in the direction of
22 where A.R. was at that time?

23 **A** Yes.

24 **Q** Could police sirens then be heard?

25 **A** Yes.

1 **Q** And then did Mr. Hudak finally leave the
2 scene?

3 **A** He did.

4 **Q** In response to the 911 call, did officers
5 with the Concord Police Department respond to the
6 scene also attempt to find Mr. Hudak?

7 **A** Yes.

8 **Q** Did they conduct a traffic stop of him?

9 **A** They did.

10 **Q** Did they find any firearms?

11 **A** They did not.

12 **Q** Did they perform a thorough search of the
13 truck?

14 **A** They performed a limited sweep.

15 **Q** Did one of the officers say on camera,
16 "There is just so much stuff, I don't know," when
17 asked if he had found anything in the truck?

18 **A** Yes.

19 **Q** Now directing your attention to
20 Government's Exhibit No. 2, Special Agent Franks, is
21 this a still from a body-worn camera of Mr. Hudak's
22 truck at an earlier date?

23 **A** Yes.

24 **Q** Is this a date from July of 2022?

25 **A** Yes.

1 **Q** And what are the items that are jammed
2 into the driver's side window of the truck?

3 **A** You can see the knives jammed into the
4 window of the truck.

5 **Q** So was Mr. Hudak arrested related to this
6 incident with J.S. but released on a promise to
7 appear?

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

9 **Q** Now did the FBI also interview an
10 individual, K.E., a witness who was at the apartment
11 complex when Mr. Hudak arrived?

12 **A** Yes.

13 **Q** Was she in her car at the time he arrived?

14 **A** She was.

15 **Q** And did she state that she saw Mr. Hudak
16 pointing a small black handgun at J.S.?

17 **A** She did.

18 **Q** Did she call 911?

19 **A** She did.

20 **Q** Did she tell the dispatcher that
21 Mr. Hudak, "Just followed these black guys out here,
22 and I seen guns and everything?"

23 **A** Yes.

24 **Q** Now is K.E. black?

25 **A** She is.

1 **Q** Is A.R. black?

2 **A** She is.

3 **Q** Is J.S. black?

4 **A** Yes.

5 **Q** And had she encountered Mr. Hudak on prior
6 occasions when he drove up to her and yelled and
7 pointed at her?

8 **A** She did, on two prior occasions.

9 **Q** Now through this investigation, did the
10 FBI also learn of incidents involving Mr. Hudak and
11 his neighbors, the Duarte family?

12 **A** Yes.

13 **Q** Specifically, what did the FBI learn about
14 an incident that occurred on November 27, 2021?

15 **A** In regards to that incident, we learned
16 that on November 26th, Mr. Duarte parked in the
17 grass outside of his family's home. On
18 November 27th, he woke up that morning and noticed
19 that his car had been egged. He assumed that it was
20 Mr. Hudak, based on where the eggs were on the side
21 of the car.

22 **MS. COSTNER:** It assumes, Your Honor.

23 **THE COURT:** I am not going to let her
24 testify to that, unless you have some direct --

25 **MS. McFADDEN:** Your Honor, I'm only

1 eliciting this statement to the FBI regarding
2 his belief of the origin.

3 I'll continue.

4 **BY MS. McFADDEN:**

5 **Q** Excuse me, Special Agent Franks, please
6 continue as to what happened on the night of
7 November 27th.

8 **A** On the night of the 27th, around eleven,
9 Mr. Hudak went -- or, I'm sorry, Mr. Duarte was
10 outside about to give a ride home to his friend.
11 Mr. Hudak came out of the house and began yelling at
12 Mr. Duarte about his headlights waking up his
13 daughter.

14 At that point, they argued back and
15 forth. Mr. Hudak yelled things like, "You F-ing
16 Mexican alcoholics," and told Mr. Duarte to, "go
17 back to your country."

18 At that point, they argued back and
19 forth and Mr. Duarte said something like, "if you
20 want to do something, let's do it." At that point,
21 Mr. Hudak charged him. Mr. Hudak swung at
22 Mr. Duarte. Mr. Duarte avoided the first two or
23 three swings, and then Mr. Hudak hit Duarte in the
24 lip with a closed fist. Mr. Duarte then returned
25 punches and they continued fighting.

1 Mr. Duarte then retrieved a shotgun
2 out of the back of his car, pointed it at Mr. Hudak,
3 and then the fight continued. Mr. Hudak charged at
4 Mr. Duarte, and ultimately Mr. Duarte told Hudak
5 that he needed to leave his yard.

6 **Q** Now did the Duartes have a
7 motion-activated ring security camera at that time?

8 **A** They did.

9 **Q** And did it capture two five-second clips
10 of this encounter?

11 **A** Yes.

12 **Q** Was this consistent with Mr. Duarte's
13 recollection of events?

14 **A** They were.

15 **Q** Did Mr. Hudak, after he left, continue to
16 say, "Fucking Mexican," and "When I see you again,
17 I'm going to run you off the road and I'm going to
18 kill you," until he went home?

19 **A** Yes.

20 **Q** Did Mr. Duarte's mother eventually take
21 out a no-contact order on Mr. Hudak?

22 **A** She did.

23 **Q** Did that complaint state that on
24 August 27th, 2022, Mr. Hudak came towards their dog
25 with a bat and verbally attacked her 9 and 13 year

1 old daughters?

2 **A** Yes.

3 **Q** Did the complaint state that when
4 Ms. Duarte came outside, Mr. Hudak called her, "A
5 fucking Mexican, stupid fat ass bitch," and said
6 that she should, "Go back to Mexico."?

7 **A** Yes.

8 **Q** Did Ms. Duarte contact the police after
9 this?

10 **A** She did.

11 **Q** Did Mr. Hudak record Ms. Duarte while she
12 was waiting for the bus and did he say, "There she
13 is, that stupid fat ass Mexican bitch."?

14 **A** Yes.

15 **Q** Was Mr. Duarte so concerned for his mother
16 and his sisters' safety that he actually moved back
17 home?

18 **A** He did.

19 **Q** Now related to these incidents, did the
20 FBI also uncover additional evidence of Mr. Hudak's
21 racial bias?

22 **A** We did.

23 **Q** Did they learn that on July 21, 2022,
24 multiple people called the Concord PD to report that
25 he was broadcasting racial slurs over a loud speaker

1 at a Sam's Club parking lot?

2 **A** Yes.

3 **Q** When police arrived, was he yelling, "Fuck
4 the black people," over a loud speaker?

5 **A** Yes.

6 **Q** Did the FBI, in the course of
7 investigating this case, also speak with a Concord
8 police officer who actually lived in Mr. Hudak's
9 neighborhood?

10 **A** Yes.

11 **Q** Did he once witness Mr. Hudak yelling and
12 cursing at his neighbor, who the officer identified
13 as Hispanic?

14 **A** Yes.

15 **Q** Did he recall Mr. Hudak yelling things
16 like, "Go back, you fucking Mexican, we don't want
17 you dirty people."?

18 **A** Yes.

19 **Q** And did the officer recall that this
20 Hispanic neighbor's children were actually outside
21 waiting for the school bus at the time that has
22 happened?

23 **A** Yes.

24 **Q** Are you familiar with an interaction that
25 Mr. Hudak had with the Concord Police Department on

1 July 2nd, 2022?

2 **A** I am.

3 **Q** Was he arrested for injury to property on
4 that date?

5 **A** Yes.

6 **Q** And did at that time he tell the arresting
7 officer, "Black people or Mexican people, oh, my
8 God, you know, some of them they are good, they
9 friendly, but some of them hate you guys. They hate
10 the thin blue line. They hate everything."?

11 **A** Yes.

12 **Q** And did he admit to calling someone, "you
13 fucking," N word and explain, "I hate using that
14 word because it is not good, but what can I do."?

15 **A** Yes.

16 **Q** And was Mr. Hudak placed on probation in
17 November of 2022 for spitting in a man's face and
18 kicking his car door?

19 **A** Yes.

20 **Q** Related to that probationary term, did a
21 state probation officer visit Mr. Hudak's home on
22 December 16th, 2022?

23 **A** Yes.

24 **Q** Directing your attention to Government's
25 Exhibit No. 3, do recognize these images?

1 **A** Yes.

2 **Q** Are these items that the probation
3 officer, the state probation officer noted in
4 Mr. Hudak's home in that home visit?

5 **A** Yes.

6 **Q** What is the flag on the far left corner?

7 **A** From the far left corner we have a flag
8 that has the swastika flag or Nazi flag.

9 **Q** What is the flag in the far right corner?

10 **A** The far right corner is a KKK flag with a
11 blood drop cross, or iron cross on it.

12 **Q** And then what is the object in the bottom
13 picture there?

14 **A** It is a ring, like a skull shape with an
15 iron cross.

16 **Q** Do you have any other understanding based
17 on your work in the civil rights unit, of the
18 significance, if any, of the emblem?

19 **A** I do. I understand that is an iron cross,
20 which was the German military symbol or medal back
21 in World War I and World War II. I know now that it
22 typically is associated with white supremacist
23 beliefs.

24 **Q** And since the incident with Mr. Hudak and
25 J.S., has he since posted racially inflammatory

1 things on social media?

2 **A** He has.

3 **Q** Turning your attention to Government's
4 Exhibit No. 4, is this a posting that Mr. Hudak made
5 to his publicly available Facebook account on
6 January 9th, 2023?

7 **A** Yes.

8 **Q** What are the comments underneath the
9 photograph?

10 **A** "Idiots from Mexico in my neighborhood,"
11 and then, "illegal immigrants."

12 **Q** And what account is associated with those
13 comments?

14 **A** Marian Hudak.

15 **Q** Turning to Government's Exhibit No. 5, do
16 you recognize this as a screen-shot of a posting
17 taken from Mr. Hudak's Facebook account?

18 **A** I do.

19 **Q** What are the words that are written there?

20 **A** It says, "Mexican idiot asking for trouble
21 every single day."

22 **Q** Is the lawn picture here the same one that
23 is pictured in Government's Exhibit 4?

24 **A** It is.

25 **Q** Showing you now Government's Exhibit No.

1 6, is this a posting made to Mr. Hudak's Facebook
2 account on January 10th, 2023?

3 **A** Yes.

4 **Q** What is the comment underneath the images
5 there?

6 **A** It has, "Mexican cartel and domestic
7 terrorist organizations in Concord, North Carolina.
8 Hate American flag and American people. Shame on
9 you, pay dirty money for walking free."

10 **Q** And what account made that comment?

11 **A** Marian Hudak.

12 **Q** Turning your attention to Government's
13 Exhibit No. 7, is this a posting made to Mr. Hudak's
14 Facebook account on January 25th, 2023?

15 **A** It is.

16 **Q** And what are the comments that are
17 underneath the image here?

18 **A** It says, "I remember this because Mexican
19 cartel and weed dealers in my neighborhood lied
20 about me in court. We deal with the Mexican cartel,
21 hate America and make dirty money on drugs and
22 illegal immigrants." And then the next comment
23 says, "Kiss my American ass, Mexican cartel and drug
24 dealers." The next comment says, "I remember those
25 days."

1 **Q** What account is associated with those
2 comments?

3 **A** Marian Hudak.

4 **Q** Turning your attention to Government's
5 Exhibit No. 8, is this a posting made to Mr. Hudak's
6 Facebook account on February 10, 2023?

7 **A** Yes.

8 **Q** Is this a screen-shot of the video taken
9 of the same residence that was featured in the post
10 in Government's Exhibits 4 and 5?

11 **A** It is.

12 **Q** Is that the Duarte's residence?

13 **A** It is.

14 **Q** Is there now a fence between the
15 properties where there was not one before?

16 **A** There is.

17 **Q** Do you know who built that fence?

18 **A** The Duartes.

19 **Q** And what is the comment underneath the
20 image there?

21 **A** It says, "And she put a no contact against
22 me and always continues to cause problems that
23 harass my family and I."

24 **Q** And is it your understanding, that
25 Ms. Duarte had in fact taken out a new contact order

1 on Mr. Hudak on or around September 2022?

2 **A** She did.

3 **Q** Turning your attention now to Government's
4 Exhibit No. 9, is this a screen-shot of a posting
5 made to Mr. Hudak's Facebook account also on
6 February 10th, 2023?

7 **A** Yes.

8 **Q** And is it again an image of the Duarte's
9 residence?

10 **A** It is.

11 **Q** Is there a comment underneath the image?

12 **A** Yes. It says, "She is a Mexican."

13 **Q** And which account made that comment?

14 **A** Marian Hudak.

15 **Q** Turning your attention now to Government's
16 Exhibit No. 10, is this a posting made to
17 Mr. Hudak's Facebook account on May 23rd, 2023?

18 **A** It is.

19 **Q** What is written on this image of the wolf?

20 **A** It says, "Welcome to my house. That door
21 you just kicked in was locked for your protection
22 and not mine."

23 **Q** Do you have any -- excuse me, are you
24 familiar with lone wolf imagery through your work
25 with the FBI?

1 **A** I am. I'm familiar with the lone wolf
2 imagery, which to us typically means somebody who
3 acts alone, is not affiliated with any groups, but
4 is motivated by some sort of grievance or ideology
5 to motivate towards violence.

6 **Q** And now turning your attention to
7 Government's Exhibit No. 11, is this a posting made
8 to Mr. Hudak's Facebook account on May 23rd, 2023,
9 as well?

10 **A** It is.

11 **Q** And what are the words that are written on
12 the image of the wolf?

13 **A** "I have a love I would die to protect, but
14 I won't go down without a fight. Don't
15 (indiscernible) with that love unless you are
16 prepared to meet your ends."

