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File Name: 18a0143p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAMESS NAKHLEH,

Defendant-Appellant.

No. 18-1107

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:17-mc-50667-01—Mark A. Goldsmith, District Judge.

Decided and Filed: July 17, 2018

Before: COLE, Chief Judge; SUTTON and LARSEN, Circuit Judges.

COUNSEL

ON BRIEF: Colleen P. Fitzharris, FEDERAL DEFENDER OFFICE, Detroit, Michigan, for Appellant. Benjamin C. Coats, UNITED STATES ATTORNEY’S OFFICE, Detroit, Michigan, for Appellee.

OPINION

COLE, Chief Judge. We have all been frustrated at one time or another by red tape. Fewer of us have grown frustrated because of tape in a more literal sense. But it was tape—or, really, the lack of tape—that sparked the encounter we consider in this matter. Upset by postal employees and their refusal to provide him with tape to seal a box, Ramess Nakhleh engaged in an escalating series of acts that distracted postal workers, interfered in their ability to serve customers, and culminated in an implied bomb threat and the post office’s brief closure. In so

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doing, Nakhleh violated a regulation prohibiting disturbances in a post office—in particular, a regulation that prohibits “conduct that creates loud and unusual noise” in a post office or that otherwise impedes or disturbs postal operations. We affirm.

I. INTRODUCTION

Nakhleh walked into a Highland Park post office two years ago on a mission that is, at least for now, routine for many of us: he wanted to mail a package. With his package in hand, he marched to the counter, put his package in a window, and told the postal employee that he wanted to return his box to the sender. Three problems stood in his way.

The first problem: the package was still open. After Nakhleh put his box in the window, one postal employee told him that he would have to tape his box closed to send it. Nakhleh had “tons of tape in [his] house” but did not have tape with him, and the postal employee told him that she could not give him tape for free. Trial Tr., R. 2, PageID 67. The post office sold tape, but one of the employees advised Nakhleh that it would be cheaper to buy tape elsewhere. Heeding this advice, Nakhleh left the post office to buy tape, returned, and after seeking reimbursement for the tape (unsuccessfully), sealed his package.

Solving the first problem, however, gave rise to a second: Nakhleh had lost his shipping label. A postal worker advised Nakhleh (correctly, it would turn out) to check for the label inside the now-sealed box. Nakhleh took a moment to accuse the workers of deliberately hiding it, but he eventually accepted the suggestion to look inside the box, where he found the label.

Then came the third problem: Nakhleh refused to touch the label and affix it to the box because, in his words, “it’s got pollutant on it.” *Id.* at 34. One of the postal workers told Nakhleh that they could not accept the package unless he affixed the label to it and resealed it, but he still refused. Another customer eventually affixed the label and taped the box together. Nakhleh advised him, “Hey, man, you better wash your hands because it’s pollutant on the label.” *Id.* at 36.

After all this, the post office processed Nakhleh’s package, and Nakhleh left. He had not gone far, though, when he decided to return. Upset—and armed with an audio recorder which he

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used to record a portion of his interaction—Nakhleh went back to the window at the counter and asked for his package. When an employee told him that she could not return his package because it had already been processed, Nakhleh became loud and irate. He walked back and forth among the windows at the postal counter, taking photos and asking employees for their names. Because of Nakhleh’s behavior, the employees were unable to serve other customers in the post office. One employee, witnessing Nakhleh’s “belligerent” behavior, called the police.

Things escalated. When the police arrived and asked Nakhleh what he needed from his package, Nakhleh replied (twice), “What if it’s a bomb?” *Id.* at 16. After that statement, the police arrested Nakhleh and evacuated the post office. The post office was closed to customers for two hours while a Postal Inspector examined the package and concluded it did not contain a bomb. That same Inspector interviewed Nakhleh, who acknowledged that he understood the statement “was a bad decision” and said that he made it out of frustration. *Id.* at 63.

Nakhleh was presented with a violation notice charging him with causing a disturbance in a post office, a violation of 39 C.F.R. § 232.1(e) made criminal by 18 U.S.C. § 3061(c)(4)(B). After a one-day bench trial, he was found guilty by a magistrate judge, sentenced to six months’ probation with anger management treatment, and fined \$1,000. The district court affirmed his conviction and sentence. He now appeals.

II. ANALYSIS

Measured from the vantage of the post office, Nakhleh made a loud and unusual noise that impeded or disturbed postal operations, and the evidence sufficed to support his conviction. The district court did not err in failing to consider the audio recording.

A. Nakhleh Made a Loud and Unusual Noise in a Post Office

Nakhleh violated § 232.1(e) when he engaged in “conduct which create[d] loud and unusual noise” in the post office and that interfered with postal operations.

1. The Regulation Means “Loud and Unusual” for the Post Office

We agree with the district court that § 232.1(e) prohibits conduct which is “loud and unusual” for the post office, not a particular person (at least so long as the conduct impedes or

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disturbs postal operations). Nakhleh would have us read the phrase to mean a noise that is “loud and unusual” for a particular speaker (him), not a noise that is “loud and unusual” for the particular place (the post office). But the regulation’s text and structure, not to mention case law interpreting similar provisions, all foreclose Nakhleh’s reading.

Start with the text of the regulation, which focuses on conduct that might interfere with the operations of the post office:

(e) Disturbances. Disorderly conduct, or conduct which creates loud and unusual noise, or which impedes ingress to or egress from post offices, or otherwise obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited.

39 C.F.R. § 232.1(e). The regulation begins with a one-word caption: “Disturbances.” “Disturbances” are “a breach of *public* peace”—already a clue that the regulation looks at conduct that might be unsettling to the public at large, rather than conduct that is unsettling for a particular person. *Disturbance*, Oxford English Dictionary (2d ed. 1989). While “not commanding,” captions such as this are a ““tool[] available for the resolution of a doubt about the meaning of a statute.”” *Yates v. United States*, 135 S. Ct. 1074, 1083 (2015); *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (citation omitted).

The clauses surrounding “loud and unusual” provide more support. One principle of statutory interpretation is to interpret words by the company they keep, and the parts of the regulation accompanying “loud and unusual noise” all point to a for-the-place, not for-the-person reading. See *Yates*, 135 S. Ct. at 1085. For instance, the regulation starts off with a prohibition against “[d]isorderly conduct,” signaling conduct that “[v]iolat[es] public order.” *Disorderly*, Oxford English Dictionary (2d ed. 1989). And the other parts of the regulation likewise concern conduct that would interfere with the public’s use of the post office. Those parts prohibit impeding access to the post office, impeding the work of public employees, or “otherwise impeded[ing] . . . the general public” at the post office. Interpreting “loud and unusual” to mean “loud and unusual” for the post office, not for a person, harmonizes this clause with the other actions that the regulation prohibits.

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And even more support: this reading is necessary to give sense to how “loud” and “unusual” are used in other parts of the regulation. Besides prohibiting a “loud and unusual” noise in the post office, the regulation prohibits “conducts which creates loud or unusual noise” in meetings of the Post Office’s Board of Governors. 39 C.F.R. § 232.1(n). And that part is aimed at prohibiting conduct that would “disturb” those meetings. *Id.* Yet under Nakhleh’s for-the-person reading, the section would permit interruptions from someone already prone to making “loud” noises or engaged in behavior that was “unusual” only to others. Many hecklers might welcome Nakhleh’s reading, but adopting it would render this prohibition nonsensical.

If this were not enough, our reading is consistent with how the Supreme Court and one other circuit have read similar provisions. In *Grayned*, the Supreme Court upheld against a vagueness challenge an ordinance that prohibited “the making of any noise or diversion which disturbs or tends to disturb the peace” in a school. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The Court concluded that the ordinance was “written specifically for the school context” and “prohibited disturbances are easily measured by their impact on the normal activities of the school.” *Id.* at 112. While there are differences in the language of the ordinance in *Grayned* and what we consider here, nothing in *Grayned* evinces any idea that the ordinance should turn on a for-the-person reading of “noise or diversion.” The Ninth Circuit considered a statute even closer to the regulation we consider here in *United States v. Agront*, 773 F.3d 192 (9th Cir. 2014). In that case, it read a Veterans-Affairs regulation that prohibited “[d]isorderly conduct which creates loud, boisterous, and unusual noise” to include “conduct that would tend to disturb the normal operation of a [Veterans’ Affairs] facility.” *Id.* at 196.

Nakhleh all but concedes that these cases support the for-the-place reading. As he puts it, he “does not dispute that factfinders must consider context, including the location where the person made the noise.” Reply Br. 5. He seems to argue that considering “how the defendant usually speaks” is necessary to give effect to the whole phrase “loud and unusual.” *Id.* Not so. The sound of a box (dropped by a customer) hitting the floor might be “loud,” but it would hardly be “unusual” for a place that deals in packages. On the other hand, asking a postal worker to be reimbursed for tape might be “unusual,” but it would not be “loud” if spoken in a voice

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normal for the post office. Nothing about the phrase “loud and unusual” requires considering how one particular person usually speaks.

Nor would our reading invite arbitrary and discriminatory enforcement. “Ordinary people,” as the district court put it, “can and do understand what conduct is usual in a post office, and thus also understand what conduct is unusual in a post office.” Order, R. 10, PageID 212. More is required than a customer’s simple expression of frustration to violate the regulation. That is because the context of the regulation—including its focus on conduct that would “otherwise disturb[] or impede[] the general public or the postal employees in transacting business”—further narrows its scope. The use of “otherwise” signals that the regulation focuses on conduct that disturbs or impedes postal operations “*another way*.” *Otherwise*, Oxford English Dictionary (3d ed. 2004) (emphasis added); *see also Agront*, 773 F.3d at 198. If anything, Nakhleh’s for-the-person standard would invite arbitrary and discriminatory enforcement. His reading would make the same conduct unlawful for the soft spoken and lawful for the strident.

Because the regulation is not ambiguous, Nakhleh’s constitutional-avoidance and rule-of-lenity arguments are unavailing. The canon of constitutional avoidance “has no application in the absence of . . . ambiguity.” *Warger v. Shauers*, 135 S. Ct. 521, 529 (2014) (citation omitted). Not only is the clause unambiguous, but a for-the-place reading—already endorsed by *Grayned*—does not touch on a constitutional issue. In the same vein, the rule of lenity “applies only when a criminal statute contains a grievous ambiguity or uncertainty, and only if, after seizing everything from which aid can be derived, the Court can make no more than a guess as to what Congress intended.” *Ocasio v. United States*, 136 S. Ct. 1423, 1434 n.8 (2016) (internal quotation marks and citation omitted). Without an ambiguity, we have no occasion to deploy these tiebreaker canons.

For all his toing and froing about “loud and unusual,” Nakhleh has not marshalled a single law, regulation, or case ever adopting his interpretation. Silence, sometimes, is deafening. The regulation prohibits conduct that is loud and unusual for the post office, not for a person.

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2. Sufficient Evidence Supports the Conviction

The evidence, construed in the light most favorable to the government, sufficed to support Nakhleh's conviction. The district court found that Nakhleh made a loud and unusual noise and that his conduct impeded both the postal workers in performing their duties and other customers in conducting business in the post office.

Recall that Nakhleh violated the regulation in two ways: (1) while he angrily paced back and forth around the counter, he kept postal workers from serving customers (indeed, his behavior was so erratic that an employee called the police); and (2) his implied bomb threat required the post office to be closed.

On appeal, Nakhleh makes no challenge to the first reason. As the magistrate judge and district court both found, postal employees testified that Nakhleh was "loud," "irate," and that they could not serve customers while he angrily paced in front of the postal counter and took photos.

The challenge that Nakhleh does make fares no better. Nakhleh argues only that the police officers and postal workers responded unreasonably to his bomb threat by closing the post office. But just like a panic is the likely outcome of yelling "fire" in a crowded theatre, the post office's closure was the likely outcome of Nakhleh's bomb threat. The workers did not know what was in Nakhleh's box, but they knew three other things: (1) Nakhleh had engaged in a series of erratic behaviors, (2) he refused to touch a label that had fallen into his box because it had "pollutant" on it, and (3) he had twice implied that the box contained a bomb ("What if it's a bomb?"). Considering this, the police and postal workers' response was reasonable.

B. Nakhleh is not Entitled to Relief for the District Court's Failure to Consider a Contemporaneous Audio Recording

That leaves one final issue: the district court failed to consider an audio recording taken by Nakhleh that at least partially captured his conduct at the post office. Even accepting for the sake of argument that the district court should have reviewed this recording, on appeal Nakhleh does not identify how this contemporaneous audio recording may have led to a different result. While he challenges the magistrate judge's decision to credit the postal workers' testimony over

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the audio recording, he does not identify how the audio recording varied from the postal workers' testimony. Yet we have explained that "we defer to the district court's credibility determinations absent reason to believe that they are clearly erroneous." *United States v. Wright*, 747 F.3d 399, 409 (6th Cir. 2014). And not only does he not identify any variation between the testimony and the tape, but Nakhleh appears to concede that the audio recording only covered a part of his interactions with the postal workers and that the postal workers' testimony was necessary to fill in the gaps. Any error, then, is harmless. *See* Fed. R. Civ. P. 52(a).

III. CONCLUSION

We affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA,

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v.

RAMESS NAKHLEH,

Defendant - Appellant.

FILED
Jul 17, 2018
DEBORAH S. HUNT, Clerk

Before: COLE, Chief Judge; SUTTON and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 17-mc-50667

v.

HON. MARK A. GOLDSMITH

RAMESS NAKHLEH,

Defendant.

**OPINION AND ORDER AFFIRMING DEFENDANT'S CONVICTION AND
SENTENCE**

This matter is before the Court on Defendant Ramess Nakhleh's appeal from his misdemeanor conviction. The issues were fully briefed. Because the facts and arguments are adequately presented in the briefs and record and because oral argument will not significantly aid the decisional process, the appeal will be decided based on the parties' briefing. See E.D. Mich. LR 7.1(f)(2); Fed. R. App. P. 34(a)(2)(C); Fed. R. Crim. P. 58(g)(2)(D). For the reasons discussed below, the Court affirms Defendant's conviction for disorderly conduct.

I. FACTS AND PROCEDURAL HISTORY

On July 8, 2016, Defendant Ramess Nakhleh went to the Highland Park Post Office to mail a package. When Nakhleh arrived at the post office, the box was unsealed; when a postal worker told Nakhleh that he would have to seal the box himself, Nakhleh went to a nearby store to buy tape. When he returned to the post office, Nakhleh asked a second postal worker to seal the box for him. The worker refused, and Nakhleh sealed it himself. The box could still not be processed, however, because the shipping label was missing. The label was inside the box, so Nakhleh reopened the box and retrieved it. Nakhleh did not want to affix the label, so he asked the postal

worker to do so; she refused and another customer volunteered to place the label on the box. With the process of preparing the box for shipment completed, the postal worker processed the package and Nakhleh left the post office.

Nakhleh's absence from the post office was short-lived. While on his way home, Nakhleh reflected on the various exchanges at the post office and became upset at his treatment by the postal workers. He returned to the post office, bringing an audio recorder with him to record his conversations with the postal employees. He approached the second postal worker and asked for the box back, explaining that he had left something in it. The worker informed him that she was not permitted to return the box for any reason. Nakhleh was apparently upset with this response; one worker testified that he became loud, rude, and irate, while another testified that he was being belligerent.

The police arrived, and Nakhleh explained that he simply wanted the box back because he wanted to retrieve something from it. The police asked what he needed to get out of it, to which Nakhleh replied, "What if it's a bomb?" After a follow-up question, Nakhleh repeated the question: "What if it's a bomb?" The police evacuated the post office, and ultimately the post office was closed for two hours. During that time, a postal inspector trained in the identification of dangerous or suspicious items x-rayed the package and determined that it did not contain a bomb.

Nakhleh was charged with disorderly conduct in a post office. See 39 C.F.R. § 232.1(e). Following trial, Magistrate Judge Grand determined that the prosecution had shown beyond a reasonable doubt that Nakhleh's conduct created a noise that was loud and unusual and that he disturbed the employees from performing their duties. Magistrate Judge Grand further found that Nakhleh's conduct set off the chain of events that impeded and disturbed the general public in use

of the post office. Accordingly, Nakhleh was convicted of disorderly conduct. 18 U.S.C. § 3061(c)(4)(B). Nakhleh was sentenced to six months' probation, which included attendance at anger-management classes, and to pay a \$1,000 fine.

Nakhleh now brings this appeal. He argues (i) that he did not make a "loud and unusual" noise as required by the regulation, as he was merely speaking in his normal voice; (ii) that the evidence was insufficient to support the conviction; (iii) that the magistrate judge erred in crediting testimony over a contemporaneous audio recording; and (iv) that the sentence imposed was unreasonable. For the reasons that follow, the Court upholds Defendant's conviction and sentence.

II. STANDARD OF REVIEW

The scope of review on an appeal to the district court from a conviction in front of a magistrate judge is the same as the scope of review on an appeal to the court of appeals from a conviction in a district court. Fed. R. Crim. P. 58(g)(2)(D). Accordingly, the Court will review the instant question of statutory interpretation *de novo*. United States v. Lombard, 706 F.3d 716, 720 (6th Cir. 2013). Regarding the sufficiency of the evidence supporting the conviction, the Court is tasked with reviewing the evidence in the light most favorable to the prosecution and determining whether "any rational trier of fact could find the elements of the crime beyond a reasonable doubt." United States v. Gooch, 850 F.3d 285, 288 (6th Cir. 2017) (emphasis in original) (internal quotation marks omitted).

Nakhleh also disputes an evidentiary ruling made by the magistrate judge. An "abuse of discretion is the proper standard of review" of a trial court's evidentiary rulings. General Elec. Co. v. Joiner, 522 U.S. 136, 142 (1997). An abuse of discretion occurs only when a reviewing court has "a definite and firm conviction that the trial court committed a clear error in judgment." United States v. Boothe, 335 F.3d 522, 526 (6th Cir. 2003) (internal quotation marks omitted).

Nakhleh also argues that the sentence imposed is substantively unreasonable. This objection was not raised in the trial court. Typically, if a defendant has not raised a reasonableness objection in the trial court, a reviewing court will apply a plain-error standard to such a challenge. See Lumbard, 706 F.3d at 720. In the Sixth Circuit, however, trial judges are required, after handing down a sentence, to ask the parties whether there are any objections to the sentence pronounced that have not been previously raised. See United States v. Bostic, 371 F.3d 865, 872 (6th Cir. 2004). In this case, after handing down the sentence, the magistrate judge merely asked “[i]s there anything further then?” Trial Tr. at 127 (Dkt. 2). This question is not sufficient to satisfy the Bostic test. See United States v. Camacho-Arellano, 614 F.3d 244, 247 (6th Cir. 2010) (finding that asking defense counsel if there was “anything else” did not constitute asking the Bostic question). Accordingly, despite the lack of objection in the trial court, because the Bostic question was not asked, the Court will apply an abuse-of-discretion standard to the sentence. United States v. Daniels, 641 F. App’x 461, 466-468 (6th Cir. 2016).

III. ANALYSIS

A. “Loud and Unusual Noise”

The magistrate judge determined that Nakhleh violated 39 C.F.R. § 232.1(e), the violation of which is made criminal by 18 U.S.C. § 3061(c)(4)(B). The regulation prohibits disturbances in a post office:

Disorderly conduct, or conduct which creates loud and unusual noise, or which impedes ingress to or egress from post offices, or otherwise obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited.

Unsurprisingly, the parties disagree regarding whether Nakhleh was properly convicted for creating a loud and unusual noise. Nakhleh focuses his argument on the term “unusual,” claiming that he cannot create a “loud and unusual noise” when talking in his normal speaking voice. The Government argues just the opposite—that “unusual” means unusual for the environment, rather than unusual for the speaker.

The disagreement between the parties essentially comes down to the question whether the regulation prohibits subjectively unusual noises, i.e. noises that are unusual for the person making them, or objectively unusual noises, i.e. noises that are unusual for the surroundings.

The Government cites two cases that support the objective standard, although both arise out of different regulations in different contexts. In United States v. Agront, 773 F.3d 192 (9th Cir. 2014), the Ninth Circuit heard an appeal from a conviction for violation of 38 C.F.R. § 1.218(b)(11), which prohibits the creation of a “loud, boisterous, and unusual noise” in a VA facility. In describing how a person would know that he or she was creating such a noise, the Ninth Circuit explained that a “person of common intelligence would understand that the prohibition on ‘loud, boisterous, and unusual noise’ is in relation to the environment of a VA facility as opposed to a baseball stadium or train station.” Id. at 197. Ultimately, the panel concluded that conduct that violates the regulation is “conduct sufficiently ‘loud, boisterous, and unusual’ that it would tend to disturb the normal operation of a VA facility.” Id.

This concept is borrowed from the Supreme Court’s decision in Grayned v. City of Rockford, 408 U.S. 104 (1972), also cited by the Government, in which the Court upheld a city ordinance that prohibited picketing or demonstrating within 150 feet of a school while school was in session. Id. at 107. There, the Court commented that “prohibited disturbances are easily measured by their impact on the normal activities of the school.” Id. at 112. The prevailing rule

from these cases is that when a regulation exists prohibiting disturbances on or near government property, the level of disturbance prohibited is relative to the typical, objectively-expected behavior that would be expected at that property. In this context, such a rule would dictate that when a regulation prohibits loud or unusual noises at a post office, the conduct prohibited is conduct that goes beyond what is objectively acceptable at a post office.

