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IN THE SUPREME COURT OF THE UNITED STATES

ROBERT EUGENE STALLINGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Kevin Joel Page

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

KEVIN J. PAGE **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24042691
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

APPENDIX TO PETITION FOR CERTIORARI

United States Court of Appeals
for the Fifth Circuit

No. 19-11300

United States Court of Appeals
Fifth Circuit

FILED

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Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT EUGENE STALLINGS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-217-1

Before RICHMAN, *Chief Judge*, and GRAVES and HO, *Circuit Judges*.

PER CURIAM:*

Following a three-day jury trial, Robert Eugene Stallings was convicted of one count of communicating false information and hoaxes in violation of 18 U.S.C. § 1038(a)(1). On appeal, Stallings argues that the evidence is insufficient to sustain his conviction, the district court erred in denying his request for several jury instructions, the Government made improper comments during closing arguments, and the district court erred

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 19-11300

by relying on his bare arrest record to impose an upward departure at sentencing. Because the evidence was sufficient and the district court did not err regarding the jury instructions, closing arguments, or sentencing, we affirm the judgment of the district court.

I

Robert Eugene Stallings had an account at Wells Fargo Bank through which he received Social Security disability payments. However, Stallings lacked proper photo identification to make cash withdrawals from that account and could not verify a permanent address to obtain a debit card for that account. Accordingly, he was able to access his account only through discretionary withdrawal procedures for limited amounts of cash. In 2018, Stallings entered the Skillman-Abrams branch of Wells Fargo in Dallas, Texas to withdraw money without the required identification. Upon showing a piece of paper with a “mugshot”-type photo, Stallings was allowed to make a small one-time withdrawal. The banker informed Stallings that the “next time he wanted to withdraw funds from the account he would have to bring in a physical form of ID or a debit card.” Yet on his subsequent visits to the Skillman-Abrams branch, Stallings did not bring either. Instead, he continued to try to convince the tellers to release cash to him without those “safeguards.”

On one occasion, when a teller would not issue cash to Stallings from his account after he showed her “a mugshot picture or some sort of picture of his -- just face,” Stallings accused the teller of “holding [his] money hostage.” He then made “a big scene, drama,” cursing at the bank employees and eventually left. During another unsuccessful withdrawal attempt, Stallings became “really angry,” “loud,” and “rude.” When asked politely to leave, he threw a “giant soda cup at the teller window,” knocked down plastic containers with brochures in them, and “shov[ed] everything

No. 19-11300

down to the floor, again yelling and screaming at everybody, cussing” before he left. A couple months later, when another teller yet again declined Stallings’s withdrawal request—noting that he did not have the proper identification and that she “was aware that he had been disruptive in the bank before”—Stallings became angry, cursed at the teller, and threw a cannister of candy she kept on the counter on the floor. As the teller attempted to escort Stallings out of the bank, telling him “he was not welcome back in [the Skillman-Abrams] branch,” Stallings “turned around just outside” and gestured around his crotch as he continued to curse at the teller. After the teller reiterated to Stallings that “he was never allowed in the branch again,” the branch manager reported the incident to security.

Despite that ban, two months later, Stallings entered the Skillman-Abrams branch with two unmarked duffel bags. He was not visibly upset and made no verbal threats. When a banker recognized and approached him, he stated that “he knew he wasn’t supposed to be there because of, you know, the things that he had done.” Stallings said he would like to speak to the manager, after a chance “to collect his thoughts.” Throughout this interaction, he “wasn’t really looking at” the teller, “just kind of . . . wandering around, looking around.” Before the teller could return with the manager, Stallings left the bank—leaving his bags behind—and walked across the street to a liquor store.

Upon learning of the bags, the manager first contacted security personnel and then the police. Security personnel told the manager to ask for a police trespass warning—not a bomb squad—and to move the bags herself. The manager asked for a trespass warning, but did not move the bags. As the Wells Fargo employees waited for the police to arrive, they continued to permit customers to enter and conduct business in the branch. One customer even stood right next to Stallings’s bags. When the police arrived, they evacuated everyone from the building and called a bomb squad to the scene.

No. 19-11300

A bomb squad officer, Corporal Walton, moved the bags “downrange” and x-rayed them, finding innocuous items inside (e.g., vodka, decorations, a jacket, and papers containing Stallings’s identifying information).

Sometime after police arrived, Stallings boarded a bus a few blocks away. As he boarded, the bus driver asked the boarding passengers if they knew what was “going on” at the bank. Stallings responded, “I think they’re looking for me, because I left a bomb over across the street at the bank.” The driver’s son overheard the statement. Stallings calmly continued that he “was having problems at the Wells Fargo” and “was pissed off” at the teller because “she was giving him a hard time,” and explained that he “was teaching [the teller] a lesson.” After Stallings exited the bus, the driver contacted law enforcement, largely discounting Stallings’s story because he did not seem upset and she was used to hearing “all kinds of things” over her years of bus driving.

Two days later, Stallings appeared at another Wells Fargo branch, asking for help locating his bags and claiming memory problems. Upon recognizing him from a circulated photograph, the manager called the police, who subsequently arrested Stallings. The Government later secured a one-count indictment against Stallings under 18 U.S.C. § 1038(a)(1), alleging “that by placing the bags in the bank branch in the specific manner and under the circumstances that he did, he intended to convey false information that indicated that an explosive device had been left at the bank.” Prior to trial, Stallings requested jury instructions. The district court proposed alternate language, and while Stallings originally objected, he declined to object when the court proposed a modification. The court ultimately instructed the jury that it had to find the following:

First, that the defendant intentionally conveyed false or misleading information;

No. 19-11300

Second, that the information was conveyed under circumstances where an imminent threat to personal safety could have been believed by a reasonable person; and

Third, that such information indicated that an activity had taken, was taking, or would take place that would constitute a violation of [18 U.S.C. § 844(i)], prohibitions with respect to explosives.

Evidence presented during trial included testimony of four bank employees from the Skillman-Abrams branch, a host of responding police officers, the bus driver and her son, and witnesses to Stallings's arrest. During closing arguments, the prosecutor made numerous statements drawing objections from defense counsel that were overruled by the district court. Stallings was ultimately convicted. The district court imposed a forty-eight-month sentence of imprisonment, an upward departure from the Guidelines in light of Stallings's criminal history. Stallings timely appealed.

II

First, Stallings argues that the evidence was insufficient to sustain his conviction under 18 U.S.C. § 1038(a)(1). Because Stallings preserved this issue by moving for acquittal under Federal Rule of Criminal Procedure 29 at the close of the Government's case-in-chief and post-verdict, this court reviews his challenge to the sufficiency of the evidence *de novo*.¹ In applying this standard, "we review all evidence in the light most favorable to the verdict to determine whether a rational trier of fact could have found that the evidence established the essential elements of the offense beyond a reasonable doubt."² We accept "all credibility choices and reasonable

¹ *United States v. Harris*, 740 F.3d 956, 962 (5th Cir. 2014) (citing *United States v. Shum*, 496 F.3d 390, 391 (5th Cir. 2007)).

² *Id.* (quoting *Shum*, 496 F.3d at 391).

No. 19-11300

inferences made by the trier of fact which tend to support the verdict.”³ “[A]ny conflict in the evidence must be resolved in favor of the jury’s verdict.”⁴

It is a crime under 18 U.S.C. § 1038(a)(1) to engage “in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of” 18 U.S.C. § 844(i).⁵ Section 844(i) makes it a crime to “maliciously damage[] or destroy[], or attempt[] to damage or destroy, by means of . . . an explosive, any building . . . used in interstate or foreign commerce.”⁶ Stallings argues that the Government did not meet its burden to prove that the “conduct” identified in the indictment—“placing two bags in the lobby of the Wells Fargo Bank”—“communicated the presence of a bomb,” or “that a reasonable person might actually believe” the bags constituted a threat.

A

Stallings contends that there is insufficient evidence to prove beyond a reasonable doubt that a reasonable person might believe that the bags constituted a threat from Stallings’s conduct of leaving the bags in the bank. He argues that the mere act of abandoning bags was innocent conduct of a transient individual (who carried his belongings with him) that a reasonable

³ *United States v. Asibor*, 109 F.3d 1023, 1030 (5th Cir. 1997) (citing *United States v. Jimenez*, 77 F.3d 95, 97 (5th Cir. 1996)).

⁴ *United States v. Moreno-Gonzalez*, 662 F.3d 369, 372 (5th Cir. 2011) (citing *United States v. Duncan*, 919 F.2d 981, 990 (5th Cir. 1990)).

⁵ 18 U.S.C. § 1038(a)(1).

⁶ 18 U.S.C. § 844(i).

No. 19-11300

person would not believe constituted a threat. Moreover, even “[i]f a reasonable person would think the bags were intended as a threat,” Stallings argues, “he or she would not think the threat credible.” At most, he contends, a reasonable observer would merely think Stallings was “trying to make the staff clean up after him again,” or that maybe there was something “gross” in the bag.

The Government responds that Stallings’s background with the bank supports the reasonableness of the belief of a threat from Stallings’s conduct of leaving the bags in the bank. It references bank employees’ testimony that they were aware of the ongoing dispute about Stallings’s account that led to his history of aggressive confrontation at the bank; knew Stallings was banned from the bank; and were concerned by Stallings’s leaving of the bags in the bank lobby. One employee testified, “Seriously, the first thing that came to my mind when he just left [the bags] in the lobby was that it might have been something that could hurt us.” While it is common for customers to come into the bank with luggage, she continued, “anytime . . . it’s just left unattended and the customer walks out, for us that’s a major red flag.” “[W]hen it comes down to a suitcase or anything bigger, that’s something that we have to address right away.” The Government also mentions the testimony that Stallings had previously shown two employees a mugshot of himself in an unsuccessful attempt to provide photo identification.

In a sufficiency-of-the-evidence review, this court applies “a rule of reason, knowing that the jury may properly rely on their common sense and evaluate the facts in light of their knowledge and the natural tendencies and inclinations of human beings.”⁷ Because “it is not necessary that the

⁷ *United States v. Holmes*, 406 F.3d 337, 351 (5th Cir. 2005) (internal quotation marks omitted) (quoting *United States v. Mulderig*, 120 F.3d 534, 547 (5th Cir. 1997)).

No. 19-11300

evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt,”⁸ we conclude there was sufficient evidence to support the jury’s determination that a reasonable person would believe that Stallings’s conduct of leaving the bags in the bank constituted a threat.

B

Stallings also contends that, even if “a reasonable person thought that the bags represented a credible threat of [a] terrorist attack,” there is insufficient evidence that a reasonable person would think “they were a credible threat of explosives specifically.” He correctly argues that the “[indicative] verbs—has, is, [and] will—following ‘indicates’ [in § 1038(a)] foreclose any prosecution on the basis of” an ambiguous act with nothing to suggest the bags’ contents.⁹

Stallings references the testimony of three bank witnesses who agreed that they did not know what was in the bags, as in whether the bags contained a bomb or some other dangerous substance, such as poison gas or a biological agent. Stallings then discusses the subjective actions of the individuals present on the day of the incident as proof that they did not have a reasonable belief that the bags contained explosives, although he acknowledges that the statute does not turn on those employees’ subjective beliefs. The actions on which Stallings relies include the bank manager delaying in calling the police because there was no “imminent” “physical threat”; the employees continuing to conduct business in the bank and permitting customers to enter

⁸ *United States v. Moreno-Gonzalez*, 662 F.3d 369, 372 (5th Cir. 2011) (brackets omitted) (quoting *United States v. Lage*, 183 F.3d 374, 382 (5th Cir. 1999)).

⁹ See 18 U.S.C. § 1038(a)(1).

No. 19-11300

after Stallings left the bags; and the police lacking the kind of urgency normally exhibited for a bomb threat.

The Government argues that it is commonly understood that the reason for the threat of unattended bags is because they “pose a risk of explosives being present,” and “[a]fter all, non-explosive items are only dangerous to someone who opens or handles the bags.” It cites the testimony of multiple bank employees who responded in the affirmative when asked if they had “any concern that the bags may contain explosives.” The Government contends that is why the bank manager called the police, who ultimately deployed the bomb squad.

Given that our review is “highly deferential to the verdict”¹⁰ and “limited to whether the jury’s verdict was reasonable, not whether we believe it to be correct,”¹¹ there is sufficient evidence to support the jury’s determination that a reasonable person could believe that Stallings’s conduct of leaving the bags in the bank indicated the specific presence of explosives. While there is evidence to the contrary, “any conflict in the evidence must be resolved in favor of the jury’s verdict.”¹² We affirm the district court’s judgment as to Stallings’s first issue.

III

Second, Stallings argues that the district court erred by declining to give four of Stallings’s proposed jury instructions. Because a “district court has substantial latitude in framing jury instructions,” we generally review the

¹⁰ *Moreno-Gonzalez*, 662 F.3d at 372 (quoting *United States v. Harris*, 293 F.3d 863, 869 (5th Cir. 2002)).

¹¹ *Id.* (quoting *United States v. Williams*, 264 F.3d 561, 576 (5th Cir. 2001)).

¹² *Id.* (citing *United States v. Duncan*, 919 F.2d 981, 990 (5th Cir. 1990)).

No. 19-11300

court's refusal to give a proposed instruction for an abuse of discretion.¹³ However, "when a jury instruction hinges on a question of statutory construction, our review is *de novo*."¹⁴ For reversal, Stallings must demonstrate that: (1) the requested instruction was "substantially correct"; (2) "the requested issue is not substantially covered in the charge"; and (3) "the instruction concerns an important point in the trial such that its absence seriously impaired [his] ability to effectively present a given defense."¹⁵

A

Stallings proposed, and the district court rejected, the following three instructions requiring proof that Stallings intended to communicate the presence of a bomb:

1. The jury may "convict the defendant if he . . . undertook an action with intent falsely to convey that he would maliciously damage, destroy, or attempt to damage or destroy real or personal property by means of fire or explosive";
2. The Government must have proved beyond a reasonable doubt "[t]hat the information the defendant sought to convey was that an activity had taken, was taking, or would take place constituting a violation of 18 U.S.C. 844(i)";
3. "It is not sufficient that he intended to communicate some other false or misleading information, but in fact communicated the presence of a bomb."

¹³ *United States v. Richardson*, 676 F.3d 491, 506-07 (5th Cir. 2012).

¹⁴ *United States v. Brooks*, 681 F.3d 678, 697-98 (5th Cir. 2012) (brackets and internal quotation marks omitted) (quoting *United States v. Wright*, 634 F.3d 770, 774 (5th Cir. 2011)).

¹⁵ *United States v. Toure*, 965 F.3d 393, 402-03 (5th Cir. 2020) (internal quotation marks omitted) (quoting *United States v. Daniel*, 933 F.3d 370, 379 (5th Cir. 2019)).

No. 19-11300

The first instruction is an incorrect statement of the law. Section 1038(a)(1) requires only that Stallings intentionally convey false or misleading information that “indicates that an activity has taken, is taking, or will take place that would constitute a violation of” § 844(i).¹⁶ Congress chose to word the statute in a way that did not assign an agent to the “activity.” As the Government correctly contends, Stallings’s requested instruction incorrectly narrows § 1038(a)(1) by requiring “proof that the defendant undertake action intending to convey that *he* is the person who will maliciously cause damage or destruction by way of an explosive.” The district court did not err in declining the first instruction.

As for the latter two instructions, both were substantially covered in the charge issued. The first and third elements of the charge—requiring that the jury must find beyond a reasonable doubt “that the defendant intentionally conveyed false or misleading information” and “that *such information* indicated that an activity had taken, was taking, or would take place that would constitute a violation of [§ 844(i)], prohibitions with respect to explosives”—substantially covered Stallings’s requested instructions. Stallings’s second instruction would have replaced the words “such information” with “the information the defendant sought to convey.” As the Government observes, “[t]here is little daylight between the court’s use of” the two phrases because they are “effectively synonymous.”

The third requested instruction would have clarified the words “such information” to mean information that “in fact communicated the presence of a bomb,” which the Government correctly argues the charge already did by using the word “such” before “information.” Stallings’s own arguments regarding the importance of “such” in connecting the two uses of

¹⁶ 18 U.S.C. § 1038(a)(1).

No. 19-11300

“information” in § 1038(a)(1) support this conclusion. Therefore, the district court did not abuse its discretion in declining to issue the latter two requested instructions.

B

Stallings proposed, and the district court rejected, the following instruction requiring proof that Stallings intended to communicate reasonably believable information:

In order to convict the defendant, you must find beyond a reasonable doubt that he intended that the information he communicated—namely the occurrence of a violation of 18 U.S.C. 844(i) . . . —be reasonably believable.

The requested instruction is an incorrect statement of the law. Stallings’s unsupported interpretation of § 1038(a)(1) imports the mens rea requirement from the first part of the statute—“intent to convey false or misleading information”—to the second part of the statute—“where such information may reasonably be believed.”¹⁷ The Ninth Circuit rejected this interpretation outright in *United States v. Castagana*.¹⁸ In *Castagana*, the Ninth Circuit held that the phrasing of § 1038(a) “clearly indicate[s] that Congress intended to apply an objective standard to the second part of the statute, explicitly distinguished from the initial portion to which the explicit subjective intent requirement applies.”¹⁹ Moreover, “it makes little sense to say that a perpetrator can *intend* that anything be ‘reasonably believed.’”²⁰ The court further determined that although it “need not rely on legislative

¹⁷ See 18 U.S.C. § 1038(a)(1).

¹⁸ 604 F.3d 1160, 1163-64 (9th Cir. 2010).

¹⁹ *Id.* at 1163.

²⁰ *Id.* (emphasis in original).

No. 19-11300

history because the statute is unambiguous, the legislative history of the statute and common sense support this interpretation.”²¹

We agree with the Ninth Circuit’s analysis. The district court did not err in declining to issue Stallings’s fourth proposed jury instruction because it is not a substantially correct statement of the law.

IV

Third, Stallings argues that the district court abused its discretion by overruling Stallings’s objections to various statements made by the Government in its closing argument, and that the district court plainly erred by failing to intervene regarding other allegedly improper statements made by the Government in closing.

For both sets of statements, “we must first decide whether the prosecutor made an improper remark,” and if she did, “we must determine whether the remark affected the substantial rights of the defendant.”²² Regarding improper remarks, “[a] prosecutor is confined in closing argument to discussing properly admitted evidence and any reasonable inferences or conclusions that can be drawn from that evidence.”²³ “The sole purpose of closing argument is to assist the jury in analyzing, evaluating[,] and applying the evidence.”²⁴ In “determining whether a prosecutor’s comment was improper, it is necessary to look at the comment

²¹ *Id.* at 1164.

²² *United States v. Alaniz*, 726 F.3d 586, 615 (5th Cir. 2013) (quoting *United States v. Gracia*, 522 F.3d 597, 600 n.2 (5th Cir. 2008)).

²³ *United States v. Mendoza*, 522 F.3d 482, 491 (5th Cir. 2008).

²⁴ *Id.* (quoting *United States v. Dorr*, 636 F.2d 117, 120 (5th Cir. Unit A Feb. 1981)).

No. 19-11300

in context.”²⁵ Regarding substantial rights, they are affected when the error “affected the outcome of the district court proceedings.”²⁶ More specifically, “we assess the magnitude of the statement’s prejudice, the effect of any cautionary instructions given, and the strength of the evidence of the defendant’s guilt.”²⁷

A

We review for abuse of discretion the three sets of statements to which Stallings objected and that the district court admitted over his objection.²⁸

i

Prior to closing arguments, when defense counsel was cross-examining the supervisor of Corporal Walton—the officer who took the x-rays of Stallings’s bags—counsel mentioned that Walton was not testifying that day and asked the supervisor if he was aware of anything that would prevent Walton from testifying. The supervisor responded that he believed Corporal Walton was on a “Brady list,” meaning that “there’s information about that officer” regarding “things in his past” “that would make him look bad.” Later, in closing arguments, defense counsel noted in passing that the prosecution had not called Corporal Walton, despite his role. When the prosecution responded, the following exchange occurred:

[PROSECUTION:] You heard today there was sort of a suggestion that Senior Corporal Walton didn’t testify and that

²⁵ *United States v. McCann*, 613 F.3d 486, 495 (5th Cir. 2010) (quoting *United States v. Insaulgarat*, 378 F.3d 456, 461 (5th Cir. 2004)).

²⁶ *Id.* at 496 (quoting *United States v. Marcus*, 560 U.S. 258, 262 (2010)).

²⁷ *Alaniz*, 726 F.3d at 615 (internal quotation marks omitted) (quoting *United States v. Gallardo-Trapero*, 185 F.3d 307, 320 (5th Cir. 1999)).

²⁸ *Id.* (citing *United States v. Gracia*, 522 F.3d 597, 600 n.2 (5th Cir. 2008)).

No. 19-11300

you should take something from that. This man put his -- put on a bomb suit, not knowing what was in it.

[DEFENSE]: Objection, bolstering.

THE COURT: Overruled.

[PROSECUTION]: This man protects this community for 20 years because something in a paper --

[DEFENSE]: Objection, facts not evidence.

[THE COURT]: Overruled.

[PROSECUTION]: They're going to try and suggest that you should impugn his actions that day. He had no idea. Nobody out there knew what was in those bags except for the man that got on the bus, the man that walked away, snickering the whole way. "They're looking for me. I'm going to teach her."

Stallings argues that the prosecution's statements were inflammatory, bolstering arguments—appealing directly to the bravery of Walton and contrasting his heroism to Stallings, “a despicable man ‘snickering’ about his plan to ‘teach’ a lesson to a female teller”—that were irrelevant to the issue before the jury. The Government argues these statements were instead “(i) a direct response to defense counsel’s attempt to discredit Walton when cross-examining his supervisor, and (ii) merely restated evidence in the record.”

Generally, “it is impermissible for a prosecutor to” bolster a law-enforcement witness, i.e., “make a largely emotional appeal to the jury to credit . . . officers’ testimony because they are police officers.”²⁹ However, a prosecutor may “present what amounts to be a bolstering argument if it is specifically done in rebuttal to assertions made by defense counsel in order

²⁹ *United States v. Kiekow*, 872 F.3d 236, 254 (5th Cir. 2017) (brackets and internal quotation marks omitted) (quoting *McCann*, 613 F.3d at 496).