17 **Q** Now drawing your attention to June 22nd,
18 2023, did you participate, along with other law
19 enforcement, in a search of the Mr. Hudak's
20 residence in Concord?

21 **A** I did.

22 **Q** Did you understand three people to live at
23 the residence at the time?

24 **A** Yes.

25 **Q** Was that Mr. Hudak, his 21-year-old child

1 and his six-year-old child?

2 **A** Yes.

3 **Q** Were photographs taken of certain items in
4 the residence and in Mr. Hudak's two vehicles, one
5 of which was parked at the residence and another
6 which was parked at the state probation office?

7 **A** Yes.

8 **Q** I'm directing your attention now to
9 Government's Exhibit No. 12. What is featured in
10 these images?

11 **A** In the top image, we have a U.S. Secret
12 Service badge that says, "special agent." In the
13 bottom image we have a collection of ammunition.

14 **Q** Were these items recovered from
15 Mr. Hudak's home?

16 **A** They were.

17 **Q** Is Mr. Hudak a special agent with the
18 United States Secret Service?

19 **A** He is not to my knowledge.

20 **Q** Moving on to Government's Exhibit 13, what
21 is featured here?

22 **A** The ammunition that was in the home.

23 **Q** Moving on to Government's Exhibit No. 14,
24 what is featured in this image?

25 **A** We have a motion and order to show cause

1 for failure to comply with a no contact order for
2 stalking or nonconsensual sexual conduct with the
3 name of Abby Duarte.

4 **Q** Is this a photograph of the hard copy that
5 was located within Mr. Hudak's residence?

6 **A** Yes.

7 **Q** And at the bottom in the far right-hand
8 corner, what does it say for the date issued?

9 **A** It says 3/6/23.

10 **Q** Moving on to Government's Exhibit No. 15,
11 what is featured in this image?

12 **A** We have a consent order, no contact order
13 for stalking or nonconsensual sexual conduct.

14 **Q** And again, was Ms. Duarte the complainant
15 in this procedure?

16 **A** Yes.

17 **Q** And is this a photograph of the hard copy
18 of this order that was located in Mr. Hudak's
19 residence?

20 **A** Yes.

21 **Q** And this is a contempt order, is that
22 correct?

23 **A** Yes.

24 **Q** Moving on to Government's Exhibit No. 16,
25 what is featured in this photograph?

1 **A** Here we have the flag with the swastika
2 and the iron cross.

3 **Q** And was this also located in Mr. Hudak's
4 residence?

5 **A** Yes.

6 **Q** Moving to Government's Exhibit No. 17,
7 what is pictured in this photograph?

8 **A** We have a box which contains tactical
9 gear, including two ballistic vests, one with the
10 placard saying, "Police."

11 **Q** And now moving on to Government's Exhibit
12 18, what is featured in this photograph?

13 **A** Here we have just part of the collection
14 of knives that were -- that was located in the home.

15 **Q** Moving on to Government's Exhibit 19, what
16 is featured in this photograph?

17 **A** Some additional, you know, bladed weapons,
18 as well as two law enforcement badges.

19 **Q** Moving on to Government's Exhibit No. 20,
20 what is depicted here?

21 **A** This appears to be a radar gun.

22 **Q** And where was this located?

23 **A** This was located in Mr. Hudak's bedroom.

24 **Q** And moving on to Government's Exhibit No.
25 21, what's featured in this photograph?

1 **A** Here we have some edged weapons as well as
2 what looks like a Taser, and then like a sword.

3 **Q** And where were these items located?

4 **A** I believe in a closet, but I am -- I
5 cannot recall the exact location.

6 **Q** But they were located in this residence?

7 **A** In the house, yes.

8 **Q** Moving on to Government's Exhibit No. 22,
9 what is featured in this image?

10 **A** Here we have in the back of the drawer the
11 Nazi patch, Velcro patch with a swastika on it.

12 **Q** And now Government's Exhibit No. 23, what
13 is this an image of?

14 **A** This image is of, like, a book or pamphlet
15 that was located in Mr. Hudak's house, which depicts
16 racial slurs.

17 **Q** Moving on to Government's Exhibit No. 24,
18 what is featured in this image?

19 **A** This is the same book that also features
20 racial slurs.

21 **Q** Moving on to Government's Exhibit No. 25,
22 what is featured here?

23 **A** Here we have some items that were located
24 in Mr. Hudak's truck that was parked in front of the
25 probation office.

1 **Q** And are these various weapons?

2 **A** Yes.

3 **Q** Looking now at Government's Exhibit No.
4 26, what is featured here?

5 **A** This appears to be a little stun gun that
6 was located in the Honda parked at the residence.

7 **Q** And when you say, "this appears to be," is
8 that based on your training and experience with
9 weapons in your training as an FBI agent?

10 **A** Yes.

11 **Q** Moving on to Government's Exhibit No. 27,
12 what is the object immediately to the left of the
13 pill bottle?

14 **A** It is a wire-pull smoke grenade.

15 **Q** And where was this located?

16 **A** In the truck at the probation office.

17 **Q** And now moving on to Government's Exhibit
18 No. 28, what is featured in this image?

19 **A** Ammunition.

20 **Q** And where was this located?

21 **A** The truck at the probation office.

22 **Q** And finally, Government's Exhibit 29, what
23 is this object here, that is the black object with
24 the yellow on it?

25 **A** It is a weapon-mounted light.

1 investigation of this case?

2 **A** I have.

3 **Q** And you testified that the FBI first
4 became aware of Mr. Hudak in March of 2020, there
5 was a tip from the Concord Police.

6 **A** Yes, Ma'am.

7 **Q** And I may have misunderstood that. That
8 was based on Mr. Hudak saying that -- saying some
9 things among them that he wanted to or was going to
10 go to Seria?

11 **A** Yes, Ma'am.

12 **Q** Was he charged with any crime as a result
13 of that?

14 **A** He was not.

15 **Q** And do you know where they say those
16 comments took place?

17 **A** Like the location where they took place?

18 **Q** Yes.

19 **A** I don't know.

20 **Q** So you don't know that that was his yard
21 or just where it was?

22 **A** I'm not aware.

23 **Q** But bottom line is, there was no crime
24 identified, he was not charged with anything.

25 **A** That's correct. However, they were

1 alarmed enough that they reported the comments to
2 the FBI.

3 **Q** And do you have any evidence that he in
4 fact made plans to go to Seria?

5 **A** I don't.

6 **Q** And do you have any information as to
7 why -- or I'm going to strike that.

8 Moving on to October 13th, this
9 altercation between Mr. Hudak and J.S.

10 Now, A.R. was -- was A.R. in the
11 vehicle during all of this time?

12 **A** No, Ma'am.

13 **Q** And so J.S. and Mr. Hudak were driving
14 down the Concord Parkway?

15 **A** Yes.

16 **Q** Okay. And I believe you testified that
17 J.S. saw or noticed the truck.

18 **A** Yes.

19 **Q** And pulled beside the truck and looked at
20 it, correct?

21 **A** That's not my understanding. It is that
22 traffic forced them to get close.

23 **Q** Okay. But then he looked at the truck?

24 **A** Correct, yes.

25 **Q** And noticed how it -- what it looked like.

1 And so -- did the first, I guess contact, that was
2 more up close and personal between Mr. Hudak and
3 J.S. Did that take place as they were driving or
4 did they stop? Was there a stopping point?

5 **A** It is my understanding that the first
6 contact took place as they were driving when they
7 made eye contact, and then ultimately they stopped
8 at the intersection and --

9 **Q** And that's when J.S. pointed his pistol at
10 Mr. Hudak?

11 **A** I wasn't aware -- I'm not aware of that.

12 **Q** Well, your testimony, and I wrote it down
13 was, that J.S. pointed a pistol at Mr. Hudak.

14 **A** I didn't say that.

15 **Q** So --

16 **A** I said that J.S. was startled enough that
17 he reached for the pistol that he had in his car.

18 **Q** And my recollection and my notes at least
19 say that J.S. pointed a pistol at Mr. Hudak, and
20 then Mr. Hudak walked away and got back in his car.
21 That's not your understanding of the evidence?

22 **A** That's not my recollection.

23 **Q** All right. May I have a moment, Your
24 Honor? I just have to review the affidavit. Sorry.

25 I may have written the notes down

1 wrong, but looking at the affidavit, they stopped at
2 a stoplight, is that correct, or a stop sign?

3 **A** Yes, Ma'am.

4 **Q** And J.S. reached for his pistol?

5 **A** Yes. That's my understanding.

6 **Q** And so now once they got to the apartment
7 complex where J.S. lived, that's when J.S. contacted
8 A.R. and asked for her to bring him his rifle?

9 **A** I believe it was en route from the
10 incident to the apartment complex.

11 **Q** And that was an assault rifle, correct?

12 **A** Correct.

13 **Q** Did the police seize or see the assault
14 rifle when they responded?

15 **A** I know that they are aware of it. I don't
16 know if they seized it.

17 **Q** Did they see or seize the pistol that J.S.
18 had in his vehicle as he was driving along?

19 **A** Not to my knowledge.

20 **Q** And I believe it is your testimony, that
21 Mr. Hudak's truck, once he was encountered by the
22 police, was searched?

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

24 **Q** And no pistol was found?

25 **A** No.

1 **Q** And he was taken downtown, or I guess to
2 the station and charged, correct?

3 **A** At that time, I'm not sure. I don't
4 believe he was taken down at that time. I think the
5 police came back later that evening and ultimately
6 arrested him.

7 **Q** Okay. And did they come with a search
8 warrant for his vehicle?

9 **A** They did not.

10 **Q** And you testified that their search was
11 limited, is that correct?

12 **A** Correct.

13 **Q** So let me make sure I understand this.
14 The police knew from J.S. and A.R., that they had
15 reported that Mr. Hudak had a pistol, correct?

16 **A** Yes.

17 **Q** And K.E., a witness, also reported seeing
18 a pistol in the hands of Mr. Hudak, but the police
19 conducted a search of the vehicle, did not find a
20 pistol, correct.

21 **A** They performed a limited sweep.

22 **Q** In a vehicle where there had been a report
23 that a person who was later charged had a pistol and
24 had pointed it and threatened others, is that
25 correct?

1 **A** Correct.

2 **Q** It is true, isn't it, that when A.R.
3 contacted the police, A.R. reported this
4 altercation, but at no time reported seeing -- when
5 she made that call, that Mr. Hudak had a firearm,
6 correct?

7 **A** I can't recall that.

8 **Q** Okay. May I have a moment?

9 So look at the affidavit that was
10 signed by one of your -- that you're testifying from
11 and that was signed by a fellow FBI agent. It says
12 in a footnote that, "J.S. called 911 during the
13 encounter, but did not contemporaneously report
14 seeing a gun in Hudak's hand." Would that be a fair
15 recitation of what happened?

16 **A** Yes.

17 **Q** And so it was only later that there was
18 this report of the firearm, correct?

19 **A** I mean, not too much later.

20 **Q** Certainly no one was calling 911 and
21 saying there is a man with a gun who is threatening
22 us?

23 **A** I would need to check my notes.

24 **Q** Well, again, if the footnote says, "J.S.
25 called 911" --

1 **MS. McFADDEN:** Objection, asked and
2 answered.

3 **MS. COSTNER:** Well, Your Honor, she's
4 changing her answer.

5 **THE COURT:** Overruled.

6 **MS. COSTNER:** Thank you, Your Honor.

7 **BY MS. COSTNER:**

8 **Q** The footnote says, "J.S. called 911 during
9 the encounter, but did not contemporaneously report
10 seeing a gun in Hudak's hand." Would it be fair to
11 say that that was not reported to anyone by J.S.?

12 **A** By J.S.

13 **Q** Okay. And did you bring any evidence or
14 any recording that shows that A.R. reported in a 911
15 call to police, that Mr. Hudak had a firearm?

16 **A** I don't have a recording of that call.

17 **Q** Do you have anything in your notes that
18 indicates that that was said to police as part of a
19 911 call?

20 **A** Only prior interviews that we've done, but
21 I would need to refer back to my notes.

22 **Q** Prior interviews with the 911 operator?

23 **A** No, with A.R. or J.S.

24 **Q** Well, aren't those calls recorded?

25 **A** They are, but I believe in this case, the

1 call from A.R. was not recorded, but I would need to
2 refer back to my notes.

3 **Q** So is it not standard practice that 911
4 calls are recorded?

5 **A** I can't speak for Concord Communications.

6 **Q** So all of the 911 calls, this particular
7 one was not recorded, is that your testimony?

8 **MS. McFADDEN:** Objection.

9 **MS. COSTNER:** I'll move on, Your Honor.

10 **THE COURT:** All right.

11 **BY MS. COSTNER:**

12 **Q** Now you looked at Exhibit 2 -- let's go
13 back to Exhibit 1 for just a minute.

14 This black Cadillac, who was the
15 driver of the black Cadillac?

16 **A** Unknown at this time.

17 **Q** So no one ever stopped or found the driver
18 of the black Cadillac?

19 **A** No, Ma'am.

20 **Q** And so I take it that that black Cadillac
21 was never searched?

22 **A** Correct.

23 **Q** No record of anyone in that black Cadillac
24 with a firearm?

25 **A** Not to my knowledge, no.

1 **Q** In regard to Exhibit 2, the truck with the
2 knives, was that photo taken the day that this
3 altercation happened between Mr. Hudak and J.S.?

4 **A** No.

5 **Q** This was a different day?

6 **A** Yes.