The dictionary definition of “unusual” supports the contention that noises that disrupt the typical operation of a post office are unusual noises in this context. When a term is undefined in a statute or regulation, as “unusual” is here, courts should assign the term its ordinary meaning, with dictionaries being “a good place to start.” United States v. Zabawa, 719 F.3d 555, 559 (6th Cir. 2013). One standard dictionary defines “unusual” as “not usual, common or ordinary.” Random House College Dictionary, Revised Edition (1979). In turn, “usual” is defined as “expected by reason of previous experience with the same occurrence, situation, person, etc.” Id. So, in the context of a post office, a noise is unusual if it is not expected by reason of previous experience within a post office. Consistent with the above authorities, this experience must be objective, rather than subjective.

Nakhleh argues that such a finding violates two canons of statutory interpretation: the rule of constitutional avoidance and the rule of lenity. First, Nakhleh claims that an objective interpretation of the regulation is vague, such that it opens the door to arbitrary and discriminatory enforcement and, therefore, runs afoul of the Due Process Clause. See Def’s Br. at 11-12. Nakhleh argues that the Court must adopt his proposed subjective interpretation, because “ambiguous statutory language” should “be construed to avoid serious constitutional doubts.” F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 516 (2009).

Even assuming that the statute is equally susceptible to two constructions, see United States v. Oakland Cannabis Buyer's Cooperative, 532 U.S. 483, 494 (2001) (“[T]he canon of constitutional avoidance has no application in the absence of statutory ambiguity.”), Nakhleh’s argument fails, because an objective interpretation of “loud and unusual noise” would not lead to arbitrary and discriminatory enforcement. The Ninth Circuit considered a similar argument in Agront and concluded that, despite the absence of a definition for “loud, boisterous, and unusual noise,” the “requisite quantum of noise is found by looking to the context in which the regulation applies.” Agront, 773 F.3d at 197. The same rationale applies here. Ordinary people can and do understand what conduct is usual in a post office, and thus also understand what conduct is unusual in a post office. The regulation in question provides sufficient context, such that it is not indeterminable whether a “loud and unusual noise” has been made. See United States v. Williams, 553 U.S. 285, 306 (2008) (“Thus, we have struck down statutes that tied criminal culpability to whether the defendant's conduct was ‘annoying’ or ‘indecent’—wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings.”) (emphasis added). Because the regulation does not raise constitutional issues, the canon of constitutional avoidance does not apply.

Nakhleh also claims that his conviction violates the rule of lenity, which holds that ambiguity in criminal statutes should be resolved in the defendant’s favor. See Skilling v. United States, 561 U.S. 358, 411 (2010) (“Further dispelling doubt on this point is the familiar principle that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.”) (internal quotation marks omitted).

The rule only applies, however, when the statute “contains a grievous ambiguity or uncertainty,” and only if “the Court can make no more than a guess as to what Congress intended.”

Muscarello v. United States, 524 U.S. 125, 138-139 (1998) (internal quotation marks omitted).

That certainly is not the case here, and the text of the regulation belies Nakhleh's argument. The regulation prohibits disorderly conduct, defined as "conduct which creates loud and unusual noise . . . or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property." 39 C.F.R. § 232.1(e). The inclusion of the word "otherwise" means that the "loud and unusual noise" fits within one of the two classes of conduct later provided in the regulation, whether that is impeding or disturbing employees, or impeding or disturbing the general public. That context lets both courts and potential defendants know the scope of the provision and precludes any argument that the regulation is ambiguous.

B. Sufficiency of the Evidence

Having concluded that the regulation applies an objective standard to "loud and unusual noise," the Court must next determine whether the evidence supports Magistrate Judge Grand's verdict that Nakhleh's conduct created an objectively loud and unusual noise in the context of a post office. Examination of the regulation in question reveals four elements for the charge of a loud and unusual noise: the defendant (1) creates a noise that is (2) loud and (3) unusual and (4) either (i) tends to impede or disturb the public employees in the performance of their duties, or (ii) impedes or disturbs the general public in transacting business or obtaining the services provided on property.¹

¹ The inclusion of three "otherwises" in the regulation leads to parsing the regulation into the elements enumerated above. As a reminder, the regulation reads as follows:

Disorderly conduct, or conduct which creates loud and unusual noise, or which impedes ingress to or egress from post offices, or otherwise obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited. (39 C.F.R. § 232.1(e)).

The first two elements are not in dispute. Nakhleh clearly created a noise, and that noise was obviously loud—indeed, Nakhleh’s entire argument is premised on the contention that he is loud. For the third element, the Court examines what conduct creates noise that is unusual at a post office, and does so by exploring the level of decorum that is expected at a post office. Typically, when people enter a post office, they might buy stamps, or prepare a package, or drop mail in the mail slot, or check a P.O. box, or even get straight in line to talk to a postal worker. After they complete their business, they typically leave. There might be a dispute regarding payment or how long it will take a package to be delivered and voices might be raised, but dealing with such a dispute is, perhaps unfortunately, one of the duties of a postal worker.

What is undoubtedly not one of the duties of a postal worker is dealing with a customer, already having left the post office just to return minutes later, demanding that his package be returned in a raised voice, especially after that customer has been told that the package has already been processed and cannot be returned. It is not one of the duties of a postal worker to feel threatened by a customer to the extent that she feels she has to call the police. These circumstances were established by the testimony of Tamika Stringer, one of the workers at the post office that day. See 5/1/17 Trial Tr. at 37-38. The conduct created a noise that was certainly unusual to the extent that it caused Ms. Stringer to feel the need to have her manager call the police when she

As noted above, the use of “otherwise” dictates that the “loud and unusual noise” must also fit within at least one of those categories. See Agront, 773 F.3d at 198 (“Use of the term ‘otherwise’ indicates that, in order to be prohibited conduct, ‘loud and unusual noise’ also would need to rise to the level of impeding or disrupting normal VA operations.”). That being said, it appears from the text of the regulation that the addition of “which” separates the various classes of conduct that are prohibited as disorderly conduct. Thus, the first “otherwise” does not announce a prohibited class of conduct, but rather modifies “which impedes ingress to or egress from post offices.” Put another way, there are four different classes of conduct which can be charged as disorderly conduct in a post office: (1) loud and unusual noise; (2) impeding ingress or egress; (3) impeding or disturbing employees; and (4) impeding or disturbing the general public. In order to be convicted under either of the first two classes of conduct, a defendant must also fit within one or both of the last two.

could have been assisting the other customers in line. See id. at 38-39. Nakhleh's disturbance went beyond what is objectively usual at a post office, and thus the third element is fulfilled.

The last element can be satisfied in a number of ways. The prosecution is required to prove either that Nakhleh's conduct tended to impede or disturb the public employees in the performance of their duties, or impeded or disturbed the general public in transacting business or obtaining the services provided on property. The prosecution proved both. As noted by Magistrate Judge Grand, the conduct that created the loud and unusual noise "prevented workers from servicing other customers." 5/1/17 Trial Tr. at 108. Even without considering the subsequent closure of the post office, there is evidence that Nakhleh both disturbed the postal workers in the performance of their duties, i.e. servicing customers, and impeded, albeit temporarily, the general public in transacting business. See id. at 40 (testimony that the postal workers "couldn't serve the customers"). Accordingly, the final element is satisfied.

For these reasons, there was sufficient evidence for the magistrate judge to convict Mr. Nakhleh of violating 39 C.F.R. § 232.1(e).

C. Audio Recording

Nakhleh next argues that the magistrate judge clearly erred by crediting the testimony of the postal workers over the contemporaneous audio recording that he recorded. Nakhleh contends that the tape reveals that he did not yell, was not belligerent, was not rude, and was not speaking in an unusual manner, and that this extrinsic evidence contradicts the testimony at trial. See Brooks v. Tennessee, 626 F.3d 878, 897 (6th Cir. 2010). The Government observes that the recording documents the events before and after, but not during, the conduct at issue. Specifically, the police had already been called when the recording began, and the tape did not include conduct that Nakhleh himself testified occurred, such as the bomb reference.

This Court will not disturb the findings of the magistrate judge. This is due, in part, to Nakhleh's failure to provide to the Court a copy of the audio recording. Thus, even if the Court were so inclined, it is impossible for the Court to independently examine the validity of his argument. Cf. Brown v. Konteh, 567 F.3d 191, 212 (6th Cir. 2009) (“[I]ssues not adequately developed or argued in the appellate briefs are deemed abandoned and thus not addressed by this court.”). Simply put, Nakhleh did not provide the Court with the piece of evidence on which he relies, and so the Court is unable to evaluate this claim.

That being said, on the record provided, it is clear that the magistrate judge did not abuse the discretion provided in valuing the testimony of the witness over the audio recording. The magistrate judge observed that the recording began after the police had already been called, and that the witness' testimony filled in the gaps of what happened before that time. Given that, it could not possibly be said that the magistrate judge made an error in judgment, let alone that the Court is left with “a definite and firm conviction that the trial court committed a clear error in judgment.” Boothe, 335 F.3d at 526. Accordingly, the Court determines that this argument is meritless.

D. Sentence

Finally, Nakhleh argues that the sentence imposed was unreasonable. On this point, Nakhleh contends that his sentence—six months' probation (including anger-management classes) and a \$1,000 fine—constitutes an abuse of discretion. Nakhleh seems particularly bothered with the requirement that he attend anger-management classes, arguing that the magistrate judge ordered attendance without any input from the probation department, such that the only evidence that anger-management classes were necessary arose from the event in question and Nakhleh's behavior at trial.

The sentence imposed clearly is not an abuse of discretion. The circumstances surrounding this case, in which Nakhleh returned to the post office because he was so perturbed by the postal workers' perceived slight, make it a reasonable conclusion that Nakhleh might benefit from anger-management classes. Judges are tasked with considering "correctional treatment in the most effective manner" when fashioning sentences. 18 U.S.C. § 3553(a)(2)(D). Considering Nakhleh's behavior here, it could not be said that the magistrate judge abused his discretion in ordering that he attend anger-management classes. Accordingly, this issue too is meritless.

E. Conclusion

For these reasons, the Court affirms Mr. Nakhleh's conviction and sentence.

SO ORDERED.

Dated: January 12, 2018
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on January 12, 2018.

s/Karri Sandusky
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Violation No. 6206831

Hon. David R. Grand

RAMESS NAKHLEH,

Defendant.

BENCH TRIAL

BEFORE THE HONORABLE DAVID R. GRAND
United States Magistrate Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226
Monday, May 1, 2017

APPEARANCES:

For the Plaintiff BENJAMIN COATS
United States of America: U.S. Attorney's Office
211 W. Fort Street
Suite 2001
Detroit, Michigan 48226
313-226-9743

For the Defendant JAMES GEROMETTA
Ramess Nakhleh: COLLEEN P. FITZHARRIS
Federal Defender Office
613 Abbott
Fifth Floor
Detroit, Michigan 48226
313-967-5866

To obtain a certified copy of this transcript, contact:

Linda M. Cavanagh, CSR-0131, CRR, RMR, RDR

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EXHIBITSIdentificationOfferedReceived

Government Exhibit No. 1,
E-mail and specialty report

Government Exhibit No. 2,
Defendant's criminal history

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Audiotape recording

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Defense Exhibit B,
Witness statement of
Tamika Stringer

1 Detroit, Michigan

2 Monday, May 1, 2017

3 - - -

4 (Proceedings commenced at 8:13 a.m., all parties
5 present)

6 THE CLERK: Court calls the matter of Ramess Nakhleh,
7 Violation No. 6206831.

8 MR. COATS: Good morning, Your Honor. Benjamin Coats
9 for the United States. With me at counsel table is Wylie
10 Christopher of the U.S. Postal Inspection Service.

11 THE COURT: Okay. Thank you. Good morning.

12 MS. FITZHARRIS: Good morning, Your Honor. My name
13 is Colleen Fitzharris from the Federal Defender Office, here on
14 behalf of Mr. Nakhleh.

15 MR. GEROMETTA: James Gerometta, Federal Defender,
16 Your Honor.

17 THE COURT: Okay. Thank you. You can be seated
18 please.

19 All right. So we're here for the bench trial in --
20 for this violation, this ticket violation. I've had a chance
21 to read what little information is there on the ticket and also
22 do some preliminary research, which looks like the only case I
23 think in the whole country that I could find in which this
24 specific CFR was involved was the *Darrah* case which was --
25 happened to be out of our court a few years ago. So -- so I'm

1 at least generally familiar with the -- with the statute and
2 the requirements and -- but, you know, we can just get started.

3 I -- the only thing I would say is I know that the
4 last ticket matter that I had where everyone showed up for
5 trial, the parties were able to reach a resolution just as I
6 was taking the bench, and so I -- I always like to just give
7 that last opportunity. I don't know if there -- if it makes --
8 if there's anything for you all to talk about. If there is, we
9 could take just five minutes and talk. If not, I'm completely
10 prepared to get started.

11 MR. GEROMETTA: Can we have one moment, Your Honor?
12 I don't think you even need to get off the bench but --

13 THE COURT: Okay.

14 (Whereupon a brief discussion was held off the
15 record)

16 MR. GEROMETTA: We're set to go, Your Honor.

17 THE COURT: Okay. That's fine. All right. Then I
18 don't know if -- if either side wanted to make any brief
19 opening statement. You're welcome to do so if you like.
20 Otherwise, we can just jump into the evidence.

21 MR. COATS: Government doesn't feel a need to make an
22 opening statement.

23 MS. FITZHARRIS: No, the -- we don't feel a need to
24 make an opening statement either.

25 THE COURT: All right. That's fine. Then go ahead,

1 Mr. Coats, you can call your first witness.

2 MR. COATS: Yes, Your Honor. The government is going
3 to call Ms. Tracy Jones.

4 THE COURT: Good morning, ma'am. If you could step
5 forward please. Thank you. And if you could have a seat in
6 our witness box. Good morning.

7 THE WITNESS: Good morning.

8 THE COURT: If you could give us your full name
9 please.

10 THE WITNESS: Tracy Jones.

11 THE COURT: Thank you, Ms. Jones. And if you'll
12 raise your right hand.

13 T R A C Y J O N E S

14 was thereupon called as a witness herein, and after being
15 first duly sworn to tell the truth and nothing but the truth,
16 testified on her oath as follows:

17 THE WITNESS: Yes, I do

18 THE COURT: Okay. Thank you. You can go ahead.

19 DIRECT EXAMINATION

20 BY MR. COATS:

21 Q. Ma'am, can you tell the Court where you work?

22 A. Highland Park Post Office.

23 Q. Are you a postal service employee?

24 A. Yes, I am.

25 Q. How long have you been with the postal service?

1 A. Be 24 years.

2 Q. And you can adjust that microphone if you want to shift
3 it.

4 A. Twenty-four years.

5 Q. Twenty-four years with the postal service?

6 A. Mm-hmm.

7 Q. Were you working at the Highland Park Post Office on July
8 8th, 2016?

9 A. Yes, I was.

10 Q. What were you doing that day, what were your duties?

11 A. Servicing customers on the window.

12 Q. What's that post office like, can you describe the
13 interior of that office?

14 A. It's a large office, a large lobby. They walk in, it's a
15 big lobby, they can come to either side and walk up to the
16 window.

17 Q. And where do you -- where would you be as one of the
18 people?

19 A. Behind a window, usually on the second window.

20 Q. Is there an actual physical barrier like glass?

21 A. Yeah, there's a glass.

22 Q. All right. And around -- at some point that day did you
23 encounter the defendant, Mr. Nakhleh?

24 A. About 12:45 when he came in.

25 Q. And you remember when he came in?

1 A. Yeah, because I was about to get off.

2 Q. And did you assist him?

3 A. Yes, I did.

4 Q. What was it that he was looking to do that day?

5 A. He had came to pick up a package. He -- I gave him the
6 package. He took the package over to the counter because
7 there's a counter that sits in the middle. He began going
8 through the box, taking the things out of the box and putting
9 things back in the box.

10 Q. So this package -- I'm sorry -- this package was -- had
11 been delivered to the post office for him?

12 A. It was delivered -- it was supposed to have been taken to
13 his house, but if you're not answering or not there, they bring
14 it there and they can pick it up, so he was picking it up.

15 Q. All right. And then you said he opened the box in the
16 lobby?

17 A. Right.

18 Q. And went through it, took some things out, put some things
19 in?

20 A. Right.

21 Q. Were you able to see or were you paying attention to see
22 what he was --

23 A. I mean I saw him with a coat, but I wasn't really paying
24 him a lot of attention as to what he was putting in and taking
25 out. I saw shoes and a coat.



1 Q. Do you remember how big this box was?

2 A. It was about like this wide and maybe this tall.

3 Q. So maybe a foot and a half by a foot and a half?

4 A. Maybe so.

5 Q. All right. And what happened then after that, after he
6 was --

7 A. After he finished putting whatever he was going to do with
8 the box, taking in and taking out, he brought it back to the
9 window and put it in the -- the gate, I call it the gate. And
10 I was like, "Sir, you have to tape the box up." And he was
11 like, "Well, I don't have any tape. How much is the tape?"
12 And I told him it's 3.49 for the tape, and he was like, "That's
13 too much money." I said, "Well, you can go to the dollar store
14 and get some tape, it's cheaper." And so he was like, "No,
15 I'll just throw a piece of scotch tape across it and take it."
16 I was like, "I'm the -- I can't be responsible for your box,
17 sir. You have to either take it with you or buy some tape."
18 So he went to walking out the door and I was like, "Sir, you
19 have to take your package with you," but he just kept walking.

20 Q. Now, let me just go back over a couple of things there.


21 So you're saying after he had done something with the box, he
22 brought it back and was giving it to you?

23 A. Yeah, he put it back through the window.


24 Q. But it wasn't sealed at that point?

25 A. No.

1 Q. And does it have to be sealed?

2 A. Yes, it has to be. I can't process it without it being
3 sealed. I'm not supposed to seal his package for him. 

4 Q. And what was his behavior like or what was his demeanor
5 like while he was -- you were having this discussion about the
6 tape?

7 A. Like he really didn't care what I did with the package.
8 He just had a don't care attitude. 

9 Q. At this point was his voice raised, was he talking loudly?

10 A. Not at that point, no.

11 Q. Did he seem to be annoyed or frustrated?

12 A. More like he was trying to be annoying to me.

13 Q. All right. And -- and so you say he just left his box
14 with you and was leaving the post office?

15 A. Yeah. And I was trying to tell him, "Sir, you have to
16 take your package." He was like, "I don't care. Put it -- go
17 do what you got to do with it." So I'm thinking he's not going
18 to come back, so I called his carrier to see if she could
19 deliver his package to him.

20 Q. When you say his carrier, you mean...

21 A. He had a carrier that I, you know, could call on the phone
22 and let her know he left a package here.

23 Q. Does the person who ordinarily delivers the mail to --

24 A. Delivers his mail, right. She knew exactly who I was
25 talking about, and so she said she would come and get his



1 package and deliver it. But before she could even come get it,
2 he came back with some tape and told me I owed him \$0.50 for
3 the tape. So I was like, "Sir, I can't pay you for the tape,
4 you have to" -- so by this time, when I -- I left off the
5 window and Tamika came up on the window. I went in the back.

6 Q. Where was his package at this point?

7 A. It was still -- it was still in the, you know, the window
8 part.



9 Q. Okay. So he could get it back?

10 A. Right.

11 Q. Did he take it back before you left the window or...

12 A. No. I had walked off when he -- it was between him and
13 Tamika after I walked off.

14 Q. All right. Were you near the end of your shift?

15 A. Right. So I had went in the back to take my drawer and
16 put it in the safe.

17 Q. Did you come back up to the front of the post office?

18 A. Yes, I did.

19 Q. And when you came back up, was he still there?

20 A. He was still there.



21 Q. What was he doing when you came back to the front?

22 A. The box had been taped and processed and in the gurney
23 and --

24 Q. What do you mean when you say "in the gurney"?

25 A. In the -- the hamper that we use to take it back and put

1 it in dispatch.


2 Q. Is that behind the glass window?

3 A. Yes.

4 Q. Is that an employees only area?

5 A. Right.

6 Q. And what -- what's the status of a package once you put it
7 in the gurney?

8 A. We take -- it's already been processed. We take it and
9 put it in the dispatch to go out. 

10 Q. All right. And what was the defendant doing?

11 A. He was arguing with Tamika about he wanted the package
12 back, and she was telling him, "I can't give it back to you,
13 it's already been processed." And he was like, "I'm going -- I
14 want my package back, it's something in there that I forgot, I
15 didn't want to put in there," that's what he said, "I didn't
16 want to put it in there." And he began taking pictures and
17 Tamika was like, "You can't take pictures in here, sir."

18 Q. When you mean -- when you say taking pictures, what did
19 you --

20 A. Taking pictures of --

21 THE COURT REPORTER: Wait, wait. One at a time.
22 "When you say taking pictures..."

23 Q. I'm sorry.

24 A. With his phone, he was taking pictures with his phone.

25 Q. And for her sake, just you have to do -- you do have to

1 let me finish the question even if you know what the end of the
2 question is --

3 A. Oh, I'm sorry.

4 Q. -- going to be.

5 All right. So you say he was taking pictures with
6 his phone?

7 A. Right.

8 Q. And the other employee, Tamika, told him, "You can't take
9 pictures"?

10 A. Right.

11 Q. And how did he respond to that?



12 A. He just kept taking pictures. And so then he was like, "I
13 need that package back, I need that package back." And it was
14 another gentleman out there -- I wasn't really paying
15 attention. By this time I had said I was going to call the
16 police.