No. 19-11300

to remove any stigma cast upon the prosecutor or his witnesses.”³⁰ Prosecutors should still be allowed to “present rebuttal that is appropriate in scope and that does not suggest the existence of information not in evidence.”³¹

The rebuttal here was appropriate in scope as it responded specifically to assertions made by defense counsel in closing to remove stigma cast upon Corporal Walton by the defense. Every statement the prosecutor made on rebuttal about Walton was in evidence—elicited on redirect by the government after defense counsel cross-examined his supervisor. Accordingly, the rebuttal was acceptable. Moreover, the statements about Corporal Walton were not inflammatory, irrelevant, or impermissible bolstering.³² These statements were not improper remarks.

ii

In closing, defense counsel noted that bank employees waited to clear the bank, let customers enter after discovering the bags, and remained inside themselves, all before the bags were relocated. The prosecution responded on rebuttal:

[PROSECUTION:] A reasonable person who sees the Defendant walk in and place the bags at 10:43, who hears the Defendant ask to speak to a manager, who then sees the

³⁰ *United States v. Thomas*, 12 F.3d 1350, 1367 (5th Cir. 1994) (brackets omitted) (quoting *United States v. Dorr*, 636 F.2d 117, 120 (5th Cir. Unit A Feb. 1981)).

³¹ *Kiekow*, 872 F.3d at 255.

³² Compare *United States v. Aguilar*, 645 F.3d 319, 324 (5th Cir. 2011) (holding argument improper when prosecutors said that agents “put their life on the line, protecting us and our kids” and therefore “get[] a sad deal” when accused of lying), and *McCann*, 613 F.3d at 494, 496 (holding argument improper when the prosecution demanded an “apolog[y] to NOPD officers who wear bulletproof vests because they have to worry about getting shot at on the street and then they come here in court and they get shot at again”).

No. 19-11300

Defendant walk across the street, they had the ability to make -- and they had to make it. I mean, this isn't a situation where somebody is pointing a gun at them. It's a different type of situation.

[Defense counsel], evidently, she would do things differently. Good for her. These women didn't go running, screaming from the bank. [Defense counsel] evidently would have.

[DEFENSE]: Objection, denigrating the defense.

THE COURT: Overruled.

[PROSECUTION]: That's what [defense counsel] wants you to believe they should have done, run screaming from the bank.

Stallings argues this was "quite plainly a personal attack" that undermined defense counsel's credibility before the jury. The Government argues the "comment was a direct response to defense counsel's argument that the bank employees' failure to run out of the bank showed that they were not really afraid."

"[N]o prosecutor . . . may impugn the integrity of a particular lawyer . . . , without basis in fact, as a means of imputing guilt to a defendant."³³ But the general rule against attacking the integrity of defense counsel does not extend to specific attacks on defense counsel's *arguments*.³⁴ First, the statements at issue did not impugn the integrity of defense counsel because they related to how defense might have acted differently if she thought the bags contained explosives, with the prosecution commenting "[g]ood for her." Second, Stallings acknowledges that the attack was not directed at defense counsel personally, but rather "deflect[ed] a central

³³ *United States v. Valas*, 822 F.3d 228, 245 (5th Cir 2016) (quoting *United States v. McDonald*, 620 F.2d 559, 564 (5th Cir. 1980)).

³⁴ See *United States v. Bernard*, 299 F.3d 467, 488 (5th Cir. 2002).

No. 19-11300

argument of the defense: that the behavior of bank employees belied any serious bomb threat.”³⁵ Third, the prosecutor’s statement about employees not “run[ning] screaming from the bank” is acceptable hyperbole because it was an inference based on the evidence.³⁶ In sum, the remarks were not improper.

iii

Stallings asserts that the “defense offered three serious challenges to the [G]overnment’s proof of the charged offense”: the behavior of the bank employees showed no subjective fear of a bomb, the bus driver was in a divided state of attention when she heard Stallings’s statements, and the testimony of the driver’s son changed. In rebuttal, Stallings alleges, the prosecution improperly treated these challenges as personal attacks on the witnesses to be rejected as “victim blaming.” The prosecution argued:

[PROSECUTION:] Like I said, they victim blamed five ways from Sunday.

[DEFENSE]: Objection, denigrating the defense.

THE COURT: Overruled.

[PROSECUTION]: It’s easy for the defense to sit here and argue after the fact as to how someone should act. That’s easy to do. But none of these women had ever been through this before, and they did the best they could.

³⁵ Cf. *id.* at 487-88 (prosecutorial comments referring to various defense arguments as a “rabbit trail” and “red herring” held to not have denied defendant a fair trial).

³⁶ Cf. *United States v. Thompson*, 482 F.3d 781, 785-86 (5th Cir. 2007) (concluding “prosecutor’s remarks were not actionably improper” despite “a bit of oratory and hyperbole”); *Foy v. Donnelly*, 959 F.2d 1307, 1318 (5th Cir. 1992) (concluding inaccurate statement implying defendant had criminal history “did not equate to a due process violation” when evidence of criminal history had been introduced at trial).

No. 19-11300

The Government argues this “was a permissible characterization of specific defense arguments that attacked the credibility of government witnesses on various grounds.” Because a prosecutor can present a bolstering argument—i.e., make a largely emotional appeal—“if it is specifically in rebuttal to assertions made by defense counsel in order to remove any stigma cast upon the” prosecution’s witnesses,³⁷ the “victim blaming” remarks were not improper.

B

Stallings claims the district court failed to intervene regarding certain statements even though Stallings did not object. Unpreserved error is reviewed under the plain error standard.³⁸ Stallings contends that when a “prosecutor’s closing argument repeatedly interferes with the defendant’s right to a fair trial,” “objections may be of little utility,” and thus this court should apply a more relaxed plain error standard. He is incorrect, as we have “not [applied] a diluted version of the plain-error standard.³⁹ So, Stallings must show “(1) there was error, i.e., the prosecutor’s remarks were

³⁷ See *supra* note 30 and accompanying text.

³⁸ *United States v. Aguilar*, 645 F.3d 319, 323 (5th Cir. 2011) (citing *United States v. Gracia*, 522 F.3d 597, 599-600 (5th Cir. 2008)).

³⁹ *United States v. Johnson*, 943 F.3d 214, 224 n.3 (5th Cir. 2019) (first citing *Aguilar*, 645 F.3d at 323; and then citing *Gracia*, 522 F.3d at 603).

No. 19-11300

improper, (2) the error was plain and obvious, and (3) the error affected his substantial rights.”⁴⁰

i

In the prosecution’s initial closing statement , referring to Stallings’s videoed, post-arrest statement, the prosecutor argued:

[PROSECUTION:] When you watch [the videos] several times, you’ll start to see certain things, certain comments stand out.

....

Again, watch the videos, look at the evidence, take the time.

....

Remember his words [in the video]: “No threats ever. Oh, no, no threats. I don’t do shit like that at my bank.”

Really? Can we believe you? What did you do two months before that?

....

If these statements existed in a vacuum, sure, there might be some credibility to them, but remember what he said two days before. Remember what he did two days before.

He ascribes it to short-term memory loss. That’s all we know. He doesn’t explain it, doesn’t say anything more.

[Fifth Amendment objection by defense counsel]

[PROSECUTION]: Let me qualify that. He doesn’t state it on the video. He doesn’t explain it.

And [defense counsel] brings up a good point, and I’ll shift to that real quickly. Fifth Amendment. The Defendant

⁴⁰ *Aguilar*, 645 F.3d at 323 (citing *Gracia*, 522 F.3d at 600).

No. 19-11300

doesn't have to do anything in this case. The Government bears the full burden. We accept that burden.

As this instruction will tell you, it is a heavy burden, it is a strict burden, and we accept it. And we have met that burden. He doesn't have to do anything.

But one note on that. Evidence in this case is his own statements. And you can consider those. There is no Fifth Amendment protection to the evidence of his statements that have been introduced in this case. And that's why I'm saying go back and watch those recordings. They are very, very telling. His story doesn't hold water.

Stallings argues that the prosecutor "crossed the line by saying '[h]e doesn't explain it, doesn't say anything more'" before defense counsel's objection. Further, Stallings contends that the prosecutor improperly commented on Stallings's exercise of the Fifth Amendment after defense counsel's objection. The Government argues that instead the prosecutor "made a permissible argument about a comment Stallings made in a recorded interview—which was properly admitted into evidence—and Stallings's failure to explain further *in the video*." Additionally, the Government contends that the prosecutor "properly responded to defense counsel's unfounded Fifth Amendment objection by telling the jury that the [G]overnment (not the defendant) has the burden of proof at trial."

Generally, prosecutors are prohibited from commenting—directly or indirectly—on a defendant's failure to testify in a criminal case,⁴¹ regardless of the "prosecutor's subjective intent in making the remarks."⁴² "A

⁴¹ See *Rhoades v. Davis*, 852 F.3d 422, 432-33 (5th Cir. 2017) (quoting *United States v. Bohuchot*, 625 F.3d 892, 901 (5th Cir. 2010)).

⁴² *Gongora v. Thaler*, 710 F.3d 267, 277 (5th Cir. 2013) (per curiam) (citing *Jackson v. Johnson*, 194 F.3d 641, 652 (5th Cir. 1999)).

No. 19-11300

prosecutor's remarks constitute impermissible comment on a defendant's right not to testify[] if the prosecutor's manifest intent was to comment on the defendant's silence or if the character of the remark was such that the jury would naturally and necessarily construe it as a comment on the defendant's silence.”⁴³

As for the prosecutor's statements pre-objection, given the failure by Stallings to cite Fifth Circuit controlling authority on the issue—which typically “mean[s] that there was not plain error”⁴⁴—the error of the court to intervene *sua sponte* was not plain or obvious. Thus, the pre-objection statement cannot constitute reversal.

As for the comments after the Fifth Amendment objection, by emphasizing that the jury focus on “the evidence of [Stallings's] statements that have been introduced in the case” and stating that Stallings's “story doesn't hold water,” the prosecutor, post-objection, focused more on what Stallings said rather than his silence. Consequently, the jury would not naturally and necessarily construe those statements as a comment on Stallings's silence. The district court did not plainly err in failing to intervene when the Government made them.

⁴³ *United States v. Johnston*, 127 F.3d 380, 396 (5th Cir. 1997) (citing *United States v. Collins*, 972 F.2d 1385, 1406 (5th Cir. 1992)).

⁴⁴ *United States v. Rodriguez-Parra*, 581 F.3d 227, 231 (5th Cir. 2009) (citing *United States v. Garcia-Rodriguez*, 415 F.3d 452, 456 (5th Cir. 2005)); *see also United States v. Segura*, 747 F.3d 323, 330 (5th Cir. 2014) (declining to hold plain error because “Segura cite[d] no Fifth Circuit authority that would make the district court's error clear or obvious”).

Referring to the bags Stallings left in the bank, the prosecutor stated in rebuttal closing:

Empty bags and a bottle of vodka. There's no explanation from that witness stand as to why there's empty bags there. None of his stuff is in that bag. A bunch of junk is in the bags. Not even a bunch.

Stallings argues this was improper because a “prosecutor’s commentary on missing evidence crosses the Fifth Amendment line if the missing evidence could only have been provided by the defendant, and only Stallings could know why his bags contained so few objects and provide an “explanation [of such] from the witness stand.” The Government argues that instead the prosecutor “noted the lack of evidence *for a specific defense theory of the case* that counsel argued throughout the trial.”

Usually “a comment on the failure of the defense to counter or explain the evidence presented,”⁴⁵ or to present evidence to support a defense or theory of the case, is permissible.⁴⁶ One of Stallings’s central defenses at trial, and arguments on this appeal, is that Stallings was a transient man and

⁴⁵ See *United States v. Iredia*, 866 F.2d 114, 118 (5th Cir. 1989) (per curiam) (citing *United States v. Soudan*, 812 F.2d 920, 930 (5th Cir. 1986) (per curiam)).

⁴⁶ See *United States v. Casel*, 995 F.2d 1299, 1308 (5th Cir. 1993) (“Since the prosecutor’s comments were intended as a statement that the defense had failed to produce any evidence of a defense he was advancing, rather than as a statement about the silence of the defendant himself, then the comments cannot form the basis for a reversal.” (citations omitted)), vacated on other grounds as to one defendant *sub nom. Reed v. United States*, 510 U.S. 1188 (1994); *Soudan*, 812 F.2d at 930 (“The record reflects that the prosecutor was not commenting upon appellant’s failure to testify. Rather, he was commenting upon the fair and reasonable inferences to be drawn from the evidence which had been presented, and the defense theory which had holes in its web. The prosecutor’s comments only served to focus that evidence which had been elicited during trial upon the government’s theory of the case.”).

No. 19-11300

there was nothing unusual about him carrying two duffel bags around.⁴⁷ In response, the Government commented “that the bags were essentially empty and did not contain all of Stallings’s possessions,” as a transient person’s would, as Stallings had suggested. The Government argued that Stallings provided no explanation for why the bags were empty.

While Stallings correctly points out that the prosecutor may not comment on missing evidence if the defendant is the only knowledgeable witness who could have supplied it,⁴⁸ Stallings does not provide any support for the assertion that he was the only person who could comment on his transient nature or why his bags were essentially empty. For example, the defense might have presented the testimony of the McDonald’s manager who “allowed [Stallings] to stay on the [McDonald’s] property in exchange for keeping trespassers off of the land.” Stallings “previously spent many hours at the restaurant during the day for shelter and to eat and, on one occasion, repaired a sink for the manager.” This manager might have known enough about Stallings, his transient nature, and the bags he kept with him to testify in support of Stallings.

The district court did not plainly err in failing to intervene.

⁴⁷ See *supra* Section II.A.

⁴⁸ See *United States v. Sardelli*, 813 F.2d 654, 657 (5th Cir. 1987) (“Where arguably favorable evidence other than the defendant’s own testimony is available to him, comment upon his failure to produce it may be justified. However, in the instant case, it is quite obvious that the prosecutor’s comments referred to Sardelli, since the only knowledgeable witnesses other than Sardelli himself had been produced by the Government.” (citations omitted)).

No. 19-11300

iii

In the prosecution's initial closing statement, the prosecutor argued:

The bank staff, when he walked in, that's the threat to them. They see this man who's been there before. He's the message. "I'm here. I'm going to leave these bags, and I'm going to walk out."

They knew him. They knew how he had treated them when he said no to them. And remember what they told you, the way he acted, his yelling, his profanity, his temper tantrums, his abuse of the banks and their personal property, his inappropriate sexual gestures. That was his calling card. That's what they saw when that man walked into the bank on . . . December the 8th.

And remember [the two bank employees]? They had seen what they termed a mugshot ID. It looked like a mugshot. So they maybe had some idea what this man was about.

Stallings now argues that by using the phrase "what this man was about" the prosecutor urged the jury to convict Stallings based on a prior arrest or general bad character under Federal Rule of Evidence 404(b). The Government responds that the prosecutor "argued that Stallings showed the bank employees a mug shot of himself in order to intimidate them and show them that he was possibly dangerous," which "was a proper comment on a piece of evidence that was admitted for exactly this purpose."

Pre-trial, Stallings sought to exclude the "mug shot" evidence, arguing that it was overly prejudicial. The district court overruled the objection because it held the photo was "logically related to the offense charged" and that the Government did not intend to use it as evidence of Stallings's criminal history not connected to this crime. Reading the

No. 19-11300

challenged comment in context,⁴⁹ the prosecutor was not urging the jury to convict Stallings on the ground of bad character irrespective of guilt. Rather, the prosecutor was arguing that Stallings used the mug shot to tell the bank employees “what [he] was about,” leading the bank employees to believe Stallings was dangerous. Moreover, Stallings cannot establish plain error because he cites no controlling Fifth Circuit authority on the issue.⁵⁰

iv

In rebuttal closing, the prosecutor argued:

Going across the street to a location where he could see and just waiting. He got what he wanted. He enjoyed every minute of it. You heard that the first officer didn’t arrive until approximately 11:08. That’s 25 minutes after the Defendant walked out of the bank. What in the world was that man doing for 25 minutes? I would submit to you, ladies and gentlemen, he was just watching and waiting to see if the little game he was playing worked. And lo and behold, it didn’t.

Later, the prosecutor added that Stallings was “the man that got on the bus, the man that walked away, snickering the whole way” saying “They’re looking for me. I’m going to teach [the teller].” Stallings argues this was an improper attempt to inflame the jury’s passion, going “beyond the evidence and attack[ing] [Stallings’s] character or veracity.”⁵¹ The Government responds that the prosecutor “engaged in a bit of oratory and hyperbole, as trial lawyers are w[o]nt to do in closing arguments.”⁵² Moreover, the

⁴⁹ *United States v. McCann*, 613 F.3d 486, 495 (5th Cir. 2010) (quoting *United States v. Insaulgarat*, 378 F.3d 456, 461 (5th Cir. 2004)).

⁵⁰ See *supra* note 44 and accompanying text.

⁵¹ *United States v. Delgado*, 672 F.3d 320, 336 (5th Cir. 2012) (en banc) (citing *United States v. Anchondo-Sandoval*, 910 F.2d 1234, 1237-38 (5th Cir. 1990)).

⁵² *United States v. Thompson*, 482 F.3d 781, 786 (5th Cir. 2007).

No. 19-11300

Government argues, the “comment had a basis in the evidence—Stallings bragging to the bus driver that he left a bomb in the bank to teach the manager a lesson—which would have been clear to the jury from the evidence and argument it had already heard” showing Stallings was “pleased with himself.”

While there was evidence to support much of what the prosecutor argued, there was no evidence that Stallings was watching the bank for twenty-five minutes while “snickering.” “An inference not reasonably deducible from the evidence may not be stated.”⁵³ Accordingly, the prosecutor’s remarks were improper. Also, the failure of the district court to intervene was plain and obvious, as Stallings cites a relevant Fifth Circuit case for support.⁵⁴ As for whether the error affected Stallings’s substantial rights, “efforts to inflame jurors through argument that characterizes a defendant in the most despicable manner will be seen as creating a high risk of prejudice.”⁵⁵ However, given that Stallings concedes the sufficiency of the evidence on the intent element of § 1038(a), Stallings cannot demonstrate that the prosecutor’s statements affected the outcome of the district court

⁵³ *Hall v. United States*, 419 F.2d 582, 585 (5th Cir. 1969) (citing *Luttrell v. United States*, 320 F.2d 462, 465 (5th Cir. 1963)).

⁵⁴ *Id.* (holding that the “prosecutor could not properly deduce from the fact of a wink the inference of an affirmative undertaking by [the witness] to ‘help’ his ‘old buddy,’” the defendant, and thus that those comments by the prosecutor were improper); *see also id.* (“[The prosecutor’s statement] was supported only by the improper implication that there was existent, but unstated, evidence of which the jury did not have the benefit.” (citing *McMillian v. United States*, 363 F.2d 165 (5th Cir. 1966))).

⁵⁵ *United States v. Mendoza*, 522 F.3d 482, 495 (5th Cir. 2008).

No. 19-11300

proceedings and thus affected Stallings's substantial rights.⁵⁶ Therefore, Stallings cannot prevail under the plain error standard.

v

During rebuttal closing, the prosecutor argued:

Did the Defendant intend to create a bomb hoax? His actions . . . show he did. His words on the day of show he did. Would a reasonable person believe there was a bomb? You better believe it. "They're looking for me. I left a bomb in there. I had a problem with a white female teller, and I'm going to teach her." Ladies and gentlemen, I ask that you find this man guilty and show him that in the United States of America this is a crime.

Stallings contends that this argument amounts to constructive amendment or fatal variance because the indictment named only Stallings's leaving the bags as the "conduct" from which a reasonable person might infer the presence of a bomb, while the prosecutor urged the jury to rely on Stallings's statements to the bus driver as the "conduct." However, as the Government correctly contends, the prosecution "never argued or even implied to the jury that Stallings's statements to the bus driver were evidence of whether the bank employees would have reasonably feared that there was a bomb in his bags." Before closing, the Government argues, the prosecution "had already very clearly told the jury—at great length—that Stallings's statement to the bus driver was evidence of his *intent*, which Stallings concedes on appeal." Thus, the prosecutor's statement in closing was mere

⁵⁶ See *United States v. Alaniz*, 726 F.3d 586, 615 (5th Cir. 2013) ("To determine whether a remark prejudiced the defendant's substantial rights, we assess the magnitude of the statement's prejudice, the effect of any cautionary instructions given, and the strength of the evidence of the defendant's guilt." (internal quotation marks omitted) (quoting *United States v. Gallardo-Trapero*, 185 F.3d 307, 320 (5th Cir. 1999))).

No. 19-11300

“rhetorical flourish, a reminder of the most damning piece of evidence against Stallings,” and was not improper. Further, because Stallings has already conceded the sufficiency of the evidence on the intent element,⁵⁷ he cannot demonstrate that this comment affected his substantial rights.⁵⁸

In sum, Stallings cannot prevail under the plain error standard regarding all five of the prosecutor’s remarks to which defense counsel failed to object.

V

Last, Stallings argues that the district court’s consideration of “numerous bare arrest records in its choice of an above-range sentence” “flatly contradicts the controlling precedent of this [c]ourt.” Because Stallings failed to object to the upward departure from the Sentencing Guidelines, we review for plain error.⁵⁹

A district court may not rely on a “bare arrest record” to extend a defendant’s sentence.⁶⁰ An arrest record is “bare” if it refers “to the mere fact of an arrest—i.e., the date, charge, jurisdiction[,] and disposition—without corresponding information about the underlying facts or circumstances regarding the defendant’s conduct that led to the arrest.”⁶¹

The Presentence Investigation Report (PSR) assigned Stallings a total offense level of 12 and a criminal-history category of VI, for an advisory

⁵⁷ See *supra* note 55 and accompanying text.

⁵⁸ See *supra* note 56 and accompanying text.

⁵⁹ *United States v. Peltier*, 505 F.3d 389, 392 (5th Cir. 2007), *abrogated on other grounds by Holguin-Hernandez v. United States*, 140 S. Ct. 762 (2020).

⁶⁰ *United States v. Windless*, 719 F.3d 415, 420 (5th Cir. 2013).

⁶¹ *Id.* (brackets and emphasis omitted) (quoting *United States v. Harris*, 702 F.3d 226, 229 (5th Cir. 2012) (per curiam)).

No. 19-11300

guideline range of 30 to 37 months' imprisonment. Paragraph 162 of the PSR recommended that the district court impose an upward departure in light of Stallings's criminal history, citing 39 adult convictions and "34 offenses that were either dismissed due to pleas in other cases or for unknown reasons." The PSR concedes that the circumstances of the 34 alleged offenses are unavailable, making the arrest records for those offenses "bare."

The district court departed upwardly from the guideline range, twice stating that it imposed a variance "for the reasons stated in paragraphs 162 and 163 of the [PSR]." However, the court's comments at sentencing clarified that it focused only on Stallings's adult convictions, not his juvenile offenses or unadjudicated conduct. Moreover, the court and the PSR specifically referenced the fact that Stallings's *convictions* that received criminal-history points amounted to a criminal-history score of almost double the amount needed for criminal-history category VI. The court thus followed the Guidelines' directive, determined a new offense level and criminal-history category of VI—yielding a new Guideline range of 41 to 51 months' imprisonment—and imposed a sentence of 48 months' imprisonment. Notably, the court recognized that even "if it were later determined that one or more of the points that [Stallings] received in the criminal history was not countable for some reason," it would "impose the same sentence as a variance." Thus, the district court did not plainly err because it did not consider Stallings's bare arrest records at sentencing.