7 **Q** There was no report that Mr. Hudak, on the
8 day he had the altercation with J.S., jumped out
9 with a knife and threatened anybody with a knife,
10 correct?

11 **A** There was not.

12 **Q** Now I'm going to move on to the incident
13 on -- was it November 27th, 2021?

14 **A** Yes, Ma'am.

15 **Q** Okay. And that was the fight, it sounds
16 like a fistfight between Mr. Hudak and Mr. Duarte?

17 **A** Correct.

18 **Q** When Mr. Hudak came out, yelled at him
19 because there were headlights shining and he
20 contended it woke his daughter up.

21 **A** Uh-huh. That's right.

22 **Q** So I believe it was your testimony that
23 Mr. Duarte said, you know, "Come on, let's do
24 something about it," so he instigated the fight, the
25 physical fight, correct?

1 **A** There was an argumentation before and I
2 believe --

3 **Q** So they were fighting and then it was
4 Mr. Duarte that went and got a shotgun, correct?

5 **A** Correct.

6 **Q** And Mr. Hudak, on that occasion, did not
7 have a shotgun, did he?

8 **A** No.

9 **Q** Now with respect to -- you testified about
10 the -- I'm going to move on to this incident that
11 happened at Sam's.

12 **A** Okay.

13 **Q** Mr. Hudak allegedly was saying racial
14 slurs over a loud speaker. Was Mr. Hudak charged
15 with possessing or found in possession of any guns
16 or weapons on that occasion?

17 **A** No.

18 **Q** Was he asked or told to leave Sam's?

19 **A** Yes.

20 **Q** And he left Sam's when he was told to
21 leave?

22 **A** Correct.

23 **Q** You testified that neighbors have
24 witnessed Mr. Hudak yelling things, insulting
25 things, according to them. Was he waving guns or

1 threatening them with weapons on that occasion?

2 **A** He was not.

3 **Q** And when there was an arrest, I believe
4 you said on July 2nd, 2022, injury to property, did
5 he shoot a gun at someone?

6 **A** No.

7 **Q** And he was put on probation, I believe you
8 said, for spitting in somebody's face, hitting a
9 car. That didn't involve the Duarte, did it?

10 **A** No.

11 **Q** It didn't involve J.S. or A.R., did it?

12 **A** No.

13 **Q** With respect to the exhibits that
14 display -- or, let's just go on to three, since
15 that's the next one in line.

16 It shows a swastika and the KKK and
17 this iron cross ring. You said those were found in
18 his residence?

19 **A** Yes. The probation officer found them,
20 and I'm not aware of where in the residence they
21 were located.

22 **Q** Okay. And so do you know whether or not
23 Mr. Hudak is a collector of these things?

24 **A** I am not aware.

25 **Q** And there is nothing inherently illegal

1 about owning such things, isn't that correct?

2 **A** Correct.

3 **Q** Unless you stole them from somebody, but
4 if you bought them legitimately, you are allowed to
5 have them, correct?

6 **A** Correct.

7 **Q** Any evidence that he took that iron cross
8 skull ring and was hitting people with it or using
9 it as a brass knuckle?

10 **A** No. It was just found.

11 **Q** It was just found in his home, correct?

12 **A** Correct.

13 **Q** All right. With respect to Exhibits 4
14 through 10, I believe these are the -- those were
15 all Facebook posts?

16 **A** Yes.

17 **Q** All right. Are the Duarte's Facebook
18 friends of Mr. Hudak's, do you know?

19 **A** I don't know.

20 **Q** You never looked to see?

21 **A** No, Ma'am.

22 **Q** And what about J.S. and A.R., do you know
23 if they are Facebook friends of Mr. Hudak?

24 **A** I don't know.

25 **Q** Did you look to see who his Facebook

1 friends are?

2 **A** I personally didn't, but I know at some
3 point it was done, most likely.

4 **Q** You don't have --

5 **A** I don't have that information.

6 **Q** Okay. And so the Facebook posts that he
7 made, do you know whether he was instant messaging
8 these to the Duarte's or to J.S. or to A.R.?

9 **A** I don't.

10 **Q** And in these Facebook posts, let's look at
11 number four. He says, "Idiots from Mexico in my
12 neighborhood, illegal immigrants." He doesn't
13 threaten to harm them, to go over there to do
14 anything to them, does he?

15 **A** He doesn't.

16 **Q** Same with Exhibit No. 5 -- I'm sorry, that
17 was -- Exhibit 5, "Mexican idiot asking for trouble
18 every single day." He doesn't threaten them. There
19 is no threats of violence or a gun or anything like
20 that, correct?

21 **A** Correct.

22 **Q** I mean, clearly he doesn't like them, that
23 would be a fair thing, correct?

24 **A** (No verbal response heard.)

25 **Q** There is nothing inherent or illegal about

1 expressing your dislike of people, you have a First
2 Amendment right to do that, isn't that true?

3 **A** That's true. But based on the previous
4 altercation and the continued threats, this family
5 is certainly intimidated by Mr. Hudak's actions and
6 posts.

7 **Q** Well, if Mr. Hudak is not Facebook friends
8 with any of these folks, how are they being -- I
9 mean, they are not -- he's not really communicating
10 a threat to them, is he, if that's the case?

11 **A** I mean, it is public Facebook.

12 **Q** And there is nothing in these particular
13 posts where there is a specific threat against
14 anybody, isn't that correct?

15 **A** That's correct.

16 **Q** Now you testified that wolves mean
17 that -- I don't know, that somehow that is some
18 symbol of being independent and also being -- tell
19 me again what it means if you like wolves.

20 **MS. McFADDEN:** Objection.

21 **THE COURT:** She is asking, I think, from
22 cross-examination. You asked what wolves mean.
23 Objection is overruled.

24 **THE WITNESS:** I'm sorry, I didn't.

25

1 **BY MS. COSTNER:**

2 **Q** I wasn't quite sure I understood. So in
3 your opinion, or in your training, posting pictures
4 of wolves means that there is some -- that you're
5 part of some hate group, basically?

6 **A** No. A lone wolf, you know, identifying as
7 a lone wolf is concerning because it seems to be an
8 actor that is motivated by some sort of ideology or
9 animus, not affiliated with any groups that could,
10 you know, move to violence quickly.

11 **Q** Okay. Well, let's look at Exhibit 10. It
12 shows a wolf and it says, "Welcome to our house.
13 That door you just kicked in was locked for your
14 protection, not mine." What group does that show
15 animus against?

16 **A** No particular group.

17 **Q** It could be he just likes wolves?

18 **A** Could be.

19 **Q** Correct. And when you look at -- let's
20 look at Exhibit 11. "I have a love I've got to
21 protect, but I won't go down without a fight. Don't
22 threaten what I love unless you are prepared to meet
23 your end." What group does that show animus
24 against?

25 **A** No particular group.

1 **Q** It might show animus against somebody that
2 threatens somebody, right?

3 **A** Correct.

4 **Q** But there is no Hispanic -- no threat, no
5 other group that this targets, isn't that correct?

6 **A** Correct.

7 **Q** No swastika is pictured in this photo.

8 **A** No swastika in this photo; however,
9 looking at the greater picture --

10 **Q** I'm sorry, the --

11 **A** I'm sorry.

12 **Q** The swastikas were found in his home?

13 **A** Correct.

14 **Q** There is nothing in that post around that
15 wolf, isn't that correct?

16 **A** There is not.

17 **Q** And Exhibit 12 -- there we go, the Secret
18 Service -- okay. This was a search on, you said
19 recently, last week, correct?

20 **A** Yes, Ma'am.

21 **Q** Okay. And where was the Secret Service
22 badge found?

23 **A** In the residence. I believe in his
24 bedroom.

25 **Q** And just sitting on the bed? Was it in a

1 drawer? Was it in a case? Was it in a container?

2 **A** I don't recall.

3 **Q** Were you there?

4 **A** I was there.

5 **Q** So you have a photo of it. That's where
6 somebody put it to take a photo of it; isn't that
7 correct?

8 **A** Correct.

9 **Q** And you have no idea whether he had this
10 in like a box, where he might have other
11 collectibles? You don't know where it was, do you?

12 **A** I don't recall the exact location.

13 **Q** Was it in his pocket?

14 **A** No.

15 **Q** Was it on his person?

16 **A** It was not.

17 **Q** Was it in a jacket pocket?

18 **A** No.

19 **Q** And the box of ammunition, where was that
20 found?

21 **A** I don't recall the exact location of this
22 box of ammunition.

23 **Q** So for all you know, it could have been on
24 a closet shelf?

25 **A** Potentially, yes.

1 **Q** And this bag of bullets, Exhibit 13, where
2 was that found?

3 **A** In the residence. I don't recall the
4 exact location.

5 **Q** You don't know where it was? No firearms
6 were discovered in the residence, correct?

7 **A** Correct.

8 **Q** So these bullets weren't in proximity to a
9 firearm or a magazine or anything like that?

10 **A** There were magazines in the residence. I
11 don't know if these bullets were in proximity to a
12 magazine.

13 **Q** You don't know where it was found. Again,
14 it could have been in a box on a closet shelf. It
15 could have been under the bed. It could have been
16 in a drawer.

17 **A** Yes, Ma'am.

18 **Q** Now he had these -- I'm looking at
19 Exhibits 14 and 15, the two -- the motion and order
20 to show cause and the contempt order. That was
21 paperwork in his home, correct?

22 **A** Correct. Yes, Ma'am.

23 **Q** All right. Where was it found?

24 **A** I don't recall the exact location.

25 **Q** Moving on to Exhibit 16, what is this item

1 that has the swastika on it?

2 **A** A flag.

3 **Q** A flag, and so this is a closet that it's
4 found in?

5 **A** That's what it looks like, yes, Ma'am.

6 **Q** Do you know whether -- I mean, was the
7 closet door open? Was it there like that, or was it
8 pulled out of something?

9 **A** I don't recall.

10 **Q** So you don't know whether he had that
11 folded up and in a container with other
12 collectables?

13 **A** Correct.

14 **Q** Moving on to Exhibit 17, the box with the
15 tactical gear and the ballistic vest, now those are
16 in a container.

17 **A** Yes, Ma'am.

18 **Q** And what room of the house is this?

19 **A** His bedroom.

20 **Q** His bedroom. His bedroom or their
21 bedroom?

22 **A** A bedroom.

23 **Q** A bedroom. So you don't know whose
24 bedroom it was?

25 **A** Correct.

1 **Q** Could you tell, was there a bed in that
2 bedroom?

3 **A** Yes.

4 **Q** And was there evidence of whether somebody
5 was sleeping in it or whether it was a guest room or
6 something like that?

7 **A** I couldn't say.

8 **Q** And with respect to the items found in
9 this box, did you all open the box to take the
10 photos?

11 **A** I don't know exactly.

12 **Q** You don't know if somebody opened the box
13 or not?

14 **A** Uh-huh.

15 **Q** But it is in a container?

16 **A** Correct.

17 **Q** He wasn't wearing these items?

18 **A** Correct.

19 **Q** He hasn't been arrested or found wearing
20 these items in any, you know, in the altercations
21 and incidents you've testified to?

22 **A** Correct.

23 **Q** You don't have any photos of him wearing
24 these items, correct?

25 **A** I don't know about these particular items,

1 no.

2 **Q** And with respect to -- I believe you got
3 some close-up pictures. Is that what, 18 and 19,
4 are some of the knives and things that are found?

5 **A** Yes.

6 **Q** In the bedroom?

7 **A** Uh-huh.

8 **Q** You seized those items. Did you remove
9 them?

10 **A** We removed the law enforcement badges.

11 **Q** And he wasn't -- those badges are
12 displayed along with the knives on some type of --
13 is that a magnetic bar, like one might put knives
14 they don't use, the knives, or were they somehow
15 affixed to the bar?

16 **A** Yes, they were. Seemed like magnets on
17 the bar.

18 **Q** So they are all in a row. They are all on
19 a bar. They are all in this room, correct?

20 **A** Correct.

21 **Q** He wasn't wearing a badge?

22 **A** Not at that time.

23 **Q** In other words, you didn't find badges,
24 like police badges that were affixed to a jacket or
25 a pocket, or a police uniform in his possession,

1 correct?

2 **A** We found a police placard attached to one
3 of the ballistic vests, but none of the badges
4 attached.

5 **Q** Is that the ballistic vest that is found
6 in this container?

7 **A** Yes.

8 **Q** You can see the word "police" there. So
9 that wasn't something that he was wearing?

10 **A** Correct.

11 **Q** He also has, looking at Exhibit 18, a
12 knife collection, some of them look like they have a
13 flag, American flag print on them.

14 **A** Correct.

15 **Q** Some, I can't tell, it might be a little
16 bit of camouflage, something on those handles?

17 **A** Yes, correct.

18 **Q** And then a United States Army badge above
19 that, so a display, as one might say, correct?

20 **A** Correct.

21 **Q** And then Exhibit 19 is just a close-up of
22 that, correct?

23 **A** Correct. A different location. 18 and
24 19, weren't the same.

25 **Q** Eighteen and 19. But this, looking at 17,

1 this is a close-up of the bar right by the
2 container, right?

3 **A** Yes, Ma'am.

4 **Q** And so one of these badges say "special
5 police." do you know where that is from?

6 **A** I don't.

7 **Q** The other one says "security enforcement
8 officer." Do you know where that is from?

9 **A** I don't.

10 **Q** Exhibit 20, you've got -- you said a speed
11 check, so that's something like an officer might
12 point at a car to determine rate of speed?

13 **A** Yes.