17 Q. You were -- you were going to call the police?

18 A. Yeah, I went to go call the police because he didn't want
19 to leave, he kept being belligerent about the package and
20 saying those stuff about his package. So I was like I'm not
21 going to argue with him, I'm just going to call the police.

22 Q. At this time did he say anything about what was inside the
23 package?



24 A. No, he wouldn't say what was in it.

25 Q. Did he say anything or do you remember him saying anything

1 at any point about contamination?



2 A. The guy that was -- he was talking to on the other side of
3 the window, I heard him telling him, "You need to wash your
4 hands." And Tamika was talk -- she was more or less talking to
5 him than I was. I was, like I said, trying to call the police.

6 Q. Did you understand why he was telling this other person
7 that he needed to wash his hands?

8 A. No. The guy was out there.

9 THE COURT: Ma'am, who -- who was the speaker that
10 said, "You need to wash your hands"?

11 THE WITNESS: He was.

12 THE COURT: He, the defendant?

13 THE WITNESS: Yeah.

14 THE COURT: So the defendant told a postal employee?

15 THE WITNESS: No, he told the guy that was out there
16 with him. It was another customer that came in that he was
17 interacting with and he was helping him out, so he told him,
18 "You need to wash your hands."

19 THE COURT: I see. Thank you.


20 BY MR. COATS:

21 Q. You didn't understand the full context of that
22 conversation?

23 A. No.

24 Q. All right. What was it about his behavior -- you've
25 described some of the things already. Was he -- that made you


1 want to call the police, what made you think he was --

2 A. Because he wouldn't leave, we kept telling him he 
3 couldn't -- "you couldn't get the package back, it's already
4 been processed." And he just, "Well, I want my package back
5 and I'm going to call the police on you too." And by -- like I
6 said, by then I was on the phone calling the police.

7 Q. At this point you mentioned one other customer. Were
8 there -- were there --

9 A. It was other customers. I'm sorry.

10 Q. Yes. There were other customers in the post office?

11 A. Yes. 

12 Q. And was -- what he was doing, was it making it difficult
13 to serve those other customers in the --

14 A. Yes. There was another lady at the far window, but we did
15 have other customers in there, yeah.

16 Q. All right. And what he was doing was keeping at least you
17 occupied and it was keeping Tamika occupied?

18 A. Mm-hmm.

19 Q. All right. And how would you describe his voice, was his
20 voice raised at this point?

21 A. Yeah, he was getting kind of loud.

22 Q. All right. And what happened once you called the police?

23 A. The Highland Park Police got there first and they asked us
24 what was going on and we explained to him, you know.

25 Q. Let me ask first, after you called the police, was it --

1 did it take some time before they responded?

2 A. Maybe five, ten minutes at the most.

3 Q. What was he doing while you were all waiting for the
4 police, the defendant?

5 A. Still talking to Tamika about he wanted his box back, and
6 she was trying to explain to him why he couldn't have the box
7 back, and he's interacting with her and this other guy that was
8 out there. So the police came in and they asked him -- they
9 asked us what happened, and we was trying to explain to him
10 what happened. And they asked him what is it that he needed to
11 get in the -- get out of the box, what's in the box, and he
12 said, "What if it's a bomb?"



13 Q. You -- you heard him say that?

14 A. Yeah, I heard him say that.

15 Q. All right.

16 A. And then the officer asked him again, "Could you repeat
17 that, what's in the box?" He said, "What if it's a bomb?" And
18 then they handcuffed him and made us leave, they made all of us
19 leave out.

20 Q. Who left, who had to leave the post office?

21 A. Me, Tamika and -- and Denise.

22 Q. Did they have to evacuate everybody who was in the post
23 office?

24 A. Every -- it was only three in the building and maybe the
25 maintenance guy was in the back, and so all of us had to leave

1 out of the building.

2 Q. And then where did you go?

3 A. We went out to the parking lot. Then they made us leave
4 out the parking lot and go on the other side of the street.

5 Q. So if all of the postal employees had to be evacuated,
6 that means that then the post office was closed?

7 A. Yes, basically, yeah.

8 Q. For about how long, do you remember?

9 A. When we went back in, it was like 3:00, 3:30, close to
10 3:30.

11 Q. So about two hours?



12 A. Mm-hmm.

13 Q. Where nobody could get any kind of service from the postal
14 office?

15 A. No.

16 Q. You had mentioned something related to taking of pictures.
17 Can you explain to the Court, is that against the rules?

18 A. Yeah, you're not supposed to take pictures in the post
19 office or videos.

20 Q. Was -- was it concerning to you as a postal employee that
21 that was happening?

22 A. Yeah.



23 Q. And why?

24 A. Because why would you be taking my picture? I don't know
25 what you're going to use that for.

1 Q. Okay. Those are my questions for you.

2 MR. COATS: No -- nothing further.

3 THE COURT: All right. Thank you.

4 Any cross-exam?

5 MS. FITZHARRIS: Yes, Your Honor.

6 CROSS-EXAMINATION

7 By MS. FITZHARRIS:

8 Q. Good morning, Ms. Jones.

9 A. Good morning.

10 Q. Were you and Tamika the only two postal workers on duty
11 that day?

12 A. No.

13 Q. Okay. When Mr. Nakhleh arrived, the box he had was
14 actually in the post office's custody?

15 A. Right.



16 Q. You handed it to him?

17 A. Yes.

18 Q. You watched him unpackage it?

19 A. I didn't watch everything he took out of it. I seen that
20 he was unpackaging it.

21 Q. And you said you saw shoes?

22 A. I saw a coat and some shoes.

23 Q. Okay. And then --

24 A. But there were more articles in there. I just didn't pay
25 attention to what he was pulling out.

1 Q. He was pulling it out in -- in front of you?

2 A. Yeah, he was at the counter pulling it out.

3 Q. Public?

4 A. Right.

5 Q. He wasn't trying to hide anything?

6 A. Not that I know. I don't know what he took out.

7 Q. And then he put things back in the box?

8 A. Mm-hmm.

9 Q. And he brought it back up to the window?

10 A. Mm-hmm.

11 THE COURT: Ma'am, if you could answer out loud
12 please.

13 THE WITNESS: I'm sorry, yes.

14 BY MS. FITZHARRIS:

15 Q. And he brought it back up to the window?

16 A. Yes.

17 Q. And box was open?

18 A. Yes.

19 Q. And you could see inside?



20 A. No, it was closed but it wasn't taped down.

21 Q. Okay. But if you wanted to, you could lift up the flaps?

22 A. Right.

23 Q. And you could look and see inside?

24 A. Right.

25 Q. Okay. And he asked you if you could have -- he could have

1 some tape?

2 A. Right.

3 Q. But he -- you didn't -- you said you can't give him any
4 tape?

5 A. No, I said he would have to purchase some tape.

6 Q. Right. But he couldn't get it from you for free?

7 A. We don't give tape out for free.

8 Q. Okay. And then you recommended he go to the dollar store?

9 A. Right.

10 Q. And --

11 A. When I -- when he asked me the price of the tape.

12 Q. Okay. And he left the box with you?

13 A. Yes.

14 Q. And the box was open?

15 A. It was still in the thing. I never took it out, I never
16 took the box out of the cage.

17 Q. Okay. But it was with you?

18 A. Right.

19 Q. And it was open?

20 A. There was -- the flap was closed but it was -- it was like
21 just like puffed up a little, yes.

22 Q. It was unsealed?


23 A. Right.

24 Q. And you didn't hear any unusual sounds coming from the
25 box?

1 A. No.

2 Q. You didn't see any strange --

3 A. I couldn't see what was in it.

4 THE COURT: Let's -- ma'am, let -- let her finish her
5 question please before you answer. 

6 THE WITNESS: Okay.

7 BY MS. FITZHARRIS:

8 Q. You didn't hear anything coming out of the box?

9 A. No.

10 Q. You didn't see any residue on the box?

11 A. No.


12 Q. And for all you know, there were shoes in the box?

13 A. No, I'm not going to say that. I don't know what he took
14 out the box, I don't know what he put in the box. I just
15 looked up and saw the shoes and the coat. There was a lot of
16 stuff in the box because he was sitting there for a minute.

17 Q. When he walked into the post office, he wasn't carrying
18 anything, was he?

19 A. No.

20 Q. At the time when he -- he left to go to the dollar store,
21 you had no reason to believe there was a bomb in the box?

22 A. No. 

23 Q. He returned a few minutes later?

24 A. Yeah.

25 Q. And he came back with tape?

1 A. Yeah.

2 Q. And he taped up the box?

3 A. He -- no, he put the tape in the thing and told me to tape
4 his box up.

5 Q. He taped up the box at some point?

6 A. He taped it up.

7 Q. Okay.

8 A. As far as I know because I left off the window.

9 Q. Okay. You said about ten minutes passed before he came
10 back to the front counter?

11 A. Yeah.

12 Q. Okay. And he said that he forgot something in the box?

13 A. Right.

14 Q. Something that shouldn't be there.

15 A. That's what he said, yeah.

16 Q. And he said that he wanted to call the police?

17 A. Yeah.

18 Q. And you decided to call the police too?

19 A. Right.

20 Q. When you -- when the police arrived, they spoke to you
21 first?

22 A. We were all at the window at that time.

23 Q. But the police spoke to you first before --

24 A. They spoke to me and Tamika.

25 Q. -- they spoke to Mr. Nakhleh?

1 A. They just asked us what the problem was.

2 Q. Okay. Did you mention that he got the box from you, that
3 it was in post office custody before he got the box back?

4 A. It was never in my custody. I left it in the window.

5 Q. But he did not arrive at the post office with the box?

6 A. Oh, right, he came to pick the box up.

7 Q. You didn't tell the police that?



8 A. No.

9 Q. You didn't tell the police that it was open?

10 A. They could see it was open.

11 Q. When the police arrived, the box was open?

12 A. The box was sitting in the window. Matter of fact, he was
13 by the door and they were asking us what happened.

14 Q. When the police arrived, the box was open?

15 A. Yes, it still was open. No, the box was closed, I'm
16 sorry, I'm sorry. The box was closed when the police got
17 there. When I came on the window, the box was closed and in
18 the gurney.

19 Q. Okay. But you didn't tell the police that the box had
20 been opened?

21 A. No. I told him that he was being belligerent about his
22 box.

23 Q. You did not tell the police that the box had been opened?

24 A. No.

25 Q. Okay. You -- he asked for the box back?

1 A. We told him we couldn't give him the box back.

2 Q. He asked for it back multiple times?

3 A. Yeah, he was -- after the discussion he had with Tamika.

4 THE COURT: Just answer -- ma'am, if you could just
5 answer the question that's asked, just limit your answer to
6 answering what's asked.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 BY MS. FITZHARRIS:

10 Q. He asked multiple times for the box back?

11 A. Yes.

12 Q. At that point you didn't have any reason to believe there
13 was a bomb in the box?

14 A. I wasn't up there.

15 Q. You were near the box?

16 A. I was in the back. When I came back up to the window, I
17 heard him arguing with Tamika about he needed the box back.

18 Q. I'm asking you like what you thought was in the box. You
19 didn't have any reason to believe that --

20 A. I -- I wouldn't know what was in there.

21 Q. You didn't have any reason to believe there was a bomb in
22 the box?

23 A. No.



24 Q. And at some point you heard Mr. Nakhleh say, "For all you
25 know, there could be a bomb in the box"?

1 A. He told the police that.

2 Q. He didn't scream?

3 A. He was loud with us.

4 Q. He did not scream?

5 A. He was loud with us.

6 Q. He -- he didn't scream at the police officers?

7 A. Not at the police officer.

8 Q. He didn't say, "There is a bomb in the box"?

9 A. He said, "What if there's a bomb in the box?"

10 Q. He did not say, "There is a bomb in the box"?

11 A. No.

12 Q. He did not say, "If I don't get my package back, I'm going
13 to blow up a bomb"?

14 A. No.

15 Q. He didn't say "bomb"?

16 A. He said, "What if there's a bomb in it?"

17 Q. Okay. But he didn't say there is a bomb?

18 THE COURT: She -- she's testified to what he said.

19 MS. FITZHARRIS: Okay.

20 THE COURT: And -- and I think any other question
21 about -- is that the entirety of what he said, ma'am?

22 THE WITNESS: Just -- it's just -- well, like I said,
23 he was telling the guy that was out on the -- in the area with
24 him that he needed to go wash his hands. He was helping him
25 with the box, and I heard him telling him, "You need to go wash

1 your hands."

2 BY MS. FITZHARRIS:

3 Q. And after he said this thing about the bomb, you -- about
4 a bomb or what if there's a bomb, you didn't say to the post
5 office or to the police officer, "The box was open, there's not
6 a bomb in there"?

7 A. It was not up to me. He had already handcuffed him by
8 then. Once he asked him, "What -- so you're saying there's a
9 bomb in the box?," he said, "What if there is a bomb in the
10 box?"

11 Q. My question though is that you didn't tell the police
12 officer that the box had been opened?

13 A. Miss, when the police asked him what's in the box and he
14 says it might be a bomb, and he said, "So you're saying there's
15 a bomb in the box?," he said, "What if there is a bomb in the
16 box?"

17 Q. I'm asking about what you did. You did not ask the -- you
18 did not tell --

19 A. Once the police came --

20 THE COURT: Wait a second. Let -- wait a second.
21 Let her ask the question, and then when she's finished, then
22 you can answer.

23 BY MS. FITZHARRIS:

24 Q. You did not ask -- you did not tell the police officer
25 that you -- that the box had been opened?



1 A. No.

2 THE COURT: She's -- this has been asked and
3 answered. Okay. She's already said no, she did not tell them
4 that.

5 MS. FITZHARRIS: Okay. I'm just clarifying that it
6 was after there was a discussion about the bomb. Okay.

7 BY MS. FITZHARRIS:

8 Q. After this incident, you spoke with the postal inspector?

9 A. Yes.

10 Q. And you wrote a statement?

11 A. Yes.

12 Q. And you put everything you thought was important about
13 this incident in the statement?

14 A. Yes.

15 Q. And you thought it was important to mention that Mr.
16 Nakhleh is Arab?

17 A. Well, yes.

18 Q. Have you ever heard that Americans talk loudly?

19 A. No.

20 Q. No, you've never heard that?

21 A. Unh-unh.

22 Q. Have you ever thought that people from other countries
23 might have like a -- talk louder than others?

24 A. No.

25 Q. Okay.

1 MS. FITZHARRIS: No further questions.

2 THE COURT: All right. Thank you.

3 Any redirect?

4 MR. COATS: No, Your Honor.

5 THE COURT: All right. Thank you. Ma'am, you can
6 step down.

7 (Witness excused at 8:37 a.m.)

8 THE COURT: Okay. And the government can call its
9 next witness.

10 MR. COATS: Yes, Your Honor. The government calls
11 Tamika Stringer.

12 THE COURT: Good morning, ma'am.


13 THE WITNESS: Good morning.

14 THE COURT: If you could give us your full name
15 please.

16 THE WITNESS: Tamika Michelle Stringer.

17 THE COURT: Okay. And could you spell your name
18 please?

19 THE WITNESS: T-A-M-I-K-A M-I-C-H-E-L-L-E
20 S-T-R-I-N-G-E-R.

21 THE COURT: All right. Thank you, Ms. Stringer, and
22 if you'll raise your right hand. 

23 T A M I K A S T R I N G E R

24 was thereupon called as a witness herein, and after being
25 first duly sworn to tell the truth and nothing but the truth,

1 testified on her oath as follows:

2 THE WITNESS: Yes.

3 THE COURT: Okay. Thank you. And if you could just
4 move the microphone a little lower so we can hear you a little
5 better. Thank you.

6 Go ahead.

7 DIRECT EXAMINATION

8 BY MR. COATS:

9 Q. Yeah, you can shove that back and adjust the angle. You
10 want to get it generally pointed at your mouth. There you go.

11 A. Okay.

12 Q. All right. Can you tell the Court please where you work?

13 A. Where I work now? I'm at the Oak Park station.

14 Q. Okay. Are you a U.S. Postal Service employee?

15 A. Yes, I am.

16 Q. How long have you been with the postal service?

17 A. A little over 16 years.

18 Q. And on July 8th, 2016 were you working at a different
19 place than where you're working now?

20 A. Yes, I was.

21 Q. Where were you working then?

22 A. At the Highland Park Post Office.

23 Q. And how long had you been working at the -- how long did
24 you work at the Highland Park Post Office?

25 A. A little over a year.

1 Q. On that particular day, on July 8th, 2016, did you have an
2 encounter involving the defendant, Mr. Nakhleh?

3 A. Yes, I did.

4 Q. And about when were you -- did you first come in contact
5 with him, if you remember?

6 A. I started work at 11:30 and we -- we normally do a shift
7 change then, I go up to the window, so it could have been
8 between 11:30 and 12:00 o'clock.

9 Q. Okay. And was he already in the post office when you went
10 up to the front that day?

11 A. When I came to the window, yes.

12 Q. And was he already dealing with another postal employee?

13 A. When I came in, he was already dealing with my co-worker,
14 Ms. Jones.

15 Q. Is that Tracy Jones?

16 A. Yes.

17 Q. And what -- what did you see or hear as you went up and --
18 and first encountered Mr. Nakhleh?

19 A. Well, when I came to the window, she was coming off the
20 window so I was putting my till in. He brought the box up to
21 the window, it was taped, and he started telling me about he
22 couldn't find his label, he thought my co-worker had hid it on
23 purpose. And I asked him did he check into his box to see did
24 he find -- you know, was the label in there. And he kept
25 saying that it was done on purpose, and I said, "Just check in





1 your box and see was the label inside." And so he ended up
2 opening up the box and the label was inside of there, inside
3 the box.

4 Q. Okay. So when you first encountered the package, it was
5 already taped up?

6 A. Yes, it was already taped up.

7 Q. Did you know anything about the history of the package,
8 where it had come from, when he had gotten it or what was
9 inside it?

10 A. I didn't know anything about the history, but when I was
11 coming in, I heard a lot of noise up at the window coming from
12 the back and I heard my co-worker, you know, talking with him.
13 They were -- he was explaining to her, telling her about
14 something about some tape, but I didn't hear the whole
15 conversation. I just know it was a lot of noise being made up
16 in the front about the box and that he had -- I heard her tell
17 him that he had to take the box with him and he was talking
18 about some tape.

19 Q. Could you clarify whether this noise was coming from Ms.
20 Jones or from the defendant or from both?

21 A. Well, it was conversation going on with both, but I heard
22 him because his voice was louder. But she was telling him
23 about the tape, and I guess he wanted to -- he wanted to have
24 tape put on there and he didn't want to purchase the tape, and
25 then that's the conversation I heard, and she told him she

1 couldn't keep the box and he was saying that he wasn't going to
2 buy any tape.

3 Q. Now, at that point, with the conversation that you're
4 describing right there, would you say he was speaking in a
5 normal tone of voice that customers ordinarily use?

6 A. No, because that's why -- I was in the back and I heard it
7 come up through -- the building is big, so the back is more
8 like a warehouse, and coming up through the back going into
9 where we got a office and I have a desk right there, so coming,
10 entering in, I heard -- and when I got right there by the door,
11 there's an entrance where you turn to the left and you go up to
12 the window. Right there is when I heard all of the
13 conversation that was going on.

14 Q. Can you --

15 A. I walked in on it.

16 Q. Can you usually hear customers when you're at that part of
17 the --

18 A. You can -- you can hear customers. It's like an echo in
19 that building, especially on the outside, but when they're even
20 louder -- because you have customers that come in, they be --
21 you know, they laugh, and you can -- you can really hear that
22 because it's an echo in the building.

23 Q. Now, when he was having the interaction that you saw and
24 heard with Ms. Jones, was it -- how would you characterize it,
25 was it friendly?

1 A. No, it wasn't.

2 Q. How was he behaving?



3 A. He was just irate and rude, really loud and rude, just
4 saying what he wasn't going to do and what she was going to do.

5 And after that, I think that's when she was coming
6 down off the -- off the window. She had to pull her till out
7 and get her money and everything because it was time for us to
8 switch over.

9 Q. Now, during the other conversation that you described
10 where he was talking to you about the label in the post office,
11 how was he then, was his voice raised at that point?



12 A. No, it was more demanding of -- he was telling me, "No, it
13 was done on purpose." And I'm like, "Did you check into your
14 box?" And he was like, "Just -- no, she's hid my label on
15 purpose." And I had said, "Sir, look down in your box and
16 check and see if your label is in your box," and that's when he
17 opened it up and the label was down in there.

18 Q. Was it at the counter or at -- at -- at --

19 A. It was in the window. We have these vestibules where you
20 have to put your package in the window, and when they slide
21 their side down, we can lift our side up.