Even if the court's brief reference to "the reasons stated in paragraphs 162 and 163" demonstrated that the district court considered Stallings's unadjudicated conduct, Stallings cannot show that the court's consideration affected his substantial rights. Stallings had 39 adult convictions, with only 16 receiving criminal-history points. The "scored" convictions gave a score of 24, eleven points more than necessary to reach the highest criminal-history category, VI. There is nothing to indicate that had the PSR and district court

No. 19-11300

completely excluded the 34 unadjudicated offenses, Stallings would have received a lower sentence. Stallings's substantial rights were not affected, and he cannot prevail under the plain error standard.

* * *

For the foregoing reasons, we AFFIRM the judgment of the district court.

United States Court of Appeals
for the Fifth Circuit

No. 19-11300

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROBERT EUGENE STALLINGS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-217-1

ON PETITION FOR REHEARING

Before RICHMAN, *Chief Judge*, and GRAVES and HO, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ROBERT EUGENE STALLINGS

§§§
CRIMINAL DOCKET NO:
3:19-CR-217-D

DEFENDANT'S REQUESTED JURY INSTRUCTIONS

TO THE HONORABLE JUDGE SIDNEY A. FITZWATER:

Comes now the Defendant, Robert Eugene Stallings, and hereby submits the following Requested Jury Instructions. The first 13 instructions are taken from the United States Fifth Circuit District Judges Association, Pattern Jury Instructions Criminal Cases, 2015 edition. The remaining instructions cite supporting authority.

The defense requests the instructions attached below.

Respectfully submitted

/s/ Marti Morgan

MARTI MORGAN
Assistant Federal Public Defender
Northern District of Texas
TX Bar #24109042
525 Griffin, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means: Assistant U. S. Attorney Tiffany H. Eggers at tiffany.eggers@usdoj.gov.

/s/ Marti Morgan
MARTI MORGAN

PRELIMINARY INSTRUCTION

Members of the jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other items received into the record as exhibits, and any facts that the lawyers agree to or stipulate to or that the court may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now.

1. Statements, arguments, and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other.

If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and

must not be considered.

4. Anything you may have seen, heard, or read outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First: the defendant is presumed innocent until proven guilty. The superseding indictment brought by the government against the defendant is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second: the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his or her innocence, or to present any evidence, or to testify. Since the defendant has the right to remain silent, the law prohibits you from arriving at your verdict by considering that the defendant may not have testified.

Third: the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that in this respect a criminal

case is different from a civil case.

In this case the defendant is charged with Attempted Extortion Affecting Interstate Commerce, Attempted Kidnapping, and Use of Facilities in Interstate Commerce to Commit Extortion. I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision.

During the course of the trial, do not speak with any witness, or with the defendant, or with any of the lawyers in the case. Please do not talk with them about any subject at all. You may be unaware of the identity of everyone connected with the case. Therefore, in order to avoid even the appearance of impropriety, do not engage in any conversation with anyone in or about the courtroom or courthouse. It is best that you remain in the jury room during breaks in the trial and do not linger in the hall. In addition, during the course of the trial, do not talk about the trial with anyone else—not your family, not your friends, not the people with whom you work. Also, do not discuss this case among yourselves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. Otherwise, without realizing it, you may start forming opinions before the trial is over. It is important that you wait until all the evidence is received and you have heard my instructions on rules of law before you deliberate among yourselves.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in this case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the Internet, websites, or blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any

source outside the confines of this courtroom.

I know that many of you use cell phones, the Internet, and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case through any means, including your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Snapchat or Twitter, or through any blog or website, including Facebook, Google+, MySpace, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

I will now give you a roadmap to help you follow what will happen over the entire course of this trial. First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it is admitted. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor arguments.

The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case, the defendant may, if he wishes, present witnesses whom the government may cross-examine. If the defendant decides to present evidence, the government may introduce rebuttal evidence.

After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and the court will instruct you on the law. After that, you will retire to deliberate on your verdict.

The trial will now begin

1.03

INTRODUCTION TO FINAL INSTRUCTIONS

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give you some general instructions which apply in every case, for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

1.04

DUTY TO FOLLOW INSTRUCTIONS

You, as jurors, are the judges of the facts. But in determining what actually happened--that is, in reaching your decision as to the facts--it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

1.05

**PRESUMPTION OF INNOCENCE,
BURDEN OF PROOF, REASONABLE DOUBT**

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The defendant begins with a clean slate. The law does not require a defendant to prove his innocence or produce any evidence at all [and no inference whatever may be drawn from the election of a defendant not to testify].

The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the defendant.

While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A "reasonable doubt" is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

1.06

EVIDENCE--EXCLUDING WHAT IS NOT EVIDENCE

As I told you earlier, it is your duty to determine the facts. To do so, you must consider only the evidence presented during the trial. Evidence is the sworn testimony of the witnesses, including stipulations, and the exhibits. The questions, statements, objections, and arguments made by the lawyers are not evidence.

The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

During the trial I sustained objections to certain questions and exhibits. You must disregard those questions and exhibits entirely. Do not speculate as to what the witness would have said if permitted to answer the question or as to the contents of an exhibit. Also, certain testimony or other evidence has been ordered removed from the record and you have been instructed to disregard this evidence. Do not consider any testimony or other evidence which has been stricken in reaching your decision. Your verdict must be based solely on the legally admissible evidence and testimony.

Also, do not assume from anything I may have done or said during the trial that I have any opinion concerning any of the issues in this case. Except for the instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own verdict.

10
CREDIBILITY OF WITNESSES

I remind you that it is your job to decide whether the government has proved the guilt of the defendant beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses [including the defendant] who testified in this case. You should decide whether you believe all, some part, or none of what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

[The testimony of the defendant should be weighed and his credibility evaluated in the same way as that of any other witness.]

Your job is to think about the testimony of each witness you have heard and decide how much you believe of what each witness had to say. In making up your mind and reaching a verdict, do not make any decisions simply because there were more witnesses on one side than on the other. Do not reach a conclusion on a particular point just because there were more witnesses

testifying for one side on that point. You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

1.09

CHARACTER EVIDENCE

Where a defendant has offered evidence of good general reputation for [opinion testimony concerning]: truth and veracity, honesty and integrity, or character as a law-abiding citizen, you should consider such evidence along with all the other evidence in the case.

Evidence of a defendant's character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt, since you may think it improbable that a person of good character with respect to those traits would commit such a crime.

1.10

IMPEACHMENT BY PRIOR INCONSISTENCIES

The testimony of a witness may be discredited by showing that the witness testified falsely, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may not consider the earlier statements to prove that the content of an earlier statement is true; you may only use earlier statements to determine whether you think the earlier statements are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited in this manner, it is your exclusive

right to give the testimony of that witness whatever weight you think it deserves.

1.19

CAUTION-CONSIDER ONLY CRIME CHARGED

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you called upon to return a verdict as to the guilt of any other person or persons not on trial as a defendant in this case, except as you are otherwise instructed.

1.24

DUTY TO DELIBERATE--VERDICT FORM

To reach a verdict, whether it is guilty or not guilty, all of you must agree. Your verdict must be unanimous on each count of the indictment. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges--judges of the facts. Your duty is to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

When you go to the jury room, the first thing that you should do is select one of your number as your foreperson, who will help to guide your deliberations and will speak for you here in the courtroom.

A verdict form has been prepared for your convenience. [Explain verdict form.]

The foreperson will write the unanimous answer of the jury in the space provided for each count of the indictment, either guilty or not guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

If you need to communicate with me during your deliberations, the foreperson should write the message and give it to the Court Security Officer. I will either reply in writing or bring you back into the court to answer your message.

Bear in mind that you are never to reveal to any person, not even to the court, how the jury stands, numerically or otherwise, on any count of the indictment, until after you have reached a unanimous verdict.

1.37

"KNOWINGLY"--TO ACT

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident.

14
SUBSTATIVE OFFENSE INSTRUCTION
FALSE INFORMATION AND HOAXES

18 U.S.C. § 1038 (a)(1)

Title 18, United States Code, Section 1038(a)(1), makes it a crime for anyone to engage in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity that violates 18 U.S.C. 844(i) or 18 U.S.C. 2332f(a)(1) has taken, is taking or will take place.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant acted with the intent to convey false or misleading information;

Second: That the information the defendant sought to convey was that an activity had taken, was taking, or would take place constituting a violation of 18 U.S.C. 844(i) or 18 U.S.C. 2332f(a)(1);

Third: That the defendant acted under circumstances in which a reasonable person¹ would believe this information; and

Fourth: That the defendant's acts would be interpreted by a reasonable person to represent an imminent threat to personal safety.²

¹See *United States v. Brahm*, 520 F.Supp.2d 619, 628-630 (D.NJ 2007)(construing the statute to require an objective "reasonable person" standard).

²The language of this element is taken directly from the indictment. It was wisely pleaded by the government, as speech that does not create a reasonable fear of imminent threat to public safety is vulnerable to First Amendment challenge. See *Brahm*, 520 F.Supp.2d at 628 (concluding that the statute survives First Amendment

A defendant violates 18 U.S.C. 844(i) if he or she:

First: Maliciously damages, destroys or attempts to damage or destroy real or personal property; and

Second: Does so or attempts to do so by means of fire or an explosive; and

Third: At the time of the fire, explosion, attempted fire or attempted explosion, the real or personal property is used in interstate or foreign commerce or in an activity affecting interstate or foreign commerce.

To “maliciously” damage or destroy a piece of property means to damage or destroy the property intentionally or with willful disregard of the likelihood that damage to the property or destruction of the property will result from one's actions.

A piece of property is “used in an activity affecting interstate [foreign] commerce” if the property is actively employed for commercial purposes and that active employment has an effect on interstate or foreign commerce. A piece of property is not used in an activity affecting interstate or foreign commerce if the property merely has a passive, passing, or past connection

challenge because of the state's interest in avoiding fear of imminent harms to public safety). In any case, dispensing with the requirement now would constructively amend the indictment. See *Stirone v. United States*, 361 U.S. 212, 218-219 (1960). “The accepted test is that a constructive amendment occurs when the jury is permitted to convict the defendant upon a factual basis that effectively modifies an essential element of the offense charged [in the indictment].” *United States v. Chambers*, 408 F.3d 237 (5th Cir. 2005)(quoting *United States v. Adams*, 778 F.2d 1117, 1123 (5th Cir.1985))(brackets in *Chambers*). Here, the “imminent threat to personal safety” language gives notice of a particular essential element, namely the “activity” threatened under 18 U.S.C. 1038(a)(1), the kind of “malicious” act threatened in 18 U.S.C. 844(i), or the prong of 18 U.S.C. 2332f(a)(1) invoked by the indictment (i.e. the “death or serious bodily injury” referenced in 18 U.S.C. 2332f(a)(1)(A) rather than the economic harms referenced in 18 U.S.C. 2332f(a)(1)(B)). It also successfully avoided First Amendment litigation by plausibly invoking a reading of the statute that included a threatened harm to public safety as an element. This is not plainly not a case where the indictment merely mis-describes an object or person. See *United States v. Munoz*, 150 F.3d 401, 407, 416-17 (5th Cir.1998); *United States v. Robles-Vertiz*, 155 F.3d 725, 727-29 (5th Cir.1998). Omission of the “public safety” language would instead change the legal theory of conviction. See *Chambers*, 408 F.3d at 243-244 (collecting cases). Alternatively, it would permit a prejudicial variance from the indictment, as counsel has prepared for trial on the assumption that the government needed to prove this element.

to commerce.

A defendant violates 18 U.S.C. 2332f if he or she:

First: Delivers, places, discharges or detonates an explosive or other lethal device,

Second: In, into, or against a place of public use, or an infrastructure facility,

Third: With the intent to cause death or serious bodily injury, or with the intent to cause extensive destruction of such place, facility, or system, where such destruction results in or is likely to result in major economic loss, and

Fourth: Such action is unlawful.

The term “serious bodily injury” means bodily injury, which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Thus, you may convict the defendant if he (1) undertook an action with intent falsely to convey that he would maliciously damage, destroy, or attempt to damage or destroy real or personal property by means of fire or explosive, and, (2) at the time of the threatened destruction, the property was used in interstate or foreign commerce or an activity affecting such commerce, (3) provided that he acted under circumstances in which a reasonable person would believe that he actually intended to undertake such action, and (4) believe that his actions represented an imminent threat to personal safety.

Alternatively, you may convict the defendant if he (1) undertook an action with intent falsely to convey that he would unlawfully deliver, place, discharge or detonate an explosive or

other lethal device in, into, or against (2) a place of public use or an infrastructure facility with intent to cause death or serious bodily injury or with the intent to cause extensive destruction of such place facility, or system and to cause or act in a way that is likely to cause major economic loss, (3) provided that he acted under circumstances in which a reasonable person would believe that he actually intended to undertake such action, and (4) believe that his actions represented an imminent threat to personal safety.

In order to convict the defendant, you must find beyond a reasonable doubt that he intended to communicate to another that activity was occurring that constituted a violation of 18 U.S.C. 844(i) or 18 U.S.C. 2332f(a)(1). It is not sufficient that he intended to communicate some other false or misleading information, but in fact communicated the presence of a bomb.¹

In order to convict the defendant, you must find beyond a reasonable doubt that he intended that the information he communicated – namely the occurrence of a violation of 18 U.S.C. 844(i) or 18 U.S.C. 2332f(a)(1) – be reasonably believable.²

¹ 18 U.S.C. 1038(a)(1) denounces “[w]hoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of [specified statutes].” It is linguistically possible to read this statute in either of two ways. First, the reader may treat the clause “where such information indicates that an activity has taken, is taking, or will take place” as a “circumstance” in which the defendant acts. As such, in this reading, the defendant might not need to intend to convey that the offense has occurred, is occurring, or will occur.

On the other hand, however, the reader might read the statute to denounce “[w]hoever engages in any conduct with intent to convey false or misleading information … where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of [specified statutes].” Under this reading, the defendant must intend that the information lead the audience to believe that a violation of these statutes is occurring. The presumption of more expansive scienter – and of course the Rule of Lenity – counsels the Court to prefer the second interpretation. *See Elonis v. United States*, 135 S.Ct. 2001, 2009 (2001)(threat statute construed to require showing that defendant intended listener to feel threatened, notwithstanding textual omission of such a requirement). This presumption is especially strong in cases where the intent requirement separates innocent from non-innocent conduct. *See Elonis*, 135 S.Ct. at 2010. Making false or misleading statements is not usually criminal, unless they are damaging or alarming.

² 18 U.S.C. 1038(a)(1) denounces “any conduct with intent to convey false or misleading information under

circumstances where such information may reasonably be believed..." It is linguistically possible to read this statute in either of two ways. First, the reader may treat the clause "under circumstances where such information may reasonably be believed" as an effort to modify "conduct." In this reading, any conduct undertaken with the intent to convey false or misleading information may be criminalized, provided that conduct is undertaken under circumstances where the information might be believed. On the other hand, however, the reader may treat the "under circumstances" phrase as an effort to modify "information." Under this reading, the defendant must intend that the information be under circumstances where it is reasonably believable. The presumption of more expansive scienter – and of course the Rule of Lenity – counsels the Court to prefer the second interpretation. *See Elonis v. United States*, 135 S.Ct. 2001, 2009 (2015)(threat statute construed to require showing that defendant intended listener to feel threatened, notwithstanding textual omission of such a requirement). This presumption is especially strong in cases where the intent requirement separates innocent from non-innocent conduct. *See Elonis*, 135 S.Ct. at 2010. Even alarming false statements are not understood as criminally culpable when the defendant does not think or intend that they will be believed – such statements are instead usually humor, satire, commentary or art. Statements of those kind may even enjoy First Amendment protection.

The Ninth Circuit rejected this argument in *United States v. Castagna*, 604 F.3d 1160 (5th Cir. 2010), but this non-binding opinion is no longer persuasive for at least three reasons. First, it predates *Elonis* by five years, and thus lacked the guidance of a Supreme Court authority expressly applying the presumption of scienter to a threat statute.

Second, it is expressly premised on the absence of a First Amendment challenge to the statute. Here, the defense expressly contends (hereby) that absence of the scienter would threaten First Amendment protected speech in some cases. *See Castagna*, 604 F.3d at 1165.

Third, the *Castagna* panel is unpersuasive in its textual reasoning. It argues that:

[i]t is difficult to imagine how we could interpret the statute as Castagana suggests, because it makes little sense to say that a perpetrator can intend that anything be "reasonably believed."

Id. at 1163. Even assuming that it is awkward to say that one "intends that something be reasonably believed," that is not what the statute says. It says that the defendant intends "to convey false or misleading information under circumstances where such information may reasonably be believed." The "under circumstances" clause is merely a limitation on what the defendant must intend – if the defendant does not think the information is reasonably believable, he has not intended to convey the information under the requisite circumstances. In any case, there is nothing especially awkward about saying that the defendant intended to convey believable information. It is no different than saying that an author, fabulist or other story teller hoped to tell a plausible tale.

Case 3:19-cr-00217-M Document 1 Filed 04/24/19 Page 1 of 3 PageID 1

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2019 APR 24 PM 1:07

UNITED STATES OF AMERICA

CRIMINAL NO.

DEPUTY CLERK

v.

ROBERT EUGENE STALLINGS

3 - 19CR - 217 - ■

INDICTMENT

The United States Grand Jury charges:

Count One
False Information and Hoaxes
[Violation of 18 U.S.C. § 1038(a)(1)]

On or about December 8, 2018, in the Northern District of Texas, the defendant, **Robert Eugene Stallings**, did intentionally convey false and misleading information by placing two bags in the lobby of the Wells Fargo Bank located at 6536 Skillman Street, Dallas, Texas, under circumstances where an imminent threat to personal safety may reasonably have been believed and that indicated that an activity had taken place, was taking place, and would take place, specifically, an explosive device had been placed in the bank, that would constitute a violation of 18 U.S.C., Chapter 40, specifically, a violation of 18 U.S.C. § 844(i), prohibitions with respect to explosives

All in violation of 18 U.S.C. § 1038(a)(1).

A TRUE BILL

FOREPERSON

ERIN NEALY COX
UNITED STATES ATTORNEY

00790456

for
Tiffany H. Eggers
Assistant United States Attorney
Florida Bar No. 0193968
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214.659.8600
Facsimile: 214.659.8805
Email: Tiffany.Eggers@usdoj.gov

Case 3:19-cr-00217-M Document 1 Filed 04/24/19 Page 3 of 3 PageID 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

v.

ROBERT EUGENE STALLINGS

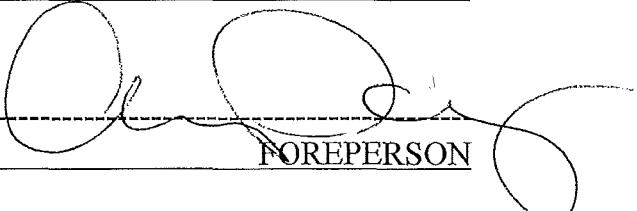
INDICTMENT

18 U.S.C. § 1038(a)(1)
False Information and Hoaxes
(Count 1)

1 Counts

A true bill rendered

DALLAS

 FOREPERSON

Filed in open court this 21 day of April, 2019.

Warrant to be Issued


UNITED STATES MAGISTRATE JUDGE

No Criminal Matter Pending

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

4 UNITED STATES OF AMERICA, §
5 §
6 Plaintiff, §
7 §
8 VS. § Criminal No. 3:19-CR-217-D(1)
9 §
10 ROBERT EUGENE STALLINGS, §
11 §
12 Defendant. §

COURT'S CHARGE

14 MEMBERS OF THE JURY:

15 It is now my duty to instruct you on the rules of law that you must follow and apply in
16 deciding this case. When I have finished, you will go to the jury room and begin your
17 discussions—what we call your deliberations.

18 It will be your duty to decide whether the government has proved beyond a reasonable doubt
19 the specific facts necessary to find the defendant guilty of the crime charged in the indictment.

20 You must make your decision only on the basis of the testimony and other evidence
21 presented here during the trial. You must not be influenced in any way by either sympathy or
22 prejudice for or against the defendant or the government.

23 You must also follow the law as I explain it to you whether you agree with that law or not,
24 and you must follow all of my instructions as a whole. You may not single out, or disregard, any
25 of my instructions on the law.

26 The indictment is merely a formal charge against the defendant and is not evidence of guilt.
27 The defendant has pleaded not guilty. The law presumes that the defendant is innocent and therefore
28 the defendant starts the trial with a clean slate. The law does not require the defendant to prove his

29 innocence or produce any evidence at all, and no inference whatever may be drawn from the election
30 of the defendant not to testify. The government has the burden of proving each element of the
31 offense charged by proof beyond a reasonable doubt, and if it fails to do so, you must acquit the
32 defendant of the offense charged.

33 Throughout your deliberations, you must presume that the defendant is innocent until such
34 time, if ever, you as a jury are satisfied that the government has proved the defendant guilty beyond
35 a reasonable doubt. If you view the evidence in the case as reasonably permitting two
36 conclusions—one of innocence, the other of guilt—you must adopt the conclusion of innocence.
37 You must never convict the defendant on mere suspicion or conjecture. Unless you are satisfied
38 beyond a reasonable doubt that the defendant is guilty, the presumption of innocence alone is
39 sufficient to find the defendant not guilty.

40 While the government's burden of proof is a strict or heavy burden, it is not necessary that
41 the defendant's guilt be proved beyond all possible doubt. It is only required that the government's
42 proof exclude any "reasonable doubt" concerning the defendant's guilt.

43 A "reasonable doubt" is a doubt based upon reason and common sense after careful and
44 impartial consideration of all of the evidence in the case. Proof beyond a reasonable doubt,
45 therefore, is proof of such a convincing character that you would be willing to rely and act upon it
46 without hesitation in the most important of your own affairs. If you are convinced that the
47 government has proved the defendant guilty beyond a reasonable doubt, say so. If you are not
48 convinced, say so.

49 As stated earlier, it is your duty to determine the facts, and in doing so you must consider
50 only the evidence that I have admitted in the case. The term "evidence" includes the sworn
51 testimony of the witnesses, the exhibits admitted in the record, and any stipulated facts.

52 Remember that any statements, objections, and arguments made by the lawyers are not
53 evidence in the case. The function of the lawyers is to point out those things that are most
54 significant or most helpful to their side of the case, and in doing so to call your attention to certain
55 facts or inferences that might otherwise have escaped your notice. In the final analysis, however,
56 it is your own recollection and interpretation of the evidence that controls. What the lawyers have
57 said is not binding upon you.

58 If a lawyer asked a question during the trial that contained an assertion of fact, you may not
59 consider the assertion as evidence of that fact unless the witness adopted the asserted fact.
60 Questions and assertions are not, in and of themselves, evidence.