14 **Q** And do you know whether it was
15 operational?

16 **A** I don't.

17 **Q** Do you know whether he was using it for
18 anything?

19 **A** I don't.

20 **Q** So where was it found? I see it is on
21 sort of a camouflage bag. Was it in that bag?

22 **A** I believe it was.

23 **Q** Okay. And where was the bag found?

24 **A** It was in that same room. I don't know
25 the exact location.

1 **Q** So in the same room with the container and
2 then the things displayed on the magnetic bars,
3 correct?

4 **A** Yes.

5 **Q** So Exhibit 21, I see that those items are
6 displayed on a weight bench. Is that right?

7 **A** Yes.

8 **Q** And I think you said one of them is a
9 taser. Was it operational?

10 **A** I do not know.

11 **Q** When the search warrant was executed, were
12 all of these things lined up on a weight bench?

13 **A** They were not.

14 **Q** Where were they?

15 **A** I don't recall their exact location.

16 **Q** Were they in the room with the weight
17 bench?

18 **A** If they weren't in there, they were in a
19 closet adjacent.

20 **Q** Was the weight bench in this bedroom or
21 was it in a separate room?

22 **A** It was in that separate room.

23 **Q** So was that more like an exercise room? I
24 mean, it had a weight bench and some weights and
25 things like that.

1 **A** I believe it had a weight bench and
2 weights.

3 **Q** And there are some weights, you can see
4 them sort of near the weight bench, correct?

5 **A** Correct.

6 **Q** And there was a closet in there?

7 **A** I don't know if it was in -- it was right
8 near the room, like in the entryway area.

9 **Q** So you don't know whether these knives
10 were in a container, in a closet, on a shelf, you
11 have no idea how they were secured or contained,
12 other than the fact that they had been now spread
13 out over a weight bench. Is that correct?

14 **A** I don't know the location where they were
15 found.

16 **Q** These were not -- he wasn't wearing these
17 on his person, correct?

18 **A** Correct.

19 **Q** And he wasn't holding the taser, he wasn't
20 carrying the taser when you all went in?

21 **A** At the time of his arrest?

22 **Q** Yes. Was he?

23 **A** No.

24 **Q** And Number Exhibit 22, you noted the
25 swastika badge. Where was this? Is this a desk or

1 a table?

2 **A** It's a desk.

3 **Q** And where was it?

4 **A** I believe in the same room as the knives
5 with the magnet strips on the wall.

6 **Q** So a bedroom that you are not sure if
7 anybody occupied or not?

8 **A** Correct.

9 **Q** And so that was a drawer that has now been
10 opened, correct?

11 **A** Correct.

12 **Q** By somebody -- by law enforcement, as a
13 part of the search?

14 **A** Correct.

15 **Q** And then a photo made of this badge that
16 is in the drawer, in the back of the drawer?

17 **A** Correct.

18 **Q** He wasn't wearing the badge?

19 **A** He was not.

20 **Q** The book that you testified about,
21 Exhibits 23 and 24, where was that found?

22 **A** It was found in the same room, the bedroom
23 that I'm not sure if it is being occupied, but I'm
24 not sure of the exact location.

25 **Q** So you don't know where this book was

1 located?

2 **A** In the bedroom.

3 **Q** I understand that, but don't know if that
4 was in a container with the other memorabilia or
5 other items of the nature that we've looked at
6 before, correct?

7 **A** Correct.

8 **Q** With respect to Exhibit 25, these were
9 items found in the truck?

10 **A** Yes, Ma'am.

11 **Q** So it looks like a hammer. You don't
12 consider that -- well, I understand it can be used
13 as a dangerous weapon, not inherently dangerous
14 weapon, correct?

15 **A** (Inaudible.)

16 **Q** So to the right, those -- are those
17 hatchet pipes?

18 **A** They look like axes, hatchets.

19 **Q** And they are pipes, though, aren't they?
20 They got a little thing like so you could smoke it,
21 sort of a novelty sort of thing?

22 **A** I don't know.

23 **Q** Were they in the truck?

24 **A** I don't know their exact location.

25 **Q** And so towards the seatbelt, what is that?

1 **A** I'm not sure.

2 **Q** And so there is honestly a knife kind of
3 near that item.

4 **A** Correct.

5 **Q** Where was that found?

6 **A** I don't know the exact location in the
7 truck.

8 **Q** It looks like a box cutter.

9 **A** Yes, Ma'am.

10 **Q** Do you know where that was?

11 **A** I don't know the exact location of that in
12 that truck.

13 **Q** Is there a toolbox in the truck?

14 **A** I don't know.

15 **Q** So you don't know if this was in the back
16 in a toolbox, in a box, under a seat, anything like
17 that?

18 **A** Correct.

19 **Q** With respect to Exhibit 26, now you
20 said -- did you say this is a stun gun?

21 **A** Yes, Ma'am.

22 **Q** This was not found in Mr. Hudak's truck,
23 was it?

24 **A** Correct.

25 **Q** That was in a different car?

1 **A** Yes, Ma'am.

2 **Q** Not a car driven by Mr. Hudak, owned by
3 Mr. Hudak?

4 **A** It was parked at his residence.

5 **Q** Well, did you look to see who the car was
6 registered to?

7 **A** I have no knowledge of that.

8 **Q** As a part of the search, did you find any
9 evidence that Mr. Hudak was an owner, possessor or
10 driver of that car?

11 **A** I have no knowledge of that.

12 **Q** And where did the search of the truck
13 happen when you found these other items that are in
14 paragraph 25?

15 **A** Where did it happen?

16 **Q** Where was his truck?

17 **A** Oh, it was parked near his probation
18 office.

19 **Q** And that's the state probation officer,
20 that wasn't at his house?

21 **A** Correct. Yes, Ma'am.

22 **Q** So he wasn't driving this car that this
23 item was found in?

24 **A** Correct.

25 **Q** So this is a legal weapon, if he doesn't

1 own it, a person in general owning a stun gun?

2 **A** Not to my knowledge.

3 **Q** You didn't charge anybody with it?

4 **A** No.

5 **Q** Exhibit 27, you said that's a smoke
6 grenade. Now if you deploy that, are things going
7 to, like, if you deployed a smoke grenade near that
8 table, would the table explode?

9 **A** I have no knowledge.

10 **Q** You don't know anything about smoke
11 grenades?

12 **A** Not this particular smoke grenade.

13 **Q** In general, do you have knowledge of smoke
14 grenades?

15 **A** No. Not -- no. Just through training and
16 experience.

17 **Q** So if you would, I guess explain then in
18 your opinion, or your knowledge, the significance of
19 a smoke grenade.

20 **MS. McFADDEN:** Objection, irrelevant.

21 **THE COURT:** Objection, sustained.

22 **BY MS. COSTNER:**

23 **Q** Now the ammo in paragraph 28, there was no
24 firearm associated with that ammunition, correct?

25 **A** Not located in our search.

1 **Q** Not in the truck?

2 **A** Yes, Ma'am.

3 **Q** Not in the house?

4 **A** Yes, Ma'am.

5 **Q** Not on Mr. Hudak's person?

6 **A** Yes, Ma'am.

7 **Q** And what, again, what is depicted in 29?

8 **A** Twenty-nine looks to me to be a
9 weapon-mounted light that mounts onto a firearm.

10 **Q** A light?

11 **A** Yes, Ma'am.

12 **Q** No firearm associated with that that was
13 found in the truck?

14 **A** No.

15 **Q** That was found in the house?

16 **A** No, Ma'am.

17 **Q** Or that was found on Mr. Hudak?

18 **A** Correct.

19 **MS. COSTNER:** I think that's all the
20 questions I have.

21 **THE COURT:** All right. I was hoping that
22 we would get through this before we had to take
23 a break for lunch, but (inaudible due to papers
24 rustling.) We'll be away for an hour.

25 **MS. McFADDEN:** Your Honor, would I have an

1 opportunity to redirect Special Agent Franks?

2 **THE COURT:** I didn't say anything about we
3 were finished with the case, but I just can't
4 go any longer without eating something.

5 We're breaking for lunch for one hour.
6 (Luncheon recess taken.)

7 **THE COURT:** All right.

8 **MS. McFADDEN:** May Special Agent Franks
9 take the stand?

10 **THE COURT:** Yes, she may take the stand
11 for redirect, as I recall.

12 **MS. McFADDEN:** That's correct, Your Honor.
13 Thank you.

14 REDIRECT EXAMINATION

15 **BY MS. McFADDEN:**

16 **Q** Special Agent Franks, just a few follow-up
17 questions. In terms of Mr. Hudak's arrest on
18 June 22nd, did that occur at his house?

19 **A** It did not.

20 **Q** Where did it occur?

21 **A** At his probation office.

22 **Q** Do you know the limitations as to whether
23 weapons can be carried on one's person into a
24 probation office?

25 **A** Yes. They cannot be.

1 **Q** Was there a reason he was arrested at the
2 probation office and not at his home?

3 **A** It was deemed to be the safest location
4 for the arrest.

5 **Q** And was Mr. Hudak wearing any jewelry at
6 the time of his arrest?

7 **A** He was wearing a ring.

8 **Q** What type of ring was it?

9 **A** It depicted an iron cross.

10 **Q** Is that similar to the item that we saw in
11 Government's exhibits earlier?

12 **A** Yes.

13 **Q** And regarding the taser and whether or not
14 it was operational, is it standard procedure of the
15 FBI to test-fire weapons at the time they are seized
16 or observed in the residence?

17 **A** No, Ma'am.

18 **Q** And why is that?

19 **A** Unsafe.

20 **Q** And finally, regarding Mr. Hudak and J.S.,
21 to your knowledge, did they have any pre-existing
22 relationship prior to that encounter on the Concord
23 Parkway?

24 **A** Not to my knowledge. I understand that
25 J.S. had seen Mr. Hudak before and they -- Mr. Hudak

1 had flipped J.S. off.

2 **Q** But that was the extent of your
3 understanding of any relationship that they had?

4 **A** Yes.

5 **MS. McFADDEN:** I have no further
6 questions, Your Honor.

7 **THE COURT:** Recross?

8 **MS. COSTNER:** No recross.

9 **THE COURT:** All right. You may step down.

10 **MS. McFADDEN:** We have no further evidence
11 to present in this matter and only proffer to
12 the Court the contents of the pretrial services
13 report that was prepared.

14 **THE COURT:** All right. Do you want to be
15 heard with respect to the pretrial services
16 report?

17 **MS. COSTNER:** Yes, Your Honor. I have
18 reviewed the pretrial services report with my
19 client, and we do have a couple of issues to
20 bring forth.

21 May I have just a moment to
22 find -- because it was disclosed this morning,
23 I couldn't print it, so if the Court will just
24 give me a minute to find it.

25 **THE COURT:** You may have a minute.

1 **MS. COSTNER:** Thank you. If I may pull it
2 up. I did download it to my iPad, Your Honor,
3 if I may just pull that up for a moment to
4 refer to it.

5 **THE COURT:** All right. While you're doing
6 that, Ms. McFadden, had you intended to offer
7 these exhibits?

8 **MS. McFADDEN:** Thank you, Your Honor.
9 That was remise of me. I would like to offer
10 Government's Exhibits 1 through 29 into
11 evidence.

12 **THE COURT:** All right.

13 **MS. COSTNER:** Your Honor, with respect --

14 **THE COURT:** Wait a minute.

15 Go ahead.

16 **MS. COSTNER:** With respect to the
17 presentence report, on page -- I'm sorry,
18 pretrial, the bail report, Your Honor, on page
19 four under mental health and substance abuse,
20 he just wanted me to make sure that the
21 Court -- and it doesn't really say, but he no
22 longer takes the Zolpiden for sleep. He did
23 take it in 2020, but he no longer takes that
24 prescription medicine.

25 With respect to the -- on page -- hold on

1 just a minute. On page four, where it shows
2 the prior criminal history, the charge on
3 11/7/2020, according to Mr. Hudak, he was not
4 charged with misdemeanor concealing a gun. It
5 was concealing a weapon. The weapon was a
6 knife. So he would ask for that correction.

7 On page -- up at the top, the charge on
8 February 18th, 2021, he recalls being charged
9 with that. He does not recall the disposition
10 where it says it was consolidated for judgment,
11 10 days imprisonment, suspended for six months.
12 He's not contesting it necessarily, Your Honor,
13 but he does not recall it, so he cannot agree
14 that that is an accurate statement of what
15 happened with that charge.

16 On page -- it's at the top where it
17 describes a probation violation. Mr. Hudak,
18 agrees about all of the weapons that are
19 mentioned, but he denies that a stun gun was
20 located on that occasion.

21 Finally, going back to page two, it would
22 be the fourth paragraph that begins with, "The
23 probation officer spoke with the defendant's
24 daughter."

25 In speaking both with Mr. Hudak and his

1 daughter, he denies saying that she suffers
2 from anxiety and is not dependable. In fact,
3 he would propose her as a third-party
4 custodian.

5 I talked with Ms. Hudak, his daughter, and
6 she further supported the denial of suffering
7 from anxiety and being not dependable, and is
8 willing to serve, and I can get into that
9 later, Your Honor.

10 But, so were it -- I don't know that it
11 mentions it in the recommendations but, you
12 know, with respect to the probation officer's
13 discussion of Ms. Hudak as a possible
14 third-party custodian, that would be all of the
15 corrections or changes that we would request to
16 the bail report.

17 **THE COURT:** All right. Thank you. Is
18 there evidence for the defendant?

19 **MS. COSTNER:** Your Honor, there would be
20 evidence with respect to detention, not with
21 respect to probable cause or the preliminary
22 examination in this matter.