22 Q. All right. So the box was at the -- at the window --

23 A. Mm-hmm.

24 Q. -- when he --

25 A. It was inside the window.

1 Q. -- when he opened it back up?

2 A. Yep. When I got up to the window, he -- the box was
3 already in the window.

4 Q. Okay. And when he opened it up --

5 A. It was at the window.

6 Q. -- was that to find the label?



7 A. Yep, it was at the window.

8 Q. Okay.

9 A. My side was still closed.

10 Q. Did you see all of the contents of the box when he opened
11 it up?

12 A. I didn't really look inside but I saw the white label that
13 he was talking about. So he -- he -- when he looked in there,
14 that's when he was telling -- started telling me then that "I'm
15 not going to touch the label, it's pollutant, it have pollutant
16 on it."

17 Q. I'm sorry, he told you that he wasn't going to touch the
18 label?

19 A. Yes. He told me, he said, "I'm not going to touch that
20 label because it's got pollutant on it." That's what he said.
21 He say, "It's got pollutant on it." He said, "You put the
22 label on there." And I said, "Sir, no, I can't put the label
23 on there for you," and I said, "I can't take the package until
24 the label is properly put on." And he said, "Well, I'm not
25 going to touch it."

1 Q. Now, did he seem to be joking about this pollutant?

2 A. No.

3 Q. Did you take it as a joke?

4 A. At first I didn't know what to think, I didn't know what
5 to think. But when he continued to demand -- because it was in
6 a demand of "No, you put the label on there." And I said, "No,
7 I'm not going to put the label on there." Then a gentleman
8 that was in line walked up behind us and said that he would put
9 the label on there.

10 Q. Now, this --

11 A. And that he would also tape the box up.

12 Q. This is another customer that you're --

13 A. Yes, it was another customer; it was a black male.

14 Q. And was this a person that appeared to be friends with him
15 or -- or somebody that was --

16 A. No, it was a customer like, you -- you know, like, "I got
17 to get out of here," and just willing to help. So he came up,
18 no attitude or anything, and he said, "Sir, I'll put the label
19 on for you."

20 Q. So the defendant didn't put the label on?

21 A. No, he didn't put the label on. The gentleman put the
22 label on and he taped the box up for him.

23 Q. The other customer was waiting to be served?

24 A. He assisted him with taping the box up.

25 Q. And was -- did you ever hear any conversation between Mr.



1 Nakhleh and this customer?

2 A. Well, when he told the gentleman, "Hey, man, you better
3 wash your hands because it's pollutant on the label." And I
4 looked at him because I'm like, "You wait til he tape your box
5 up and, you know, tell him that?"

6 Q. Told him that after he --

7 A. Yeah.

8 Q. -- already touched the label?

9 A. Yeah, but he was trying to help him.

10 Q. So you weren't -- you weren't taking that as a joke that
11 the label was somehow possibly contaminated?

12 A. I -- like I said, just -- I'm -- my whole thing was maybe
13 it was a mental. I don't know what was going on. But the fact
14 is that you're in a post office and we have to ask those
15 haphazard -- you know, we have -- we have questions that we
16 have to ask dealing with hazardous materials and stuff, and
17 then you blatantly saying you're not going to touch the label
18 because it's pollutant on it and then you tell the customer
19 that helps you "wash your hands."

20 Q. Well, you -- you didn't call the police right then?

21 A. No, didn't call the police then.

22 Q. Something else happened?

23 A. Right.

24 Q. What was it?

25 A. After he put the box back in the window and I slid the --

1 slid it up, I had to lay it on a scale and we had -- I had to
2 process it. So once I processed it, the receipt came out and I
3 gave him his receipt and he walked away. I went on and
4 continued on with the next customer. Then he came back in. I
5 don't know the time frame, but I had served like maybe two or
6 three customers in between that.

7 Q. Did he leave the post office or just walk away from the
8 window?

9 A. No, he walked out the -- out the door, he walked out the
10 door.

11 Q. And you served other customers?

12 A. Yep.

13 Q. And then he came back in?

14 A. He came back in, came right back up to my window and said,
15 "Give me my box." And I said, "Excuse me?" He said, "Give me
16 my box." He said, "I need my box, give me my box, there's
17 something in there." And I said, "Sir, I've -- I've already
18 handled the transaction, I've processed your package." And he
19 said, "Give me my box."

20 And then that's when he pulled out his phone and
21 started taking pictures. He asked what my name was, he asked
22 what my co-worker name was, and then that's when it -- that's
23 when the real situation came about. He -- that's when the
24 loud, the real loudness came, the out -- the irateness came.
25 And then that's when I was like, okay, I'm not -- you know, I'm

1 not dealing with this.

2 Q. You just --

3 A. That's when I started for myself of not knowing, fear or
4 what was going to happen or what was going on, but, okay, this
5 is out of -- this is out of my hands now. I got to call my
6 manager. My co-worker called the Highland Park Police. And he
7 was saying he was going to call the police because he kept
8 walking back and forth, so I didn't know what to do. And we've
9 got other customers in line. And so that's when I went on
10 ahead and I told him, I said, "I'm going to have my manager
11 come over here and then I'm calling the postal inspectors."
12 And he said, "Call them." He said, "I'm calling the police."

13 Q. Now, you've mentioned loudness and irateness.

14 A. Mm-hmm.

15 Q. Are you talking about behavior that you saw the defendant
16 engaging in?

17 A. Yes, it was -- this was with me then.

18 Q. And it was directed toward you?

19 A. Right. The -- he was being loud, rude and irate to the
20 fact that it was like demanding, you know, okay, what is this
21 man about to do next? Even though I'm behind there, it was
22 just us -- it was three women in the post office, nobody else
23 was there with us.

24 Q. Were there customers there still?

25 A. Yes, it was customers there.

1 Q. Were they there throughout your interactions with the
2 defendant, were the customers --

3 A. Mm-hmm, yep, there was customers there. I still had
4 customers in line. He walked up to my window. It wasn't
5 where -- you know, you supposed to wait in line. He walked up
6 to my window.

7 Q. How did you --

8 THE COURT: I -- I just have one question. You
9 mentioned that you gave him a receipt.

10 THE WITNESS: Yes. We have to give a receipt for
11 prepaid packages.

12 THE COURT: Okay. That's what -- so it was a prepaid
13 label that was on it?

14 THE WITNESS: Yes. Yes.

15 THE COURT: I see. Thank you. Go ahead.

16 BY MR. COATS:

17 Q. When he -- you said he took out his phone and started
18 taking pictures?

19 A. Yes.

20 Q. How did you react to that?



21 A. Well, I told him he couldn't take pictures in the post
22 office.

23 Q. And did he stop taking pictures then?

24 A. He walked away, talking, babbling. I really don't
25 understand what he was saying because I was trying to continue

1 on with my line. And he walked out but then he came back in
2 again, and that's when I'm -- that's when I got serious. And
3 like I said, my co-worker went and called the police, the
4 Highland Park Police, and I went to call my manager,
5 supervisor, whichever one I can get first, and the postal
6 inspectors.

7 Q. Did it seem like he continued to take pictures after you
8 told him not to?

9 A. Oh, yeah, he was taking pictures. He -- he walked from
10 one window to the other window.

11 Q. What do you mean, one window to the other window?

12 A. We -- we have like each window is where the cash register
13 is, so we have two windows that's open, and so I was on one --
14 one window. When you come in, I would be to the right, and
15 then you got the window that's the first window. So I was the
16 window like if you had to walk past to go out to the door. But
17 he was walking back and forth, then he walked around. And he
18 was talking. I don't know what he was saying, he was just
19 loud, he was talking. Then he came back up and walked around
20 again, and at that time he was still taking pictures and he was
21 still asking what our names was.

22 Q. Was any of this, what he was doing, was any of this making
23 it difficult for you or other employees to serve the customers?



24 A. Yeah, we couldn't serve the customers. Everybody was
25 looking then. And then I didn't want to just continue on, like

1 I said, knowing what was going on. At that time, that's when I
2 told him that we were calling the postal inspectors and my
3 supervisor or management would take it from there.

4 Q. Were you worried about the package and what might be in --

5 A. I left the package there. After that, I didn't want to
6 touch it. I left it in a -- we have a gurney and it was on top
7 of some other packages.

8 Q. Were you still there when the police arrived?

9 A. I was there. I had walked to the back when they came in.

10 Q. What did you see or hear when the police arrived at the
11 post office?

12 A. When I was coming back up to the front, that's when I
13 heard one of the officers say, "Oh, you -- you saying it's a
14 bomb in there?" And I -- next thing I know, he was turning
15 around putting handcuffs on him.

16 Q. Okay. So you heard -- you didn't hear -- just to be
17 clear, you didn't hear the defendant himself say anything about
18 a bomb?

19 A. No, I wasn't in -- I wasn't up there.

20 Q. You heard the police officer --

21 A. When I was coming back around at that time, the police was
22 addressing him of what he had said and then they were
23 handcuffing him. And he then told me, the officer, he said,
24 "Get everybody out of the building now," because I was trying
25 to ask him a question. He said, "Ma'am, get everybody out of

1 the building now," and so we had to exit the back.

2 Q. Just casually or in a hurry?

3 A. No, he said now, so we got out the building now. We still
4 had things -- you know, everything was still set up, the store,
5 it was still open.

6 Q. But -- so all the employees had to be evacuated?

7 A. Yep.

8 Q. And with no employees, then the post office I assume can't
9 serve any customers?

10 A. No. They came and roped everything off.

11 Q. Who came and roped everything off?

12 A. We had the postal inspectors, I think they had someone
13 came where they were I guess detecting to see what was in the
14 package, it was someone came there. Then the police, it was
15 more police, it was a lot of police cars up there, and they
16 were roping off the area in the front and also in the back
17 where we was.

18 Q. And do you remember about how long the post office was
19 closed that afternoon?

20 A. It was over two hours because we -- they took us from that
21 building over to the other building because we still had our
22 belongings in there.

23 Q. Do you ordinarily work during that time on -- on Friday
24 afternoons or were you ordinarily working at that post office
25 on Friday afternoons?



1 A. Yes, I work every Friday.

2 Q. And were there ordinarily customers that would come into
3 the post office on Friday afternoons?

4 A. Yeah, around that time, 11:30, 12:00, yep, you have
5 customers coming in there throughout the day.

6 Q. So had the post office not been closed during that period
7 because of the -- whatever statement about the bomb, you
8 believe customers would have been needing service from the post
9 office?

10 A. Oh, I know they would have, they would have been in there.

11 Q. All right.

12 MR. COATS: Nothing further.

13 THE COURT: Okay. Thank you.

14 Any cross-exam?

15 CROSS-EXAMINATION

16 BY MS. FITZHARRIS:

17 Q. Good morning, Ms. Stringer.

18 A. Good morning.

19 Q. When Mr. Nakhleh first came in, you were not at the
20 counter?

21 A. No, I wasn't.

22 Q. But you saw him interact with Ms. Jones?

23 A. I heard him.

24 Q. You heard him?

25 A. Yeah.

1 Q. And you heard that he -- he needed some tape?

2 A. Yes, that he -- he wasn't going to purchase any tape.

3 Q. But he needed tape to close the box?

4 A. Right.

5 Q. And he left to buy tape?

6 A. Yes.

7 Q. And he left the box open?

8 A. I don't know because when I got there, the box was taped.
9 When I came up to the window to actually see him physically,
10 the box was taped. He approached me saying that he didn't know
11 where his label was and that my co-worker had hid it on
12 purpose.

13 Q. Okay. So -- but when he came back, he didn't know where
14 his label was?

15 A. Yes.

16 Q. And he taped up the box?

17 A. Well, it was taped. I don't know if he -- but it was
18 taped up.

19 Q. It was taped. He didn't know where the label was?

20 A. Yes.

21 Q. He thought maybe your co-worker had done something with
22 the label?

23 A. Yes.

24 Q. And you said look in the box?

25 A. Yes.

1 Q. Because you had seen the label in there before?

2 A. No. I just told him to look in the box. We have
3 customers that come in and they can't find the label. I -- and
4 on the other side, I don't recall that, but on the other side
5 when he opened up the box, the label was on the top of the box.

6 Q. After this happened, you spoke with the postal inspector?

7 A. I don't recall; not right after it happened.

8 Q. Do you remember giving a statement?

9 A. Yes, I wrote my statement down.

10 Q. You wrote your statement down and you were complete in
11 that statement?

12 A. I believe.

13 Q. And that was closer in time to when this happened to now?

14 A. Yes, very much closer in time.

15 Q. All right.

16 MS. FITZHARRIS: Permission to approach, Your Honor.

17 THE COURT: Go ahead.

18 MS. FITZHARRIS: I'm showing her -- well, she's --

19 BY MS. FITZHARRIS:

20 Q. You're -- you're saying today you did not see the label
21 inside the box?

22 A. I don't recall.

23 Q. You don't recall.

24 Would looking at your statement refresh your
25 recollection?

1 A. Yes, probably would.

2 Q. All right. I'm handing you what has been previously
3 marked as -- premarked as Defense Exhibit B. Would you take a
4 look at that?

5 A. Mm-hmm.

6 Q. What is it?

7 A. My statement.

8 Q. All right. And would you look at page 2?

9 A. Okay. On here I got --

10 Q. Does that refresh your recollection?

11 A. Mm-hmm.

12 THE COURT: Ma'am, if you could answer out loud.

13 THE WITNESS: Oh, yes.

14 THE COURT: Thank you.

15 BY MS. FITZHARRIS:

16 Q. And you saw the label in the box before you suggested he
17 open it again?

18 A. Yes.



19 Q. Okay. So you watched him open the box again?

20 A. Yes, he opened the box again.

21 Q. And he rummaged around inside?

22 A. Yes, he did.

23 Q. And took a little while?

24 A. Little.

25 Q. And if you wanted to, you could see inside the box?

1 A. I saw the -- the white label right on -- on the side up at
2 the top of the box.

3 Q. So you saw the label?

4 A. Mm-hmm.

5 Q. Saw shoes?

6 A. No.

7 Q. No?

8 When he said this thing about pollutant on the
9 label --

10 A. Yes.

11 Q. -- did you consider he might be joking?

12 A. I looked at him, first I just looked at him.

13 Q. Okay. You processed the package?

14 A. Yes.

15 Q. So you saw that he was sending the box to a shoe company?

16 A. I just know it was a prepaid label.

17 Q. Okay. And when you were handling the box, you didn't hear
18 any sounds coming out of the box?

19 A. No.



20 Q. You didn't see any residue on the box?

21 A. Not that I could see with my natural eye, no.

22 Q. You didn't see any wires coming out of the box?

23 A. No, I didn't see any wires.

24 Q. And the box wasn't unusually heavy?

25 A. It was a bigger -- it was a big box.

1 Q. Okay. At some point Mr. Nakhleh returned to the post
2 office, little while later?

3 A. Yeah.

4 Q. And during the time he was gone the package was behind the
5 counter?

6 A. Yes, it was on -- it was on our side then.

7 Q. You didn't have any control over the package at that
8 point?

9 A. No.

10 Q. And he asked -- he came up to the counter and asked for
11 his box back?

12 A. He came back to the counter and said, "Give me my box."

13 Q. Okay. I'm going to play something for you.

14 MS. FITZHARRIS: Your Honor, I've previously
15 disclosed this audio recording to government counsel. I'm
16 going to hand it up as Exhibit A at this point.

17 THE COURT: Thank you.

18 MS. FITZHARRIS: If I might just play it.

19 THE COURT: Okay.

20 MS. FITZHARRIS: And if you can't hear it, please let
21 me know.

22 THE COURT: Okay.

23 (Audiotape recording being played)

24 BY MS. FITZHARRIS:

25 Q. Is that your voice?

1 A. I couldn't really hear it.

2 Q. All right. Let's see if we can -- mind if we bring this a
3 little closer?

4 (Audiotape recording being played)

5 A. That's my voice.

6 Q. That's your voice?

7 A. Yes.

8 Q. And is that Mr. Nakhleh's voice?

9 A. Yes.

10 Q. Does that sound like a recording of what happened that
11 day?

12 A. I really can't recall, but that -- that sounds like it
13 because I was saying it was put in the system.

14 Q. Okay. When Mr. Nakhleh asked for his box back, he said
15 that he forgot something in it?

16 A. He said there was something inside of it.

17 Q. That he -- that shouldn't have been in there?

18 A. Right.

19 Q. So he wanted it back so he could open it?

20 A. That I don't know. He just said, "Give me my box back.
21 There's something in there that shouldn't be in there."

22 Q. And at some point you said that the police were coming?

23 A. Well, at that time my co-worker through all the -- when we
24 were going back and forth was calling the police, the Highland
25 Park Police, and I told him I was going to be calling my

1 supervisor or manager and the postal inspectors and they can
2 handle it from there.

3 Q. But some point Mr. Nakhleh learned the police were coming?

4 A. Yes.

5 Q. And he said okay, all right.

6 A. Yeah, because he said he was going to call the police too.

7 Q. He didn't start yelling?

8 A. That's when he was going back and forth. He was talking
9 but he was going back and forth.

10 Q. He didn't start yelling?

11 A. That I don't know because I had went on and started taking
12 another customer.

13 MS. FITZHARRIS: Jim, would you please --

14 BY MS. FITZHARRIS:

15 Q. So you're -- you're saying today you don't know if he was
16 yelling or --

17 THE COURT: Well, at what time are we talking about?

18 BY MS. FITZHARRIS:

19 Q. When you said that you were call -- you were calling the
20 police?

21 A. Yes. When we said we was going to call the police, he
22 told us that he was calling the police too. He wasn't yelling
23 when he said that.



24 Q. Okay. He didn't threaten to set off a bomb if you called
25 the police?

1 A. No.

2 Q. And then he asked you for your name?

3 A. Asked me what my name was.

4 Q. And you didn't give him your name?

5 A. No, I didn't.

6 Q. If -- if a customer needs to file a complaint, it would be
7 helpful to know your name, right?

8 A. I would assume so. If it was on a regular term where
9 someone hasn't came up and been irate and rude from thereon,
10 I've -- we've had where we've told our supervisor or manager to
11 come up from that point.

12 Q. Okay. But --

13 A. This case I didn't know what --

14 Q. But it's not unusual for a customer to ask for your name?

15 A. No, it's not unusual.

16 Q. And it would be necessary if the person wanted to file a
17 complaint?

18 A. I would assume so.

19 Q. And at some point Mr. Nakhleh also asked to speak with
20 your manager?

21 A. No.

22 Q. No. So your testimony today is that he did not ask to
23 speak with your manager?

24 A. He didn't ask me to speak with a manager. I told him I
25 was calling my supervisor and my manager would be handling it,

1 but he didn't ask me for a manager.

2 MS. FITZHARRIS: Jim, would you mind playing,
3 starting at second 40?

4 MR. COATS: I'm going to object to -- the exhibit's
5 not in evidence and only a very small portion of it has had any
6 foundation laid.

7 THE COURT: Well, what -- can you lay a foundation
8 for what is -- what you're about to present?

9 MS. FITZHARRIS: This is a recording of the
10 conversation Ms. Stringer has previously identified her voice
11 and Mr. Nakhleh's voice and said that it sounds likes the
12 conversation she had. At this point I'm not offering it into
13 evidence; it's impeachment. She has testified that she -- he,
14 Mr. Nakhleh, did not ask to speak with her manager.

15 THE COURT: Well, she testified he did not ask her --

16 MS. FITZHARRIS: Correct.

17 THE COURT: -- to get the manager, but all right, you
18 can -- you can play it.

19 (Audiotape recording being played)

20 MS. FITZHARRIS: All right. You can pause it.

21 BY MS. FITZHARRIS:

22 Q. So does that --

23 THE COURT: I don't know -- just for the record, I
24 don't know if you can hear that better than I can. I couldn't
25 make heads or tails of -- of what that audio clip said.

1 MS. FITZHARRIS: Yeah, I recognize that.

2 THE COURT: I don't know if you can, ma'am. Were you
3 able to hear and discern any of the words that were spoken?

4 THE WITNESS: I hear -- I hear noise, I hear a lot of
5 background, because like I said, it's echo in that building,
6 but no.

7 MS. FITZHARRIS: I mean we can -- we can start it a
8 little earlier, you know, if -- if Your Honor wants to play it
9 on -- you know, I don't have a great way of making it louder
10 other than --

11 THE CLERK: Maybe if you want to put the microphone
12 up to the speaker.

13 THE COURT: All right. Let's try to play it one more
14 time.

15 (Audiotape recording being played)

16 BY MS. FITZHARRIS:

17 Q. Okay. Does that refresh your recollection of
18 what happened?

19 A. It sounds like he asked me where my boss was and I said
20 they're not here.

21 Q. Okay.

22 MS. FITZHARRIS: Sorry, Your Honor, I should have
23 done this before. Government counsel has agreed to stipulate
24 to the admission of this recording. We can play it later and
25 that might make things easier.

1 THE COURT: All right. That's fine. Then it will
2 be -- it will be admitted. And does that go also, Counsel, for
3 the same recording you played earlier.

4 MS. FITZHARRIS: Yes, they're all part of one
5 exhibit.

6 THE COURT: Okay.

7 MS. FITZHARRIS: Defendant's Exhibit A, which is on
8 the CD I handed up.

9 THE COURT: All right. Thank you. Then that will be
10 admitted.

11 MS. FITZHARRIS: Okay. Thank you.

12 BY MS. FITZHARRIS:

13 Q. All right. At some point you said that after you had
14 called the police, Mr. Nakhleh was walking around?

15 A. I didn't call the police.

16 Q. Or someone, I'm sorry --

17 A. My co-worker.

18 Q. -- Ms. Jones called the police?

19 A. Yes, he was walking around.

20 Q. And he got on his phone?

21 A. I believe. I'm not -- I can't recall that.

22 Q. Okay. At some point do you remember he asked you for the
23 address of the post office?

24 A. I don't recall that either.

25 Q. Okay. Do you recall he asked to call 9 -- that he said he

1 was calling 911?