61 While you may consider only the evidence in the case, you are permitted to draw such
62 reasonable inferences from the testimony and exhibits as you feel are justified in light of common
63 experience. In other words, you may make deductions and reach conclusions that reason and
64 common sense lead you to draw from the facts established by the testimony and evidence in the case.

65 You should not be concerned about whether the evidence is direct or circumstantial. "Direct
66 evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness.
67 "Circumstantial evidence" is proof of a chain of events and circumstances indicating that something
68 is or is not a fact. The law makes no distinction between the weight you may give to either direct
69 or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of
70 the defendant's guilt beyond a reasonable doubt before you may find the defendant guilty.

71 You also must not assume from anything I may have said that I have any opinion concerning
72 any of the issues in this case. Except for my instructions to you, you must disregard anything I may
73 have said during the trial in arriving at your own decision concerning the facts.

74 In saying that you must consider all of the evidence, I do not mean that you must accept all
75 of the evidence as true or accurate. You are the sole judges of the credibility or believability of each
76 witness and the weight to be given the witness' testimony. In weighing the testimony of a witness
77 you should consider the witness' relationship to the government or to the defendant; the witness'
78 interest, if any, in the outcome of the case; the witness' manner of testifying; the witness'
79 opportunity to observe or acquire knowledge concerning the facts about which the witness testified;
80 the witness' candor, fairness, and intelligence; and the extent to which the witness' testimony has
81 been supported or contradicted by other credible evidence. You may, in short, accept or reject the
82 testimony of any witness, in whole or in part.

83 Also, the number of witnesses testifying concerning any particular dispute is not controlling.
84 You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute
85 is more believable than the testimony of a larger number of witnesses to the contrary.

86 In deciding whether you believe or do not believe any witness, I suggest that you ask
87 yourself a few questions: Did the person impress you as one who was telling the truth? Did the
88 witness have any particular reason not to tell the truth? Did the witness have a personal interest in
89 the outcome of the case? Did the witness seem to have a good memory? Did the witness have the
90 opportunity and ability to observe accurately the things the witness testified about? Did the witness
91 appear to understand the questions clearly and answer them directly? Did the witness' testimony
92 differ from the testimony of other witnesses?

93 You should also ask yourself whether there was evidence tending to prove that a witness
94 testified falsely concerning some important fact; or, whether there was evidence that at some other
95 time a witness said or did something, or failed to say or do something, that was different from the
96 testimony the witness gave during the trial.

97 You should keep in mind, of course, that a simple mistake by a witness does not necessarily
98 mean that the witness was not telling the truth as the witness remembers it, because people naturally
99 tend to forget some things or remember other things inaccurately. So, if a witness has made a
100 misstatement, you need to consider whether that misstatement was simply an innocent lapse of
101 memory or an intentional falsehood, and that may depend on whether it has to do with an important
102 fact or with only an unimportant detail.

103 In any criminal case the government must prove the identity of the defendant as the person
104 who committed the alleged crime. When a witness points out and identifies the defendant as the
105 person who committed a crime, you must first decide, as with any other witness, whether that
106 witness is telling the truth as the witness understands it. Then, if you believe the witness was
107 truthful, you must still decide how accurate the identification was. Again, I suggest that you ask
108 yourself a number of questions: Did the witness have an adequate opportunity at the time of the
109 alleged crime to observe the person in question? What length of time did the witness have to
110 observe the person? What were the prevailing conditions at that time in terms of visibility or
111 distance and the like? Had the witness known or observed the person at earlier times?

112 You may also consider the circumstances surrounding the later identification itself including,
113 for example, the manner in which the defendant was presented to the witness for identification, and
114 the length of time that elapsed between the incident in question and the witness' identification of the

115 defendant. After examining all of the testimony and evidence in the case, if you have a reasonable
116 doubt as to the identity of the defendant as the perpetrator of the offense charged, you must find the
117 defendant not guilty.

118 In determining whether any statement, claimed to have been made by the defendant outside
119 of court and after an alleged crime has been committed, was knowingly and voluntarily made, you
120 should consider the evidence concerning such a statement with caution and great care.

121 You should give such weight to the statement as you feel it deserves under all the
122 circumstances. You may consider in that regard such factors as the age, sex, training, education,
123 occupation, and physical and mental condition of the defendant, his treatment while under
124 interrogation, and all the other circumstances in evidence surrounding the making of the statement.

125 The testimony of a law enforcement officer is entitled to no special weight. It is subject to
126 the same examination and the same credibility as is the testimony of any other witness. In other
127 words, you should not believe a law enforcement officer merely because the person is a law
128 enforcement officer. You should recall each officer's demeanor, the officer's manner of testifying,
129 and the substance of the officer's testimony. You should weigh and balance the testimony just as
130 carefully as you would the testimony of any other witness.

131 The defendant is on trial here only for the offense set forth in the indictment. In order for
132 you to find the defendant guilty of the crime charged in the indictment, the government must prove
133 each of the essential elements of the crime beyond a reasonable doubt. The defendant is not on trial
134 for any acts, conduct, or offense not alleged in the indictment.

135 Neither are you called upon to return a verdict as to the guilt or innocence of any other
136 person or persons not on trial.

137 You will note that the indictment charges that the offense was committed "on or about" a
138 certain date. The government does not have to prove with certainty the exact date of the alleged
139 offense. It is sufficient if the government proves beyond a reasonable doubt that the offense was
140 committed on a date reasonably near the date alleged in the indictment.

141 You will note that the indictment refers to the Wells Fargo Bank located at 6536 Skillman
142 Street, Dallas, Texas. This is a typographical error and is intended to refer to the Wells Fargo Bank
143 located at 6535 Skillman Street, Dallas, Texas.

144 The intent of a person or the knowledge that a person possesses at any given time may not
145 ordinarily be proved directly because there is no way of directly scrutinizing the workings of the
146 human mind. In determining the issue of what a person knew or what a person intended at a
147 particular time, you may consider any statements made or acts done by that person and all other facts
148 and circumstances received in evidence which may aid in your determination of that person's
149 knowledge or intent.

150 You may infer, but you are certainly not required to infer, that a person intends the natural
151 and probable consequences of acts knowingly done. It is entirely up to you, however, to decide what
152 facts to find from the evidence received during this trial.

153 The word "intentionally," as that term is used from time to time in these instructions, means
154 to act purposely, with the conscious desire to cause the result of the conduct.

155 The word "knowingly," as that term is used in this charge, means that the act was done
156 voluntarily and intentionally and not because of mistake or accident.

“Interstate commerce” means commerce or travel between one state, territory, or possession of the United States and another state, territory, or possession of the United States, including the District of Columbia.

“Foreign commerce” means commerce or travel between any part of the United States, including its territorial waters, and any other country, including its territorial waters.

“Commerce” includes travel, trade, transportation, and communication.

False Information and Hoaxes

Count One of the indictment charges that the defendant intentionally conveyed false and misleading information by placing two bags in the lobby of the Wells Fargo Bank located at 6536 Skillman Street, Dallas, Texas, under circumstances where an imminent threat to personal safety may reasonably have been believed and that indicated that an activity had taken place, was taking place, and would take place, specifically, an explosive device had been placed in the bank, that would constitute a violation of 18 U.S.C., Chapter 40, specifically, a violation of 18 U.S.C. § 844(i), prohibitions with respect to explosives, in violation of 18 U.S.C. § 1038(a)(1).

18 U.S.C. § 1038(a)(1) makes it a crime for anyone to engage in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of certain specified federal laws.

175 For you to find the defendant guilty of this crime, the government must prove beyond a
176 reasonable doubt each of the following essential elements:

177 First, that the defendant intentionally conveyed false or misleading
178 information;

179 Second, that the information was conveyed under circumstances
180 where an imminent threat to personal safety could have been believed
181 by a reasonable person; and

182 Third, that such information indicated that an activity had taken, was
183 taking, or would take place that would constitute a violation of Title
184 Chapter 40, specifically, a violation of 18 U.S.C. § 844(i),
185 prohibitions with respect to explosives.

186 Title 18 U.S.C., Chapter 40, specifically, 18 U.S.C. § 844(i), makes it a crime to maliciously
187 damage or destroy, or attempt to damage or destroy, by means of an explosive, any building, or other
188 real or personal property used in interstate or foreign commerce or in any activity affecting interstate
189 or foreign commerce.

190 Jury Deliberations

191 You are here to determine from the evidence in this case whether the defendant is guilty or
192 not guilty. The question of punishment should never be considered by you in any way in deciding
193 the case. If the defendant is convicted, the matter of punishment is for me to determine.

194 Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous.
195 In other words, to return a verdict you must all agree. Your deliberations will be secret; you will
196 never have to explain your verdict to anyone.

197 It is your duty as jurors to discuss the case with one another in an effort to reach agreement
198 if you can do so. Each of you must decide the case for yourself, but only after full consideration of

199 the evidence with the other members of the jury. While you are discussing the case, do not hesitate
200 to reexamine your own opinion and change your mind if you become convinced you are wrong. But
201 do not give up your honest beliefs solely because the others think differently or merely to get the
202 case over with.

203 When you go to the jury room you should first select one of your members to act as presiding
204 juror. The presiding juror will preside over your deliberations and will speak for you here in court.

205 A form of verdict has been prepared for your convenience. You will take the verdict form
206 to the jury room and, when you have reached unanimous agreement, the presiding juror will fill in
207 the verdict form, date and sign it, and then advise the Court Security Officer that you have reached
208 a verdict. You will then deliver the verdict form to the Court Security Officer who will, in turn,
209 deliver it to me.

210 The court will honor the schedule you set for your deliberations and your requests for breaks
211 during your deliberations. From time to time I may communicate with you concerning your
212 schedule. This is done primarily for the purpose of anticipating the court's staffing needs, and is not
213 in any way intended to suggest that your deliberations should be conducted at a different pace or on
214 a different schedule.

215 During the trial, the court reporter made a verbatim record of the proceedings. The court
216 rules do not provide for testimony to be produced for the jury in written form, or for testimony to
217 be read back to the jury as a general aid in refreshing the jurors' memories. In limited
218 circumstances, the court may direct the court reporter to read testimony back to the jury in open
219 court. This is done, however, only when the jury certifies that it disagrees as to the testimony of a
220 particular witness, and identifies the specific testimony in dispute.

221 If you should desire to communicate with me at any time, the presiding juror should write
222 down your message or question and pass the note to the Court Security Officer, who will bring it
223 to my attention. I will then respond as promptly as possible, either in writing or by having you
224 returned to the courtroom so that I can address you orally.

225 With regard to any message or question you send in which you indicate the jury is divided,
226 you shall not tell me your numerical division at the time.

227 August 7, 2019.

228

229
230
231



SIDNEY A. FITZWATER
SENIOR JUDGE

FILED

Aug - 1 2019

CLERK, U.S. DISTRICT COURT
By _____ Deputy

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISIONUNITED STATES OF AMERICA, §
Plaintiff, §
VS. §
ROBERT EUGENE STALLINGS, §
Defendant. §

Criminal No. 3:19-CR-217-D(1)

VERDICT

We, the jury in the above-entitled case, find the defendant (answer "Guilty" or "Not Guilty" in the space provided):

Guilty

on Count One

Date: 8/7/19Thomas Goff

Presiding Juror

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ROBERT EUGENE STALLINGS

Case Number: 3:19-CR-00217-D(1)
USM Number: 58857-177
Marti Rachel Morgan
Juan Gabriel Rodriguez
Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	1 of the indictment filed on April 24, 2019

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1038(a)(1) False Information and Hoaxes	12/08/2018	1

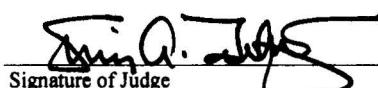
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 21, 2019

Date of Imposition of Judgment



**SIDNEY A. FITZWATER
SENIOR JUDGE**

Name and Title of Judge

November 21, 2019

Date

DEFENDANT: ROBERT EUGENE STALLINGS
 CASE NUMBER: 3:19-CR-00217-D(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
 forty-eight (48) months as to count 1.

It is ordered that the sentence shall run consecutively to any sentences hereafter imposed by the Wyandotte County Municipal Court in Kansas City, Kansas, in Case Nos. T888358077-A, M888358075-5, and M888384454-A; any sentence hereafter imposed by the El Paso County Combined Courts in Colorado Springs, Colorado, in Case No. 2012M3911; any sentence hereafter imposed by the Eau Claire County Circuit Court in Eau Claire, Wisconsin, in Case No. 2016CM000292; any sentence hereafter imposed by the Baldwin County District Court in Bay Minette, Alabama, in Case Nos. DC17-607 and DC17-608; any sentences hereafter imposed by the Hennepin County District Court in Minneapolis, Minnesota, in Case Nos. CR-17-16972, CR-17-20343, and CR-17-28494; and any sentence hereafter imposed by the Olmsted County District Court, Rochester, Minnesota, in Case No. VB-17-7674.

- The court makes the following recommendations to the Bureau of Prisons:
 - that the defendant be given mental health and appropriate medical treatment.
 - that the defendant be allowed to participate in the Institutional Residential Drug Abuse Program, if eligible, and be assigned to serve his sentence at a facility where he can participate in the Program.
 - that the defendant be assigned to serve his sentence at a facility as close to Kansas as is consistent with his security classification.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____
 - a.m.
 - p.m.
 - on _____

as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
 DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT EUGENE STALLINGS
CASE NUMBER: 3:19-CR-00217-D(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ROBERT EUGENE STALLINGS
 CASE NUMBER: 3:19-CR-00217-D(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ROBERT EUGENE STALLINGS
CASE NUMBER: 3:19-CR-00217-D(1)

SPECIAL CONDITIONS OF SUPERVISION

Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant shall pay restitution in the amount of **\$1451.42**, payable to the United States District Clerk for disbursement to the City of Dallas. Restitution shall be payable immediately, and any remaining balance shall be payable during incarceration. If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than **10%** of the defendant's gross monthly income, or at the rate of not less **\$50** per month, whichever is greater, until the restitution is paid in full. Payments shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, and lawsuit awards shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990, or any other means available under federal or state law. It is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

The defendant shall have no contact with the victims or the victims' families, directly or indirectly, through personal, electronic, or telephonic communications, without prior approval by the probation officer.

The defendant shall provide to the probation officer any requested financial information.

The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

DEFENDANT: ROBERT EUGENE STALLINGS
 CASE NUMBER: 3:19-CR-00217-D(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$100.00	\$1,451.42	\$0.00	\$0.00	

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution of \$1,451.42 to:

CITY OF DALLAS

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT EUGENE STALLINGS
 CASE NUMBER: 3:19-CR-00217-D(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

See special condition of supervision regarding restitution, as if set forth in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

1 You may go to the same place together on the break,
2 but remember not to talk about the case.

3 | we will resume at 10:45.

4 SECURITY OFFICER: All rise.

5 (Jury out)

6 (Recess from 10:15 to 10:45)

7 SECURITY OFFICER: All rise for the jury.

8 (Jury in)

9 THE COURT: Be seated, please.

10 You may proceed, counsel.

11 MS. EGGLERS: Thank you, Your Honor.

12 DESTINY O'DANIEL, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

13 DIRECT EXAMINATION CONTINUED

14 | BY MS. EGGERS:

15 Q. Ms. O'Daniel, I just want to take a step back. I thought
16 I asked you a question, but now I'm not sure, okay?

17 A. okay.

18 Q. Does the Skillman branch have the ability to transmit
19 money via wire outside the state of Texas?

20 A. Yes, ma'am.

21 Q. Did I ask you that earlier?

22 A. Yes, ma'am.

23 Q. I thought I had, but I needed to make sure.

24 And what about exchanging currency? Does the
25 Skillman branch have the ability to convert or exchange foreign

1 currency for its customers?

2 A. Yes, ma'am.

3 Q. Did I ask you that earlier?

4 A. Yes, ma'am.

5 Q. Okay. I thought I had.

6 So let's go back to -- we were -- when we left off,
7 we had started talking about -- excuse me -- Government's
8 Exhibit 3. We were going to talk about the day of December 8,
9 2018.

10 Do you recall that?

11 A. Yes, ma'am.

12 Q. Okay. And you said that Ms. Rojas had alerted you that
13 Mr. Stallings was in the bank and he wanted to speak with you,
14 and you looked up and you didn't see him; is that correct?

15 A. That is correct. Yes.

16 Q. So looking at Government's Exhibit 3 -- I'm going to go to
17 page 5. Is this just, so we can see, southward inside the
18 bank?

19 A. That is correct. Yes.

20 Q. Okay. And page 6, that's looking north; is that correct?

21 A. That is correct.

22 Q. Okay. Going back, then, you mentioned something about the
23 drive-through area just before we left?

24 A. Yes.

25 Q. You said you looked around the inside, didn't see him.

1 But then where did you see Mr. Stallings after you had been
2 alerted by Ms. Rojas that he was there and then he's not inside
3 the bank?

4 A. I saw him going south through my driveway.

5 Q. Okay.

6 A. Or drive-up. Sorry.

7 Q. And so is that what we're able to see on page 2?

8 A. From that angle, yes.

9 Q. Okay. And so this still just looks south sort of towards
10 Skillman --

11 A. That is correct.

12 Q. -- is that correct?

13 Okay. Describe --

14 THE COURT: You're stepping on each other again.

15 MS. EGGERS: I'm sorry.

16 THE WITNESS: Sorry.

17 THE COURT: Go ahead.

18 BY MS. EGGERS:

19 Q. This looks south?

20 A. Yes.

21 Q. Okay. I'm going to show you what's been marked as
22 Government's Exhibit A without objection. It's just a
23 demonstrative exhibit.

24 Are you able to recognize what we see here in this
25 Google Earth photo?

1 A. Yes, ma'am.

2 Q. Okay. And down here where -- using the clicker, does it
3 say Wells Fargo Bank?

4 A. That is correct.

5 Q. If you would, Ms. O'Daniel, describe to the members of the
6 jury where you observed the Defendant walk after you saw him
7 walk through the drive-up, what direction you saw him travel.

8 A. I observed him travel south, go across Skillman, and into
9 Cindy's Liquor.

10 Q. Okay. And do we see on the bottom side of Demonstrative
11 Exhibit A -- does it actually have a marker where Cindy's
12 Discount Liquor is located?

13 A. Yes, ma'am.

14 Q. And so that street that runs between, that's the Skillman
15 Street that you were describing?

16 A. That is --- that is correct. Yes.

17 Q. Now, out in front of Cindy's Discount Liquor, is there a
18 -- what appears to be a little marker for a bus stop?

19 A. Yes, ma'am. That is correct.

20 Q. And then also if someone wanted to go south on a bus, is
21 there a bus stop on that side of Skillman as well?

22 A. Yes, ma'am. That is correct.

23 Q. Okay.

24 THE COURT: I'm going to give the jury an instruction
25 concerning demonstrative.

1 Members of the jury, when an exhibit is used as a
2 demonstrative, that means it's being used in the trial itself
3 and it will not be available to you in the jury room during
4 your deliberations. And if you find that the demonstrative is
5 in any respect inaccurate, you are instructed to disregard it
6 to that extent.

7 MS. EGGERS: Thank you, Your Honor.

8 BY MS. EGGERS:

9 Q. So the Wells Fargo Bank, we've seen that there is actually
10 video footage of the December 8th incident; is that correct?

11 A. Yes, ma'am.

12 Q. Okay. I'm going to show you Government's Exhibit Number
13 4.

14 (Video played)

15 Q. Are you able to see yourself on the video?

16 A. Yes, ma'am.

17 Q. And were you speaking with Ms. Greenfield there?

18 A. Yes, ma'am.

19 Q. Okay. So I'm going to actually back it up.

20 And you've -- have you had an opportunity to see this
21 video before today?

22 A. Yes, I have.

23 Q. Okay. I'm going to start at the beginning. Since my eyes
24 are not so good, I'm going to play the video, and I'm going to
25 try and pause it.

1 (video played)

2 Q. Are you able to see the time that is on the screen right
3 there?

4 A. Yes, ma'am.

5 Q. What time is on your -- your computer monitor?

6 A. 10:39 a.m.

7 | Q. So this would be 10:39 a.m. on December 8, 2018?

8 | A. That is correct.

9 Q. Okay. Your computer system there at Wells Fargo Bank, are
10 y'all's computer times accurate?

11 A. 100 percent.

12 | Q. Okay. So this is at 10:39 a.m.?

13 A. Yes.

14 (video played)

15 Q. These teller windows, Ms. O'Daniel, what's behind -- if
16 the teller was sitting there looking and speaking with the
17 customer, what would be directly behind them?

18 A. A printer and a cashier's check and personal money order
19 printer, as well as our TV screen that does the weather and
20 local news.

21 Q. And is the tellers that sit at the drive-through window,
22 are there some more back there as well? Are they in the area?

23 where are the people that sit at the drive-through?

24 A. The people that sit at the drive-through are actually
25 directly behind this video that you can see.

1 Q. Okay.

2 (Video played)

3 Q. I'm going to just pause right there.

4 Do you see a man with a hat, looks to be like a coat,
5 collared shirt, standing there?

6 A. Yes, ma'am.

7 Q. Do you see that?

8 And does it appear as though there is a bag sitting
9 down here in the bottom left-hand corner?

10 A. Yes, ma'am.

11 Q. So that's approximately 2 minutes and 29 seconds in.
12 Would you agree?

13 A. Yes, ma'am.

14 Q. Okay. I'm going to keep hitting play.

15 (Video played)

16 Q. Is that Ms. Rojas coming across the screen there?

17 A. That is correct. Yes.

18 (Video played)

19 Q. Would it have been around this time that you were alerted
20 that Mr. Stallings had come into the bank and that he was
21 asking to speak with you?

22 A. Yes. That is correct.

23 Q. After you saw what you believe to be Mr. Stallings walking
24 across the street, you said you saw him go where?

25 A. Into Cindy's Liquor.

1 Q. After you saw that, what, if anything, did you do? Did
2 you call anyone?

3 A. Yes, I did. I contacted my Wells Fargo local security
4 agent, Corinthia, who instructed me to contact Security
5 Response Center, which I then followed, as well as contacted
6 the police department per instructions with the Security
7 Response Center, and then followed by my district manager.