23 Your Honor, I would call Ingrid Hudak, my
24 client's daughter.

25 **THE COURT:** All right. Thank you.

1 **(INGRID HUDAK, DEFENSE WITNESS, WAS**
2 **SWORN.)**

3 **DIRECT EXAMINATION**

4 **BY MS. COSTNER:**

5 **Q** Good afternoon, Ms. Hudak. If you would,
6 for the record, please state your name.

7 **A** Ingrid Michelle Hudak.

8 **Q** Do you recognize the person seated next to
9 me?

10 **A** Yes.

11 **Q** How do you know Mr. Hudak?

12 **A** He is my father.

13 **Q** How old are you, Ms. Hudak?

14 **A** Twenty-one.

15 **Q** And where do you reside?

16 **A** 1765 Redford Circle in Concord, North
17 Carolina 28025.

18 **Q** Up until last week, who did you reside
19 with?

20 **A** I was in my home.

21 **Q** And did any one else live there?

22 **A** No.

23 **Q** Prior to your dad's arrest last week, did
24 any one else live in your home?

25 **A** No. My sister comes.

1 **Q** I'm not sure you are understanding me.
2 Maybe I can just make it a little more -- did your
3 father ever live in the home with you?

4 **A** Oh, yes, yes.

5 **Q** So he would be a person that lived with
6 you there, is that correct?

7 **A** Yes. That's correct.

8 **Q** And how long -- have you resided with him
9 most of your life, part of your life, a couple of
10 years?

11 **A** All of my life.

12 **Q** Now your parents, are they together or are
13 they separated?

14 **A** Separated.

15 **Q** And where does your mother live?

16 **A** She lives on Birchfield -- 5833
17 Bridgefield Lane in Concord, North Carolina.

18 **Q** After your parents separated, who did you
19 reside with?

20 **A** My father.

21 **Q** And he has been there for the entire time?

22 **A** Yes.

23 **Q** Do you have -- are you currently employed?

24 **A** No.

25 **Q** And tell the Court -- you're 21 years old,

1 is that correct?

2 **A** Yes.

3 **Q** And so have you graduated from high
4 school?

5 **A** Yes.

6 **Q** And tell the Court a little bit about
7 that, and your diploma and other degrees you may
8 have earned during high school.

9 **A** Yes. I graduated Cabarrus Community
10 College of Technology, and at the same time that I
11 graduated with my high school diploma, I also
12 graduated with an associates degree in science from
13 Rowan Cabarrus Community College in Concord.

14 Then I proceeded to go to college at
15 Cabarrus College of Health Sciences and obtained my
16 occupational therapy degree. So I am a certified
17 occupational therapy assistant.

18 **Q** And where did you receive that degree from
19 the Cabarrus College of Health Sciences?

20 **A** Western.

21 **Q** Tell the Court a little bit about what
22 that degree allows you to do.

23 **A** It helps me treat patients in occupational
24 therapy, so if they have a stroke, I can work on
25 their goals and work towards their independence.

1 **Q** And you do have a license in that?

2 **A** Yes.

3 **Q** Is that required as a part of -- for
4 somebody to work in that field?

5 **A** Yes.

6 **Q** And what were your grades like in college?

7 **A** I was always an A-plus honor roll student.

8 **Q** After you graduated did you have to take a
9 test or anything to get that certification?

10 **A** Yes.

11 **Q** And did you pass that on the first try?

12 **A** Definitely.

13 **Q** Did you become employed after you received
14 your degree?

15 **A** Yes.

16 **Q** And when was that?

17 **A** It was from August to February.

18 **Q** And what year?

19 **A** 2022 to 2023.

20 **Q** And are you still -- where were you
21 working? Where did you get hired?

22 **A** I was working in Charlotte, but because of
23 the commute, I decided to resign and look for
24 something closer.

25 **Q** So you were commuting from Concord to

1 Charlotte, is that correct?

2 **A** Yes.

3 **Q** So you voluntarily left that position in
4 February of 2023?

5 **A** Yes.

6 **Q** Have you been searching for employment
7 since that time?

8 **A** Yes.

9 **Q** Are you doing any other work?

10 **A** No.

11 **Q** You and your dad have lived together
12 during that time. Do you know whether he works?

13 **A** He is on disability.

14 **Q** And do you know what the nature of that
15 disability is?

16 **A** He hurt his back.

17 **Q** Was that a car accident?

18 **A** Yes.

19 **Q** And does he receive disability as a part
20 of -- you know, because of the accident?

21 **A** Yes.

22 **Q** Is that -- during the time that -- since
23 you've come out of work, have you been able
24 to -- you have been able to pay bills and, you know,
25 sort of pay for the expenses of day-to-day living?

1 **A** Definitely.

2 **Q** How would you describe your relationship
3 with your father?

4 **A** My father is a very caring, loving, and
5 respectable individual. I have been with him ever
6 since I was born, and he has always been there for
7 me and he has always cared for me. I know that I
8 can trust him and I love him as well and he is
9 always there for me. He cares for me and I know
10 that I can survive and that he can survive with me
11 and I with him.

12 **Q** Now you are aware of your father's arrest
13 last week, is that correct?

14 **A** Yes.

15 **Q** You know that he has been in jail since
16 that time?

17 **A** Yes.

18 **Q** Have you and I reviewed some of the
19 requirements that might be required of your dad
20 should the Court grant pretrial release?

21 **A** Yes.

22 **Q** It was noted in the bail report, that you
23 suffer from anxiety. Could you just tell the Court
24 a little bit about whether or not that is true?

25 **A** That is not true. I'm not sure why that

1 was alleged on me. I have never been to a mental
2 health doctor, nor diagnosed with any mental health
3 disorders, so that is false.

4 **Q** Do you know why it would have said in the
5 report that you were irresponsible?

6 **A** I don't know. You can ask any person that
7 I know, they always would tell you that I'm
8 responsible. I'm always positive, I'm nice, I'm
9 kind.

10 **Q** And you completed college?

11 **A** Yes.

12 **Q** Got a certification?

13 **A** Yes.

14 **Q** And you've actively been seeking
15 employment, is that correct?

16 **A** That's correct.

17 **Q** When you spoke with the probation officer
18 that prepared the pretrial report, did you two
19 discuss the duties of a third-party custodian?

20 **A** Yes.

21 **Q** You understand that you would
22 become -- have some responsibilities, isn't that
23 correct?

24 **A** That's correct.

25 **Q** And part of that would be to make sure

1 that your father abides by all of the terms and
2 conditions of pretrial release?

3 **A** Yes.

4 **Q** Did you and I review those conditions?

5 **A** Yes.

6 **Q** And that you would be responsible if you
7 found that he wasn't abiding by those terms and
8 conditions, it would be your responsibility to
9 report that, is that correct?

10 **A** That's correct.

11 **Q** Are those obligations that you are willing
12 to take on?

13 **A** Yes.

14 **Q** And to make sure that your dad complies
15 with every term and condition?

16 **A** Definitely.

17 **Q** Now even though you're his daughter and
18 you're young, do you feel that you have the
19 fortitude, if there is a problem, to address it, as
20 you agreed to do before the Court in being a
21 third-party custodian?

22 **A** Yes. I have always been a strong and
23 dedicated individual, and I am able to comply with
24 this.

25 **Q** Now one of the conditions would be that he

1 would be on home incarceration, and that would mean
2 he would be locked-down to the house. Did we
3 discuss that?

4 **A** Yes.

5 **Q** And you understand, don't you, that he
6 couldn't leave the house except for very few
7 exceptions, such as doctor's appointments, meeting
8 with the attorney or court. Is that your
9 understanding?

10 **A** Yes.

11 **Q** So if your father needs something from the
12 grocery store or pick up, you know, a household item
13 or something from the drug store, is that something
14 that you are willing to support him and do for him?

15 **A** Definitely.

16 **Q** Did we also review that a part of the
17 conditions would be electronic monitoring? Did you
18 see that?

19 **A** Yes.

20 **Q** And as a part of that, your dad would be
21 required to wear the monitor and be accountable for
22 that monitor. Is that your understanding?

23 **A** Yes.

24 **Q** And are those obligations something that
25 you're willing to support, oversee, and make sure

1 that he follows those recommendations?

2 **A** Yes.

3 **Q** Let me just say, do you believe he is
4 capable of following those recommendations?

5 **A** Definitely.

6 **Q** Do you think he needs you to watch over
7 him?

8 **A** No.

9 **Q** But you're willing to do that, is that
10 correct?

11 **A** Yes.

12 **Q** And the final recommendation was that
13 there would no internet, no social media, no
14 computer accessibility for your dad. You saw that,
15 right?

16 **A** Yes.

17 **Q** And being 21, I understand that that's a
18 big deal for people in your age group, but is that
19 something you're willing to forego over the next
20 several months if your dad is granted pretrial
21 release?

22 **A** Definitely.

23 **Q** Now you were here during the hearing,
24 testimony earlier?

25 **A** Yes.

1 **Q** And so you saw testimony about items in
2 the house that could be considered contraband,
3 correct?

4 **A** Yes.

5 **Q** Are those items that you're willing to
6 have removed from the house if there is anything
7 left?

8 **A** Yes.

9 **Q** And if the Judge, Judge Webster were to
10 say nothing like that could be in the house, would
11 that be something that you would be willing to be
12 vigilant about in terms of making sure it wasn't in
13 the house, removing it, or even contacting probation
14 if you saw something like that that came in that you
15 had never seen before?

16 **A** Definitely.

17 **Q** Tell the Court, though, your belief about
18 your dad's ability to follow all of those
19 requirements?

20 **A** My father will follow all of those
21 requirements. He is responsible, and I know that he
22 will do it.

23 **Q** And do you pledge to help him in any way
24 that he needs to successfully fulfill all of the
25 requirements of pretrial release?

1 **A** Yes.

2 **MS. COSTNER:** That's all the questions I
3 have.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** Cross.

6 **MS. McFADDEN:** Just briefly, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MS. McFADDEN:**

9 **Q** Ms. Hudak, you were at the residence last
10 week when it was searched, is that right?

11 **A** Yes.

12 **Q** And you met Special Agent Franks?

13 **A** Yes.

14 **Q** And she gave you her contact information?

15 **A** Yes.

16 **Q** She returned your phone to you, actually,
17 a couple of days ago?

18 **A** Yes.

19 **Q** Do you recall leaving a voice-mail on
20 Special Agent Franks' cell phone last evening about
21 this case?

22 **A** Yes.

23 **Q** Do you recall telling her that your father
24 was setup?

25 **A** Yes.

1 **Q** Do you recall telling her that she
2 believes the lies of the illegal Mexicans?

3 **A** Yes.

4 **Q** Now in terms of your work situation, how
5 long was your commute when you were working your job
6 in Charlotte?

7 **A** Fifteen minutes, sometimes an hour with
8 traffic.

9 **Q** And it is your testimony under oath, that
10 you resigned from that job, not that you were let
11 go, is that correct?

12 **A** Yes.

13 **Q** Would it surprise you that your father
14 told agents after he was arrested, you were actually
15 let go from that job?

16 **A** Say that again.

17 **Q** Would it surprise you to learn that your
18 father told agents after he was arrested, that you
19 were let go from that job?

20 **A** Yes, because I resigned.

21 **Q** So it is still your testimony that you
22 resigned?

23 **A** Yes.

24 **Q** Prior to your father being placed on state
25 probation, did he have firearms in the home?

1 **A** No.

2 **Q** You've never seen a firearm in your
3 father's home before, is that correct?

4 **A** Yes. There was before probation, yes.

5 **Q** Do you recall what kind of firearms?

6 **A** Like AR-15 and like handguns. A handgun.

7 **Q** Do you recall approximately how many?

8 **A** No.

9 **Q** Do you recall where he kept them in the
10 home?

11 **A** In his room.

12 **Q** Is there a lock on his door?

13 **A** Yes.

14 **Q** Did he ever leave his room unlocked?

15 **A** No.

16 **Q** In terms of your current work situation,
17 you're not bringing in any income, is that correct?

18 **A** No.

19 **Q** Who pays the bills for the house?

20 **A** My father.

21 **Q** And you have a cell phone, right?

22 **A** Yes.

23 **Q** Who pays the bills for your cell phone?

24 **A** My father.

25 **Q** And do you have a car to drive?

1 **A** Yes.

2 **Q** Who pays for the insurance for the
3 vehicle?

4 **A** My father.

5 **Q** Who pays for the gas for that vehicle?

6 **A** My father.

7 **Q** Do you have health insurance?

8 **A** Yes.

9 **Q** Who pays the premiums for your health
10 insurance?

11 **A** I have Medicaid.

12 **MS. McFADDEN:** I have no further
13 questions, Your Honor.

14 **MS. COSTNER:** Just a couple, Your Honor.

15 **THE COURT:** All right.

16 **REDIRECT EXAMINATION**

17 **BY MS. COSTNER:**

18 **Q** Ms. Hudak, you were asked about the
19 voice-mail that you left for the agent. Now despite
20 your feelings about whether or not your father is
21 guilty of these charges, does that impact your
22 commitment to abiding by any terms of pretrial
23 release that are set by Judge Webster?

24 **A** No.

25 **Q** And you can set aside your feelings about

1 whether or not your dad could be convicted of those
2 charges, and make sure that he is successful and to
3 assist him in being successful on pretrial release?

4 **A** Yes.

5 **Q** And if one of those conditions is he stays
6 off of Facebook or something like that, you're
7 willing to not have internet, not have access to
8 Facebook, and make sure that that is not a part of
9 what is going on in your house or what is available
10 in your home, is that correct?