2 A. No, I don't recall that either.

3 Q. Okay. But he asked a lot of times for the box back?

4 A. He -- while I was at the window. Eventually I walked
5 away.

6 Q. He was frustrated?

7 A. I didn't -- no, not just frustrated; didn't know what was
8 going on. I moved myself from --

9 THE COURT: No, she asked if he was frustrated. Did
10 he seem frustrated to you?

11 THE WITNESS: Oh, yeah.

12 BY MS. FITZHARRIS:

13 Q. Okay. Have you ever heard that Americans talk loudly?

14 A. No.

15 Q. No?

16 A. No.

17 Q. Have you ever thought maybe some people who -- from other
18 countries might speak louder than others?

19 A. No.

20 Q. No? Okay.

21 When the police came and they talked to him and you
22 heard something about a bomb, did you tell the police that you
23 had seen the box opened?

24 A. I don't recall.

25 Q. Did you tell the police that you had heard any unusual



1 noises?

2 A. No, I didn't tell them that.

3 Q. Okay.

4 MS. FITZHARRIS: No further questions.

5 THE COURT: Okay. Thank you. Any redirect?

6 MR. COATS: Yes, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. COATS:

9 Q. I would imagine that in 16 years you've dealt with a lot
10 of customers?

11 A. A lot.

12 Q. Would you characterize Mr. Nakhleh's behavior as unusual?

13 A. Yes.

14 Q. Was the noise that he was making loud, would you
15 characterize it as loud and unusual?

16 A. Yes.

17 Q. Did you make that recording that is Defense Exhibit A?

18 A. No.

19 Q. Have you ever heard it before?

20 A. No.

21 Q. Do you know if it's the full recording of all of your
22 encounter with him on that day?

23 A. No.

24 Q. Thanks.

25 MR. COATS: Nothing further.

1 THE COURT: All right. Thank you. Ma'am, you can
2 step down. Thank you for your time.

3 (Witness excused at 9:07 a.m.)

4 THE COURT: Okay. And does the government have any
5 additional witnesses to call?

6 MR. COATS: Yes, Your Honor. The government calls
7 Wylie Christopher.

8 THE COURT: Thank you. You can step forward. All
9 right. Thank you, sir. If you could give us your full name.

10 THE WITNESS: Wylie Christopher.

11 THE COURT: And if you could spell that please.

12 THE WITNESS: W-Y-L-I-E, my last name is Christopher
13 C-H-R-I-S-T-O-P-H-E-R.

14 THE COURT: All right. Thank you. And Linda, are
15 you okay? Do we need a -- do you want a break?

16 THE COURT REPORTER: I'm fine, thank you.

17 THE COURT: Okay. All right. Okay. Thank you.
18 And, sir, if you will raise your right hand.

19 W Y L I E C H R I S T O P H E R
20 was thereupon called as a witness herein, and after being
21 first duly sworn to tell the truth and nothing but the truth,
22 testified on his oath as follows:

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay. Thank you. You can go ahead.

25 DIRECT EXAMINATION

1 BY MR. COATS:

2 Q. Could you tell the Court please where you work?

3 A. I work for the United States Postal Inspection Service.

4 Q. What do you there?

5 A. I'm United States Postal Inspector.

6 Q. How long have you been a postal inspector?

7 A. I've been a postal inspector since January of 2006.

8 Q. Briefly, what is it that a postal inspector does?

9 A. Our -- we're federal law enforcement officers who are
10 responsible for protecting the postal service, its employees,
11 customers and infrastructure from criminal attack and criminal
12 misuse.

13 Q. Do you have any training or job duties related to
14 suspicious packages, possible explosive devices in packages?

15 A. Yes, sir.

16 Q. Can you describe that briefly for the Court?

17 A. Yes. I've attended approximately five weeks of training
18 on how to identify dangerous items or, more specifically,
19 suspicious items that have been sent through the mail, whether
20 they're substances or potentially improvised explosive devices.

21 Q. Are you familiar --



22 THE COURT REPORTER: Whether they're substances or
23 potentially what?

24 THE WITNESS: Improvised explosive devices.

25 THE COURT REPORTER: Thank you.

1 Q. Is there any particular size that a package needs to be in
2 order to have an explosive device in it?

3 A. No, sir.



4 Q. Are there small explosive devices?

5 A. Yes, sir.

6 Q. And can you give an example?

7 A. We have -- we've learned that explosive devices can be
8 created from some of the musical cards that are sent through
9 the mail now, so I'm assuming from that size on up.

10 Q. Given that background, what are postal employees supposed
11 to do if someone says something about a bomb in a post office?

12 A. They're supposed to call local law enforcement and postal
13 inspectors. We often ask them to call local law enforcement
14 because, generally speaking, they're closer to a facility than
15 postal inspectors.



16 Q. Are they supposed to make their own decisions about
17 whether or not there's really a bomb in a package?

18 A. No, sir.

19 Q. Were you working on July 8th, 2016?

20 A. Yes, I was.

21 Q. Did you get a call to go to the Highland Park Post Office
22 that day?

23 A. Yes.

24 Q. And what -- what was going on there?

25 A. I was told that a bomb threat had been made at the

1 Highland Park Post Office which directly resulted in the post
2 office being evacuated.

3 Q. When you got to the Highland Park Post Office, what was
4 the situation like?

5 A. The post office had been evacuated and two other postal
6 inspectors were on scene.

7 Q. All right. What was done, if anything, with respect to
8 the package?

9 A. Myself along with the two other postal inspectors, we
10 X-rayed the package and were able to determine that it did not
11 contain an infra -- an improvised explosive device.

12 Q. No bomb or anything like a bomb in the package?

13 A. No, sir.

14 Q. And it didn't appear to you to be contaminated in any way?

15 A. No, sir.

16 Q. Did you then speak with the defendant, Mr. Nakhleh?

17 A. Yes, I did.

18 Q. And did you read him his rights?

19 A. Yes, sir.

20 Q. And did he waive his rights and agree to speak with you?

21 A. Yes, he did.

22 Q. And what did he tell you about what had happened in the
23 post office that day?

24 A. He stated that he had entered the post office and his --
25 he was going to mail a package and the package required tape to

1 be placed on the box. He described his conversation with the
2 postal employees where they told him that he needed to purchase
3 tape or he could go to the dollar store and buy tape that would
4 cost less.

5 Q. Did he say he had gone to the dollar store and bought that
6 tape?

7 A. Yes, sir.

8 Q. And then who taped up the box according to his statement?

9 A. He indicated he taped up the box and he placed it in the
10 mail stream. I'm sorry, that he turned it over to the postal
11 service to be placed in the mail stream.

12 Q. Now, did he also tell you about this -- what we've heard
13 about the return label controversy?

14 A. Yes, he did.

15 Q. What did he tell you about that?

16 A. He stated that he said that the package may be -- the
17 label may be contaminated. However, he stated that he was
18 joking.

19 Q. All right. So he admitted he had made statements about
20 the label potentially being contaminated?

21 A. Yes, he did.

22 Q. But he claimed to you that he had been joking when he made
23 those statements?

24 A. That is correct.

25 Q. Did he admit to you that he had been taking photographs

1 inside the post office?

2 A. I don't recall.

3 Q. Okay. If I showed you the Memorandum of Interview from
4 that day, would that help you remember whether he made such a
5 statement?

6 A. Yes, sir.

7 Q. Just read that quietly to yourself there. The relevant
8 portion I think is near the bottom. Look up when you're ready.

9 (Brief pause)

10 A. I'm ready.

11 Q. Does that help you remember?

12 A. Yes, sir.

13 Q. All right. What did he say, if anything, about taking
14 photographs inside the post office?

15 A. He said from his vantage point he had taken photos.

16 Q. Of the -- of the box?

17 A. Yes.

18 Q. All right. And he admitted that he had taken those photos
19 with his phone?

20 A. That is correct.

21 Q. Did you ask him or did he make any statements about saying
22 anything about a bomb being in the package?

23 A. Yes, he did.

24 Q. What did he say?

25 A. The defendant stated that he was frustrated with the

1 situation and he either said there was a bomb in the box or
2 maybe there was a bomb in the box. And he also stated that he
3 was joking when he made those statements but he understood that
4 it was a bad decision.

5 Q. Did he say why he made those statements?

6 A. He stated because he was frustrated with the situation.

7 Q. And did he say that he understood why those statements
8 would cause concern?

9 A. Yes, sir.

10 Q. Do you know about how long the post office was closed
11 because of this package?

12 A. Approximately two hours.

13 Q. All right. And those -- were those hours that the post
14 office would ordinarily be open and serving customers?

15 A. Yes, sir.

16 MR. COATS: Nothing further. Thank you.

17 THE COURT: Thank you.

18 Any questions?

19 MS. FITZHARRIS: No, Your Honor.

20 THE COURT: All right. Thank you. You can step
21 down.

22 THE WITNESS: Thank you.

23 (Witness excused at 9:15 a.m.)

24 MR. COATS: And the government rests, Your Honor.

25 THE COURT: All right. Thank you. Does the defense

1 wish to call any witnesses?

2 MS. FITZHARRIS: May we have a minute, Your Honor?

3 THE COURT: Sure. Why don't we just take a
4 five-minute recess.

5 MS. FITZHARRIS: Okay.

6 MR. GEROMETTA: Thank you, Judge.

7 THE COURT: All right. Thank you.

8 (Court in recess at 9:15 a.m.)

9 (Proceedings resumed at 9:23 a.m., all parties
10 present)

11 THE COURT: All right. Thank you. You can all be
12 seated. We're back on the record.

13 And the government had rested its case. Does the
14 defense wish to call any witnesses?

15 MS. FITZHARRIS: Yes, Your Honor. We call Ramess
16 Nakhleh.

17 THE COURT: All right. Thank you. Sir, you can step
18 forward and you can have a seat, you can have a seat in the
19 witness box.

20 MR. GEROMETTA: Right there, yeah.

21 THE COURT: All right. Thank you. Good morning.

22 THE WITNESS: Good morning, Your Honor.

23 THE COURT: If you could give us your full name
24 please and spell it.

25 THE WITNESS: Ramess Nakhleh, Knock (indicating) Lee.

1 THE COURT: And if you could spell it please.

2 THE WITNESS: Sure. R-A-M-E-S-S N-A-K-H-L-E-H.

3 THE COURT: Okay. Thank you.

4 THE WITNESS: No problem.

5 MS. FITZHARRIS: Before we begin, Your Honor, just
6 very quickly, I'd like to clarify on the record that Ms.
7 Stringer was formerly Ms. Burt, is that correct?

8 MR. COATS: We'll stipulate to that.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 BY MS. FITZHARRIS:

12 Q. Good morning, Mr. Nakhleh.

13 A. Good morning.

14 Q. Where do you live?

15 A. I -- on Brentwood, 685 West Brentwood.

16 Q. And which city is that in?

17 A. Detroit, Detroit.

18 Q. How long have you lived in Detroit?

19 A. Fifty -- close to 50 years. Over there, about 36 years.
20 In Highland Park I was 40 years.

21 Q. Where did you move to Detroit from?

22 A. What I'm -- what country I am from?

23 Q. Yes.

24 A. Syria, Damascus.

25 Q. And how old are you?

1 A. I'm 75.

2 Q. What is the closest post office to your home in Detroit?

3 A. Highland Park.

4 Q. Do you remember going to the post office on July 8th,
5 2016?

6 A. Yes. Yes.

7 Q. Why did you need to go to the post office?

8 A. Why?

9 Q. Yes.

10 A. Well, I had a box, this box, it was sitting two months in
11 my house, and every time I pick up a mail from outside --
12 because my back hurt and I'm tired, my leg. I have three lot I
13 have to keep it clean on, rake, cut wood, so I'm tired. So the
14 mail, I put it there on the box. I couldn't even take the mail
15 over there; just dump it there.

16 Well, maybe this is not important. I'm going to
17 make -- wrap this quickly as much I can.

18 THE COURT: Well, let's just -- just answer the -- if
19 you could just answer the question.

20 THE WITNESS: Yes, Your Honor, yeah. And then I took
21 the box to my car, so the box sitting in the car for about a
22 month or maybe more. And then --

23 Q. So Mr. Nakhleh, why did you need to go to the post office
24 on July 8th?

25 A. Well, to take the box. Well, I find it, I said, "Oh, man,

1 you passing by the post office, when you going to take it?" So

2 I park and I went there to give them the box.

3 Q. Can I ask you a quick question? What was in the box?

4 A. Two shoe.

5 Q. And where did you want to send the box to?

6 A. To the place where I bought it from.

7 Q. Okay. And when you got to the post office, who did you
8 speak to at first?

9 A. The lady was on the left side told -- probably that's her
10 over there, I think that's her, I remember now.

11 Q. Do you remember the two workers who testified today?

12 A. You have to make me understand what you said.

13 Q. Do you remember the two women who -- who spoke today in
14 court?

15 A. Yeah.

16 Q. Yep?

17 A. Yeah.

18 Q. Was it the first woman who spoke today?

19 A. The first woman, the one who was here.

20 Q. Okay. And when you went up to the window, what did you
21 want to do?

22 A. I went to the -- straight to the window. She said, "What
23 do you want to do?" I said, "I'm going to mail this box." She
24 said, "Put it in the window." She took it to her side. And I
25 said, "I want to send this box." I got tons of tape in my



1 house, but anyway I didn't have the tape in the car. I said --
2 she says, "You can't send it like this."

3 Q. Why couldn't you send it like that?

4 A. She said, "You can't mail-- we can't take it like this, no
5 tape; it has to be taped."

6 Q. When you say "like this," what are you -- what are you
7 talking about?

8 A. Like this. Okay, good question you ask me. You know the
9 tape, it has a flap?

10 Q. Mm-hmm?

11 A. Okay? Okay. She said, "You can't send it -- we can't
12 send it." I said, "Okay. Can you give me a tape?" She said,
13 "I can't do that." I said --

14 Q. Just to clarify, was the box open?

15 A. Yeah.

16 Q. Okay.

17 A. I said, "How come?" She said, "We're not supposed to do
18 that." I said, "Well, could you please give me just two inch?"
19 because I'm tired. I might go take the box back to the car and
20 I might never come back because I've got a lot of work, rock
21 and dirt, I have to clean the yard, cut the grass and I'm
22 tired. So I said, "How about if you give me two inch on this
23 side and two inch on this side?" She said, "I can't do that."

24 Q. Did she explain why?

25 A. Say exact, what?



1 Q. Did she explain why she couldn't give you the --

2 A. No.

3 Q. -- any tape?

4 A. Wait a minute. Wait a minute. You saying to me could you
5 explain why she couldn't give me the tape?

6 Q. Did she explain why?

7 A. She could say anything. She didn't explain why. Then I
8 was staring at the box, I wasn't saying nothing. I shook my
9 head, and she said, "We sell them."

10 Q. Okay.

11 A. I said, "How do you sell them?" Well, she said, "They are
12 there on the wall." I said, "How much?"

13 Q. So Mr. Nakhleh, can I stop you for a second?

14 A. Okay, yeah, yeah.

15 Q. I have to ask you questions.

16 A. Yeah, go ahead.

17 Q. All right. So remember to listen to my questions.

18 A. Yes. Yes. Yes.

19 Q. So you -- you needed some tape and -- but you couldn't get
20 any. So what did you do next?

21 A. What do you think? When she -- when I needed the tape, I
22 asked her if she would give me a tape. She said, "I can't give
23 you a tape." I said, "Would you give me two inch? Should
24 be -- the box is not that heavy, just two inch, one on the
25 right and one on the left." She said, "I can't do that." I'm

1 repeating this again.

2 Q. Right. So when Ms. Jones said that she couldn't give you
3 any tape --

4 A. Right.

5 Q. -- what did you do?

6 A. She said, "We do sell it."

7 THE COURT: No, what did -- what did you do?

8 BY MS. FITZHARRIS:

9 Q. What did you do?

10 A. When she didn't give me no tape?

11 Q. Yes.

12 A. I was quiet, just looking surprised.

13 Q. Okay. And what did she do?

14 A. Huh?

15 Q. What did she do, what did Ms. Jones do?

16 A. She standing there silent looking at me. She didn't say
17 nothing and I wasn't saying nothing to her. And then she said,
18 "We do sell them." I said, "Where are they?" She said, "Up
19 there." I said, "How much?" She said, "3.45."

20 Q. And what did you think when you heard that the tape cost
21 3.45?

22 A. Okay. I said to her -- I shook my head, I said, "3.45?"
23 She said yeah. I was thinking of my mind at that time, I
24 either buy the tape or take the box back to my house. As I'm
25 thinking about it that way, she probably was reading my mind.

1 She said, "If I am you, I would go to the dollar store. Why
2 you want to pay 3.45?"

3 Q. Okay. So after she suggested you could go to the dollar
4 store --

5 A. Yeah.

6 Q. -- what did you do?

7 A. I said -- what did I do? I said to her, "You sure about
8 that, go to the dollar store? You telling me to go to the
9 dollar store for one dollar?" She said, "That's what I would
10 do if I am you, I would go to the dollar store."

11 And look what she did after that.

12 Q. Well --

13 A. Watch. She said, "Go to the dollar store." She said,
14 "Your box" -- she put her hand on the box like this -- "be safe
15 and your label will be here. When you come back, the box will
16 be here and the label will be here." And I looked at both, the
17 box and the label. She said, "Go."

18 Q. Okay. And --

19 A. "Why you want to pay 3.45?"

20 Q. Okay.

21 A. So I left.


22 Q. All right. So how long were you at the dollar store?

23 A. Well, it took me about 20 minutes, I would say 20, maybe,
24 give and take, 20, maybe 25 minutes because I have to go all
25 the way down to -- if you remember the old building, Ford --



1 Ford Motor Company on Manchester and Woodward Avenue, there was
2 Rite Aid over there. That's the only place where I could have
3 got it.

4 Q. When you returned to the post office after buying tape,
5 what did you do?

6 A. Okay. Okay. That's -- that's how the -- the center of
 7 the story start right here. When I came back, the post office
8 was no one person at all, not even one, zero.

9 Q. So when you talk about none, who are you talking about,
10 are you talking about --

11 A. She said there was line there.

12 Q. Mr. Nakhleh?

13 THE COURT: Sir, excuse me. Just let her ask the
14 question.

15 THE WITNESS: Yeah, sure, okay. I don't try to be
16 dispolite. They -- they upset me.

17 BY MS. FITZHARRIS:

18 Q. Mr. Nakhleh?

19 A. And I'm getting upset because they were saying it was line
20 there. It was nobody, Your Honor, was no person, period, zero,
21 nothing, nobody, just me.

22 Q. So Mr. Nakhleh, just to clarify, are you saying -- how
23 many other customers were in the post office when you returned?

24 A. Nobody.

25 Q. Nobody.

1 Were -- how many employees were there?

2 A. Just her.

3 Q. And when you say her, who are you talking about?

4 A. I'm talking about that lady with that blue shirt.

5 Q. Okay. And you remember the two women who spoke today.

6 Was she the first or the second woman who spoke?

7 A. The second time when I came, that's probably her name. I
8 don't know her name.

9 Q. Ms. Stringer?

10 A. Huh?

11 Q. Ms. Stringer?

12 A. Burt, Burt.

13 Q. Okay. Her previous name was Burt.

14 A. I don't know her name Burt or not.

15 Q. Okay. So when you started speaking to Ms. Burt, where was
16 your box?

17 A. My box? She say, "You come?" I say, "Yeah, I'm here, I
18 got the tape." She said okay. She brought the box.

19 Q. Could you hold on, Mr. Nakhleh? Listen to my question.
20 Where was your box?

21 A. On their side.

22 Q. Okay. And who gave you the box back?

23 A. Wait, wait, wait a minute now. Now, you -- you jumping
24 over the -- you're jumping too much. You say who gave you the
25 box back?