8 Q. So you made a total of four calls?

9 A. That is correct.

10 (Video played)

11 Q. Is that you walking across the screen there?

12 A. That is correct.

13 Q. At approximately five minutes and 35 seconds in?

14 A. That is correct.

15 Q. Do you know what you went and did right there?

16 A. I went to retrieve my phone so that way I could contact
17 the police department.

18 Q. I'm going to pause it right there.

19 You have got a monitor that might be a little bit
20 better than my laptop monitor.

21 In watching this video, are you able to see any
22 reflection of yourself in the video?

23 A. Yes. That is correct.

24 Q. And is it -- are you right over here?

25 A. I am -- yes. Yes.

1 Q. Sort of right there?

2 A. Yes. That is correct.

3 Q. So you're on the inside of the bulletproof -- is that
4 bulletproof glass?

5 A. Yes, it is.

6 (video played)

7 Q. Looks like you're back at your computer; is that correct?

8 A. That is correct.

9 Q. Do you know what you were doing there?

10 A. I was pulling up the information that was sent from our
11 previous discussion of the October incident.

12 Q. So had you actually -- in addition to the notes, had you
13 sent any email to your higher-up, so to speak, the security
14 personnel, after that October 5th incident --

15 A. Yes.

16 Q. -- occurred?

17 And is that what you are looking for there?

18 A. That is correct.

19 (video played)

20 Q. So that looks to be about a total of 9:43, approximately
21 10-minute-long video; is that right?

22 A. That is correct. Yes.

23 Q. Now, you said you called Corinthia. And what was her
24 position again?

25 A. She is our Wells Fargo security agent.

1 Q. A security agent. And then you called the SRC. What's
2 the SRC?

3 A. Security Response Center.

4 Q. Okay. And did they tell you to go running from the
5 building, or what did they tell you to do?

6 A. They did instruct me to contact the police, as well as to
7 remove the bags from my branch.

8 Q. Your -- the people that are sitting in some other building
9 told you to remove the bags?

10 A. Yes, ma'am.

11 Q. Did you contact the police?

12 A. I did.

13 Q. Did you place a 911 call to the Dallas Police Department?

14 A. Yes, I did.

15 Q. Previously admitted pursuant to agreement, I'm going to
16 publish Government's Exhibit Number 5.

17 (Audio played)

18 Q. I'm going to stop you right there.

19 Did you say, "My Security Response team wants to
20 press criminal trespass charges"?

21 A. That is correct. Yes.

22 Q. These are the people that aren't sitting in the building
23 with the two bags sitting there?

24 A. That is correct.

25 Q. Okay.

1 (Audio played)

2 Q. I'm just going to pause it there.

3 You gave her your cell phone number at that point; is
4 that correct?

5 A. That is correct. Yes.

6 Q. And then is the call over after that?

7 A. Yes, ma'am.

8 Q. Okay. Now, did members of the Dallas Police Department
9 respond to your location?

10 A. Yes, they did.

11 Q. Okay. Going back to Government's Exhibit A, the
12 demonstrative exhibit, did y'all just stay in the bank while
13 the police came in and cleared it, or what did y'all do?

14 A. We stayed in the branch until the police department did
15 show up, per the instructions of my district manager.

16 Q. And who is your district manager?

17 A. Mark Koch.

18 Q. Okay. So Mr. Koch told you to wait until the police got
19 there?

20 A. And follow their instructions afterwards.

21 Q. Okay. And what instructions, if any, were you given once
22 the police department, the law enforcement officers responded?

23 A. The police department did ask for me to evacuate the
24 branch, as well as including my customers and my team members.

25 Q. Prior to them telling you to evacuate the branch, had you

1 given one or more officers just a general description of what
2 had happened and who this person was?

3 A. Yes, I did.

4 Q. And so where did y'all -- where did you and the other
5 members of your branch go to at that point?

6 A. We went to our meeting place, which is located across the
7 street.

8 Q. Okay. Is that Jake's?

9 A. That is correct.

10 Q. Okay. Looking at Government's Exhibit A, the
11 demonstrative exhibit, do we see Jake's Burgers and something
12 right there?

13 A. Yes. That is correct.

14 Q. Now, did you immediately go over to where the other
15 members of the Wells Fargo team were located, or did you stay
16 back?

17 A. I was instructed to stay back per the Dallas Police
18 Department.

19 Q. What did you have to do when staying back?

20 A. I had to provide them keys to the branch to access it, as
21 well as to give a description of the gentleman and inform other
22 police department -- police officers which location and
23 direction I saw him going in.

24 Q. Okay. So you had to -- as the -- I hate to say the one in
25 charge, but as the branch manager, you are the one in charge;

1 is that fair?

2 A. That is correct.

3 Q. So you had to tell the law enforcement officers what --
4 give them the facts, so to speak; is that correct?

5 A. Yes.

6 Q. Okay. And so were you able to see -- I mean, ultimately
7 did a bomb squad show up?

8 A. Yes, they did.

9 Q. Did they show up immediately?

10 A. No, they did not.

11 Q. Did some time pass before they got there?

12 A. Very much so.

13 Q. While you were waiting, at some point did you move over to
14 where your team members were over at Jake's?

15 A. Once the police officers released me, they instructed me
16 to go wait with the rest of my team.

17 Q. Okay. And while -- while all this was going on, were you
18 ever sent any photographs to see if you or anybody on your team
19 could identify the person that had left those bags in the bank?

20 A. Yes, ma'am. One of the police officers did send me the
21 photo.

22 Q. Okay. Before getting that photo from the police officer,
23 had you given the name of the Wells Fargo customer?

24 A. Yes.

25 Q. Okay. Gave him --

1 A. And date of birth.

2 Q. Okay. So you got that off the account information?

3 A. Yes, I did.

4 Q. Okay. Name and date of birth.

5 MS. EGGERS: If I may have one moment, Your Honor.

6 (Pause)

7 BY MS. EGGERS:

8 Q. I'm going to show you what's previously been admitted into
9 evidence as Government's Exhibit Number 11.

10 Do you recognize Government's Exhibit Number 11?

11 A. Yes, I do.

12 Q. And is that the photo that you were sent --

13 A. Yes.

14 Q. -- by one of the police officers?

15 How did he send it to you?

16 A. via text message.

17 Q. And once you got it via text message, what did you do with
18 it?

19 A. I then forwarded it to my two personal bankers, Aracely
20 Rojas and Samantha Greenfield --

21 Q. Okay.

22 A. -- to have them verify the identity.

23 Q. And once they did that, did you notify the law enforcement
24 officer?

25 A. Yes, I did.

1 Q. So according to your computer, it was approximately 10:39.
2 Is that what it was on the -- when that video started, that
3 10-minute video?

4 A. Yes, ma'am.

5 Q. Okay. So that's 10:39.

6 Y'all -- your bank was supposed to be open that day
7 until 1:00. Is that what you said earlier?

8 A. That is correct.

9 Q. Approximately how -- or approximately what time did y'all
10 come back from Jake's? Approximately what time were y'all
11 allowed back into your bank?

12 A. Around 3:00 p.m.

13 Q. So y'all didn't get to open back up that day?

14 A. That is correct.

15 Q. While y'all were down there, since this is Skillman and
16 Abrams -- I mean, that's a major intersection. Did you notify
17 any of the surrounding banks that they might have customers
18 that need to come see them since y'all are closed for business?

19 A. Yes, I did.

20 Q. Which branches did you notify?

21 A. I notified our Abrams and Royal location, as well as our
22 Lovers and Greenville, inside Tom Thumb. I notified their
23 branch managers.

24 Afterwards, then I sent an email -- or I sent a text
25 message to my regional service support consultant, who notified

1 the other branches just in case. I don't have their contact
2 information.

3 Q. Now, you said Abrams and Royal, so would that be north of
4 where you were at Abrams and Skillman?

5 A. Yes, it is.

6 Q. Who is the branch manager up there?

7 A. Amela Saric.

8 THE COURT: Do you have the spelling of that name?

9 THE WITNESS: A-M-E-L-A, and then S-A-R-I-C.

10 BY MS. EGGERS:

11 Q. And as a result of y'all having to go across the street to
12 Jake's that day, was there an impact upon the Wells Fargo
13 Bank's business there at your branch location?

14 A. Yes, there was.

15 Q. Now, you said Ms. Saric, the branch manager of Abrams and
16 Royal. You said that you did notify her; is that correct?

17 A. Yes. That is correct.

18 Q. Because maybe some of her people might come up -- or your
19 people might go up there?

20 A. That is correct.

21 Q. Is that right?

22 A. Yes.

23 Q. During that process, did you provide Ms. Saric a copy of
24 the photo of the person?

25 A. Not until after we were already dismissed for the day.

1 Q. Okay. So you gave that to her just so she would be on the
2 lookout, so to speak, as well?

3 A. That is correct.

4 Q. Ms. O'Daniel, let me ask you, in light of your prior
5 interactions of that October 5th incident, did you have any
6 concern about what was in those bags?

7 A. Yes, I did.

8 Q. Did you have any concern that the bags may contain
9 explosives that would damage the building and injure yourselves
10 and others that were in the bank?

11 A. Yes.

12 Q. Did you have any concern that the bags may contain an
13 explosive that would destroy the bank and/or injure yourself
14 and others?

15 A. Yes.

16 Q. Let me ask you this. I mean, you sat in that bank for 10
17 minutes at least. I mean, you know, we see the video. About
18 two -- however long in, the bags are placed there. You're
19 sitting there.

20 why didn't you just go run screaming from the bank,
21 Ms. O'Daniel?

22 A. Not our procedures. But I did instruct my team to come
23 back behind the bulletproof glass.

24 Q. After -- I'm going to go back in time to Government's
25 Exhibit 2.

1 After that October 5th incident, when you notified
2 the SRC and the local security agent, did you -- did you
3 believe that the Defendant was no longer going to be a customer
4 of the Wells Fargo Bank?

5 A. Yes, I did.

6 Q. Okay. And since that time, have you learned that -- I
7 mean, obviously, you walked back in on December 8th. Did you
8 learn that between October 5th and December 8th that actually
9 he was still a continued customer of Wells Fargo?

10 A. Yes.

11 Q. And were you recently asked to determine the branches that
12 he went to after the encounter on October 5, 2018?

13 A. Yes, I was.

14 Q. So I'm going to -- you said that the procedure that y'all
15 had -- and I'm going to ask you this again. The procedure you
16 had at your bank is if somebody doesn't have an ID or their
17 debit card, they're allowed to get a \$25.00 courtesy
18 withdrawal; is that correct?

19 A. That is my branch discretion there. Every branch has its
20 own discretion.

21 Q. Okay. So that's your branch's discretion; is that
22 right?

23 A. That is correct.

24 Q. There are a lot of other Wells Fargo Banks in Dallas-Fort
25 Worth?

1 A. That is correct.

2 Q. Others open on Saturday?

3 A. Yes, ma'am.

4 Q. So looking at Government's Exhibit 2 -- we've already
5 learned that this goes in reverse order. So I'm going to
6 utilize you, Ms. O'Daniel.

7 The entry here -- and I don't think I asked you.

8 Government's Exhibit 2, what is this? I mean, it's not a bank
9 statement. What is it?

10 A. This is an undeliverable address that has been notated for
11 a delivery of a debit card, and then it was returned back to
12 Wells Fargo and then it was destroyed for the reasons that
13 there was no new address on file to forward that information
14 to.

15 Q. Okay. So you're one step ahead of me. So -- but this
16 overall, these notes that we're going to be looking at, are
17 these -- is there a name for these notes?

18 A. Banker notes.

19 Q. Banker notes.

20 Okay. And so this particular June of 2017, you said
21 it's a return debit card; is that correct?

22 A. That's correct.

23 Q. Okay. Let's go to June 30th of 2017.

24 What's that entry?

25 A. This is for a return statement.

1 Q. Let's go to July 17, 2017.

2 what is the entry there?

3 A. For a returned debit card as well.

4 Q. Well, I want to make sure I understand. This isn't you,
5 Destiny O'Daniel, doing this. This is somewhere in Wells Fargo
6 Bank system where these entries are being made; is that
7 correct?

8 A. That is correct.

9 Q. Okay. Let's go to July 20th.

10 A. Returned statement.

11 Q. August 9, 2017?

12 A. A returned debit card.

13 Q. August 28, 2017?

14 A. A returned debit card.

15 Q. September 19, 2017?

16 A. Returned debit card.

17 Q. October 4, 2017?

18 A. A returned statement.

19 Q. October 16, 2017?

20 A. A returned statement.

21 Q. Let me go to page 2, because they're in reverse order.

22 October 19, 2017?

23 A. A returned statement.

24 Q. November 13, 2017?

25 A. A returned statement.

1 Q. January 17, 2018?

2 A. A returned statement.

3 Q. April 10, 2018?

4 A. A returned statement.

5 Q. Now, July 3, 2018, looks different?

6 A. That is correct.

7 Q. Read that one aloud for us.

8 A. "Assisted customer with withdrawing \$100.00 from his
9 account since his wallet was stolen. I PIN validated the
10 customer. I also let him know that this was a onetime
11 courtesy, that he needed to take the funds and get an ID."

12 Q. Okay. Now, this says July 3, 2018. And it looks like it
13 was Patrice Bowden; is that correct?

14 A. That is correct.

15 Q. Okay. Did she work there at your location or --

16 A. Not at the Skillman and Abrams location.

17 Q. Okay. So it says, "Assisted customer with withdrawing
18 \$100.00 from his accounts."

19 So you mentioned ago that your policy is a \$25.00
20 courtesy withdrawal?

21 A. That is correct.

22 Q. But this is a different branch. They did a courtesy of
23 \$100.00; is that correct?

24 A. That is correct.

25 Q. When it says, "I PIN validated the customer," that's

1 something they were able to do at whatever branch Ms. Bowden
2 was at?

3 A. That is correct.

4 Q. And according to her notes, she told him it was a onetime
5 courtesy, that he needed to take the \$100.00 and get an ID?

6 A. That's correct.

7 Q. Is that correct?

8 A. That is correct.

9 Q. So that's July 3rd of 2018.

10 Let's go to August 4, 2018. If you would please read
11 that aloud.

12 A. "Customer is in Dallas, Texas. He does not have an ID.
13 He comes and tries to withdraw \$100.00 with cardless PIN and
14 security questions. Informed him he needs an ID for future
15 withdrawals."

16 Q. It's David Tumax; is that correct?

17 A. That is correct.

18 Q. Was he at your branch location?

19 A. No, he is not.

20 Q. Okay. August 8, 2018?

21 A. "Assisted customer with withdrawing \$100.00 from his
22 account since his wallet and belongings were inside the place
23 he was staying and his girlfriend kicked him out. I PIN
24 validated the customer, asked almost every token question, and
25 he was able to correctly -- he was able to answer correctly.

1 Also let him know this was a onetime courtesy for him."

2 Q. Juan -- or, I'm sorry. Joan --

3 MR. DE LA GARZA: Guardado.

4 BY MS. EGGERS:

5 Q. Guardado. Does Joan Guardado -- did she work at your
6 Skillman branch?

7 A. No.

8 Q. And then August 18, 2018?

9 A. "Assisted customer with withdrawing \$50.00 from his
10 account with alternate forms of ID."

11 Q. And that was Matthew -- or Markenous Matthews; is that
12 correct?

13 A. That is correct.

14 Q. Markenous Matthews, did he work at your branch?

15 A. No.

16 Q. I mean, here's the \$1 million question, I guess. Why not
17 just let him keep on withdrawing \$25.00 every single day from
18 here in perpetuity?

19 why do you have the policy of making it a onetime
20 thing?

21 A. Because we need to make sure that we authenticate our
22 customers, and in doing that we require specific forms of ID,
23 including the debit card in hand with them card -- with them
24 swiping it and inputting in the PIN number.

25 If they're not able to have their debit card on hand,

1 then we do require their physical ID --

2 Q. And so --

3 A. -- whether it be a passport, state ID, driver's license.

4 Q. Can it just be a piece of paper with my photo or
5 somebody's photo on it?

6 A. No, it cannot.

7 Q. What about if I write my Social Security name -- or my
8 Social Security number and my date of birth and my name on it
9 and put that on my photo?

10 A. That is not a government-issued ID.

11 Q. And so you doing the courtesy of a onetime \$25.00, is that
12 something you as the branch manager have discretion to do?

13 A. Yes.

14 Q. Let's go to the first page that we started with.

15 what's the entry on August 25, 2018?

16 A. Returned debit card.

17 Q. And then September 11, 2018?

18 A. A returned statement.

19 Q. And then we obviously saw earlier your entry on October
20 5th, so I'm not going to ask you to read that.

21 October 17th?

22 A. Returned statement.

23 Q. December 4, 2018?

24 A. "Customer came in to do a withdrawal from his account
25 total of \$120.00. He doesn't have an ID right now but I was

1 able to authenticate him."

2 Q. And that Wells Fargo employee, did he work at your bank --

3 A. No.

4 Q. -- location?

5 And then December 10, 2018, what is the --

6 A. That is a hard hold that was placed on his account.

7 Q. And so the events that we're here about are December 8,
8 2018, which was a Saturday; is that correct?

9 A. That is correct.

10 Q. So this would be the following Monday?

11 A. That is correct.

12 Q. So getting back to -- I sort of started off going through
13 this with you.

14 Again, were you recently asked to determine if the
15 Defendant went to any branches after you notified SRC and Wells
16 Fargo local security?

17 A. Yes, I was.

18 Q. And we're obviously able to see that December 4th entry,
19 but in looking at the statements and pulling the records, were
20 you able to see that there were other branches and additional
21 withdrawals that were conducted by the Defendant in that
22 two-month period?

23 A. Yes, ma'am.

24 Q. Okay. I'm going to show you -- I'm sorry.

25 MS. EGGERS: I apologize, Your Honor. I have just

1 lost power.

2 (Pause)

3 MS. EGGERS: I apologize, Your Honor.

4 BY MS. EGGERS:

5 Q. I'm going to show you what's been marked as Government's
6 Exhibit Number 1.

7 Are you able to see that?

8 A. Yes.

9 Q. Okay. And Government's Exhibit number 1, what is that?

10 A. This is an account application.

11 Q. Okay. And according to this account application, the
12 store name for this Wells Fargo Bank location was what?

13 A. Mobil, Maine.

14 Q. Okay. Have you ever heard of Mobile, Alabama?

15 A. Yes.

16 Q. Okay. Does Wells Fargo have banks in Alabama?

17 A. Yes.

18 Q. Okay. And what was the date that the account was opened?

19 A. May 1, 2017.

20 Q. Okay. And the name on the account, was it Robert E.
21 Stallings.

22 A. That is correct.

23 Q. Okay. And the address at the time the account was opened,
24 was it in Wisconsin?

25 A. That's what it appears, yes.

1 Q. Okay. So that's page 1. Let's go to page 66.

2 Okay. So I'm going to ask you about the statements
3 between -- that show us the activity between October 5th, when
4 that incident happened that you described earlier -- go through
5 those statements to December 8, 2018.

6 A. Okay.

7 Q. So this statement that we're looking at here, page 66 of
8 Government's Exhibit 1, would that be a statement that covers
9 that time period after October 5th?

10 A. Yes.

11 Q. Okay. So let's go to the next page, page 67.

12 And looking at it, after October 5th, how many
13 withdrawals are there?

14 A. There are three.

15 Q. Okay. And have you brought with you your notes so you
16 could tell this jury what the different branch locations are?

17 A. Yes, ma'am.

18 MS. EGGERS: If I may have one moment, Your Honor.

19 (Pause)

20 BY MS. EGGERS:

21 Q. Okay. So the first one was October 15th; is that correct?

22 A. That is correct.

23 Q. Let's go to page 133.

24 Okay. Looking at -- and if you need to -- because
25 obviously you can't memorize things like this. If you need to

1 refer to your notes, that's fine.

2 So looking at Government's Exhibit 133, the
3 withdrawal slip that we see here on October 15, 2018, for
4 \$80.00 that we saw on the left-hand side, what branch location
5 was that?

6 A. That one is at 3701 Belt Line Road, Addison, Texas.

7 Q. Okay. Let's go to page 134.

8 Looking at Government's Exhibit Number 1, page 134,
9 that \$100.00 withdrawal, what branch location was that?

10 A. This one is done at 2601 Lakeview Parkway, Rowlett, Texas.

11 Q. Okay. Now, I want to ask you a question.

12 (Pause)

13 Q. So there were two on October 15th that we saw here. Do
14 you see that?

15 A. Yes.

16 Q. Okay. And this withdrawal slip says 10-13 up at the top,
17 but let's look here at the bottom. What's it say down here
18 according to the date?

19 A. For the business day of October 15th.

20 Q. Okay. So if I come into Wells Fargo and make a withdrawal
21 on October 13th, which happens to be a Saturday, what day is it
22 going to actually come out, show up on the records?

23 A. It will reflect for Monday's business day.

24 Q. Okay. And you said -- again, page 134, that was -- what
25 address was that again?

1 A. 2601 Lakeview Parkway, Rowlett, Texas.

2 Q. Okay. Let's go to page 135.

3 This withdrawal for \$50.00 on October 24th, what
4 address was that?

5 A. This one is at 1421 North Central Expressway, Plano, Texas
6 75075.

7 Q. Okay. So that takes us through that statement.

8 So let's go to page 70 -- or page 69. Is this the
9 next month's statement?

10 A. Yes. That is correct.

11 Q. Okay. So going to page 70, are there multiple withdrawals
12 listed?

13 A. Yes, there are.

14 Q. Okay. The first one being on what date?

15 A. October 29th.

16 Q. So let's go to page 136 on the right-hand side.

17 what was the branch location for October 29th?

18 A. 1445 Ross Avenue, Dallas, Texas.

19 Q. In looking at the statements after that withdrawal, there
20 appears to be a deposit; is that correct?

21 A. That is correct.

22 Q. And then the next withdrawal is on what day?

23 A. November 2nd.

24 Q. So let's go to page 137.

25 what was the branch location for that November 2nd

1 \$150.00 withdraw.

2 A. 5352 North Garland Avenue, Garland, Texas.

3 Q. And then do we have a November 9th withdrawal?

4 A. Yes, we do.

5 Q. Okay. Let's go to page 138, then.

6 And what was the location for that November 9th
7 withdrawal on page 138?

8 A. 1405 East Renner Road, Richardson, Texas.

9 Q. And then does there appear to be two -- two withdrawals
10 according to the statement date of November 13th?

11 A. Yes. That is correct.

12 Q. Let's go to page 139.

13 what is the location of this withdrawal?

14 A. 11730 Preston Road, Dallas, Texas.

15 Q. Okay. Now, that says November 13th up at the top; is that
16 correct?

17 A. That is correct.

18 Q. And it has the same date down at the bottom, November
19 13th. So we know we're not in a Saturday situation; is that
20 right?

21 A. That's correct.

22 Q. Okay. So let's then go to page -- do some Wells Fargo
23 Banks or other Wells Fargo Banks have cameras and that type of
24 thing?

25 A. Yes.

1 Q. So if -- if they are requested quickly enough, does the
2 Government have the ability to get copies of surveillance,
3 pictures from events and that type of thing?

4 A. Yes. That is correct.

5 Q. Okay. So let's go to page -- again, we were looking at
6 November 13th. I'm going to go to page 160.

7 Looking at page 160, does this appear to be
8 surveillance footage -- and this is all in Government's Exhibit
9 Number 1 -- surveillance footage from November 13, 2018?