11 **A** Yes.

12 **Q** You were asked about whether your dad told
13 agents that you were let go from your job. What is
14 your dad's country of origin?

15 **A** Slovakia.

16 **Q** Does he speak that language?

17 **A** Yes.

18 **Q** And are there times language is a barrier,
19 you know, struggles where your dad is concerned?

20 **A** Yes.

21 **Q** Is there a possibility that your dad was
22 trying to communicate that you left your job but may
23 have mistakenly communicated that you were let go of
24 your job?

25 **A** Yes. He knows that I resigned.

1 **Q** Did you give notice at your job?

2 **A** Yes.

3 **Q** How much notice did you give?

4 **A** Thirty days.

5 **Q** With respect to the questions about -- so
6 you testified that your dad's bedroom door was
7 locked. No access to either of the firearms for
8 anybody except your dad, is that correct?

9 **A** Yes.

10 **Q** And you were asked about the finance
11 situation in your home. Your father receives a
12 disability check, doesn't he?

13 **A** Yes.

14 **Q** While you were working and receiving an
15 income, did you help contribute to the household
16 expenses?

17 **A** Definitely.

18 **Q** Was that something that if you were to get
19 a job you would expect to do in the future?

20 **A** Definitely.

21 **Q** But at this point in time, you are not
22 working, you are able to be home with your dad and
23 able to serve as a third-party custodian almost on a
24 24/7 basis, isn't that correct?

25 **A** Correct.

1 **MS. COSTNER:** That's all of the questions
2 I have.

3 **THE COURT:** You said that the agent was
4 believing -- I didn't take the note down
5 completely, were believing what the illegal
6 Mexicans had said. How do know they were all
7 illegal?

8 **THE WITNESS:** Well, I don't know that for
9 a fact, like if it's true, but I do think it
10 is, because Abby Duarte does have a fiancée,
11 Ray David Martinez Santos, who does not speak
12 Spanish, and she also assumed that we were
13 illegals, and told my father to go back to
14 Russia. She has called me multiple names,
15 harassed me. And her husband illegally pointed
16 a loaded handgun on my father.

17 **THE COURT:** There is something in the
18 report here about the passport being in a safe
19 at his wife's residence, and that she was not
20 going to let the -- I guess is that your mother
21 or the --

22 **THE WITNESS:** Yes, my mom.

23 **THE COURT:** Won't let anybody come in to
24 get it. Is that the case?

25 **THE WITNESS:** I mean, that's what she told

1 me, but if you were to come, I believe she
2 would let you in and retrieve the passport.

3 **THE COURT:** Did you hear all of the
4 evidence today?

5 **THE WITNESS:** Yes.

6 **THE COURT:** I heard some evidence to the
7 fact that when the police came on the scene,
8 your dad was allegedly -- I can't remember
9 exactly, was it using the N word or using -- or
10 hollering something? Do you remember what that
11 was?

12 **MS. McFADDEN:** There were multiple
13 occasions of that, Your Honor.

14 **THE COURT:** But with the police?

15 **MS. McFADDEN:** Yes. I believe the
16 police -- you may be referring to the incident
17 at the Sam's Club, when he was broadcasting.

18 **THE COURT:** And I'm just trying to -- I'm
19 trying to compare that, or contrast that with
20 your description of him as very caring, loving
21 and respectful person. And then you said
22 responsible. I'm just trying to wrap my head
23 around how all of those things could be true if
24 the alleged -- if the facts that I've heard
25 today are true.

1 **THE WITNESS:** Your Honor, a lot of people
2 that were producing video today, like J.S. and
3 I'm not sure of the other initials, Abby
4 Duarte, they have reported a lot of false
5 allegations towards my father, and they have
6 started the problems.

7 My neighbor has always harassed me. She
8 called me a bitch, and I have never heard my
9 father ever calling somebody the N word,
10 threatening, ever using weapons of any kind
11 towards anybody. If anything, weapons were
12 always pointed at him, like the guy at the
13 apartment complex, when my father went there,
14 he hopped out of the car -- popped out of his
15 sports car, which I do have a video of, it's
16 evidence, that he pointed a rifle at him, and
17 his girlfriend, I'm assuming, sped away. So
18 they have always flipped him off. Always have
19 cursed him out, and just to get on his nerves
20 and cause problems, because I guess they are
21 against what my father stands for and they
22 don't want him representing his freedom.

23 **THE COURT:** If I ask a question, you all
24 can -- either, both sides can follow up.

25 **MS. McFADDEN:** I have nothing further,

1 Your Honor.

2 MS. COSTNER: I have just a couple, Your
3 Honor.

4 FURTHER EXAMINATION

5 BY MS. COSTNER:

6 Q You were asked questions about your
7 neighbors and why you think that they are illegal
8 and then about the other folks, your father's
9 language. If your father is allowed out on pretrial
10 release, do you believe that you and he can, you
11 know, ignore the neighbors, regardless of what they
12 say or you say or anything like that, and abide by
13 the Court's order?

14 A Yes.

15 Q You would do that?

16 A My father doesn't even -- like before all
17 of this --

18 Q Let me interrupt you for a minute, because
19 what I'm trying to -- I'm not trying to -- I'm
20 talking about if the Court orders and allows your
21 dad to come home, he will be under home
22 incarceration, is that correct, you understand?

23 A Yes.

24 Q So he wouldn't be coming out of the house.

25 A Yes.

1 **Q** He might come out of the house on
2 occasion.

3 **A** Yes.

4 **Q** You are able to go get in your car and go
5 do what you need to do and come back?

6 **A** Definitely.

7 **Q** And you would support your father, the
8 efforts and the orders that your father must follow
9 where all of that is concerned, is that correct?

10 **A** Yes.

11 **Q** And with respect to -- you were asked
12 about the passport. Now Judge Webster probably
13 wouldn't go get the passport, but if a United States
14 Probation Officer went to your mother's house and
15 requested that passport, do you believe your mother
16 will give the passport?

17 **A** Yes.

18 **MS. COSTNER:** That's all the questions I
19 have.

20 **THE COURT:** As to that question, we have
21 in here that your father was the only one who
22 knew how to use -- would be able to get into
23 the safe or something.

24 **THE WITNESS:** Yes. It is in a safe. And,
25 yes, sir, he can only get into it.

1 **MS. COSTNER:** Do you mind if I ask one
2 quick follow-up? Do you believe your father
3 would give you the combination?

4 **THE WITNESS:** Yes.

5 **THE COURT:** Any further questions of this
6 witness?

7 **MS. McFADDEN:** Nothing from the United
8 States, Your Honor.

9 **MS. COSTNER:** No, Your Honor.

10 **THE COURT:** You may step down.
11 Further evidence for the defendant?

12 **MS. COSTNER:** No, Your Honor.

13 **THE COURT:** All right. I'll hear from the
14 defense first.

15 **MS. COSTNER:** Your Honor, do you want me
16 to address both the probable cause and the
17 detention hearing or one and one or -- I don't
18 know how the Court wants to do that.

19 **THE COURT:** I guess maybe I
20 misinterpreted, I thought that you were not
21 conceding probable cause.

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

23 **THE COURT:** I'll hear you on both.

24 **MS. COSTNER:** I'll address the probable
25 cause first. Your Honor, certainly I

1 understand the low threshold that dictates to
2 find probable cause, and just would submit a
3 couple of things for the Court to consider.

4 Your Honor, first of all, with
5 respect -- I looked at both statutes, and under
6 18 U.S.C. 245(b)(2)(B), it says by force or
7 threat willfully injures, intimidates or
8 interferes with or attempts to injure,
9 intimidate or interfere with any person
10 because of his race, color, religion or
11 national origin, and I'm going to highlight
12 this, because he is or has been participating
13 or enjoying any benefit, service, privilege,
14 program, facility actively provided or
15 administered by any state or subdivision
16 thereof.

17 And, Your Honor, I would just say even in
18 the light most favorable to the Government, the
19 Court heard no evidence that any interaction
20 between my client and J.S. was because he was
21 enjoying the benefit, and I'm assuming that the
22 Government means riding on the road. They have
23 not linked up any alleged behavior with that,
24 that it happened because this person was
25 riding --

1 **THE COURT:** What would be an example of
2 a -- because of using the road?

3 **MS. COSTNER:** That's a good question, Your
4 Honor. I would -- so, first of all, I would
5 say that this situation appears to be sort of a
6 road rage, and I'm not sure what happened, and
7 I don't know that any of us know what happened.
8 We did hear evidence that J.S. knew of my
9 client, but there had at least maybe been some
10 interaction that he noticed the car and he was
11 looking at the car, but there is no evidence
12 that anything that my client did was intended
13 to prevent him from riding on the road. They
14 both were on the road. They both exited off
15 the road. They stopped at a stop sign, and
16 from what it sounds like is, J.S. had a
17 firearm.

18 Now, there is no question as to whether he
19 actively pointed it at that point or not. They
20 go to the apartment complex. I didn't hear any
21 evidence that any of the parking area of the
22 apartment complex falls within activity
23 provided or administered by any state or
24 subdivision of the state, so I didn't hear any
25 evidence about that part of the altercation

1 that it occurred in that area.

2 So when I look at it, Your Honor, I see
3 two people riding down the road engaging in
4 some type of, you know, action, road rage type,
5 stopping at a stop sign and then continuing on.

6 So when I look at the statute, and I
7 examine it with the evidence that the Court
8 heard, I would just contend that they have not,
9 even with the very low threshold that the
10 Government has, they really haven't established
11 as to why this happened, and what they have to
12 show is that it happened because the person,
13 the victim, J.S. is or has been, you know,
14 participating or enjoying in this benefit, so
15 that causal relationship was not established.

16 What would be, Your Honor, maybe a
17 roadblock, where the roadblock is clearly
18 somebody like, you know, and I'm -- I
19 understand the Court heard something about a
20 roadblock in the apartment complex but, again,
21 Your Honor, there is no evidence that that part
22 of the complex is a state managed or
23 administered area, and so perhaps on a public
24 road some people put up a roadblock that is
25 clearly racist or interfering with, you know,

1 or directed it towards people of color or
2 national origin or something, and refusing it
3 at that point, maybe letting only people that
4 they believe should pass come and go through,
5 and making the other folks turnaround and go.

6 I mean, that's just an example that comes
7 off the top of my head, Your Honor, but that's
8 not what happened here. What happened here is,
9 two people that apparently had had some
10 interaction in the past, were driving down the
11 road and if -- you know, this is what Mr. Hudak
12 is alleged to have said. I mean,
13 unfortunately -- I mean, it is not illegal for
14 him to say it, and we also don't know what was
15 said back, because J.S. certainly didn't admit
16 to any behavior on his own, except that he had
17 firearms. He had a firearm in his car and what
18 did he ask for in this parking lot? He asked
19 for his assault rifle. And you heard no
20 evidence of a firearm on the part of Mr. Hudak.
21 What you heard was, we didn't do a real good
22 search.

23 Well, I guess, Your Honor, I would just
24 say, if there was really good strong evidence
25 and a belief that somebody had pointed a

1 firearm at three people and threatened to kill
2 them, that there would be a pretty thorough
3 search of that car, and it wouldn't just be,
4 oh, well, there is a lot of stuff in this car,
5 and I just can't really tell. I mean, that to
6 me, is just completely unreasonable, Your
7 Honor.

8 There was no firearm found because there
9 was no firearm in his car. So that's what I
10 would say as to the first charge, Your Honor.

11 With respect to the second, this
12 altercation, you know, with the neighbors. You
13 know, again, whoever -- whether or not acting
14 under color of law by force or threat,
15 willfully injures or interferes with or
16 attempts to injure, intimidate or interfere
17 with any person because of race, color,
18 religion, sex, handicap, national origin, and
19 because he is or has been, and I'm just going
20 to jump to occupying any dwelling.

21 So first, Your Honor heard no evidence
22 that this was in fact the dwelling of the
23 neighbors next door. You heard, well, the
24 Duarte were there and there was this
25 altercation. Really, the evidence you heard

1 is, that these folks, especially this one
2 person on this occasion pulled in and Mr. Hudak
3 came out and said, your headlights are -- my
4 daughter can't sleep, and that caused the
5 argument. And, Your Honor, that's not the type
6 of argument or altercation that's called for in
7 that statute. That's, you're interfering with
8 my ability, you know, my children to sleep.
9 And, Your Honor, just kind of our experience in
10 life, those kinds of altercations happen in the
11 regular experience in life. They are not
12 great. We hope they don't. But who invited
13 who to fight? You heard the evidence. The
14 neighbor invited and brought on the fight, and
15 then when the fight wasn't going so well, the
16 neighbor got a shotgun and pointed it at
17 Mr. Hudak, and that's what started the
18 altercation.

19 You did hear evidence of some very
20 unpleasant things that were said, very racist
21 or --

22 **THE COURT:** Do you contend that the
23 evidence I heard was, that he referred to
24 persons of color with the N word?

25 **MS. COSTNER:** He did.

1 **THE COURT:** Do you not believe that
2 invites someone to fight?

3 **MS. COSTNER:** Well, Your Honor, first of
4 all, maybe I don't understand your question.
5 Do you mind repeating it?

6 **THE COURT:** Calling someone the N word, is
7 there law or anything that says whether that is
8 or is not fighting words?

9 **MS. COSTNER:** I don't know of a law that
10 says that, if what we are talking about is the
11 legal framework of this.