1 Q. When you came back from the dollar store with tape --

2 A. Yes.

3 Q. -- and the box was on their side --

4 A. I said, "I got the tape in my hand."

5 Q. Right. And who gave you the box back so you could tape it
6 up?

7 A. She said -- no, she said okay. Look, you -- we have to
8 refrain this to make it more clear and accurate.

9 THE COURT: Sir, you just answer the questions that
10 are asked.

11 THE WITNESS: Sure, Your Honor.

12 THE COURT: So she asked you who gave you the box.

13 THE WITNESS: She gave me the box.

14 BY MS. FITZHARRIS:

15 Q. And when you say she, who are you talking about, the first
16 woman who spoke today or the second?

17 A. No, the -- the -- the first -- the lady on the left side,
18 she wasn't there.

19 Q. Okay. So Ms. -- so Ms. Stringer gave you the box back,
20 for the record, just to clarify?

21 A. The woman behind you on the right side.

22 MS. FITZHARRIS: Let the record reflect he's talking
23 about Ms. Stringer.

24 A. The -- the lady here, yeah.

25 BY MS. FITZHARRIS:

1 Q. Okay. When she gave you the box back, what did you do
2 with it?

3 A. I have to put the tape on it.

4 Q. Okay.

5 A. Because there's no -- the -- the -- the box needed tape.

6 Q. And so did you put tape on the box?

7 A. I put the tape on the box.

8 Q. And what did you do with it after you taped up the box?

9 A. Gave it back to her.

10 Q. Okay. And what happened at that point after you gave her
11 the taped-up box?

12 A. I gave her the box back, she said, "Okay. Where is the
13 label?" I said, "When I left, the box was there and the label
14 was next to the box," just like the first lady, she said, "Your
15 box be okay." She said, "Go -- go get dollar -- dollar -- the
16 dollar tape, the label here." So when I came back 20, 25
17 minute, she gave me the box to tape it. I gave her the box
18 back. She said, "Where's the label?" I said, "Wait a minute,
19 you can't send that box without a label. You better look
20 around." She said, "I don't see it. Where is it, where is
21 it?" I said, "I don't know what to tell you. I don't know. I
22 don't see the label. If you don't have the label, you lost it
23 or something." She said, "Open the box."

24 Q. And when she suggested that you open the box --

25 A. Huh?

1 Q. When she suggested that you open the box --

2 A. Yeah.

3 Q. -- what did you do?

4 A. She gave it to me, I had to open the box.

5 Q. Okay. When you opened the box, what -- what did you do
6 once it was opened?

7 A. I saw -- I looked, I saw the label.

8 Q. And what did you do with the label?

9 A. I said, "This is the label right here." She said, "Okay.
10 Give me the box." She said -- I said, "No, wait a minute. I
11 have to tape it again," because when you open it, then you have
12 to tape it one more time. So I taped it the second time and I
13 put the -- and the label -- I took the label off, I put it on
14 the box and she took it, she put it on the scale.

15 Q. Who put the label on the box?

16 A. She took the label. The label need to be peeled. You
17 know how you peel it?

18 Q. Yes.

19 A. She didn't -- it wasn't peeled at that time. She was
20 doing like blah-blah, you know, on the register, she had the --
21 and I'm looking at her. And then the box is there and the
22 label on the side. She said okay. She took the label and put
23 it on the box.

24 Q. Okay.

25 A. When -- can I finish this please? This is very important

1 for everybody here.

2 Q. Well, Mr. Nakhleh, I have to ask you a question.

3 A. Okay. Ask me the question.

4 Q. All right. So after she put the label on the box --

5 A. Wait a minute, wait a minute. I -- I taped the box the
6 second time.

7 Q. Let me finish the question.

8 A. Yeah.

9 Q. Okay. After you said Ms. Stringer put the label on the
10 box, what did she do with the box?

11 A. The box on her side.

12 Q. Mm-hmm.

13 A. And I took the label outside the box, so the label is on
14 the top of the box. I didn't put the label on the -- on the
15 box; I thought maybe she would -- she would do it. I mean I --
16 I don't know where to put it. So the label is in the air,
17 free, lay it here like this. She took the box -- both back,
18 the box and the label. She took the label, put it on the side
19 here, and the box is here but on the scale. She was hitting
20 something, making receipt. And then she said -- after she
21 finished, she said okay. She picked up that label and put it
22 on the box.

23 At that moment when she put that label on the box, a
24 very handsome man came, I would say he's handsome. He's --
25 he's like black, not dark black, he really looks good, dressed

1 up nice. He came and he put his hand on the counter and he
2 heard her telling me, "I cannot put that label on the box." I
3 said, "How come?" She said, "You have to do that." When she
4 said, "You have to do that," the man, he's leaning his arm like
5 this and he smiled a big smile, and I was looking at him
6 smiling. His smile, he was surprised about her telling me,
7 "You have to put the label, you have to put." She has to
8 give -- now give me the box, she wants me to put the label on
9 the box. I said, "Okay, ma'am," put that label on the box, put
10 it in the window. I got to go home please, I got to go, I'm
11 tired, I've got to go.

12 So when she put the box and the label on the box, I'm
13 looking at the man and he's smiling. He's surprised about her.
14 She's telling me, "I can't put the label on the box."

15 Q. Did you talk to the man?

16 A. Yeah.

17 Q. And what did you say to him?

18 A. I said to the man -- I looked at the label and the box. I
19 says -- I said, "Sir, do you think this label is contaminated?"
20 He looked at me and he -- he was still smiling. He said, "No,
21 I don't think so." I grabbed that label and I said to him,
22 "Can you touch it?" He said, "Yeah, I can touch it."

23 Q. Why did you ask him if it's contaminated?

24 A. Huh?

25 Q. Why did you ask the man if the label was contaminated?

1 A. Because she refused to put it on the box. Maybe she
2 touched it, but she want to tell me I want to put the label
3 because it's -- your hand is dirty or something like that
4 sense. I mean she acting arrogant. You know, she said -- that
5 story she said --

6 Q. Mr. Nakhleh?

7 A. Let's not talk about it, okay.

8 Q. Yeah, okay. Was -- besides this other man in the office,
9 in the post office, how many other customers were there that
10 you remember?

11 A. Nobody.

12 Q. Okay.



13 A. Nobody, zero.

14 Q. About how long was your conversation with Ms. Stringer
15 from the time you returned from the dollar store to when you
16 left?

17 A. Minute.

18 Q. Okay.

19 A. About maybe minute, not even -- maybe I would say minute,
20 no more than a minute and a half, maybe two minutes.

21 Q. So after you gave her the box, what did you do?

22 A. Well, I give her the box and the label on the box. She
23 was making her in the register (as spoken). She said to me
24 okay. She grabbed the label. At the time when she grabbed the
25 label, that good-looking handsome man came, he lean in, she

1 said, "Okay, put the label on the box," and he was looking at
2 her. He -- she said to me, "I'm not going to put the label,
3 glue it, put the return label to go back." She said, "I'm not
4 going to do it." I said, "How come?" She said, "I'm not going
5 to do it, you have to do it." I'm repeating this again.

6 Q. Okay. At -- yes, you are.

7 So Mr. Nakhleh, at some point she gave you a receipt?

8 A. She did.

9 Q. Right? Okay.

10 And what did you do after you received a receipt for
11 the box?

12 A. The receipt, folded and put it in my pocket.

13 Q. Okay. And after you put the receipt in your pocket, where
14 did you go?

15 A. Home. But the -- the conversation, she --

16 THE COURT: Wait a second. She asked you where
17 you -- where did you go after --

18 THE WITNESS: Home.

19 THE COURT: Okay.

20 THE WITNESS: That's it, done, one minute, two
21 minutes.

22 THE COURT: Okay. Then wait for the next question.

23 BY MS. FITZHARRIS:

24 Q. And how long were you -- did you go all the way home?

25 A. I got in the car and I drove --

1 THE COURT: Sir, just answer, did you go all the way
2 home?

3 THE WITNESS: I came back after quickly, right, okay.

4 BY MS. FITZHARRIS:

5 Q. But did you go all the way home?

6 A. I -- no, I didn't go home, no.

7 Q. Why didn't you make it all the way home?

8 A. Because I was thinking about there, what they were doing,
9 that was terrible. I start to -- my head, I got -- I said,
10 "Man, you better go back to that post office." So I made the
11 U -- I don't want to say U-turn, that's illegal. I pulled over
12 and I made a turn to come back to the post office. It took me
13 about 15 minute from the time I left to the time I come back,
14 15 minute.

15 Q. All right.

16 A. Okay. Come back.

17 Q. So when you came back to the post office --

18 A. Yeah, yeah.

19 Q. -- what did -- did you carry anything into the post office
20 with you?

21 A. When I come back?

22 Q. Yes.

23 A. No.

24 Q. No?

25 A. Just my phone and I had a tape recorder in my pocket.

1 Q. And what were you doing with the tape recorder?

2 A. Well, the -- the tape recorder, I carry it all my life,
3 I've been carrying that tape recorder; where I go, it go with
4 me. I sleep, it sleep with me. It's right in my pocket all
5 the time. So I -- when I came, I pushed on the button. I
6 said -- the reason why I pushed on the recording button, I said
7 in case if she not going to give me the box, so let's see what
8 she's going to say, so I pressed on recording.

9 Q. All right.

10 A. That's the first thing I did.

11 Q. So when you entered the post office, was the recorder on?

12 A. No. I pressed on the button.

13 Q. Okay. When did you press on the button?

14 A. She didn't see me, nobody can see me, so I pressed,
15 pressed on the button; it's standard smaller recorder.

16 Q. Yes. But, you know, how soon after entering the post
17 office did you turn on the recorder?

18 A. Yeah, I went to her and I told her, "Ma'am, why couldn't
19 you give me the box?"

20 Q. Please, Mr. Nakhleh, please listen to my question, okay?

21 A. Yeah.

22 Q. Right. So you returned to the post office?

23 A. Yeah.

24 Q. And then you entered it?

25 A. Right.

1 Q. At what point did you start recording?

2 A. When I asked them to give me the box.

3 Q. Okay. And who did you speak to when you asked to get the
4 box back?

5 A. The lady, Brute or Burt. I don't know her name.

6 Q. Ms. Stringer?

7 A. You say Turner, I say Brute, Burt, whatever.

8 Q. Okay. And why did you want your box back?

9 A. You asked me that question before. I want that box, I was
10 heated, I was upset about what they did.

11 Q. Why were you upset?

12 A. Because the first lady, I said they playing game, that's
13 what I said. I said, "Man, you better go get your box, save
14 your box and save your shoe," because I have to get \$60 back,
15 that shoe cost me \$60. So I say, "You better go get your box,
16 they are up to something." And those people, I was talking to
17 myself, if in the future they didn't send the box, I'll go to
18 them. I called the company, they said -- I said, "They sent
19 the box, my box." They said, "We sent it." Then I said, "Why
20 you here?" They called the police on me and I can't win with
21 them, I can't win with those people. They -- they -- they
22 called police on me and then I would lose the shoe.

23 Q. Okay. So you asked for the box back and what did Ms.
24 Stringer say to you?

25 A. Mr. Who?

1 Q. When you asked for your box back, what did Ms. Stringer
2 say to you?

3 A. The Ms. Straighter [sic], what's that?

4 Q. Ms. Burt.

5 A. Huh?

6 Q. The postal worker who you were speaking with.

7 A. I told you, I came in, I say, "Hey, watch my recorder to
8 see what they're going to do." She actually said, "I'll give
9 it to you."

10 Q. When did she say that?

11 A. I didn't record that part.

12 Q. Okay.

13 A. I -- I wish I -- I don't know, I didn't record, but at
14 least I record enough. I said, "Ma'am, I'm asking to give me
15 the box." She probably show up and I said to her, "I'm asking
16 to give me the box," but she left. You can hear on the -- I'm
17 asking her to give me the tape. She's gone. I said, "Please,
18 can you please give me the box? There's something there that
19 shouldn't be there." I'm talking about paper mail. So she
20 said -- and then she said, "I can't do that. Since we scan it,
21 it is dated, we can't do that." I said, "Well, there is
22 something there I need." She said, "Wait for the police. When
23 the police come here, if he say open it, we will open it so you
24 can get something out of the box." She said that. I said --
25 Q. And when you heard that the police were coming --

1 A. Huh?

2 Q. When you heard that the police were coming, how did you
3 respond?

4 A. The police wasn't there at that time.

5 Q. Oh, but when you heard from the postal workers that the
6 police were coming, how did you respond?

7 A. No, I asked her -- listen, let me show you something. I
8 said to her -- there are four phrases, about three or four
9 phrases. I said to her -- she -- I said to her, "I need to get
10 something out." She said, "Wait til the police come, we'll --
11 we'll open the box so you can get something out." And then I
12 said to her, "Is the police coming?," because I told her I'm
13 going to call the police. "Is the police coming?" She said,
14 "Yep." I said to her -- and then I said, "Where is the
15 manager, who's the manager?" She said, "The manager never
16 here, they're not -- they're -- they are not here, they're
17 never here." That's what she said.

18 And then I got on the phone. And I wasn't taking
19 picture, that's a lie. They -- I wasn't taking picture. I
20 wish I took a picture. If I took a picture for the whole post
21 office to show you that they said --

22 THE COURT: All right, sir. You can -- you can stop.
23 That's not -- you just need to answer the question.

24 BY MS. FITZHARRIS:

25 Q. Mr. -- yes.



1 A. Yes.

2 Q. Okay. But at some point they said to you the police are
3 coming?

4 A. I called, yeah.

5 Q. Yeah. And how did you respond?

6 A. Well, no, I didn't -- I -- I said to her that's good.

7 Q. Okay. So you said that you -- you called the police. At
8 what point did you call the police?

9 A. I asked her -- because I told her I'm going to call the
10 police, I haven't did yet. I said -- I said, "I'm going to
11 call the police now." She said -- she didn't say nothing. I
12 just walk away and I'm on the police 9 -- talking to 911. And
13 then --

14 Q. Why did you call the police?

15 A. I called the police so he can help me get the box.

16 Q. And how long were you on the phone with 911?

17 A. About a minute, not even a minute, not even.

18 Q. When you were on the phone with 911, where were you, were
19 you in the post office, were you outside?

20 A. No, I was inside.

21 Q. And what happened after you called the police?

22 A. I'm -- I was on the phone the whole time.

23 Q. Mm-hmm.

24 A. I said -- she asked me, "Where is the location, sir?" I
25 said, "I'm across street from YMCA." She said, "Sir, I need a

1 location." I said, "Across street from YMCA, that's -- I'm in
2 Highland Park Post Office" I said to her. She said, "Sir,
3 that's not enough." I said -- she said, "That's not enough."

4 Q. So did you know the address of the post office?

5 A. Yeah. She said, "Give me the address." So I went to
6 Ms. -- Ms. Brute, I said to her, "Would you please give me the
7 address?" And I'm there -- I said to the 911, I said, "Ma'am,
8 wait a minute, I'm trying to get you the address." I said,
9 "Would you give me the address?," the phone on my ear. When I
10 said to her, "Could you give me the address?," watch, "Give
11 me -- get me address" and the phone on my ear, I see the police
12 come through. And then I said to the police -- and the phone
13 is still on my ear, I'm still talking to 911. I said to the
14 police as he walked through, he came in through the door, I
15 said, "Officer, I'm asking her to give me the box." He said,
16 "Shut that tape recorder, shut that" --

17 Q. Hold on for a second.

18 A. Yeah.

19 Q. When you were on the phone with the police --

20 A. Right.

21 Q. -- was the tape recorder on?

22 A. The tape recorder was on, yeah.

23 Q. Okay.

24 A. I was taping 911 too.

25 Q. Okay. So from the time you entered to when the police

1 arrived, how long was the tape recorder on?

2 A. For not even a minute.

3 Q. Not --

4 A. Not -- not even --

5 Q. But was it for most of the conversation?

6 A. Yeah.

7 Q. Okay.

8 A. I was the whole time on the phone.

9 Q. All right.

10 A. While I was on the phone, the police came and I'm still on
11 the phone. And the woman at the center had says to her mom,
12 "Mom, I have to let you go, the police is here." She said,
13 "The police are there?" I said, "Yeah." I said to her, "Thank
14 you." She said, "Good luck." After I said, "Thank you," she
15 said, "Good luck," and I hang the phone. And the police came
16 to me, he said, "What's -- what's the matter?" I said, "I'm
17 asking -- I want my box."

18 Q. All right. Mr. Nakhleh, you heard me play a little piece
19 of the recording earlier?

20 A. Yeah.

21 Q. Was that the recording you took on July 8th, 2016?

22 A. Yeah. Yeah.

23 Q. Yes? Okay.

24 After the police arrived at the post office, who did
25 they speak to first?

1 A. Me.

2 Q. You?

3 A. I think, yeah, me.

4 Q. And --

5 A. No, me. Listen, it happened --

6 THE COURT: Just -- just -- just answer the question.

7 BY MS. FITZHARRIS:

8 Q. And what did they ask you?



9 A. They said, "What's the -- what's the problem?" I said,
10 "I'm asking -- I'm -- I'm asking -- I want my box. She's not
11 giving me my box." He said, "Let me go and talk to her."

12 Q. Did you explain why you wanted your box back?

13 A. No, we didn't talk about that.

14 Q. So after you said that you --

15 A. I told the police, "There is something mailed in the box,
16 there's something I want outside the box."



17 Q. Did you ever tell the police what you wanted out of the
18 box?

19 A. Mail.

20 Q. So after they spoke to you, what did the police do?

21 A. Went, talked to her.

22 Q. Did you hear that conversation?

23 A. I wish. I wish.

24 Q. But you didn't hear it?

25 A. I wish.

1 THE COURT: Just answer the question.

2 THE WITNESS: No, I didn't hear. They were talking
3 with a low voice.

4 BY MS. FITZHARRIS:

5 Q. And then after they spoke -- the police spoke to the
6 postal workers --

7 A. Right.

8 Q. -- what did they do?

9 A. Came back quickly to me.

10 Q. And what did you say to them?

11 A. He came back to me, he says, "Sir, you can't come to the
12 post -- post office and say" -- he just -- the word "say." I
13 said, "Look, I want my box so I can go somewhere else," and it
14 ended right there.

15 Q. At this point, how were you feeling?

16 A. Bad, upset, very upset. I want my box. It's my box, my
17 property.

18 Q. And why did you think you could get the box back?

19 A. Huh?

20 Q. Why did you think you could get the box back?

21 A. I still don't understand the question.

22 Q. Why did you think that you could get the box back?

23 A. Why do I think I should get it back?

24 Q. Why did you think that you could get the box back?

25 A. It's because it's a box, it's a material, nothing but a



1 box.

2 Q. Okay.

3 A. It's a box, just give it to him, just give him the box,
4 cancel the whole deal.

5 Q. How long were you speaking to the police officers?

6 A. When the police come talk to me when he finished talking
7 to her?


8 Q. Yes.

9 A. Not even five second.

10 Q. At some point did you say anything about a bomb?

11 A. Yeah.

12 Q. What did you say?

13 A. I was really upset and I said to the police, "Hey, maybe
 14 there's a bomb in the box," and he cuffed me.

15 Q. Did he ask you any follow-up questions?


16 A. Yeah, he just -- he didn't say nothing.

17 Q. All right.

18 A. He cuffed me.

19 Q. At any point were you taking photos in the post office?

20 A. No. I wish I did. I'd bring it here, I don't care, to
21 prove their lie because they're saying that it was people in
22 the post office.

 23 THE COURT: Okay. Sir, sir, just -- you answered
24 the -- the question was, "Did you take photos?" The answer is
25 no.

1 THE WITNESS: Yes, Your Honor, you're right.

2 MS. FITZHARRIS: Okay.

3 THE WITNESS: No, I didn't take no photos.

4 MS. FITZHARRIS: All right. No further --

5 (Brief pause)

6 MS. FITZHARRIS: All right. Your Honor, at this
7 point I would like to play the tape if that's possible, have
8 Mr. Nakhleh identify it.

9 THE COURT: That's fine, but I -- as I said before, I
10 really couldn't hear --

11 MS. FITZHARRIS: Okay.

12 THE COURT: -- the detail.

13 THE WITNESS: Judge, can I say something please?

14 THE COURT: No, you -- you can't.

15 THE WITNESS: To you, Judge.

16 THE COURT: No. You can only answer questions that
17 are asked of you by your attorney.

18 THE WITNESS: Well, okay, no problem.

19 MS. FITZHARRIS: All right. No further -- well,
20 we'll -- we'll play it and so that you can try and --

21 THE COURT: Well, let's play it and see, but I just
22 wanted you to know that I really couldn't hear anything.

23 MS. FITZHARRIS: I understand. Maybe --

24 THE WITNESS: Well, why don't you -- can I ask --

25 MR. GEROMETTA: Hold on.

1 MS. FITZHARRIS: Mr. Nakhleh -- you know, maybe you
2 can listen to it in chambers with all of us or on the record,
3 but at some point I would like that to be on the record.

4 THE COURT: So go -- go ahead, go ahead and play it.

5 MS. FITZHARRIS: Okay. Maybe move the speakers
6 closer to you.

7 THE COURT: I can come down there, that's fine.

8 (Brief pause)

9 THE COURT: All right. Go ahead and you can play it.

10 (Audiotape recording being played)

11 THE COURT: Is that it? All right. Thank you.

12 Mr. Nakhleh, if you could turn the microphone back
13 towards you.

14 THE WITNESS: There was some more. Mr. Jim?

15 MR. GEROMETTA: Hold on.

16 BY MS. FITZHARRIS:

17 Q. Mr. Nakhleh, there is a little bit more in the recording,
18 right?

19 A. Yeah, there was some more when he --

20 Q. All right. But was that --

21 A. When he came and said to me --

22 Q. Was that --

23 A. -- "You can't come to the post office and say you want."

24 Q. Was that part of the recording taken on July 8th?

25 A. Yeah.

1 Q. Yes?

2 A. (Nods in the affirmative)

3 Q. The rest -- so there -- there's a --

4 A. The tape is short, it's --

5 Q. Right.

6 A. Where is the last of it?

7 Q. The last of it, was that taken on July 8th when you were
8 in the post office?

9 A. The tape?

10 Q. The rest of the tape.

11 A. Yeah. You mean that -- you have something that's missing.

12 MR. GEROMETTA: Just a moment please, Your Honor.

13 THE COURT: All right.

14 THE WITNESS: I have the original.

15 THE COURT: Just -- just wait.

16 (Brief pause)

17 BY MS. FITZHARRIS:

18 Q. All right. Mr. Nakhleh, there are two other conversations
19 that you recorded?

20 A. No, this is it, but there's -- when the police finished
21 talking to her, he came to me and he said, "Sir" -- this --
22 this conversation was not even two seconds -- "Sir, you can't
23 come to the post office and say you want," and stop right
24 there, he didn't say nothing. I said to him, "All I'm asking,
25 I want my box so I can go to another post office," and I asked

1 him. That part, he didn't hear that.