10 A. That's what it appears, yes.

11 Q. Okay. And is there a man wearing -- looks like some type
12 of a baseball cap -- styled cap with a jacket on?

13 A. Yes.

14 Q. Appears to be a hood?

15 A. Yes.

16 Q. Not on the head but just a hooded jacket.

17 A white T-shirt with maybe some kind of blue-colored
18 shirt underneath?

19 A. Yes.

20 Q. So that's page 160.

21 Page 161, just another slide; is that correct?

22 A. Yes.

23 Q. Page 162, another slide. We can see a little bit more of
24 the man's face?

25 A. Yes.

1 Q. 163 --

2 A. Yes.

3 Q. -- the same?

4 And, finally, 164 as well; is that correct?

5 A. Yes.

6 Q. And so looking at those, that has -- the account number
7 ends in 3674; is that correct?

8 A. Yes.

9 Q. And the statement we've been looking at, is that the
10 account number ending in 3674?

11 A. Yes.

12 Q. So let's go back, then, to page -- Government's Exhibit 1,
13 page 140.

14 After November 13th, is there another one on November
15 13th listed?

16 A. For that business day, yes.

17 Q. Okay. And looking at page 140, what's the date of this
18 withdrawal ticket?

19 A. November 10, 2018.

20 Q. Okay. And according -- what's the business date for the
21 ticket itself?

22 A. November 13th.

23 Q. If there's a federal holiday or something like that, would
24 the same thing happen?

25 A. Yes. That is correct. It will refer to the next business

1 day.

2 Q. Okay. Okay. So that's page 140. Let's go to page 141.

3 Going back over here, is there a November 15th
4 withdrawal?

5 A. Yes. That is correct.

6 Q. And what's the branch location for page 141?

7 A. 8448 Abrams Road, Dallas, Texas.

8 Q. I don't know that I asked you. Page 140, what was the
9 branch location for page 140?

10 A. 3411 Inwood Road, Dallas, Texas.

11 Q. So two different branches?

12 A. Yes. That is correct.

13 Q. Okay. And you said 141 was -- what was the address?

14 A. 8448 Abrams Road, Dallas, Texas.

15 Q. You said Abrams Road earlier. Is that Ms. Saric, where
16 Ms. Saric is the branch manager?

17 A. I -- I do not know her --

18 Q. Okay.

19 A. -- her physical location.

20 Q. Okay. But she's on Abrams?

21 A. She is on Abrams.

22 Q. Okay. Let's go to page 142.

23 What is the branch location for page 142 of
24 Government's Exhibit 1?

25 A. 11730 Preston Road, Dallas, Texas.

1 Q. Okay. Now, the date up top, is that November 19th?

2 A. Yes, ma'am. That is correct.

3 Q. And then the date down at the bottom, is that November
4 19th as well?

5 A. Yes, it is. That is correct.

6 Q. So let's go to page 165.

7 Looking at 165, does this appear to be surveillance
8 footage from November 19th?

9 A. Yes, it does.

10 Q. Okay. That same account ending in 3674?

11 A. Yes, it does.

12 Q. And are we able to see a man -- it looks like a
13 baseball-style cap standing at the teller window?

14 A. Yes.

15 Q. A different color jacket on in this photo?

16 A. Yes.

17 Q. Some type of vest or something?

18 A. Yes.

19 Q. That's page 165. Let's go to 166.

20 Is that just a slightly different angle? We can see
21 the man hand's out --

22 A. Yes.

23 Q. -- holding his jacket open?

24 (Pause)

25 Q. Then the man -- a different angle on the man's face?

1 A. Yes.

2 Q. That's 166 -- or 167, excuse me.

3 168, are we able to see just a slightly different
4 angle?

5 A. Yes.

6 Q. Does the man appear to be wearing any jewelry?

7 A. Yes.

8 Q. And then page 169, just a different angle as well?

9 A. Yes.

10 Q. Okay. Let's go to page 143.

11 This withdrawal ticket, it looks to be dated November
12 13, 2018; is that correct?

13 A. Yes.

14 Q. This is page 143.

15 But looking down here at the bottom, what's the
16 actual transaction date?

17 A. For November 19, 2018.

18 Q. Okay. And what is the branch location for this November
19 19th withdrawal?

20 A. 10600 Forest Lane, Dallas, Texas.

21 Q. That's even a different branch. You have said a number of
22 branches thus far; is that right?

23 A. That is correct.

24 Q. Okay. Let's go to page 144.

25 This withdrawal dated November 21, 2018, what branch

1 | location is that?

2 A. 13050 Coit Road, Dallas, Texas.

3 Q. That's a different branch that you haven't called out
4 before?

5 | A. Yes.

6 Q. There are a lot of Wells Fargos here, huh?

7 A. Yes, ma'am.

8 Q. Okay. Let's go to -- I've just got one more statement.

9 | Go to page 73 of Government's Exhibit Number 1.

10 would this be the next chronological statement?

11 A. Yes, ma'am.

12 Q. Okay. And on the statement, does there appear to be a
13 deposit and then three withdrawals?

14 A. That is correct. Yes.

15 Q. And the withdrawal dates, are they December 3rd, 4th, and
16 December 6th?

17 A. Yes.

18 Q. So looking at this, we've got -- the deposit amount on the
19 statement on December 3rd is how much?

20 A. \$583.00.

21. Q. The same day, how much is withdrawn?

22 A. \$50.00.

23 o. The next day, how much is withdrawn?

24 A. 120.

25 9. The next day -- or, excuse me. Two days later. December

1 6th, how much is withdrawn?

2 A. \$200.00.

3 Q. So does that mean as of December 8th, according to the
4 statement, there would have been \$269.00 in the account?

5 A. That is correct.

6 Q. Okay. So let's look at the deposit slips for those three
7 dates.

8 The date of this deposit or -- I'm saying deposit --
9 withdrawal slip is what?

10 A. It is for calendar date December 1, 2018.

11 Q. And the business date is what?

12 A. December 3, 2018.

13 Q. What branch location was this?

14 A. 4020 Belt Line Road, Addison, Texas.

15 Q. Let's go to page 146.

16 Looking at this withdrawal ticket for December 4,
17 2018, what was the branch location for this \$120.00 withdrawal?

18 A. 13050 Coit Road, Dallas, Texas.

19 Q. Now, you did say that one earlier?

20 A. Yes, ma'am.

21 Q. Okay. So let's go to Government -- Government's Exhibit
22 1, page 155.

23 Does this appear to be surveillance footage from that
24 December 4, 2018 withdrawal?

25 A. Yes, ma'am.

1 Q. Okay. Same account, 3674; is that correct?

2 A. That is correct.

3 Q. If you would, describe what the individual shown in the
4 surveillance footage is wearing that day.

5 A. He is wearing a hat, a white shirt, and a tie with what
6 appears to be a jacket.

7 Q. Okay. Looks like a suit jacket or --

8 A. Yes.

9 Q. Is it a white-collared shirt that one would wear with a
10 tie?

11 A. That is correct.

12 Q. Page 156, is that just a different angle?

13 A. Yes.

14 Q. Page 157, the same thing, just a different angle?

15 A. Yes.

16 Q. 158, just slightly moving the camera, it looks like --

17 A. Yes.

18 Q. -- or movements?

19 And then, finally, 159, a different angle as well?

20 A. Yes.

21 Q. Okay. So then let's go to the last one. Since this is
22 December 4th, and we had one more withdrawal on December 6th,
23 let's go to page 147.

24 what branch location was the December 6, 2008 [sic]
25 withdrawal?

1 A. 4771 Saturn Road, Garland, Texas.

2 Q. I don't see that you've said that one before, have you?

3 A. No, I do not believe so.

4 Q. Okay. So let's go to page 150.

5 Does this appear to be the surveillance footage from
6 that date?

7 A. Yes, it does.

8 Q. Same account number. And now our date is December 6,
9 2018?

10 A. Yes.

11 Q. Does this appear -- man appear to have on either a red or
12 pinkish-colored shirt?

13 A. Yes.

14 Q. There appears either a coat or a jacket?

15 A. Yes.

16 Q. Blue or black coloring?

17 A. Yes.

18 Q. And then a brimmed cap as well?

19 A. Yes, ma'am.

20 Q. So that's page 150.

21 151, just another slight movement?

22 A. Yes.

23 Q. Okay. Let me ask you. Look at this right here. Are you
24 able to see something right there, like papers or something?

25 A. Yes.

1 Q. Appears to be a photo right there?

2 A. Yes.

3 Q. Maybe some writing or some kind of text below the photo?

4 A. Yes.

5 Q. That's page 151. Let's go to 152.

6 Just a different angle. And you see the teller is
7 now presumably Mr. Mark -- the Markenous individual there.

8 Do we see him handing money up there?

9 A. Yes.

10 Q. 153, just a different angle?

11 A. Yes.

12 Q. 154, a different angle as well?

13 A. Yes.

14 Q. Okay.

15 MS. EGGERS: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 (Pause)

18 BY MS. EGGERS:

19 Q. You went through those addresses, and I didn't ask you an
20 account. If you would, go through your notes and then be ready
21 to tell me how many total different branches of those dates
22 that we went through.

23 And I've given you, for the record, just a little pad
24 if you need to write anything down.

25 (Pause)

1 Q. How many different branches?

2 A. 13 branches.

3 Q. Were y'all the only Wells Fargo Bank open on December 8,
4 2018, to your knowledge?

5 A. No, we were not.

6 Q. Once those bags were left there and you became alerted to
7 them, you -- we can see your shadow, so to speak. You're on
8 inside of the bulletproof glass; is that correct?

9 A. That is correct. Yes.

10 Q. Did you -- did you ever personally go and open up any of
11 those bags?

12 A. No, ma'am.

13 Q. Why not?

14 A. I didn't want to have my fingerprints on them.

15 Q. Were you concerned for your safety and the safety of the
16 building?

17 A. Yes, ma'am.

18 Q. Did you tell any of the employees that worked for you,
19 "Hey, you go check it out"?

20 A. No, ma'am. I instructed them to get as far away back
21 behind the bulletproof glass.

22 Q. Now, you mentioned earlier that you had -- at the end of
23 the day and once everything was over, you gave a copy of
24 Government's Exhibit Number 11 -- or you sent a copy of
25 Government's Exhibit Number 11 to Ms. Saric; is that right?

1 A. That is correct.

2 Q. And, again, that was just to alert her as to the
3 individual and give her a photo; is that correct?

4 A. Yes.

5 Q. You're probably going to be asked, so I'm going to ask
6 you. After -- did you see once the bomb squad left?

7 A. Yes.

8 Q. Okay. I mean, did they have a different kind of vehicle
9 and different outfits and that kind of stuff?

10 A. Yes. That is correct.

11 Q. Did the police ever come in and tell you what was in the
12 bags?

13 A. No.

14 Q. Okay. You just knew that the FBI had been alerted?

15 A. Yes.

16 Q. Okay. And then you ended up getting interviewed by law
17 enforcement after that, be it the FBI agent or DPD; is that
18 correct?

19 A. Yes. That is correct.

20 Q. I'm going to ask you, have I met you before coming here
21 today?

22 A. Yes.

23 Q. Okay. Met you how many times?

24 A. About five different times, I would say.

25 Q. You've met me five different times?

1 A. I think so. Has it been that many? Three maybe? Three.

2 Yeah. No more.

3 Q. And did you have to go pull these records and that kind of
4 thing?

5 A. Yes, ma'am.

6 Q. Okay. Now, you said that you alerted Ms. Saric.

7 when is the next time after the police left on
8 December 8th -- y'all are allowed to go back into the bank, you
9 said, approximately 3:00?

10 A. Yes. That is correct.

11 Q. The tellers have to close up. Did y'all have to take care
12 of the vault and do all the other stuff?

13 A. Yes, ma'am.

14 Q. Okay. So y'all did that.

15 when is the next time that you heard information
16 about Mr. Stallings?

17 A. Monday morning at approximately 9:00 a.m.

18 Q. Who?

19 A. From Amela Saric.

20 Q. That's Ms. Saric --

21 A. Yes.

22 Q. -- up at that Abrams branch?

23 A. Yes.

24 Q. Okay. And what did Ms. Saric notify you of?

25 A. That Mr. Stallings had just walked into her branch.

1 Q. As a result of being notified that Mr. Stallings had
2 walked into her branch, did you later learn that he had left
3 her branch?

4 A. Yes, I did.

5 Q. And what did you do as a result of learning he was no
6 longer inside her branch?

7 MS. MORGAN: Objection, relevance.

8 THE COURT: Overruled.

9 BY MS. EGGERNS:

10 Q. What did you do as a result of learning that he was no
11 longer inside of her branch?

12 A. I immediately called my district manager Mark Koch for
13 directions on how I should proceed.

14 Q. And what did you do?

15 A. He instructed me to post a team member at each entry of
16 our branch and then if we saw him come into our branch to
17 immediately lock the doors.

18 Q. Were you concerned that he might try and come back on
19 December 10th?

20 A. Yes, ma'am.

21 MS. EGGERNS: May I have one moment, Your Honor?

22 THE COURT: You may.

23 (Pause)

24 MS. EGGERNS: Nothing further, Your Honor, at this
25 time. I'll just get my stuff.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MS. MORGAN:

4 Q. Good morning, Ms. Daniel [sic].

5 A. Good morning.

6 Q. O'Daniel. I'm sorry.

7 So who was it who decided to close the branch?

8 A. Dallas Police Department is the one that asked me to
9 evacuate.

10 Q. Okay. All right. Now, you talked to the police
11 informally on that day many times?

12 A. Yes. That is correct.

13 Q. All right. And then you were interviewed by Agent
14 Keighleigh and Corporal Walton from Dallas Police Department on
15 January 15th of 2019?

16 A. Yes. That is correct.

17 Q. All right. And then obviously you've spoken with the
18 Government attorneys and Agent Keighleigh multiple times since
19 then?

20 A. Yes. That is correct.

21 Q. All right. Now, I want to talk a little bit about making
22 a withdrawal.

23 A. Okay.

24 Q. We've talked a lot already about needing a bank card. If
25 you don't have a bank card, you need a government ID.

1 Now, if someone loses their government ID and their
2 bank card, how do they replace them?

3 I mean, you don't have to tell me how to replace the
4 ID. I know that's not your wheelhouse. But how does a person
5 replace their debit card?

6 A. Through the 1-800 customer number, and then they will
7 reissue a card out to the customer.

8 Q. Okay. And that's something that has to be mailed to their
9 home address?

10 A. That is correct.

11 Q. All right. And that's part of why when you were speaking
12 with the Government you were going through all those mailings
13 to Mr. Stallings -- attempted mailings to addresses that were
14 no longer his?

15 A. That is correct.

16 Q. All right. Okay. So there's no way to get a card in the
17 bank without a government ID?

18 A. That is correct. Yes.

19 Q. All right. But if a person doesn't have their ID, they
20 can still access their money.

21 You mentioned that you had a bank policy. Your
22 branch policy was \$25.00?

23 A. That is correct. Yes.

24 Q. All right. And that's if they didn't have a debit card
25 and they didn't have an ID?

1 A. That is correct. Yes.

2 Q. All right. And you've made it very clear that's your
3 policy?

4 A. That is -- it is up to branch discretion, and that is my
5 discretion at my -- at every branch that I have ever been at.

6 Q. Okay. But, obviously, it's not universal?

7 A. That is correct. Not every branch manager allows a
8 withdrawal done without ID, or they have a set amount that they
9 already have in place.

10 Q. Okay. And based on your review of the records involved in
11 this incident in this case, some of the branches in the area
12 have much higher limits that they'll allow?

13 A. As it appears from the withdrawal slips, yes.

14 Q. All right. And all of the branches are part of Wells
15 Fargo Bank, correct?

16 A. Yes.

17 Q. And Wells Fargo Bank is the entity that contracts with
18 customers and holds their money --

19 A. Yes.

20 Q. -- correct?

21 Okay. Now, I know you said that after October 5th
22 you were under the impression that maybe Mr. Stallings no
23 longer had a Wells Fargo account, but he did, correct?

24 A. As it appears from finding out from the December incident,
25 yes.

1 Q. Okay. So he did still have an account in December?

2 A. Yes.

3 Q. All right. And that account had money in it, correct?

4 A. At that moment, when everything happened, I was not aware
5 of the balance in his account; but, yes, it does appear to the
6 statements.

7 Q. Right. We've gone -- we spent a good amount of time going
8 through statements and looking at statements. And he had money
9 in his account?

10 A. Yes.

11 Q. All right. And you saw that there were monthly deposits
12 being made into his account, correct?

13 A. After this -- after appearing on the statements, yes.

14 Q. Right. This is what I'm asking you about.

15 A. Yes.

16 Q. We've -- we've looked at these statements ad nauseam.
17 Rather than pull them up each individually again, I'm just
18 asking you, based on your review, he had money in his account?

19 A. Yes.

20 Q. And he was getting a monthly deposit?

21 A. Yes.

22 Q. And did you notice those were monthly deposits coming from
23 Social Security?

24 A. Yes.

25 Q. Okay. And I don't know if you can tell based on the bank

1 lingo. Can you tell that it's Social Security Disability, or
2 is that something that you can't differentiate?

3 A. I'm not quite certain. I have not really taken a look at
4 his. I know they come through as Social Security.

5 Q. Okay. All right. Now, since you get to decide, why have
6 you decided that \$25.00 is the limit?

7 A. It is something that both my service manager and I have
8 always discussed. The reason why I do the \$25.00 is because
9 that is an acceptable amount to go get a new ID, which I will
10 then take the paper copy, the temporary copy of the ID, to be
11 able to reissue a debit card or provide a temporary debit card
12 or to do more cash out. But \$25.00 is sufficient enough money
13 to go get the replacement ID.

14 Q. Okay. And you on direct indicated that you moved here
15 from Alaska not that far -- not that long ago?

16 A. That is correct.

17 Q. All right. When you moved here from Alaska, do you
18 remember -- did you get a new Texas ID?

19 A. Yes, I did.

20 Q. Do you remember what you had to take with you when you
21 went and got it?

22 A. My previous ID from Alaska.

23 Q. Is that it?

24 A. I probably -- I more than likely brought several other
25 things with me --

1 Q. Right.

2 A. -- at the same time.

3 Q. Probably take proof of residency, some kind of bill for
4 your house?

5 A. Yes. But did the DMV person look at it? No. But that's
6 one thing I do remember.

7 Q. Okay. You -- so your recollection is that the only thing
8 you had to give them was your Alaska ID?

9 A. She said because I had everything with me, I more than
10 likely wasn't -- who I say -- who I was saying I was, yes.

11 Q. Okay. So she wasn't particularly diligent?

12 A. Right.

13 Q. But the conversation did lead you to believe that you --
14 the documents that you had brought probably after looking --

15 A. Would have been -- suffice, yes.

16 Q. Okay. And you probably looked it up on the internet to
17 see what you had to take?

18 A. Yes.

19 Q. All right.

20 THE COURT: Just a minute.

21 MS. MORGAN: Sorry.

22 BY MS. MORGAN:

23 Q. And it was --

24 MS. MORGAN: Oh, still? I'm sorry.

25 THE COURT: Now you may proceed.

1 MS. MORGAN: Okay.

2 BY MS. MORGAN:

3 Q. Okay. And it was some of those things we were talking
4 about. The proof of residency, correct?

5 A. Yes.

6 Q. Maybe a copy of your birth certificate?

7 A. Yes.

8 Q. Or a passport?

9 A. Yes.

10 Q. Okay. Things like that.

11 All right. Now, in speaking with the Government, you
12 went through withdrawals between October and December. And
13 that's because they ask you to go back and look at those
14 withdrawals, correct?

15 A. Yes.

16 Q. Okay. But we know that when you first started in July,
17 had Mr. Stallings already made that withdrawal with Ms. Rojas,
18 the first one where he was allowed to make a withdrawal?

19 A. Yes. Prior, yes.

20 Q. Okay. So then we know that his first withdrawal with your
21 bank, when it was without ID, was probably in June at least if
22 not before then, correct?

23 A. Yes.

24 Q. All right. So did you by any chance go back and look at
25 his withdrawal slips starting in July, July through December?

1 A. No. I had no business need to look at his account at that
2 time.

3 Q. Okay. So the only reason -- so you looked at withdrawal
4 slips at the direction of the Government?

5 A. That is correct.

6 Q. All right. And they just asked you to look at October
7 through December?

8 A. That is correct.

9 Q. Okay. Now, I want to talk about that a little bit more,
10 but I also want to talk about the bank notes or the -- did you
11 call them banker notes?

12 A. That is correct. Yes.

13 Q. All right. Now, when you went through those, there was no
14 note from the June withdrawal at your branch, was there?

15 A. No, there was not.

16 Q. Okay. Now, these are called banker's notes. Does that
17 mean that the bankers are able to access those notes?

18 A. That is correct. Bankers, service managers, and branch
19 managers.

20 Q. Okay. Does that mean tellers can't?

21 A. That is correct.

22 Q. Okay. Now -- okay. So there is no record in the bank
23 notes, banker notes, of the initial withdrawal from your
24 branch?

25 A. That is correct.

1 Q. Okay. And that was before you took over?

2 A. That is correct. Yes.

3 Q. All right. And do you know what the withdrawal limit was
4 at that time?

5 A. No, I do not.

6 Q. Okay. But it could have been higher than \$25.00?

7 A. It could have been, yes.

8 Q. All right.

9 MS. MORGAN: May we come sidebar really quickly?

10 THE COURT: Well, why don't we do this. I think
11 we're at a break point anyway.

12 MS. MORGAN: That's --

13 THE COURT: Members of the jury, in a moment we're
14 going to be recessing until 1:30 for lunch.

15 You may go to lunch with one another if you wish, but
16 remember not to talk about the case.

17 I'm going to go ahead and excuse you at this time so
18 that I can take up some matters with counsel.

19 SECURITY OFFICER: All rise.

20 (Jury out)

21 THE COURT: You may step down, if you like.

22 Be seated, please.

23 MS. MORGAN: Your Honor, could I have just a moment?
24 That's actually why I was going to ask to come sidebar, because
25 I need a quick -- very quick break.

1 MS. EGGERS: Thank you, Your Honor.

2 THE COURT: At this time, then, the Court will stand
3 in recess until 1:30.

4 SECURITY OFFICER: All rise.

5 (Recess from 12:21 to 1:29)

6 SECURITY OFFICER: All rise.

7 (Jury in)

8 THE COURT: Be seated, please.

9 You may proceed, counsel.

10 DESTINY O'DANIEL, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN

11 CROSS-EXAMINATION CONTINUED

12 BY MS. MORGAN:

13 Q. All right. Earlier when we were talking, you told me that
14 it was Dallas Police Department who decided to close your
15 branch?

16 A. That is correct. Yes.

17 Q. And do you remember was that officer -- was it Swindell,
18 the first one who arrived, or was it one of the later officers?