12 Now whether that's -- I mean, there are
13 all kinds of other ways we can judge those
14 words, but if we are looking at an application
15 of these statutes to his actions then, you
16 know, despite what our personal feelings might
17 or might not be about those words, I cannot
18 find support for the fact that it is illegal to
19 say them, and especially when we're looking at
20 the context of this statute and, again, we get
21 to -- so you've got the first part of the
22 statute with respect to the neighbor and the
23 enjoyment of the --

24 **THE COURT:** Do you have a copy of the
25 statute?

1 **MS. COSTNER:** Yes, Your Honor, I do. I
2 can pull it up. I have both to hand up. If I
3 may approach.

4 **THE COURT:** You may.

5 **MS. COSTNER:** Does Your Honor want me to
6 wait a minute for the Court to --

7 **THE COURT:** No, you can go on.

8 **MS. COSTNER:** Thank you, Your Honor. When
9 you look at 42 U.S.C. 3631, again, you have,
10 "and because." The actions have to be because
11 this person is occupying this house. So,
12 again, Your Honor, even under this very --

13 **THE COURT:** Is there a law or anything
14 that says whether that is or is not fighting
15 words?

16 **MS. COSTNER:** Again, you have, "and
17 because." So the actions have to be because
18 the person, the victim, is occupying this
19 house. And again, Your Honor, even under this
20 very relaxed standard that the Court has to
21 look at, I would just contend that there is no
22 evidence that this altercation or this -- what
23 is charged is because these people are
24 occupying the house. They were neighbors.
25 They do occupy the house.

1 If the Court believes there was sufficient
2 evidence to show that and, again, I'm not
3 conceding one bit, but did the actions that
4 Mr. Hudak is alleged to have committed rise to
5 the level of this crime, was it because they
6 lived there? Is it because some bad blood
7 started when the male victim, I don't know,
8 Mr. Duarte, whoever, pulled in and began to
9 shine the lights in the house and that caused
10 the fight, which then led to the firearm, which
11 then led to further bad blood?

12 Your Honor, they present evidence that
13 shows -- so what do we see? We see, first of
14 all, there is the social media. Well, Your
15 Honor heard, yes, Mr. Hudak posted about his
16 dislike for his neighbors. I mean, he did.
17 You saw what he posted.

18 There is no evidence that this was
19 something that the neighbors saw, Facebook
20 friends that he was directing it to them, that
21 he was making threats. He was venting and
22 saying things that weren't very nice. I mean,
23 I can't say that otherwise.

24 You know, I believe that -- or I would
25 contend that the neighbor started this with the

1 pointing of the firearm.

2 Your Honor saw -- Your Honor heard, when I
3 asked, well, my client didn't pull a gun and
4 we've heard about these other bad acts as well
5 that they want to sort of pile on. He's out
6 there. He's saying things that, you know,
7 are -- I mean, socially unacceptable. Are they
8 illegal? No. I mean, in that context.

9 When he was asked to leave Sam's Club, for
10 example, he left. They didn't want him there
11 saying those things. He wasn't arrested, Your
12 Honor. He didn't have a firearm. He wasn't
13 pulling knives on people. You didn't hear any
14 evidence at all about him pulling, you know,
15 weapons, hurting people, you know, or shooting
16 at people, threatening to shoot people.

17 You saw all of the things in his house.
18 That may be of concern to the Court, having
19 swastikas, having those types of things may
20 well give Your Honor concern, but what did you
21 also hear from the agent? She couldn't tell
22 you where they came from. For all we know,
23 they're in a den in a collector's bin. They
24 are in a room. They are --

25 **THE COURT:** I was trying to understand

1 your argument about that. What difference does
2 it make that they have been in a bin or in a
3 closet? The fact that, I think, the Government
4 is trying to point out is, that they were in
5 his home.

6 **MS. COSTNER:** I understand that, Your
7 Honor, and you are allowed by law to collect
8 all kinds of things. Again, I'm not arguing
9 the moral high ground of collecting items like
10 that. What I'm saying, Your Honor, is that if
11 he collects them, and he keeps them in his
12 home -- and I asked the agent, did you see him
13 wearing these things? Is he displaying these
14 things? Is he -- you know, I mean, all of
15 these items that they found, is he wearing a
16 Secret Service badge? Is he wearing a police
17 badge that you found in there? Is he -- you
18 know, is he threatening people with these
19 items? And, they are in his home.

20 I would just pose the question, how does
21 that support an argument that he is guilty or
22 that they have probable cause to meet the
23 definition of these two statutes? You don't
24 hear from J.S. or from the neighbor that he
25 somehow put on a badge and ran out there or

1 that he hit somebody with one of these iron
2 cross rings that they are making a big deal
3 about. All of these items are, again, in his
4 home. They are not outside.

5 So, Your Honor, I think I just would
6 contend when you look at the statutes
7 themselves, and I just reiterate that the big
8 problem that they have and I would contend that
9 it should - the Court should not find probable
10 cause. They cannot tie the behavior to the
11 next card, because J.S. was on the road,
12 because the Duartes live in the house, and they
13 have to make that causal connection for them to
14 go forward with this case, and I would just ask
15 Your Honor to find no probable cause for both
16 of those charges.

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

18 **MS. COSTNER:** Your Honor, with respect to
19 detention, I sort of mentioned a lot of what
20 the Court has already heard, but the
21 recommendations are pretty stringent. The
22 recommendations from probation are for home
23 incarceration. He would not be permitted to
24 leave the house except for medical emergencies,
25 except to meet with his probation officer,

1 except to go to court. He would be able to
2 come and meet with me.

3 Your Honor, even though there is some
4 potential issues at least expressed in the bail
5 report, you have been able to hear from his
6 daughter, and that she is educated. She's done
7 well in school. She's worked.

8 **THE COURT:** Would you admit that she is
9 vindicated through her testimony and by the
10 call to the agent? Can I suppose most of the
11 people who come through here who are family
12 members and girlfriend, boyfriend, mother,
13 aunt, whatever -- the daughter, that she
14 allegedly made to the officer and the statement
15 that she finds no -- you know, finds no fault
16 in her father?

17 **MS. COSTNER:** Well, daughters love their
18 dads and I will say that, Your Honor --

19 **THE COURT:** I have two daughters, two
20 grown daughters myself, and they probably may
21 not find any fault in me, even though I know
22 that I have faults like every human being.

23 **MS. COSTNER:** Yes.

24 **THE COURT:** So that's the part that
25 bothers me a little bit is, she didn't see that

1 he's done anything even morally wrong.

2 **MS. COSTNER:** I have been doing this a
3 very long time, Your Honor, and it is my
4 experience, that many people that are out on
5 pretrial release who have third-party
6 custodians in mothers, girlfriends, wives, not
7 often daughters but, you know, but sometimes
8 family is family, and they are going to support
9 their family through thick and thin, until
10 otherwise. But that is one bucket.

11 The other bucket is this, Your Honor.
12 What is her obligation as a third-party
13 custodian and living in that home and she is
14 aware of the consequences of not acting and
15 taking on the duties of a third-party
16 custodian, and she understands what her father
17 is going to be ordered to do to remain in the
18 house 24/7, to wear an ankle monitor and keep
19 it charged and abide by all of those
20 requirements, to get rid of the internet, to
21 get rid of Facebook or all of the -- you know,
22 all the social media. And in that case, it is
23 going to have to go for her, too, because you
24 can't have Wi-Fi in the house that only one
25 person can access.

1 I'm assuming, you know, of course I
2 haven't met with probation, but I have sat down
3 with her, Your Honor, and I very carefully
4 explained to her every single duty, every
5 obligation that Mr. Hudak would have and the
6 ramifications of that requirement of no
7 internet, no social media. She understands
8 that. And for a 21-year-old, that's a tough
9 one, but she is willing to do every bit of
10 that, and she understands that he is going to
11 be monitored, that people are going to be --
12 you know, the probation office will be in her
13 home monitoring this.

14 I told her that most likely, law
15 enforcement are going to be monitoring, to see
16 if he is out there posting on Facebook or what
17 is being said. It won't be just probation.
18 She knows that as well, and Mr. Hudak knows
19 that, even more importantly.

20 She is willing to support her father in
21 this. Mr. Hudak is willing to abide by every
22 condition. And, Your Honor, should there be a
23 violation, I don't believe there would be, but
24 there are consequences. I mean, there would be
25 other opportunity, and I've made that very

1 clear to both of them that any misstep is going
2 to result in him being placed in custody in
3 jail, and they are both willing.

4 So regardless of maybe her personal
5 feelings about her father and whether or not
6 she believes he's done anything wrong, she
7 fully accepts the requirements that have been
8 laid out, and the recommendations that have
9 been laid out. She has no hesitation.

10 You heard her testify about all of that,
11 Your Honor. When I met with her, there was no
12 argument about that. It was, I will do those
13 things. I am willing to report him if he
14 doesn't, but I believe my dad will do those
15 things.

16 I've talked with Mr. Hudak. He's
17 committed to following everything that the
18 Court orders, and his home is going to be open
19 to inspection. And so I would just -- Your
20 Honor, in terms of -- I'm not going to go over
21 all of the things about what I had to say sort
22 of woven into the preliminary --

23 **THE COURT:** When is he due in District
24 Court?

25 **MS. COSTNER:** In District Court now?

1 **THE COURT:** When is --

2 **MS. COSTNER:** I mean, so this is -- are
3 you talking about the complaint? You mean with
4 his state charges? I'm not sure -- I don't
5 understand the question.

6 **THE COURT:** At some point he's going -- if
7 I were to find probable cause, he's going to be
8 before a District Judge at some point, right?

9 **MS. COSTNER:** Yes, Your Honor.

10 **THE COURT:** That's what I am asking, when
11 is that?

12 **MS. COSTNER:** The Government would have to
13 indict.

14 **MS. McFADDEN:** We'll be presenting an
15 indictment to the grand jury and his
16 arraignment would be calendared as soon as any
17 return was made. So there is no date just yet.

18 I will note for the Court, that the grand
19 jury is convening this week.

20 **THE COURT:** Thank you.

21 **MS. COSTNER:** So, Your Honor, I think I
22 was much more able to present a timetable. I
23 have given him sort of a forecast of the
24 timetable because I didn't know when the
25 Government was going to the grand jury.

1 He understands this would be for several
2 months, you know, potentially. So does his
3 daughter. They both understand that, and they
4 are absolutely willing to follow the
5 Court's -- if the Court is willing to give him
6 pretrial release, every condition. If the
7 Court wants to come up with other conditions
8 that Your Honor feels would be appropriate
9 here, then they will follow those conditions,
10 and I feel they have insured me that they will
11 comply and will not be back before this Court
12 on any type of a violation.

13 So, Your Honor, I ask the Court
14 to -- you've heard the evidence. You've heard
15 my cross-examination, what I had to say about
16 the sufficiency, and I am not going to repeat a
17 lot of that for the Court, but I believe I
18 would say that a lot of that also bears on,
19 again, the strength --

20 **THE COURT:** You are not finding any cases
21 that interpret these statutes that you could
22 have handed up to the Court?

23 **MS. COSTNER:** Your Honor, this case -- I
24 got it Thursday and, unfortunately, Your Honor,
25 was -- this hearing came very quickly. I was

1 not able to do the research. I found one case
2 that it really wasn't on point and so I have
3 not really found -- but I have not had the
4 opportunity to do the research, just due
5 to -- and I'm not a dodging my homework kind of
6 person, but I had travel plans and was not able
7 to do the research that I would need.

8 I'm happy to do that and submit to the
9 Court with a memorandum. If the Court wanted
10 that, I'm happy to do that.

11 **THE COURT:** I think I would. You've
12 raised points about the statute. This is
13 certainly the first case of -- or first
14 impression with this Judge, and it sounds like
15 you haven't had a dozen yourself, so.

16 **MS. COSTNER:** This will be a first.

17 **THE COURT:** I don't know about the
18 Government, but, I mean, it would be helpful to
19 me to, you know, see something before making a
20 decision.

21 **MS. COSTNER:** Well, I would be happy, if
22 the Court would give me a day or two, I would
23 be happy to brief something and send it in.

24 **THE COURT:** Let me ask probation, you've
25 made a recommendation to release him, and I see

1 all of the conditions. Is it in part because
2 of his -- I'm not going to say, no record. I
3 mean, he certainly has some record here, but it
4 is not -- you know, he has not been convicted
5 of a lot of felonies like we often see and so
6 forth.

7 **THE PROBATION OFFICER:** Your Honor, that's
8 one factor, the number of felony convictions,
9 or lack of felony convictions is one of many
10 different factors that go into that decision.
11 I can't point to one specific thing that pushed
12 the recommendation one way or the other, but
13 that was one factor, yes.

14 **THE COURT:** Are you finished, Counsel?

15 **MS. COSTNER:** Yes, Your Honor.

16 **THE COURT:** All right. I'll hear from
17 Ms. McFadden.

18 **MS. McFADDEN:** Thank you, Your Honor.
19 First and foremost, in terms of my preparation
20 today, I'm a little bit caught and surprised
21 that probable cause is not being conceded on
22 the "but for" language, because I am not sure
23 the evidence could be stronger of the but for
24 language as to between Mr. Hudak's actions and
25 the victims that he selected.

1 The incident with J.S., was not a road
2 rage incident. There was -- the instigating
3 event was that J.S. was black and he was
4 driving his car on the same road as Mr. Hudak,
5 and he made that abundantly clear when he got
6 out of his car and knocked on his window and
7 called him the N word and called him boy, and
8 in terms of interference with his right to the
9 roadways, I mean, the Court asked a great
10 question, what is an example, if not something
11 like this.