2 Q. Okay. But you then -- couple days later you had a
3 conversation with post -- the postal inspectors?

4 A. On the phone.

5 Q. On the phone.

6 And you recorded that?

7 A. Yes.

8 Q. And that's on -- on here?

9 A. Probably if you could -- because Mr. Jim --

10 Q. Okay.

11 A. -- he heard it and he said he like to --

12 Q. But you didn't -- but you didn't take those recordings on
13 July 8th, right?

14 A. No, that's in my house.

15 MS. FITZHARRIS: Okay. No further questions.

16 THE COURT: All right. Thank you.

17 Any cross-exam?

18 MR. COATS: No, Your Honor

19 THE COURT: Thank you.

20 All right. Thank you. You can step down.

21 (Witness excused at 10:01 a.m.)

22 THE COURT: Okay. So is the defense going to call
23 any additional witnesses?

24 MS. FITZHARRIS: No, Your Honor. Defense rests.

25 THE COURT: All right. Thank you. Then why don't we

1 just do brief closing arguments. Do you want -- do you need
2 just five minutes to prepare or are you prepared to go ahead?

3 MR. COATS: That's fine, Your Honor. We're prepared.

4 THE COURT: All right. And if you'll make sure to
5 address what you believe are all of the elements of the charge.

6 MR. COATS: Yes, Your Honor. We're dealing with a
7 violation of Section 232.1 of Title 39 of the CFR, subsection
8 (e), that's Disturbances, and that essentially prohibits
9 disorderly conduct, and then goes to -- goes on and sets forth
10 a number of I guess examples of disorderly conduct, including
11 conduct creating a loud and unusual noise, conduct that impedes
12 ingress or egress to post offices or otherwise tends to impede
13 or disturb the public employees of the performance of their
14 duties. There is no mental state that is in there, but I think
15 that it's -- it's pretty clear that it has to be knowing
16 conduct, that you have to knowingly engage in the conduct, and
17 that the conduct has to be disorderly in at least one of these
18 ways.

19 THE COURT: And when you say knowing, what about
20 the -- are there other elements in subsection (a) that are
21 elements that are -- I should say are there other components of
22 subsection (a) that are required elements of the crime?

23 MR. COATS: I'm sorry, subsection (a)?

24 THE COURT: Where it says "Applicability."

25 MR. COATS: I'm sorry, that it -- that it occur, the

1 conduct occur on "real property that is under the charge and
2 control of the postal service"?

3 THE COURT: And keep going.

4 MR. COATS: I mean there are other sections listed in
5 the Applicability section.

6 THE COURT: Are those elements of the crime?

7 MR. COATS: I think an element of the crimes would be
8 that it occurs on postal property in order for -- well, it's --
9 it's a jurisdictional element I suppose.

10 THE COURT: What about the -- give me just one
11 second.

12 (Brief pause)

13 THE COURT: What about the sentence that says, "This
14 section shall be posted and kept posted at a -- at a
15 conspicuous place on all such property," is that a required
16 element of the crime or no?

17 MR. COATS: No, I would say no, Your Honor. That
18 section instructs the postal service as to what it should do,
19 or the people who are in charge of the facilities as to what
20 they should do. But I'm not -- I don't read that sentence in
21 the statute, and I haven't seen any authority that suggests,
22 that that is an element of the crime, that is, something that
23 the government has to prove in order to find the defendant
24 guilty.

25 THE COURT: All right. Thank you. Then you can go

1 ahead.

2 MR. COATS: All right. Then, Your Honor, I think
3 what is -- there actually isn't -- doesn't appear to be a lot
4 of dispute about what happened here. We heard the defendant
5 testify, we heard the postal employees testify. There was
6 clearly a series of interactions that left this defendant
7 frustrated and upset with the package behind the counter of the
8 postal service that he wanted back.

9 And in the course of the conversations that built up
10 to that, he was behaving in what was at least a borderline
11 disorderly way. To make comments, whether joking or not, about
12 the postal -- the label being contaminated, not only to make
13 those comments but then to tell another customer -- to make --
14 to persist in that, to tell another customer that he needed to
15 wash his hands after handling the label, that this is someone
16 that a reasonable -- a reasonable person in the defendant's
17 position should know by making these statements, I am -- I'm
18 going to cause a reaction, there is going to have to be some
19 kind of reaction taken to this. By making a claim that the
20 label is somehow contaminated on my package, then there has to
21 be some kind of response to that that's going to affect the way
22 that these employees can do their job, and there was.

23 And -- and the real meat of this is what happens
24 after when he needs to come back and get his package back.
25 That's when you heard Ms. Stringer testify that he walked

1 directly up, interfering with her ability to serve other
2 customers; that he was belligerent, that he was loud, he was
3 making a loud and unusual noise, and that he was demanding his
4 package back and that it caused her to call the police.

5 And the recording that you heard starts after that.
6 So it captures -- the recording which is controlled by him,
7 controlled by the defendant, captures none of his conduct up to
8 the point where the police are called, which was the bulk of
9 Ms. Stringer's testimony.

10 And it is clear and, in fact, he even admitted it
11 that once the police arrived, he made comments to them out of
12 frustration that suggested that there could be a bomb in the
13 package. Every witness testified to that. He admitted it to
14 Postal Inspector Christopher and he admitted it today to the
15 Court.

16 And that because of those statements, as a direct
17 result of those statements and only those statements, the post
18 office was closed. That was a reasonable and a necessary
19 response to his making those statements and indeed a
20 foreseeable response to him making those statements. And the
21 post office was closed, and that meant that people couldn't go
22 into or out of the post -- well, everybody went out of the post
23 office. Nobody could go into the post office, nobody could be
24 served, and the employees couldn't serve customers.

25 So it's really the -- the disorderly conduct is the

1 loud and unusual noise, the behavior that he was engaging in
2 when he was trying to get his box back before the police were
3 called, and then the statement about the bomb which caused the
4 post office to be closed. I think that satisfies the
5 definition of disorderly conduct in several ways.

6 THE COURT: All right. Thank you.

7 MR. COATS: Yes, Your Honor.

8 THE COURT: Ms. Fitzharris, go ahead.

9 MS. FITZHARRIS: Your Honor, in a lot of ways, this
10 was a comedy of errors. Mr. Nakhleh is probably not going to
11 get a customer appreciation award, but the employees here are
12 not going to get employee of the month either. They did not
13 behave reasonably in -- in response to Mr. Nakhleh at all
14 circumstances.

15 The first thing I really want to address is whether
16 Mr. Nakhleh was saying anything in a loud and unusual noise.
17 It is not enough just that he be loud; it has to be unusual.
18 It can't just be his normal speaking voice. And you heard him
19 testify today, Mr. Nakhleh is a loud speaker. Sometimes he has
20 a hard time understanding the questions, sometimes he has a
21 hard time hearing us, and so he speaks maybe a little louder
22 than I do. But the way he was speaking, as you can hear from
23 the recording, was not unusual; it was normal. And any attempt
24 to just say that it was loud I think would -- would render the
25 statute broad, just being loud in the post office and subject

1 to arbitrary enforcement.

2 The postal workers talked a lot about him being
3 belligerent and irate, but again, we can hear from the
4 interaction he had the third time he was in the post office
5 that he was actually speaking in a very normal voice. He said
6 that he started recording a conversation very soon after he
7 started speaking to the employees, so we really do have a -- a
8 accurate representation of the tone and level of discourse on
9 that day, and -- and it wasn't particularly belligerent or
10 angry or loud.

11 As far as then, you know, the meat, as Mr. Coats
12 said, of this is what he said to the Highland -- what Mr.
13 Nakhleh said to the Highland Park Police Department. And, you
14 know, at this point Mr. Nakhleh was incredibly frustrated. He
15 had made some requests that even -- that were not inherently
16 unreasonable. It's not unreasonable to say, "Hey, do you mind
17 if I use some -- some of your tape?," or it's not unreasonable
18 necessarily to ask for a package back to make sure that you
19 don't send something you don't want sent. And so he felt like
20 he was dealing with people who were behaving unreasonably,
21 and -- and he kept trying to get them -- the box back.

22 And -- and yes, he jokingly said, "For all you know,
23 there's a bomb in there, maybe there's a bomb in there," but it
24 was the culmination of a series of frustrating interactions for
25 him.

1 And let's -- and it's really important to remember
2 that this box had been opened multiple times. There is nothing
3 suspicious about this box. The postal workers saw him open the
4 box, pull things out of it, put things back into it, tape it
5 up. They had had control of the box. They didn't notice
6 anything unusual during the time when he went to the dollar
7 store and when he left to go home. There is no residue on the
8 box. There is nothing to indicate or really cause anyone to
9 reasonably believe there was a bomb in this box.

10 And so, you know, when he made this comment after --
11 out of frustration, after telling the police that he left mail
12 in the box -- and, you know, it would have been very easy, to
13 prevent a shutdown of the post office, for the workers to just
14 say the bomb -- the box was open, there isn't a bomb in there,
15 there are shoes in there because everyone had seen it.

16 You know, does Mr. Nakhleh acknowledge that this --
17 that he would have done things differently? He certainly
18 would. But his conduct was not criminal. This does not rise
19 to the level of criminal conduct.

20 And I think that the statute would border on being
21 over-vague and overbroad if it would apply to just being an
22 annoy -- to an annoying customer, someone who irritates postal
23 workers. You know, it has to be something much more egregious
24 than that. And for that reason, I think it's inherent in the
25 statute that everyone involved behave reasonably.

1 For that reason, you know, Mr. Nakhleh may have been
2 a difficult person on that day, he may not have been their
3 favorite customer, but he did not behave -- he did not violate
4 this statute. Thank you.

5 THE COURT: All right. Thank you. All right. We're
6 just going to take a short recess and then I'm going to just
7 compose some -- some thoughts and I'll be back and we'll issue
8 a ruling. Thank you.

9 THE CLERK: All rise.

10 (Court in recess at 10:12 a.m.)

11 (Proceedings resumed at 10:41 a.m., all parties
12 present)

13 THE COURT: All right. Thank you.

14 First I'd like to thank counsel for your work in
15 preparing for this case today. I'm glad we were able to keep
16 the presentation short and concise. I thought you all did a
17 fine job.



18 The issue before the Court relates to whether the
19 defendant is guilty of the crime of disorderly conduct under
20 section 39 CFR 23.2 -- I'm sorry, 232.1(e). And the first
21 element of that crime is that the conduct occur on postal
22 property, on real property under the charge and control of the
23 postal service. The government proved that element by --
24 beyond a reasonable doubt by the testimony.

25 The section (e) then goes on to describe the actual

1 statute in question and it's entitled "Disturbances," and it
2 says, "Disorderly conduct or conduct which creates loud and
3 unusual noise or which impedes ingress to or egress from post
4 offices or otherwise obstructs the usual use of entrances,
5 foyers, corridors, offices, elevators, stairways and parking
6 lots, or which otherwise tends to impede or disturb the public
7 employees in the performance of their duties, or which
8 otherwise impedes or disturbs the general public in transacting
9 business or obtaining the services provided on property, is
10 prohibited."

11 And in the -- when we started this morning, I
12 mentioned the *Darrah* case. It's a case out of the Eastern
13 District first and then the Sixth Circuit. It's -- the Sixth
14 Circuit cite is *U.S. v Darrah*, 630 Fed. Appendix 390. That was
15 a recent case decided in 2015. And that kite -- that case
16 helps us by somewhat more defining what disorderly conduct is.
17 And it said, pursuant to the statute in question, the postal
18 regulation under which the defendant was charged, disorderly
19 conduct requires some conduct that, quote, "disturbs or impedes
20 the general public or the postal employees in transacting
21 business." And in that case the Sixth Circuit ruled that the
22 government had not met its burden of proof because the officer
23 really could just have easily avoided any kind of
24 confrontation, and so it found that there was no -- no criminal
25 violation.



1 But I think the facts of this case, as testified to
2 by all of the witnesses, including the defendant, show much
3 more of an interruption which was caused, including the post
4 office being shut down for two hours, and much more of a -- of
5 a disturbance by the defendant, which, frankly, I think was
6 reacted to very appropriately by the individuals who testified
7 here today and by -- and by the police who did not testify.

8 First, the Court finds the testimony of Ms. Jones,
9 Ms. Stringer and Mr. Christopher was credible as to their
10 eyewitness account of Mr. Nakhleh's conduct while inside the
11 postal office. They described in detail what took place and
12 was very consistent not only with the testimony that each other
13 gave but frankly also very consistent with the defendant's own
14 testimony. I don't really see that there are that many factual
15 disputes here. But as I said, I do find that the -- that those
16 individuals' credibility was very strong in terms of their --
17 their testimony.

18 As for the defendant, I also think his testimony
19 was -- was largely credible and not -- not that different
20 really than the -- than the government's witnesses. Mr.
21 Nakhleh admitted that he was very upset and -- give me just one
22 second -- heated, frustrated, and so I -- you know, to that
23 extent, I think that -- that his testimony also was -- was
24 largely credible.

25 One part of his testimony that I guess I cannot



1 credit and I think that does raise at least some questions is
2 that he testified that -- with respect to the tape, he said
3 that he started recording as soon as he asked for his box back,
4 and then the tape was played and he claims that there were
5 other aspects that -- that weren't played and that are somehow
6 not on the tape. So again, I don't think that's really here
7 nor there in terms of the outcome, but I just point out at
8 least that one factual discrepancy between the evidence of the
9 tape that was played today at least and the testimony.

10 But in terms of the facts of what happened here, I
11 think it's fairly unusual and somewhat bizarre but also very
12 straightforward and not much in -- in dispute. He -- he took
13 the box in, which wasn't taped, and he was told it needs to be
14 taped and that he'll have to do it himself, and that's just
15 the -- the post office requirement. Everyone uses the post
16 office, you know, from time to time, and they are very busy, at
17 least the one in Ann Arbor they're very busy, and I know they
18 can't take time to tape everyone's packages and -- and so
19 customers are expected to do that themselves.

20 And contrary to the defendant's suggestion that he
21 thought he was being treated unreasonably by the -- by the
22 employees in the store, I think they treated him very fairly.
23 In fact, the testimony was that when Ms. Jones said that --
24 what the cost of the tape was going to be, she actually
25 suggested to him that he go across the street to the dollar

1 store where he might be able to buy the tape less expensively,
2 and it was only 3.50 to begin with. And so I think that that
3 testimony alone should have clued him in that he was not being
4 treated unreasonably and nobody at the postal office had it in
5 for him in any way. Ms. Jones was trying to help him, and I
6 think I'll -- there's other ways that that will manifest itself
7 too in just a moment.

8 But anyway, he -- he goes and he buys the tape and
9 then comes back. And the -- the testimony from the postal
10 employees with their -- was that there were other customers in
11 the post office, and I credit that testimony. We know that
12 there was at least some activity going on. The -- the
13 employees testified who they were working with, and that we
14 know later on during the sequence the gentleman who helped the
15 defendant was there. We don't know the exact timing of it all,
16 but it -- certainly it was during normal business hours and
17 there was activity.

18 And the defendant was also given a receipt to track
19 his package. Again, that's an appropriate action by the postal
20 employees. And if he -- so number one, I question his -- the
21 legitimacy of his contention that he had a concern that they
22 were going to do something with his package and that he better
23 go back to get it because what if they were going to take --
24 take the package or not mail -- not mail it. Again, he had the
25 receipt and could have used it to track the package or to show

1 the -- the shoe company that, "Hey, I, in fact, did mail this
2 back and not my fault."

3 But instead, he goes back to the post office,
4 apparently feeling like someone's conspiring against him and
5 has it in for him, and again I don't -- I don't really know
6 based on what because that's not what the evidence was. The
7 evidence was that they were being fair with him and -- and
8 trying to help him.

9 And he goes back in, and then the testimony is that
10 during the discussion, that he was being argumentative,
11 belligerent, loud, irate, demanding, and -- and they kept
12 talking to him and trying to de-escalate things as far as I can
13 tell. They did not call the -- the police, you know,
14 immediately and tried to talk to him, but he is just refusing
15 to -- to obey what they're telling him.

16 The testimony is that -- that his actions at this
17 time prevented workers from servicing other customers. And
18 even if it didn't at that exact time, the Court would still
19 come out the same way because ultimately, and as I'll talk
20 about in just a moment, his conduct -- his conduct resulted in
21 the post office being shut down for two hours, which is a
22 sufficient length of time to have it closed from public use
23 that -- that I think he -- that meets the statute for the, you
24 know, impeding the public use of the post office.

25 And then the -- he has the -- the issue with respect

1 to the -- the pollutant comment, and this comes before the
2 police officers get there. I actually -- if it was just this,
3 I would really not have the same concerns that I have. I think
4 that I can see, based on the defendant's testimony, that he was
5 being sarcastic about just the fact that he was unhappy that
6 Ms. Stringer did not put the label on and so he would say,
7 "Well, what, is it contaminated?" I don't think he was
8 actually making an assertion that the -- that there was real
9 contaminants or pollutants or some kind of chemical. And --
10 and so if it was just that issue, I -- I don't think we'd
11 probably even be here.

12 But it -- you know, instead it kind of escalates and
13 then to a point where Ms. Stringer believes that, you know, we
14 just have to get the -- get the police involved because the
15 defendant's just being loud, belligerent, irate, again just
16 refusing to -- to leave the property, and -- and it's taking
17 the workers away from being able to do their jobs.

18 And so -- so then when the -- when the police do show
19 up and they ask him a simple question of, "Well, what's in the
20 box?," and he -- he could have said, "It's none of your
21 business" or he could have been honest and says it's shoes,
22 he -- he could have said, you know, "I just need to get
23 something out of it," but instead he says that, "Well, you
24 know, for all you know, there could be a bomb in that box."

25 And he even testified, the defendant testified



1 himself that he -- that he knew that that statement was likely
2 to cause concern. He's testified that he was very upset and
3 heated. And so I think that, again, that the police acted very
4 appropriately in -- in taking that precaution in light of
5 the -- the situation. He didn't retract his statement at all.
6 In fact, he repeated it when -- when the police said, "Well,
7 what -- what did you say?"



8 And so, you know, I think he had ample opportunity to
9 avoid a more serious situation here and -- and did not avail
10 himself of that opportunity, and again, that resulted in the
11 post office being closed for about two hours.

12 And as to the defense argument that, well, that's his
13 normal tone and his normal demeanor and that people from other
14 countries talk more loudly than others, I just -- I really
15 think that's just a red herring. I think that the standard is
16 really an objective standard from the point of view of the
17 postal worker as to whether the conduct is -- is disturbing the
18 operations of the office. And, of course, it has to be a
19 reasonable interpretation by the postal worker. They just
20 can't, you know, take offense at -- at some comment and -- and
21 shut down and then claim it was the defendant's fault. It --
22 their -- the postal worker's response has to be reasonable in
23 light of what the defendant's conduct is.

24 And here I think, as I said, that they did act very
25 reasonably in trying to talk him down and trying to, you know,

1 de-escalate the situation, but at some point they are entitled
2 to -- to take additional matters, and they did; they called --
3 they called the police.

4 And I just think all -- all people, whatever
5 background you are, what other -- whatever ethnicity or race,
6 anything like that, you need to act in a -- in a lawful manner
7 when you are -- when you're at the post office, and there are
8 regulations that describe that and that's what was violated
9 here.

10 The -- moreover, the testimony was that his behavior
11 was unusual and loud, and that's in connection with the -- the
12 normal operations of the post office, and so I think beyond a
13 reasonable doubt that the -- that that element of the standard
14 has been met.

15 As I said earlier, the defendant himself testified
16 that he was frustrated, heated and really upset. And so even
17 if I were to look at it from his own point of view and that his
18 normal tone is -- is somewhat loud, I still would find that he
19 was talking in a tone more agitated and more loud and -- than
20 his normal one, but as I said, I think really the -- the issue
21 is from -- is an objective standard.

22 Okay. Okay. So I -- again, just to -- to conclude,
23 I think that the government has shown beyond a reasonable doubt
24 that the defendant's own conduct here was disorderly in terms
25 of the -- the -- what the statute provides, I think that it was

1 loud and unusual. I think that it impeded the -- and disturbed
2 the employees from performing their duties. I also think that
3 it -- it resulted, again quite appropriately, in the shutting
4 down of the post office and therefore -- for -- for a
5 significant period of time, for about two hours, and therefore
6 impeded and disturbed the general public in using the services
7 of the post office.

8 And I want to address also the defendant's argument
9 that he says that, well, the employees should have just told
10 the police that there's nothing in the box. But number one,
11 they testified that -- both employees testified, both postal
12 workers testified that they did not know the entirety of the
13 box's contents, and I think that's -- that's true. They
14 didn't -- there was no testimony that they rummaged through the
15 entire box and knew what was in it. And as Ms. -- Agent
16 Christopher testified, there could be small -- explosives could
17 be small, even the size of an envelope he said in terms of
18 those singing cards.