19 A. I do not recall who -- what the officer's name was.

20 Q. Okay.

21 A. But, yes, it was the very first one that arrived on scene.

22 Q. Okay. All right. The one who kind of ended up being --
23 could you tell he was the one that kind of ended up being in
24 charge a little bit, or you couldn't tell?

25 A. I couldn't tell.

1 Q. That's fine.

2 All right. So on direct when you were speaking with
3 the Government, you guys talked about -- this is a little bit
4 of recap, but we had a break -- Mr. Stallings making
5 withdrawals between October and December and that -- you went
6 and looked at those branch locations at the Government's
7 request?

8 A. That is correct.

9 Q. All right. But we know that his first attempt at taking
10 out a withdrawal without a bank card or an ID at your branch
11 was back in June?

12 A. I'm not quite certain of the month, but I know it was
13 prior to me arriving at the branch.

14 Q. Okay. So before July 1st?

15 A. Yes. That is correct.

16 Q. All right. So we know that was an ongoing thing prior to
17 July 1st?

18 A. Yes.

19 Q. All right. Did you by any chance look and see how many
20 withdrawals Mr. Stallings made between July 1st and the
21 December 8th incident?

22 A. No, ma'am. I had no business need to open up his account
23 to look at that information.

24 Q. Right. And the Government didn't ask you to do it?

25 A. Not until this hearing has come up.

1 Q. well, but they didn't ask you to go back to July?

2 A. No.

3 Q. Okay. All right.

4 MS. MORGAN: Then if we could pull up Defense Exhibit
5 1 to page 37.

6 BY MS. MORGAN:

7 Q. And these are just the withdrawal slips that you've
8 already seen that you went through. I just backed us up to the
9 beginning of July.

10 A. Okay.

11 Q. And so I'm just going to -- we're just going to try to do
12 this as quickly as possible. I just want to go -- I know
13 you're not going to have the branch information here, right,
14 because you have to look at the branch number and all that
15 stuff?

16 A. That is correct. Yes.

17 Q. Okay. But we're just going to go through and find out how
18 many times he was able to make a withdrawal from Wells Fargo
19 Banks without his ID and bank card during that period of time,
20 okay?

21 A. Okay.

22 Q. All right. So we've got July 3rd. That's one.

23 MS. MORGAN: We could just move forward.

24 BY MS. MORGAN:

25 Q. All right. We've got -- do you see a date on this one?

1 oh, down at the bottom?

2 A. It would be July 6th.

3 Q. Okay. July 6th. So that's two?

4 A. That is correct.

5 Q. All right. This one is --

6 A. July 9th.

7 Q. July 9th. That's three.

8 This one is?

9 A. July 9th as well.

10 Q. Okay. So four. Is that right?

11 A. Uh-huh.

12 Q. Okay.

13 A. That is correct.

14 Q. This one?

15 A. July 10th.

16 Q. Okay. That's five, correct?

17 A. Yes.

18 Q. Okay. This date?

19 A. July 12th.

20 Q. All right. That's six, correct?

21 A. Yes. That is correct.

22 Q. This one?

23 A. July 13th.

24 Q. Okay. And that's seven?

25 A. Yes.

1 Q. All right. This one looks like August 3rd?

2 A. That is correct.

3 Q. All right. That's eight.

4 Also August 3rd?

5 A. That is correct.

6 Q. All right. That's nine.

7 August 4th, that's ten; is that right?

8 A. That is correct.

9 Q. August 7th, that's 11; is that right?

10 A. That is correct.

11 Q. Okay. August 8th, 12?

12 A. That's correct.

13 Q. Okay. August 10th, that's 13; is that right?

14 A. That is correct.

15 Q. Okay. August 18th, that's 14; is that right?

16 A. That is right.

17 Q. Okay. September 4th, that's 15, right?

18 A. Yes.

19 Q. September 4th again, that's 16?

20 A. Yes.

21 Q. Okay. September 7th, that makes 16 -- or, no, 17?

22 A. Yes.

23 Q. Okay. Sorry. Thanks.

24 This one is September 18th. That's 18?

25 A. Yes.

1 Q. All right. What's the date? Can we read the date on this
2 one?

3 A. October 3rd.

4 Q. October 3rd. All right. That's 19.

5 And then is that where you picked up the records that
6 you were looking at with the Government?

7 A. Yes.

8 Q. Okay. And so -- and that was a total of 16?

9 A. Uh-huh.

10 Q. Correct?

11 A. That is correct.

12 Q. All right. So we've got 16 plus 19. That's a total of 35
13 withdrawals; is that right?

14 A. That's what it appears, yes.

15 Q. Okay. All right. So he was able to make 35 withdrawals
16 from various Wells Fargos in the area without his ID and his
17 debit card?

18 A. Yes.

19 Q. Okay. All right. And according to the banker notes you
20 were able to look up, he was told on multiple occasions this is
21 a onetime thing?

22 A. That is correct.

23 Q. Okay. But still at least 35 times in that period of time?

24 A. Yes.

25 Q. All right. Now, on December 8th, you didn't have any

1 interaction with Mr. Stallings?

2 A. That is correct.

3 Q. So you don't know if he was -- if he seemed angry or if he
4 seemed happy. You had no interaction with him?

5 A. That is correct.

6 Q. All right. When Ms. Rojas came to you and told you that
7 he was there, did she say, "Oh, and he's angry"?

8 A. No.

9 Q. No. Okay.

10 All right. And when Ms. Rojas came up to you, you
11 were actually talking to someone else?

12 A. That is correct. Yes.

13 Q. All right. So there was a little bit of time. She waited
14 until her turn to talk to you, right?

15 A. That is correct. Yes.

16 Q. All right. And, you know, she didn't come to you and say
17 he's making threats?

18 A. That is correct.

19 Q. She didn't say he left a note, nothing like that?

20 A. That is correct.

21 Q. All right. And then you saw him -- you knew his bags were
22 there, right?

23 A. I did see them, yes.

24 Q. You saw him going across to the liquor store?

25 A. That is correct.

1 Q. He wasn't running?

2 A. No, no.

3 Q. Okay. All right. And you didn't evacuate the bank then?

4 A. No.

5 Q. All right. And you've got -- we watched the video. There
6 are clients -- bank clients coming in and out, coming in and
7 out, right?

8 A. That is correct.

9 Q. Little old lady at the teller stand?

10 A. Yes.

11 Q. Do you remember that?

12 An older gentleman comes in, and he's actually
13 standing right over next to Mr. Stallings' bags?

14 A. Yes.

15 Q. All that just continues to go on, right?

16 A. Yes.

17 Q. Okay. Now, the first call you made was to Wells Fargo
18 security?

19 A. That is correct.

20 Q. All right. And then -- and did you make that on your cell
21 phone?

22 A. No. I made it through the branch line.

23 Q. Okay. All right. And then the second call you made was
24 also to a Wells Fargo security?

25 A. That is correct.

1 Q. All right. So that takes a little bit of time?

2 A. Yes.

3 Q. Okay. And then -- and you made those calls from inside
4 the bank?

5 A. Yes.

6 Q. All right. And they didn't tell you to evacuate the bank?

7 A. They told me to -- they instructed -- I was instructed to
8 follow Dallas Police Department's instructions when they
9 arrived.

10 Q. Okay. All right. And they told you to call the police
11 because they wanted him trespass from the bank, right?

12 A. Yes.

13 Q. Okay. And have you -- do you have some familiarity with
14 what that means?

15 A. Yes.

16 Q. Okay. And so having someone trespass is when you ask
17 the police to come out and sort of officially tell them you
18 can't come back?

19 A. Right.

20 Q. All right. And so if once the police have told them
21 officially you can't come back, then if they come back it
22 becomes sort of a misdemeanor crime?

23 A. That is correct. Yes.

24 Q. All right. And nothing like that had ever happened
25 before?

1 A. No.

2 Q. You never had Mr. Stallings trespassed?

3 A. That is correct.

4 Q. Okay. But you're familiar with having someone trespassed?

5 A. Yes.

6 Q. Okay. Because you've had that done?

7 A. Yes.

8 Q. All right. So the gist of all this is you guys didn't
9 want him coming back?

10 A. That is correct.

11 Q. Understandable.

12 So that's why you called the police, to have them
13 come out and issue the trespass warning?

14 A. That is correct.

15 Q. All right. Now, you said, I believe, that when you were
16 going to call the police you went to your desk to get your cell
17 phone?

18 A. That is correct.

19 Q. All right. And then you used your cell phone to call 911?

20 A. Yes.

21 Q. All right. But even though you were on your cell phone,
22 you still made the call from inside the bank?

23 A. Yes.

24 Q. All right. And you're on the phone with them for about
25 three and a half minutes?

1 A. Yes.

2 Q. Sound right?

3 Okay. All right. And the 911 dispatcher didn't want
4 to send a police officer, right?

5 A. That's what it sounded like, yes.

6 Q. Yeah. That was frustrating?

7 A. Yes.

8 Q. Okay. And you were asking, "Look, I need him trespass,"
9 and she just wanted to know, "Is he still there?"

10 A. Right.

11 Q. And because he wasn't there, she didn't want to send
12 anybody?

13 A. Yes.

14 Q. And that's because the police have to actually come in
15 contact face-to-face with the person to give them the trespass
16 warning?

17 A. Yes.

18 Q. All right. Now, Ms. Greenfield was standing with you when
19 you were on the phone with 911, wasn't she?

20 A. Yes.

21 Q. Okay. All right. And Ms. Greenfield is the one who was
22 most adamant about the bags; isn't that true?

23 A. We were both most adamant about the bags.

24 Q. Okay. So Ms. Greenfield indicated that she thought --

25 MS. EGGERS: Objection, Your Honor, as to counsel

1 providing information to a witness as to what another witness
2 has said.

3 THE COURT: Rephrase the question.

4 MS. MORGAN: Okay.

5 BY MS. MORGAN:

6 Q. So you had been asked -- the idea had been raised for you
7 to take the bags out of the bank?

8 A. From Security Response. That is correct.

9 Q. Okay. And Ms. Greenfield was very adamant that you
10 shouldn't do that?

11 A. We were both very adamant I wasn't going to touch the
12 bags.

13 Q. Okay. On the 911 call, did you say at one point, "I'm
14 about to get these bags out of here"?

15 A. That's what my Security Response had instructed me to do,
16 and I did not want to do that.

17 Q. Okay. I understand.

18 So -- okay. Now, you didn't know whether those bags
19 held clothes?

20 A. That is correct.

21 Q. You didn't know whether they held booze?

22 A. That is correct.

23 Q. You didn't know whether they held a bomb?

24 A. That is correct.

25 Q. You didn't know whether there was anthrax or ricin?

1 A. That is correct.

2 Q. Sarin gas?

3 A. That is correct.

4 Q. Snakes?

5 A. That is correct.

6 Q. All right. You didn't know what was in those bags. There
7 wasn't -- they weren't ticking?

8 A. I did not get close enough to even listen to them, but I
9 would assume no.

10 Q. Okay. There weren't curly cords coming out or anything
11 like that?

12 A. That is correct.

13 Q. Okay. And still you've made the 911 call. You're in the
14 bank. You haven't evacuated the bank, right?

15 A. That is correct.

16 Q. All right. And I know you said that you got some of the
17 people behind the bulletproof glass, but some of your bankers
18 are still out at their desks, right?

19 A. I believe I had one banker that was still out at her desk,
20 finishing up with a customer.

21 Q. Ms. Rojas or another one?

22 A. I don't recall which banker it was.

23 Q. Okay. But you're still allowing clients to come in and
24 out?

25 A. Yes.

1 Q. Do their business?

2 A. Yes.

3 Q. All right. Out in the lobby on the other side --

4 A. Yes.

5 Q. -- of the bulletproof glass?

6 That was a "yes"? Sorry.

7 A. Yes.

8 Q. We've got to kind of take turns.

9 All right. So then the police come out, and they
10 decide to close your bank?

11 A. That is correct.

12 Q. All right. And they call out the bomb squad, right?

13 A. Yes.

14 Q. And this is a big, big deal, right?

15 A. Yes.

16 Q. Lots of police everywhere, correct?

17 A. Yes.

18 Q. They've got everything cordoned off at the street. No one
19 is getting close to the bank?

20 A. That is correct.

21 Q. The bomb squad cars come in. Do they say "bomb squad"?

22 A. I don't recall.

23 Q. Don't remember? That's fair.

24 You guys were excluded from their investigation,
25 right?

1 A. Yes.

2 Q. Okay. Y'all were kept away and across the street.

3 And I want to come back to this in just a second, but
4 you don't know at what point -- at what time you evacuated the
5 bank?

6 A. The exact time, no, I do not.

7 Q. Okay. But sometime after the police got there?

8 A. As soon as the police officer walked in is when he
9 requested us to leave the branch, to evacuate.

10 Q. Okay. All right. Now, the video that we watched was
11 about -- just shy of ten minutes, I think --

12 A. Yes.

13 Q. -- you said.

14 All right. And you had sort of gone through the
15 timing of that video with the Government, right?

16 A. Yes.

17 Q. Okay. Because you were able to say, "Yes, two minutes and
18 23 seconds after the time was showed on my laptop, that's what
19 time Mr. Stallings came in"?

20 A. Yes.

21 Q. All right. And so you know that then the video shows
22 another seven minutes of business as usual, correct?

23 A. Yes.

24 Q. And then it would have gone on from there, correct?

25 A. Yes.

1 Q. Okay. The cameras are running nonstop in your bank?

2 A. Yes.

3 Q. Okay. Who pulled that video?

4 A. Security Response --

5 Q. Okay.

6 A. -- only has access to it.

7 Q. Okay. So you don't know why the video was cut where it
8 was cut?

9 A. That is correct.

10 Q. Okay. At any point have you gone back to look at any
11 other video?

12 A. No.

13 Q. At any point did the Government ask you to help them
14 retrieve additional video?

15 A. No.

16 Q. Okay. All right. So the police come out. They do their
17 thing. They bring in their special equipment. And after it's
18 all over, they told you, "Bank is safe. You can go back"?

19 A. Yes.

20 Q. And you were understandably a little bit concerned and
21 curious, right? "what was in my bank?"

22 A. Yes.

23 Q. Okay. And when you asked, did they tell you?

24 A. No.

25 Q. They would not tell you. But did they tell you that the

1 FBI were going to be involved going forward?

2 A. They -- we were informed that we would have additional
3 people come out and talk to us later on.

4 Q. And you were told that the FBI were now involved?

5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. All right. And that's information you shared with some of
9 the other bankers?

10 A. Yes.

11 Q. Okay. That you didn't know what was in the bag?

12 A. Right.

13 Q. They wouldn't tell you?

14 A. Right.

15 Q. But that the FBI was involved?

16 A. Yes.

17 Q. Okay. And that left an impression with you that there had
18 been something dangerous in that bag?

19 A. Could have been, yes.

20 Q. Okay. That's part of why on Monday morning, when you
21 learned that Mr. Stallings left the other bank, that you called
22 your manager and you guys had people posted to be sure
23 Mr. Stallings couldn't come in?

24 A. Yes.

25 Q. All right. That's because you were left with the

1 impression that something dangerous had, in fact, happened at
2 your bank?

3 A. Yes.

4 MS. MORGAN: One second.

5 (Pause)

6 BY MS. MORGAN:

7 Q. Just to clarify, you allowed business in the bank to go on
8 as usual up until the time that the police officer said, "All
9 right. Let's evacuate"?

10 A. Per the instructions of my district manager, yes. I
11 followed his -- his words.

12 Q. Okay. And I understand that he's your manager.

13 A. Yes.

14 Q. But you have personal autonomy, correct?

15 A. Exactly.

16 Q. And if someone were doing something to you, coming at you,
17 placing you in imminent danger, you wouldn't call and consult
18 with him before you took action, would you?

19 A. I am instructed to contact 911 and Security and then him.

20 Q. Okay. So 911 first?

21 A. Well, I'm sorry. Security Response, then 911, and then
22 him. It depends on the -- I mean, if there's physical threat
23 that's happening, like physical violence with an individual,
24 then, yes, 911 is contacted first and then Security Response to
25 document it. But the way this situation was, he left my

1 branch, and I have suspicious bags.

2 Q. Okay. So if imminent physical threat, you either run, if
3 they're coming at you, or you call 911 first, right?

4 A. Yes.

5 Q. Okay. Thank you.

6 THE COURT: Are you passing the witness?

7 MS. MORGAN: Yes, Your Honor. Sorry.

8 MS. EGGERS: Thank you, Your Honor.

9 THE COURT: Redirect?

10 MS. EGGERS: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. EGGERS:

13 Q. Ms. O'Daniel, you said earlier about something that you
14 spoke with your service manager once you got to the Skillman
15 and Abrams branch. And that's when you became the manager
16 there. And after consulting her, y'all came to the agreement
17 of the \$25.00 max?

18 A. Yes.

19 Q. Okay. So the \$25.00 max one time is what y'all agreed on?

20 A. Yes.

21 Q. What's a service manager?

22 A. It is a manager that is actually over the tellers only.
23 And as a branch manager, the bankers report directly to me, as
24 well as the service manager reports directly to me.

25 Q. And so that was a joint decision that you and the service

1 manager made?

2 A. Yes.

3 Q. Okay. You also mentioned on cross-examination that some
4 branch managers don't allow withdrawals at all?

5 A. That is correct.

6 Q. Looks like some do and some don't?

7 A. That is correct.

8 Q. Let me ask you this.

9 A. Uh-huh. Yes.

10 Q. Does it say anywhere in the Wells Fargo manual that if
11 you, using your discretion, which you can either do 25, none,
12 160, that that would entitle someone, if you're going to do
13 this, use your discretion, to yell at y'all?

14 A. I'm sorry. Can you repeat the question?

15 Q. Anywhere in the Wells Fargo manual, customer policy, or
16 anything like that, if you -- does it say that somebody can
17 yell at y'all, you being the Wells Fargo personnel --

18 A. Uh-huh.

19 Q. -- if you use the discretion that you've been given?

20 A. No.

21 Q. What about cussing at you?

22 A. No.

23 Q. What about throwing drinks at the tellers?

24 A. No.

25 Q. What about knocking over candy dishes?

1 A. No.

2 Q. What about leaving bags in the bank and then walking
3 across the street to the liquor store?

4 A. No.

5 Q. Did you have concern with what was in the bags?

6 A. Yes.

7 Q. Was that also the reason that you called the police?

8 A. Yes.

9 Q. Now, Ms. Morgan was asking you about -- law enforcement
10 didn't tell you what was in the bags, right?

11 A. That is correct.

12 Q. And law enforcement said that the FBI is involved?

13 A. Yes.

14 Q. Did you ever meet Jacqueline Lumpkin?

15 A. I don't know who -- that name does not sound familiar.

16 Q. So you never actually met the bus driver of the bus the
17 defendant got on?

18 A. No.

19 Q. So you're not privy whatsoever to what she -- when it's
20 happening, they didn't tell you what all that was about?

21 You didn't go out and interview her, did you?

22 A. No.

23 Q. Okay. Did you ever interview Diavionn Fowler?

24 A. No.

25 Q. Okay. So you didn't go out conducting interviews like the

1 FBI, the police department --

2 A. No.

3 Q. -- and that type of thing?

4 A. No.

5 Q. Wait for me.

6 So had you learned that those people had
7 conversations with the Defendant --

8 MS. MORGAN: Objection, inferential hearsay.

9 THE COURT: You may complete your question.

10 BY MS. EGGERS:

11 Q. Had you learned that those people, those two people you
12 don't know, had conversations with law enforcement about a
13 bomb, would that have shaded your judgment one way or the
14 other?

15 THE COURT: Overruled.

16 You may answer.

17 THE WITNESS: I -- I don't think I understand the
18 question.

19 BY MS. EGGERS:

20 Q. Well, I mean, if these people told law enforcement
21 something that you weren't aware of -- if these people told law
22 enforcement that they heard the Defendant make statements about
23 a bomb --

24 MS. MORGAN: Objection, relevance.

25 THE COURT: Overruled.

1 BY MS. EGGERS:

2 Q. If these people told law enforcement that the Defendant
3 made statements about a bomb, would that have some bearing upon
4 your concern come December 10th?

5 A. Previously?

6 Q. Well --

7 A. I still --

8 Q. Meaning, had you known what law enforcement knew?

9 A. No.

10 Q. Okay. Would it have mattered to you to know that the
11 Defendant got on a bus and said something about a bomb?

12 MS. MORGAN: Objection, Your Honor, facts not in
13 evidence.

14 THE COURT: Overruled.

15 BY MS. EGGERS:

16 Q. Would it have mattered to you, ma'am, to have found out
17 that when the Defendant got on the bus he made reference to a
18 bomb?

19 A. Yes, it would have.

20 Q. Based upon your knowledge of the Defendant's actions at
21 the bank that you both witnessed and what you had heard he --
22 had happened before you got there, did you believe there was
23 possibly something dangerous in that bag?

24 A. Yes, most definitely.

25 Q. Did you believe that there could be an explosive in the

1 bag that could damage or destroy the building and injure those
2 inside?

3 A. Most definitely.

4 Q. with regards to the timing and y'all having to wait for
5 the law enforcement to respond -- have you ever been in, like,
6 the Army?

7 A. No, ma'am.

8 Q. The Marines?

9 A. No.

10 Q. Do you have any training in explosive ordnances or
11 anything like that?

12 A. No.

13 Q. They don't give y'all that kind of training at Wells
14 Fargo?

15 A. No.

16 Q. Never learned any training about picking something up
17 might cause it to go off?

18 A. No.

19 We have only training as far as upon -- upon opening
20 the branch, looking around for any suspicious customers or
21 suspicious people or packages, and then as well as throughout
22 the day just being aware and observant of what's going on in
23 the branch, including suspicious packages, anybody that is
24 loitering, staking out the branch.

25 Q. So y'all have received training in suspicious packages?

1 A. Yearly.

2 Q. with regards to the timing, then, law enforcement got
3 there, and you said it was the first officer that you spoke
4 with and told everything to, and it was then at that point that
5 y'all were told to evacuate; is that correct?

6 A. That is correct. Yes.

7 Q. On the computer, again, what time was it? And I'm not
8 going to belabor the point and pull it back up.

9 Was it 10:39 --

10 A. Yes, ma'am.

11 Q. -- on your computer?

12 A. Yes, ma'am.

13 THE COURT: Let --

14 THE WITNESS: Sorry.

15 BY MS. EGGERS:

16 Q. And so if the records were to reflect that the first law
17 enforcement officer showed up at 11:08, does that sound about
18 right, that that's probably how long from that whole video that
19 we saw, 11:08, that it would be that the first law enforcement
20 officer responded?