12 I mean, if you go back to, for instance,
13 if (indiscernible) is going to school people
14 could call her the N word and call her
15 derogatory slurs and they can yell and scream
16 at her, but unless they roadblock the school,
17 that's not interfering with her constitutional
18 right to attend school?

19 I mean, the argument that there is no
20 nexus between the racial animus and the actions
21 here is to completely ignore the history of
22 this country and the Civil Rights Act under
23 which these statutes were passed by Congress to
24 address these particular types of problems.

25 The incident with Mr. Duarte, if it had

1 nothing to do with the fact that Mr. Duarte
2 appears Mexican, Mr. Hudak didn't even know if
3 he is or not, despite his assertions that he's
4 illegal. Despite his daughter's assertions
5 that he's illegal, that's followed up with
6 "Idiots from Mexico in my neighborhood.
7 Illegal immigrants. Mexican idiot asking for
8 trouble every single day. Mexican cartel in
9 Concord, North Carolina, hate American people.
10 Shame on you. Dirty money for walking free,
11 because Mexican cartel in my neighborhood lied
12 about me in court." He could not make it
13 anymore clear the reason that this is
14 happening.

15 And, while it is almost impossible to
16 prove a negative, the Court hasn't heard any
17 evidence of the fact that he's also running
18 white drivers off the road and following them
19 to their apartment complexes.

20 There was a comment, then perhaps there
21 was -- not clear whether or not J.S. pointed a
22 gun. There is no evidence that J.S. pointed
23 the gun. There is evidence that he reached for
24 it, and if he did point a gun, why on the earth
25 would Mr. Hudak then follow him to his

1 apartment complex and block the road and
2 continue to yell at him and threaten him there?
3 It makes no sense.

4 The real common denominator between all of
5 these events is Mr. Hudack's involvement in
6 them, and the fact that people that are
7 targeted are of a minority, and that's what
8 these statutes are meant to address.

9 I'm happy to brief this for Your Honor,
10 but I will say for the record, that these types
11 of statutes cannot be charged by our office
12 without approval from Washington, specifically,
13 with the civil rights section. They have to be
14 certified by the Associated Attorney General,
15 that's Kristen Clark, and they have a whole
16 team of lawyers whose job it is just to
17 research cases on these very issues, these very
18 legal issues.

19 So these charges aren't brought lightly
20 and they weren't brought lightly, and
21 they -- in light of the fact that the evidence
22 here is compelling that there is probable
23 cause, so I would ask the Court to make that
24 finding.

25 And to the extent that the Court wanted

1 any additional briefing, I would ask the Court
2 to stay such an order until the grand jury has
3 had an opportunity this week to review these
4 charges, because if they do return an
5 indictment, then the issue of probable cause is
6 muted at that point in time, because they have
7 found it.

8 In terms of detention, I respectfully
9 disagree with probation's recommendation. I do
10 not think there are any conditions that can
11 safely assure the safety of the community or
12 prevent flight.

13 I just want to walk the Court through the
14 time line that we see reflected both in the
15 evidence that Agent Franks testified to and the
16 evidence that is in the pretrial services
17 report.

18 So on March 29th, 2021, there is a
19 misdemeanor conviction for DWI and carrying a
20 concealed gun after consuming alcohol. That's
21 a danger to the community.

22 On November 27th, 2021, there is the
23 assault on Justin Duarte. This is while he was
24 serving a term of probation related to the DUI.

25 That same month, November 10th, 2021, he

1 has charges of illegal use of a red or blue
2 light and charges of impersonating a law
3 enforcement officer, which was dismissed. The
4 other, he was convicted on.

5 On June 5th, 2022, he's arrested for
6 misdemeanor carrying concealed weapon. That's
7 pending.

8 On July 2nd, 2022, after being arrested on
9 a different charge of injury to property, he
10 proceeds to talk to the arresting officer about
11 black people and Mexican people, oh, my God,
12 you know, the two very types of minorities that
13 were targeted and two charges in the criminal
14 complaint.

15 July 21st, 2022, that's the Sam's Club
16 incident. Again, does he have a First
17 Amendment right to say these terrible things?
18 Absolutely. But can the Court consider it as
19 evidence of bias and probable cause,
20 absolutely.

21 October 13th, 2022, this is the assault on
22 J.S. He was arrested related to this.
23 Released on a promise to appear.

24 November 16th, 2022, convicted for injury
25 to personal property and simple assault.

1 **THE COURT:** What was the 10/13/22, was
2 that -- I see that was voluntarily dismissed on
3 January 31st, 2023.

4 **MS. McFADDEN:** Your Honor, both J.S. and
5 Mr. Duarte did press charges through magistrate
6 warrants against Mr. Hudak. I would submit to
7 the Court that these are cases that the police
8 department ought to have arrested and brought
9 charges and the DA's office should have
10 addressed. They were put in the posture of
11 essentially having to prosecute.

12 There are no -- they are victims of hate
13 crimes. This is why this statute is so
14 important federally. But my understanding is,
15 that the reason why that was dismissed was
16 because J.S. did not appear at one of the
17 hearings.

18 Going back to the time line here, on
19 December 19th, 2022, he is violated for having
20 the fixed blades and not providing truthful
21 information to his probation officer.

22 On December 30th, 2022, there is an arrest
23 for misdemeanor disorderly conduct. He's
24 convicted for that in March of this year.

25 Then we get to January 2023, where we have

1 the postings that the Court saw. These
2 publically filed posts, Exhibit 5, "Idiots from
3 Mexico."

4 Exhibit 6, "Mexican cartel in Concord,
5 North Carolina."

6 Exhibit 7, "I remember this because
7 Mexican cartel in my neighborhood lied about me
8 in court."

9 And between those two posts in six and
10 seven, is a charge January 18th, 2023, for
11 misdemeanor criminal contempt.

12 Moving forward to February, 2023, he's
13 charged with reckless driving to endanger.
14 That's pending.

15 On February 10th, 2023, we have the
16 recorded videos of the Duarte posted to
17 Facebook. "She is a Mexican."

18 Then we have the no contact orders and the
19 contempt that he was found in by the Court
20 related to violating the no contact order.

21 Then we have Exhibits 10 and 11, the posts
22 of the lone wolf memes. Perhaps there is a
23 plausible explanation for loving animals, but
24 when you look at these memes, coupled with
25 Mr. Hudak's violent behavior, his possession of

1 weapons, there is no way to ignore those and
2 there is no way to ignore a meme about killing
3 someone who threatens what he loves.

4 May 24th, 2023, he is convicted of
5 misdemeanor stalking. And finally, we have
6 June 22nd, which was the date of this search.

7 Again, it is not illegal to own these
8 items, but it is absolutely laughable to
9 suggest that he owned this Nazi flag, this KKK
10 flag, this iron cross ring, that horrible
11 pamphlet with the racial twerps because he is a
12 collector of items. Okay.

13 This is a smoking gun of evidence of
14 racial animus and it is the same racial animus
15 that fueled his attacks on the people that are
16 identified in the complaint.

17 So I understand this is the Government's
18 burden. Section 3142 asks the Court to
19 consider a number of factors in deciding
20 whether or not there are safe conditions.
21 Again, I submit that there is not.

22 When you look at the nature and
23 circumstances of the offense, this is not a
24 case about free speech. It is not a case about
25 collectables. It is a case about terrorizing

1 minorities. It is legal to own Nazi
2 paraphernalia. It is not legal to terrorize
3 people driving on the street. It is not legal
4 to terrorize people who live next to you
5 because you don't like the color of their skin
6 or where you think they are from. It is not
7 legal to attack them for those reasons.

8 There is nothing more serious than
9 targeting individuals for violence because of
10 these factors. And this is not to mention that
11 the assault on J.S. involved the threatened use
12 of a firearm.

13 Now, we understand that there are some
14 facts about that that we may not know. There
15 was a limited sweep of the car. They didn't
16 find a firearm. They didn't do a very thorough
17 search in the moment. It could have been
18 there. Three different witnesses saw that and
19 one of them was K.E., the woman who was
20 completely uninvolved, and not only did she see
21 it, she contemporaneously reported it in the
22 911 call.

23 But even if there wasn't one, there was
24 the threatened use of one, and that is
25 sufficient in terms of danger to the community.

1 In terms of the strength of the evidence,
2 again, I would submit it is strong. The video
3 evidence, both the ring camera at the Duarte's
4 home and the surveillance at the apartment
5 complex support the victims' accounts of what
6 occurred.

7 In terms of racial animus, I mean, it is
8 on his truck. It is on his Facebook. It is in
9 his home. It is in the comments he makes to
10 police officers on a recorded body-worn camera
11 during these many arrests, and I would submit
12 to the Court that there is case law mostly
13 rising out of the Second Circuit, that
14 indicates that significant evidence of guilt is
15 something the Court should factor in when it is
16 making a detention determination, especially,
17 when the penalties faced are severe.

18 Here, it is a ten year statutory maximum
19 for each one of these counts. This is not like
20 anything that Mr. Hudak has experienced in
21 state court.

22 There is cases out of the Second Circuit,
23 which is United States versus Williams, where
24 the Court noted that even if a ten year penalty
25 alone on a 922(g) was sufficient in terms of

1 the strength of the evidence to weigh in favor
2 of detention because of the potential sentence
3 that was being faced on the significant
4 evidence.

5 I submit that the history and the
6 characteristics weigh in favor of detention
7 both with regards to safety of the community
8 and the risk of flight.

9 The defendant has dual citizenship. He
10 has ties to another country in terms of flight.

11 In terms of danger to the community, he's
12 been arrested or convicted of repeated charges
13 over the past three years. He's had multiple
14 probation violations. He's had contempt orders
15 for violating no contact orders. He attacked
16 Mr. Duarte when he was on probation already.

17 Again, held in contempt for the no contact
18 order with Mrs. Duarte. He also has a prior
19 conviction for carrying a concealed weapon, and
20 drinking alcohol as well as DWI.

21 Finally, in terms of the nature and
22 seriousness, the danger to any person or
23 community upon his release, I think it is his
24 conduct over the past few years speaks for
25 itself. He is a danger to the community

1 because Mr. Smith -- or excuse me, J.S., there
2 is no evidence he had ever seen him before.
3 There was no evidence that there was any
4 instigating event. J.S. was just a person
5 driving on the road who happened to be a black
6 man, and then it ended with him being chased to
7 his apartment building and having to call his
8 girlfriend because he was so afraid, to get his
9 firearm. That's what these people are reduced
10 to. The same thing for Mr. Duarte.

11 I would also contend he is a specific
12 danger to the witnesses in this particular
13 case, because he has violated the no contact
14 order, and that any conditions of release would
15 place him next door to the same people. And
16 this isn't an issue of a civil contempt case in
17 state court.

18 Here, these people are witnesses in the
19 case that involves significant real penalties,
20 and that places them, I think, in additional
21 danger.

22 So nothing in the behavior indicates that
23 he's not going to violate orders of the Court
24 because he's already violated orders of the
25 court in the past. This is the first time in

1 his years of menacing his community that he is
2 facing actual serious consequences, and he's
3 told us how he will react in such a situation.
4 That's Exhibit 11. He said, "Don't threaten
5 what I love, unless you're prepared to meet
6 your end."

7 Now, appreciate his daughter's willingness
8 to serve as third-party custodian. I think
9 this Court knows in the time that I've appeared
10 here, that I always am respectful and
11 appreciative of people who want to support
12 their family members, but the Court has already
13 identified what I view to be a significant
14 issue with her serving in that capacity, which
15 is that she appears to have a view of her
16 father that does not align with the evidence,
17 and she appears to be aggrieved on his behalf
18 to such extent that she called one of the
19 agents to accuse the agent of believing lies
20 and telling the agent she, "believed the
21 illegals."

22 And I will say in my ten years in
23 practicing in this District, I've never had a
24 proposed third-party custodian call one of the
25 law enforcement officers and make those types

1 of accusations. I have real concerns about her
2 ability to be unbiased and to report to this
3 Court any violations by her father, and that's
4 not even including the fact that she is a young
5 woman, and she is completely financially
6 dependent on him at this point in time.

7 So while I obviously respect her
8 willingness to serve, I don't think that the
9 conditions posed by probation, even with
10 Ms. Hudak as a third-party custodian, are
11 sufficient to insure the safety of the
12 community or to remove the risk of flight.

13 For those reasons, I would ask that this
14 Court detain him pending further proceedings.
15 And should this Court decide that release is
16 more appropriate, I would ask the Court to stay
17 that order pending an appeal to the District
18 Court.

19 **THE COURT:** All right. Let me ask both
20 sides to not send me a brief, but send me a
21 couple of cases with further research and find
22 out how these statutes have been interpreted.

23 Both of you may know the Fourth Circuit
24 conference is being held in Greensboro
25 beginning on Wednesday, and I plan to be

1 present for that, but if you'll send me those
2 cases, I can multitask and go to meetings and
3 decide certainly no later than Friday what I
4 plan to do in this case.

5 **MS. COSTNER:** Yes, Your Honor.

6 **THE COURT:** Thank you everybody.

7 (This matter was concluded.)
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C E R T I F I C A T E

I, J. ALLEN, RPR, United States District Court
Reporter for the Middle District of North Carolina, DO
HEREBY CERTIFY:

That the foregoing is a transcript of the
proceedings had in the above-entitled matter, WHICH WAS
TAKEN FROM AN AUDIO RECORDING, AND TRANSCRIBED TO THE
BEST OF MY ABILITY.

July 19, 2023

J. Allen, RPR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401