19 And I think also, frankly, just coupled with
20 defendant's somewhat bizarre behavior in giving the box and
21 refusing to tape it and -- and having to have the other
22 gentleman, you know, be involved and then coming back to the
23 scene, that it was reasonable and foreseeable that his comment
24 and the way, the manner in which it was delivered, his demeanor
25 at the time would be interpreted as a -- as a real or at least

1 significant enough threat that it should lead -- should
2 reasonably have led to the police closing down the -- the
3 facility. And again, the defendant even -- even testified that
4 he knew his statement would cause concern.

5 So again, I think, to -- to conclude, that by beyond
6 a reasonable doubt, the government has shown that all of that
7 conduct that I described was -- constitutes disorderly conduct
8 under the statute and had the -- the necessary effects of
9 impeding the workers and the public and just the general
10 operation of the business of that postal office, and that was
11 on July 8th of 2016. So that is the -- the Court's ruling in
12 this matter.

13 We now need to take up the issue of sentencing. I
14 don't know if we do that at this point or, Counsel, if there's
15 anything for -- for you all to discuss or present to me before
16 I issue a sentence.

17 MR. COATS: Your Honor, we're prepared to proceed. I
18 think the rule says immediately, although it provides that the
19 Court could ask Probation to do an investigation if you wanted
20 to. I think ordinarily we would proceed directly and we're
21 ready to do that today.

22 THE COURT: Okay. You can go ahead then. I'll hear
23 first from the government.

24 MR. COATS: Yes, Your Honor.

25 MS. FITZHARRIS: We're prepared to proceed to

1 sentencing.

2 THE COURT: All right. Thank you.

3 MR. COATS: Your Honor, there were just -- there are
4 two exhibits that I'd like the Court to have for sentencing
5 here. I've shown these to the defense attorney before or -- we
6 started today. They're marked as Government's Exhibits 1 and
7 2, if I could approach.

8 THE COURT: Yes.

9 (Brief pause)

10 THE COURT: And just -- sorry. Before we go on, I
11 wanted to just say one other thing, just -- nobody raised it
12 but I just addressed -- any -- I would rule that there was no
13 First Amendment protection here to the defendant's speech.
14 There -- he clearly raised a potential public safety threat, at
15 least in connection with the bomb threat, that's not entitled
16 to First Amendment protection.

17 Anyway, but you can go ahead with the -- with the
18 additional argument regarding sentencing.

19 MR. COATS: Yes, Your Honor, and I'll -- I'll be
20 brief on this.

21 We're not going to ask -- we're not asking the Court
22 to put Mr. Nakhleh in jail. I don't think that that would be a
23 good use of government resources under the circumstances.

24 What I've provided you is first an e-mail where --
25 where Mr. Christopher says that he estimates the -- the actual




1 loss incurred or his -- the postal service has estimated the
2 actual loss incurred here is \$504 and -- and explained how
3 that's calculated.

4 Now, there was a specialty report, which is the
5 second page of Government's Exhibit 1, that -- that lists a
6 costs savings of \$17,168. I'm not sure exactly how that's
7 calculated, but I think our -- our point is that a reasonable
8 starting point for estimating the economic harm here is the
9 \$504, not the \$17,000. That \$504 is -- is really just
10 capturing the cost of the employees for the time that it was
11 shut down and doesn't really -- doesn't capture the whole, but
12 it's a reasonable anchor I think for -- for the magnitude, the
13 economic magnitude of this offense.

14 And then the second, Government's Exhibit 2, which is
15 seven pages, is a criminal history record for the -- for the
16 defendant. And it -- the point of that I think from the
17 government's perspective is not to say that what he has done or
18 what he did on July 8th, 2016 is a continuation of similar
19 conduct before. It's actually much more serious criminal
20 conduct that is in his history, and some of it is remote and so
21 there is some question. It certainly was done while he was an
22 adult and tells us something about the person that the Court is
23 sentencing. And I think if -- if you -- there are lessons that
24 could be drawn. We could say that it appears that Mr. Nakhleh
25 has a difficult time putting himself in others' position and

1 considering them when he's deciding what he should do, consider
2 the effect of his actions on other people, but I think that you
3 could see that from what he's done and from his -- really from
4 his own testimony here today anyway.



5 What we're suggesting would be an appropriate
6 sentence in this case, Your Honor, is to put the defendant on
7 probation for a term of one year; to order that he pay a \$1,500
8 fine, \$1,500 fine; and it -- it probably makes sense as a
9 condition of his probation that he receive, or at least be
10 evaluated for, some sort of anger management treatment.

11 But we -- we do believe that a fairly stiff fine is
12 necessary here because our concern is that at this point, Mr.
13 Nakhleh may never modulate his behavior because he's had a
14 change of heart, he's changed on the inside, but it's possible
15 that some sort of stiff consequence today will have the
16 specific deterrent effect that when he is encountering some
17 sort of situation like this in the future, he can think back
18 and say, "That was a painful experience and I don't want to
19 repeat it." That's really what we're hoping that the Court
20 will consider and achieve with its sentence today.

21 THE COURT: Okay. Thank you.

22 MR. COATS: Thank you.

23 THE COURT: Ms. Fitzharris, go ahead.

24 MS. FITZHARRIS: Thank you, Your Honor.

25 The criminal history, well, first very quickly want

1 to address the criminal history you have in front of you. I
2 know it's seven pages and that can look pretty scary. When you
3 actually look very closely at which -- how many times he's been
4 convicted of an offense, it's only three times, and the most
5 recent one was in 1997, so we're talking about very stale
6 criminal history. I mean it's been over 20 years since his
7 last conviction. There are other arrests, but arrests and
8 dismissals are just as consistent with innocence as they are
9 with guilt. So you shouldn't really take into consideration
10 any arrests that he has on his record, and I actually would
11 submit that it potentially violates due process to do so.

12 As far as the appropriate fine, we're going to
13 request a \$500 fine. The \$500 is a significant fine for Mr.
14 Nakhleh. He is retired, he has very limited income. \$500 is
15 more than sufficient to make sure that he thinks about his
16 conduct next time he goes into the post office. He will have a
17 very difficult time paying that money and, you know, it's -- it
18 really -- it would be a substantial burden on him.

19 As to the question of probation, Mr. Nakhleh is
20 75 years old. This conduct occurred almost a year ago, ten
21 months ago, and he hasn't had any other contacts with law
22 enforcement. He has not gone back to the post office except
23 for one misunderstanding with the postal inspectors the couple
24 days after this happened. But he's shown that he can, you
25 know, adjust his behavior. And I just don't see it as a -- as



1 a useful use of probation, the Probation Department's resources
2 to monitor Mr. Nakhleh over an extended period of time.

3 And so -- or, you know, and as far as anger
4 management, I don't -- he didn't act violently. I don't think
5 that that is something that would be necessary under these
6 circumstances.

7 I know Mr. Nakhleh would like to address the Court.

8 DEFENDANT NAKHLEH: Huh?

9 THE COURT: That's fine. If -- if -- Mr. Nakhleh, if
10 you'd like to address the Court, you may do so.

11 MR. GEROMETTA: Can I have one moment with Mr.
12 Nakhleh, Your Honor?

13 THE COURT: Sure.

14 (Brief pause)

15 DEFENDANT NAKHLEH: How you doing, Your Honor?

16 THE COURT: Good. Go ahead, sir.

17 DEFENDANT NAKHLEH: I wasn't loud and I didn't say no
18 cussing words, I wasn't. I did not say anything to harm the
19 person or to be disrespect, disrespectful, respect of, respect
20 of.

21 MS. FITZHARRIS: Disrespect.

22 DEFENDANT NAKHLEH: Disrespected.

23 THE COURT: Right.

24 DEFENDANT NAKHLEH: That's not me. In the public I
25 learned, I take a loss, better than to say something to harm or

1 offend that person. I did not say one single, one single word,
2 I did not cuss, I did not swear.

3 Another thing I want to say, Your Honor, that's very
4 much interesting. When you say -- just now you said when I was
5 on the phone I was loud. The reason why I was loud, because
6 the building is so big and it's making a echo. The echo, that
7 sound, my voice was on the phone sound is -- that's a echo.

8 And I was -- really I was -- I was really upset. I
9 didn't see no help from those people here. They're not giving
10 me my box. It is my property, my box, please give me my box.
11 What's a -- what a box? Box is a cardboard, just give it back
12 to me, that's it, simple, take your box and I'll go and all
13 this didn't happen.

14 When I came back, I came back, it's for their action.
15 Their action, number one, she didn't give me the tape, she
16 wouldn't give me two inch.

17 And then when I come back, she put the label inside
18 the box, because that was 25-minute when I was at the dollar
19 store. So they both got together and say, "Let's put the label
20 inside the box so when he come, he'll put the tape on the box
21 and then let's show him that we tough." I'm saying that they
22 were tough, mean.

23 So why she let me put the tape on the box, the tape,
24 the glue tape on the box and the label is inside the box, don't
25 you think that's being mean? Don't you think that means

1 they're being very, very much despicable, they are very much
2 hatred because I'm a Arabic, because the Arabic, Arab people,
3 they got big, big shots, they are bad, terrorists? Are your
4 fingers all the same? Are your fingers all the same? They're
5 different; I'm talking about people. Are people all the same?
6 There are a lot of other Arab people here. They looking for
7 security for their life. They like to -- just to stay out of
8 the trouble. They don't want to get involved with bad things
9 so they do their work, whatever their procedures or their daily
10 life, and then they go home, come back, and they will serve the
11 community, the public, they're nice people. And I -- who am I?
12 Am I one -- am I a bad one?

13 You listen to them, to this long story. I was in the
14 post office two minute. This story they're saying is --
15 it's creating is showing that I was there for ten minute or
16 maybe more. They said they called the -- they did not call
17 nobody.

18 And then the police, why the police? Police, he --
19 he is overreacting by him saying making a report. I have a
20 little article. No, it's in the -- two days ago I was at the
21 attorney, Colleen and Jim. They read for me the misdemeanor --
22 am I allowed to, Your Honor -- the reason why I'm loud, so you
23 can hear, so I mean --

24 THE COURT: I hear you just fine.

25 MS. FITZHARRIS: There's a microphone right here,

1 sir.

2 DEFENDANT NAKHLEH: Yeah. Am I -- am I loud, Your
3 Honor, because I don't know, maybe I was loud over there a
4 minute and maybe you didn't like it.

5 THE COURT: As I said -- it's not that I didn't like
6 you. As I said, you testified yourself you were heated
7 during --

8 DEFENDANT NAKHLEH: No, my -- officer, that doesn't
9 mean because I'm loud here, you're getting the idea maybe I
10 wasn't, but at the post --

11 MS. FITZHARRIS: Mr. Nakhleh, there's a microphone
12 here so you can speak into that.

13 DEFENDANT NAKHLEH: You want me to hear me here or in
14 here?

15 THE COURT: I can hear you just fine.

16 DEFENDANT NAKHLEH: Okay. Your Honor, they making a
17 story. All they say, it's a lie. I did not say to the man,
18 "Wash your hand," I did not. When I said to the man, "Can it
19 be contaminated?" that's just a word. "Could it be
20 contaminated?" He said no. I said, "Can you touch it?" He
21 said, "Yeah, I can touch it." I say, "Can you peel it?" He
22 said, "Yeah, I can peel it." I say, "Can you put it on the
23 box?" "Yeah, I can put it on the box." He was humor, nice
24 looking.

25 THE COURT: And I -- I understood that and I said

1 that, but -- but I understand that part.

2 DEFENDANT NAKHLEH: Yes, sure, okay. I'm repeating
3 again. He put it on the box, I told thank you and I left. And
4 my hand -- behind my back, I'm -- I told him, "Thank you,
5 good-bye." I said, "Good-bye, I got to go home, I got work to
6 do."

7 Where are these -- when that happened, when they said
8 I was belliger [sic], belliger [sic], how you say that word,
9 belligerent, and they say, "Oh, because you said the bomb, that
10 caused them to go." You know, when I say there was a bomb,
11 that was my last recourse to give me the box, that's why. I
12 want to wake them up, "Wake up, give me my box." They don't
13 even have to open it. If -- say if he went in there and say to
14 her, "Give me the box," she will give him the box and the
15 police will give me the box and say go home. You don't even
16 have to open it. There's nothing in the box, nothing but a
17 shoe, two shoe, that's it.

18 THE COURT: It would have been better if you had said
19 that.

20 THE WITNESS: Huh?

21 THE COURT: It would have been a lot better for you
22 had you just said there's two shoes.

23 DEFENDANT NAKHLEH: Sure, sure, yeah. It's an ugly
24 word. I told them, I told Jim and -- it's an ugly word, nobody
25 like to hear that word, but that's a word. Honor, Your Honor,

1 the word bomb, if you go any country in the world, this is a
2 popular word, bomb, bomb, bomb, you say it, bomb, everywhere.
3 It's just a word.

4 Well, at that time -- I mean you can say a bomb, you
5 could be joking, but at that time I was upset. I said maybe
6 there's a bomb. I said that to see if that would help me to
7 get that box. That's why I said maybe there's a bomb in the
8 box. Maybe he -- he will go to the box and open it.

9 And then when he open -- the police -- Your Honor,
10 let me tell you this.

11 THE COURT: Well, sir, I've already announced my --
12 my ruling. I've -- I've found you to be guilty beyond a
13 reasonable doubt of the various elements of the -- of the
14 charge, and so that's not going to change. This is your --
15 your time to present any information that you wish to present
16 to me that I ought to consider in -- in fashioning a sanction
17 and a sentence in this matter.

18 DEFENDANT NAKHLEH: Yeah, but you keep repeating
19 those statement that they're saying. Those statement --

20 MS. FITZHARRIS: Your Honor, may I have a moment with
21 him?

22 THE COURT: Yes.

23 DEFENDANT NAKHLEH: These statement they make --

24 MS. FITZHARRIS: Mr. Nakhleh?

25 THE COURT: Why don't you listen to your attorney.

1 DEFENDANT NAKHLEH: Don't -- that doesn't exist.

2 MS. FITZHARRIS: Mr. Nakhleh?

3 DEFENDANT NAKHLEH: What they're saying on the paper
4 doesn't -- big lot of paper, lot of words, lot of thoughts.

5 MS. FITZHARRIS: Mr. Nakhleh?

6 DEFENDANT NAKHLEH: Sure, they can say belligerent.

7 THE COURT: Sir, why don't you talk to your attorneys
8 just for a minute.

9 DEFENDANT NAKHLEH: This, all they're saying, this --
10 all that didn't happen, it didn't exist. All I said, "I want
11 my box, give me my box and go," that's it.

12 THE COURT: Mr. -- Mr. Gerometta, you ought to talk
13 to your client for a minute.

14 MR. GEROMETTA: Yeah. Thank you, Your Honor.

15 (Brief pause)


16 MR. GEROMETTA: All right. I think we're fine, Your
17 Honor. I think Mr. Nakhleh has made his statement, so thank
18 you.

19 THE COURT: Okay. Thank you. Well, in this matter I
20 do think that it was a -- I'm going to impose the same sentence
21 I was going to anyway. I don't know if Mr. Nakhleh helped
22 himself at all in his -- in his statements to -- to the Court.
23 I'm not going to penalize him more for that.

24 I -- I think that a sanction of a thousand dollars is
25 a meaningful sanction in this case based on Mr. Nakhleh's

1 circumstances, the circumstance -- the circumstances of the
2 offense, the fact that there was no -- you know, there's no
3 physicality that -- that has been presented to the Court in
4 terms of any kind of physical altercation. And -- but I've
5 really said that -- all -- all I think I need to in terms of
6 the facts and -- and, you know, what -- what I find and -- and
7 on what basis.

8 So I'm going to impose, sir, a thousand dollar fine.

 9 And I -- I do agree with the government that there is a
10 potential anger management issue here that ought to be followed
11 through by the Court. As -- as I said, even just standing here
12 in his opportunity to address the Court, and I tried to be as
13 fair as I could be and as straightforward as I could be and
14 indicated to Mr. Nakhleh that some of the aspects of the case I
15 found in -- in his favor in terms of the issue with the label,
16 others I did not, and -- and really, he got more, much more
17 agitated even just -- just standing here.

18 And I'm not asking you, sir, to agree with my -- my
19 sentence. We probably wouldn't be here if you did agree. But
20 I think that there is a -- a potential for -- that he can be
21 supervised for a short period of time and that he will benefit
22 from that supervision and hopefully not have any further kind
23 of criminal consequences.

24 I do note that he does have a -- a criminal record.
25 It's -- it's -- most of it is -- is quite old and so I take

1 that into consideration, but it also -- but it is a -- a
2 consideration.

3 And I think that -- that it's just appropriate to
4 have a short term of probation as well as anger management. I
5 don't know that it needs to be an entire year. I'm going to
6 talk to -- I don't know. Mr. Coats, do you know, am I
7 permitted to do a probationary sentence of six months or does
8 it need to be a year? I can't remember.

9 MR. COATS: I believe a six-month sentence is
10 permissible.

11 THE COURT: All right. I'm going to, sir, sir, order
12 that you do a probationary sentence of six months where you'll
13 be required to check in with our Probation Department as they
14 deem necessary, and that will be up to them. If they -- if
15 they view you as being compliant and want to check in with you
16 every two months for just a few months, that will be up to
17 them.

18 But I -- I will include in that probationary sentence
19 that you attend at least some kind of anger management class,
20 and again, that will -- that will be up to Probation to fashion
21 how and when that takes place.

22 So that is the Court's sentence in this matter. I
23 appreciate everyone's time here today, and I wish you the best
24 of luck, sir. And if you do wish to appeal, that's certainly
25 your right. You have very fine attorneys working for you, and

1 I'm sure if that's what you wish to do, that they'll be happy
2 to assist you with that.

3 All right. Is there anything further then?

4 MR. COATS: No, Your Honor.

5 DEFENDANT NAKHLEH: No, Your Honor.

6 (Brief pause)

7 THE COURT: Anything else at this time?

8 DEFENDANT NAKHLEH: Well, yes, Your Honor. I want to
9 show you this.

10 THE COURT: Well, sir, we're not -- we're not here to
11 do the -- the trial has been completed in this matter.

12 DEFENDANT NAKHLEH: You don't want to see this?

13 THE COURT: The time -- I -- I -- I saw all the
14 evidence that was presented to me --

15 DEFENDANT NAKHLEH: No, I want --

16 THE COURT: -- during the trial.

17 DEFENDANT NAKHLEH: -- I want to show it to you and
18 tell me what you think about it.

19 THE COURT: No, we're not going to take any
20 additional evidence. The -- the --

21 DEFENDANT NAKHLEH: That in the past it shows -- I
22 see some papers here. It's about misconduct, what is it,
23 these -- I have proof. Tell me where you are, Your Honor. I'm
24 going to bring you the proof.

25 MS. FITZHARRIS: Mr. Nakhleh?

— — —

C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 128 comprise a full, true and correct transcript of the proceedings held in the matter of United States of America vs. Ramess Nakhleh, Violation No. 6206831, on Monday, May 1, 2017.

s/Linda M. Cavanagh
Linda M. Cavanagh, CRR, RMR, RDR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: June 13, 2017
Detroit, Michigan

REPORT: 05/02/2017

PETTY OFFENSE DOCKET SHEET AND JUDGMENT ORDER

FOR	AT	MAGISTRATE JUDGE: HON DAVID R. GRAND		DISTRICT: EASTERN DISTRICT OF MICHIGAN				
OFFENSE	ISSUED	OFFICER	FTA CODE	NARRATIVE	PROCESSING FEE	SPECIAL ASSESS.	FINE	TOTAL
DISORDERLY CONDUCT	07/08/2016	HYLIE	TE	6 months probation and anger management as directed by probation.	\$30.00		1000.00	1030.00
LOC	MI60	NAKHLEH, RAMESS						
VIOL. NO.	6206831	M	685 BRENTWOOD					
ORIGINAL AMT	\$0.00		HIGHLAND PARK, MI 48203					
BALANCE DUE	\$0.00		SSN# ##-##-9714	DRIVERS LIC.# N240730013030	ST: MI			

TAPE NUMBER(S)

SIGNATURE OF JUDICIAL OFFICIAL:



DATE:

5/2/17

TIME IN COURT: HOURS 2 MINUTES 45

DISPOSITION CODES:

NO COURT ACTION: FC-FORFEITURE OF COLLATERAL

AFTER TRIAL:	TD-DISMISSED/ACQUITTED	TC-COMMITTED TO CUSTODY	TB-PROBATION	TA-DRIVING COURSE	TP-FINE PAID
AFTER PLEA:	TR-PAYROLL DEDUCTION	TE-INSTALLMENT PAYMENT	TT-FINE/SENTENCE STAYED	TS-FINE/SENTENCE SUSPENDED	
	PD-DISMISSED/ACQUITTED	PC-COMMITTED TO CUSTODY	PB-PROBATION	PA-DRIVING COURSE	PP-FINE PAID
	PR-PAYROLL DEDUCTION	PE-INSTALLMENT PAYMENT	PT-FINE/SENTENCE STAYED	PS-FINE/SENTENCE SUSPENDED	