21 A. Yes.

22 MS. EGGERS: May I have one moment, Your Honor?

23 (Pause)

24 MS. EGGERS: Nothing further, Your Honor.

25 THE COURT: Recross?

1 MS. MORGAN: No, thank you, Your Honor.

2 THE COURT: Any objection to excusing the witness?

3 MR. DE LA GARZA: No objection from the Government,
4 Your Honor.

5 MS. MORGAN: No, Your Honor.

6 THE COURT: All right. Thank you. You may step
7 down.

8 You're excused.

9 (witness excused)

10 THE COURT: The Government may call its next witness.

11 MR. DE LA GARZA: The Government calls Sergeant Juan
12 Jose Aguinaga.

13 (Pause)

14 (The witness was sworn)

15 THE COURT: All right. Be seated, please. And speak
16 into the microphone.

17 (Pause)

18 MR. DE LA GARZA: May I proceed, Your Honor?

19 THE COURT: You may.

20 JUAN JOSE AGUINAGA, GOVERNMENT'S WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. DE LA GARZA:

23 Q. What's your name, sir?

24 A. Juan Jose Aguinaga.

25 Q. How do you spell your last name?

1 JACQUELINE LUMPKIN, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. EGGERS:

4 Q. If you would, ma'am, go ahead and please state your name
5 and spell your first and last name for us.

6 A. Jacqueline C. Lumpkin, J-A-C-Q-U-E-L-I-N-E. Lumpkin,
7 L-U-M-P-K-I-N.

8 Q. And where do you work, ma'am?

9 A. DART, Dallas Area Rapid Transit.

10 Q. What do you do for DART?

11 A. I'm a bus operator.

12 Q. How long have you worked for DART?

13 A. Almost five years.

14 Q. And the entire time have you been -- worked as a bus
15 operator?

16 A. Yes.

17 Q. Have you ever driven a bus before beginning your
18 employment five years ago with DART?

19 A. Yes.

20 Q. Approximately how long have you been driving a bus?

21 A. This month makes 23 years.

22 Q. 23 years?

23 A. Yes.

24 Q. What other cities have you driven buses in?

25 A. Las Vegas, Baltimore, New York, Chicago.

1 Q. So some other big cities?

2 A. Yes.

3 Q. So when you moved to Dallas, did you have to learn the
4 route that you were going to drive and everything like that?

5 A. Well, yes. I mean, you do it over and over again, yes.

6 Q. So how does that work? Are you assigned to a certain area
7 that you normally work? Do you drive the same route each and
8 every day? Or tell us about your daily routine, so to speak.

9 A. I work out of East Dallas, so most of our routes come out
10 of North and East Dallas and Garland.

11 And, typically, no, I do not do the same route every
12 single day. I choose to do different routes every day. So I
13 do the same route on Monday, every Monday, for approximately
14 three to four months, but on Tuesday I do something else, if
15 that makes sense.

16 Q. Do some bus operators, do they make a decision to drive
17 the same route every single day, day in and day out?

18 A. Yes. We bid on our routes, so I have an option to bid,
19 yes.

20 Q. And last December, December of 2018, were you driving any
21 routes in the month of December on Saturdays?

22 A. Yes.

23 Q. What route were you driving on Saturdays in December of
24 2018?

25 A. The 583.

1 Q. The 583?

2 A. Yes.

3 Q. Okay. And what's the beginning and the ending point of
4 Route 583?

5 A. Well, for me the beginning would be Richland College, and
6 the end would be Lovers Lane, because I start at Richland
7 College. So that means that when I come out of the bus yard, I
8 start at Richland College.

9 MS. EGGERS: Your Honor, if I may have one moment.

10 THE COURT: You may.

11 (Pause)

12 BY MS. EGGERS:

13 Q. I'm going to show you what's being used as a demonstrative
14 exhibit without objection, Government's Exhibit B.

15 MS. Lumpkin, you said that there's two ends obviously
16 to this. You said one was Richland College; is that correct?

17 A. Yes.

18 Q. Okay. And then the other one is that Lovers Lane station?

19 A. Yes.

20 Q. Okay. If you would, when you turn your head, just move
21 the microphone just a little bit, because it's harder to hear.

22 Yeah. No, turn it towards you a little bit. There you go.

23 So do you -- when you -- obviously, I'm talking to
24 you about December 8th of 2018. That's why -- why you've been
25 brought in here, so to speak, okay?

1 A. Right.

2 Q. So what end would you have started on on that day?

3 A. I would have started at Richland College.

4 Q. Okay. So on the north end of the route?

5 A. Wait. I take that back. I'm sorry.

6 Q. Pardon me?

7 A. Because I -- I'm sorry. I do it -- at that particular
8 time, I did it on Saturday and Sunday. So on Saturday I
9 started at Lovers Lane. I'm sorry.

10 Q. Okay.

11 A. I started at Lovers Lane.

12 Q. Lovers Lane?

13 A. Yes.

14 Q. And on December 8th of 2018, was anybody riding with you
15 that you actually knew that day?

16 A. My son.

17 Q. What's your son's name?

18 A. Diavionn Fowler.

19 Q. And how old is your son now?

20 A. He's 17 now.

21 Q. So would he have been how old in -- last December?

22 A. 16. His birthday is in February.

23 Q. Now, when your son rides with you and when he was riding
24 with you on December 8th of 2018, does he go sit in the back of
25 the bus and just listen to music, or what does he do?

1 A. No. All the years I've been driving he stands next to me
2 the entire route.

3 Q. Like, where does he stand?

4 A. Literally next to me.

5 Q. Okay.

6 A. Right behind the yellow line, but flush -- flush up
7 against me.

8 Q. Okay. He's been doing that ever since he's been riding
9 with you?

10 A. Yes.

11 Q. Okay. But you said behind the yellow line, right?

12 A. Yes.

13 Q. Okay. Now, specifically, looking at this route -- so you
14 said you started down here at Lovers Lane; is that right?

15 A. Yes.

16 Q. Okay. And so how does it basically work?

17 You just do the route, get to the top, and then come
18 all the way back down?

19 A. Well, you know, there's turns between there. But, yes, I
20 do the route on a fixed time schedule. So I have specific
21 times I need to be at certain intersections.

22 Q. So I'm going to go to page 2.

23 You said there's specific time schedules that you
24 have to do.

25 Looking at this, Government's Exhibit --

1 Demonstrative Exhibit B, the Saturday 583 schedule that would
2 have been in effect back then, this first column -- just to
3 orient ourselves to the timing, that first column, is that the
4 time that the bus would be at Lovers Lane?

5 A. Well, it's the time that it would depart Lovers Lane.

6 Q. Depart Lovers Lane?

7 A. Yes.

8 Q. Okay. And then there's a column, Abrams and Town Hill,
9 Skillman and Larmanda, Lake Highlands station, and it goes
10 across the screen; is that correct?

11 A. And so those are considered to be major intersections.

12 Q. Okay.

13 A. Time points we call them, actually.

14 Q. What do you call them?

15 A. We call them time points.

16 Q. Okay. So there's time points at major intersections?

17 A. Yes.

18 Q. Okay.

19 A. So that's the time that we are scheduled to be at that
20 stop providing there's nothing happened.

21 Q. Okay. And so let me ask you this. For instance, looking
22 at the line that's 10:19 -- or, excuse me, the line that's
23 11:14. I'm just going to use that one, okay?

24 A. Uh-huh.

25 Q. So would the bus ever stop at any points -- since that's a

1 major intersection, are there places to stop along the way that
2 you might pick up people at other bus stops that aren't major
3 intersections?

4 A. Yes. There's stops all along there. At Abrams and Town
5 Hill, it's probably a light.

6 Q. Okay. There's -- Okay.

7 A. So I'm saying that each one of these, Skillman and
8 Larmanda, it's a light in a shopping center.

9 Q. Oh, okay.

10 A. So these are points of where there's popular locations.

11 Q. Okay. So specifically between Skillman and Larmanda and
12 then Lake Highlands station, are there potentially stops in
13 between there as well?

14 A. Yes.

15 Q. Okay. Did you pick up any people that morning, ma'am, in
16 the area of Skillman and Abrams?

17 A. I picked up a passenger after my Skillman and Larmanda
18 stop.

19 Q. Okay. I'm going to go back to Government's Exhibit -- or
20 Demonstrative Exhibit B, page 2. So tell us where, looking at
21 this -- looking at this, where would you have picked up -- and
22 was it one passenger or two?

23 A. I picked up two passengers. I picked up two passengers.

24 Q. Okay. And so between, you said, Skillman --

25 A. So I picked up -- I picked up two passengers between the

1 Skillman and Larmanda time point, which is at 11:23, and the
2 Lake Highlands station, which is 11:29. So, actually, the
3 Wells Fargo Bank is two bus stops from Skillman and Larmanda
4 stop.

5 Q. Okay. So between 11:23 and 11:29, you picked up two
6 passengers?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes. Two other passengers, yes.

10 Q. Pardon me?

11 A. Two other passengers, yes.

12 Q. Okay. I'm going to go to Government's Exhibit A, which is
13 a demonstrative exhibit as well. And we have this as Skillman.
14 This is Abrams. There's the Wells Fargo. Northbound there
15 appears to be a bus stop on the right-hand side of the road; is
16 that correct?

17 A. Yes.

18 Q. And that's sort of faint.

19 A. Yes, that's the bus stop.

20 Q. Okay. And is that the location where you picked up the
21 two passengers?

22 A. Yes.

23 Q. Okay. So since there's a light right -- or is there a
24 light in the area?

25 A. The light is behind -- the light is right here. What is

1 that? 200, 300 feet behind that bus stop. So before I got to
2 the bus stop, there's a light.

3 Q. Okay. So go ahead and hit your finger to it again for me.

4 A. So this would be the light.

5 Q. Okay.

6 A. I'm crossing the light. This is the bus stop. There's
7 the bank across the street.

8 Q. Okay.

9 A. That's the bus stop.

10 That's actually -- this -- this bus stop at the
11 light -- I mean, this stop at the light is not the Larmanda and
12 Skillman. Larmanda and Skillman is around the corner.

13 Q. Okay.

14 A. Okay.

15 Q. But just so we can orient ourselves.

16 A. Okay.

17 Q. When you were sitting at the light itself, though, tell us
18 what you saw.

19 Did you see anybody? What did you see going on?

20 A. Well, we -- we're trained basically to look at the people
21 at the bus stop before we actually pick them up. So that's our
22 way of looking at your passenger, to know what maybe is going
23 on with your passenger, for example. Basically, looking at the
24 passenger and deciding should you pick the passenger up.

25 Q. Okay. That's some of the training that you received?

1 A. Yes.

2 Q. Okay.

3 A. So, I mean, you know, sometimes there's people at the bus
4 stop that you may feel unsafe.

5 Q. Okay.

6 A. Let's say that.

7 Q. Okay.

8 A. So you're just trained to look at the people. This is
9 your opportunity to get a good look at them, because standing
10 next to you it's kind of hard to look somebody up and down.

11 Q. Once they're on the bus, it's a little too late at that
12 point?

13 A. Right.

14 Q. Okay.

15 A. It's too late.

16 Q. So go ahead and tell us. If you would, describe to the
17 jury what you saw when you just looked up and saw the two
18 people at the bus stop, and then just tell us what happened
19 once they got on the bus.

20 A. So while I'm sitting at the light, because there's so much
21 activity across the street at the Wells Fargo, I'm wondering --
22 I'm actually sitting at the light wondering what's going on.

23 So these two passengers standing there looked just
24 like two ordinary passengers. So I get to the bus stop, and I
25 pick them up.

1 The first gentleman that got on the bus -- and I
2 can't remember his age, because apparently -- I'm assuming he
3 that must have had earplugs in his ears, because when I asked a
4 question, he didn't respond. He went straight to the back of
5 the bus. He didn't give me any indication that he heard me at
6 all, not like he was ignoring me. So I think he had earplugs
7 on, and he went straight to the bus [sic].

8 The second person that got on -- the second person
9 that got on the bus, he said --

10 Q. what did you ask?

11 A. I asked him -- I said to both of them, I said, "what's
12 going on over at the bank?" Because it was so much activity
13 over there.

14 And the second person that got on the bus said, "I'm
15 going to tell you in a minute. I think they're looking for
16 me."

17 And so now the other gentleman is in the back. And
18 me and my son are, you know -- I'm sitting in the driver's
19 seat. My son is standing there. And he gets on, and he says,
20 "wait a minute. I've got to get my fare."

21 And so he goes behind me, so I can't really see what
22 he's doing behind me, because there's a -- like a wall. So I
23 can't see. But he's not back there a minute. 35 seconds.
24 He's not back there that long. And so he puts a card in, like
25 a voucher.

1 Typically, I've known passengers who have vouchers
2 are usually coming from, like, Social Services, the Welfare
3 Department, the hospital, something along those lines.

4 He puts that card in, and that card is -- once it
5 goes in, it's validated, and an actual bus ticket comes out.

6 So he got his bus ticket, put it in his pocket, and
7 then he said, "I think they're looking for me, because I left a
8 bomb over across the street at the bank."

9 Q. He said that to you?

10 A. Yes.

11 Q. Where was your son when this was said to you?

12 A. Standing next to me. At this time he -- this gentleman is
13 standing in the doorway.

14 Q. In front of the --

15 A. He does not --

16 Q. In front of the yellow line?

17 A. Yes, he's in front of the yellow line.

18 Q. So what did you say back when the man said, "I think
19 they're looking for me. I left a bomb in the bank"?

20 A. "I don't -- I don't believe you." I said, "If they're
21 looking for you, why are you just standing at the bus stop?"

22 Like, he didn't run up to the bus stop. He wasn't
23 out of breath. He wasn't sweating. He didn't give any
24 indication of somebody that had done something.

25 So he said, "Oh, yeah, they're looking for me."

1 And so at this point, because I've been driving the
2 bus for so long, for so many years, that people say all kinds
3 of things. So now I'm no longer interested in what he's
4 saying, because I don't believe him, like it's not real.

5 So, you know, I close the door and proceed down the
6 street, and he continues to talk.

7 I can't remember all the things that he talked about,
8 because I started shutting him out, not listening, because the
9 things he was saying wasn't making sense to me.

10 Q. Tell us -- tell us the things that you remember him
11 saying.

12 A. He was telling me -- telling us about how he was having
13 problems at the Wells Fargo, that that was not his first time
14 going there. I want to say maybe three or four times he had
15 already gone in there. He had some kind of disagreement with a
16 white female teller that was in the bank, that she was giving
17 him a hard time, he was pissed off with her, and that he was
18 teaching her a lesson.

19 Q. He was going to teach her a lesson?

20 A. Yes.

21 Q. And he said a white female teller?

22 A. Yes.

23 Again, he's not -- but he's not talking to me like
24 he's angry. So, again, nothing indicated to me that he was
25 upset, that anything he was saying was true, other than the

1 police being over there across the street. He didn't say it
2 like he was upset, like he had just had an argument. That's
3 what I mean.

4 Q. Okay. Now, is he just standing there right next to your
5 son? Is he in front of the yellow line?

6 A. No, he's still -- he's still in the doorway. I had to ask
7 him -- I had to tell him that, you know, regulations said he
8 has to stand behind the line. So at that point, I do tell him
9 that.

10 And I was thinking that he was going to go to the
11 back of the bus and the conversation was over with. No. He
12 continued to stand -- so he literally stood mashed up with my
13 son, so they're both standing in this little space, because
14 it's only this wide. And so both of them are standing in that
15 same space, but my son facing the windshield and him facing my
16 son.

17 Q. Okay.

18 A. And he continues to talk. So almost shoulder to shoulder,
19 because it's not that much space on the bus.

20 Q. How big is your son?

21 A. He's a pretty big guy. He's almost 300 pounds and six
22 foot.

23 Q. Okay. So he's six foot?

24 A. Just about.

25 Q. When he was saying this about having a disagreement with

1 the white female teller in there, did you ever ask him about,
2 "why didn't you just go to another bank?"

3 A. Did I ever ask him? Sorry.

4 Q. Why he didn't just go to another bank?

5 A. Oh, I did. I asked him, you know -- well, he explained --
6 he explained how he was -- he didn't have his ID.

7 Q. Okay.

8 A. And so I was like, "well, what bank will let you withdraw
9 money without an ID?"

10 And he was like, "I don't need an ID. I have an
11 account, and that's my money in there. I have a whole lot of
12 money. And she was giving me a hard time, because she don't
13 believe a black man has money."

14 And so I said, "There's a wells Fargo not far from
15 here. Just go to another one."

16 "No, I'm going to go to that one. That's the bank
17 I'm going to go to."

18 So he was adamant about going to that particular
19 bank.

20 Q. And where approximately -- I'll go to Government's
21 Demonstrative Exhibit B, page 2.

22 So you estimate that the time, then, is sometime
23 between 11:23 and 11:29; is that right?

24 A. Yes. That's the -- that's the time. We talked until he
25 actually got off, which was after the Lake Highlands station.

1 Q. Okay.

2 A. He got off at Whitehurst.

3 Q. You said he got off at Whitehurst?

4 A. Right. Before I get to LBJ-Skillman station --

5 Q. Okay.

6 A. -- he gets off the bus.

7 Q. Okay. During the course of him talking and standing -- or
8 did he ever sit down?

9 A. No.

10 Q. So during that timeframe of him sitting -- standing there
11 and talking, did he ever say anything about bags or anything
12 like that?

13 A. He did.

14 Q. What did he say?

15 A. He said that -- at some point in the conversation, after
16 rattling on and telling us different things, he said, "I'm
17 going back. I want my bags. They're not keeping my stuff."

18 And so I said, "What stuff?" You know, "Why are you
19 going back to the bank? If you're having -- again, if the
20 police are over there, why are you going back to that bank?"

21 Just trying to, I guess -- I'm trying to understand
22 if he's telling the truth, what part -- what part is true.

23 "So why are you going back to the bank?"

24 He's like, "I'm going to get my things. I'm going to
25 get my stuff."

1 Q. Do you recall what this man was wearing that day, any of
2 his clothing?

3 A. The -- he had on a jacket -- oversized jacket and
4 overalls, FUBU overalls.

5 Q. You said --

6 A. FUBU. FUBU is the name of a fashion design.

7 Q. Okay. F-U-B-U?

8 A. Yes.

9 Q. FUBU. Okay.

10 Did he have anything on his head or any kind of head
11 apparel or anything?

12 A. Yes. He had on some kind of -- like, it was chilly
13 outside, so something covering his ears --

14 Q. Okay.

15 A. -- his head. The flaps came down.

16 Q. Now, let me ask you this. The DART bus that you drive,
17 are there, like, computer systems in them?

18 A. They do.

19 Q. Okay. Do these computer systems help keep you on time to
20 know your -- you said your time points?

21 A. Time points, yes.

22 Q. Okay. What about any type of recording equipment or
23 anything like that?

24 A. Well, we are supposed to have a recording system, cameras.
25 We have -- I think it's 22 cameras around the whole bus. Like,

1 eight of them are sitting in front of us.

2 Q. Okay.

3 A. Yes.

4 Q. Your computer system and cameras that day, were they
5 working?

6 A. They were not. I was not -- I can't positively say what
7 the cameras was doing, because I only can go with the red light
8 or the green light. But my system was not working, meaning I
9 had to manually put in the information for my fare box to work.

10 I was not able to -- if there had been an emergency,
11 I was not able to use the system. The buttons was not working,
12 so the system was not working correctly.

13 Q. If somebody -- so if you had to get an emergency
14 notification out, what would you have to do? Use your phone?

15 A. I would have to use my phone. I would stop the bus and
16 use my phone.

17 Q. And you said something about red lights. Would that be
18 like red lights on the cameras?

19 A. Right, the cameras.

20 Q. And you said that the red lights were not on?

21 A. No, there was not on a red light on on my camera. That
22 still does not mean -- I don't know whether or not it's
23 working. That's what it means. Generally, the lights are
24 green --

25 Q. Okay.

1 A. -- which means everything is a go.

2 Q. Now, at some point after the man with the FUBU outfit got
3 off your bus, did you end up speaking with any law enforcement
4 officers?

5 A. I did.

6 Q. Okay. Where -- where would that have been?

7 A. So I spoke to the first law enforcement officer back at
8 Lovers Lane.

9 Q. At Lovers Lane?

10 A. Yes.

11 Q. So that means you would have gone all the way to Richland
12 College and then back down?

13 A. All the way to Richland College and then back down, yes.

14 Q. Okay. And did you speak with law enforcement multiple
15 times that day?

16 A. Yes.

17 Q. Did you tell law enforcement what that man had said to
18 you?

19 A. Yes.

20 MS. EGGERS: If I may have one moment, Your Honor.

21 THE COURT: You may.

22 (Pause)

23 BY MS. EGGERS:

24 Q. Some of the DART buses, they're handicapped accessible?

25 A. All of them are handicapped accessible.

1 Q. All of them are?

2 A. Yes.

3 Q. That day, when you stopped between 11:23 and 11:29 at that
4 place right across from the Wells Fargo, did you activate the
5 handicap accessible portion so those men could get on the bus?

6 A. I would have no reason to operate the ramp.

7 Q. So neither of the men was using a walker or a wheelchair
8 or anything like that?

9 A. No.

10 Q. Thank you, ma'am.

11 THE COURT: Are you passing the witness?

12 MS. EGGER: Yes, Your Honor. I'm sorry.

13 THE COURT: Cross-examination?

14 MR. RODRIGUEZ: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. RODRIGUEZ:

17 Q. Good afternoon, Ms. Lumpkin.

18 A. Hi.

19 Q. I have some questions for you. If you'd give me just a
20 quick second to -- so you've been a bus driver for 23 years?

21 A. Yes.

22 Q. And is there a special license to drive a bus?

23 A. A commercial driver's license. I have a Class A.

24 Q. Okay. So it's a -- it's a commercial driver's license.

25 Is that known as a CDL?

1 A. Yes.

2 Q. And then you have a special designation on that?

3 A. Yes.

4 Q. And that's a class A?

5 A. Yes.

6 Q. And what does the class A mean?

7 A. It means I'm qualified to drive a truck.

8 Q. Okay. So you can drive -- you can drive a truck?

9 A. And a bus.

10 Q. And a bus?

11 A. (Indicating in the affirmative)

12 Q. You can drive something big?

13 A. Yes.

14 Q. Okay. Now, on the day in question, when you picked up

15 those two passengers --

16 A. Uh-huh.

17 Q. -- they were already at the bus stop as you were

18 approaching?

19 A. Yes.

20 Q. Okay. So they were already standing there?

21 A. Yes.

22 Q. They didn't, like, rush up to that bus stop?

23 A. No.

24 Q. They were just -- they were just sitting there waiting?

25 A. Not sitting. Standing.

1 Q. I mean -- I'm sorry. Standing there waiting?

2 A. Yes.

3 Q. Okay. Thank you.

4 And you noticed the scene across the street at the
5 Wells Fargo?

6 A. Yes.

7 Q. You saw a lot of activity?

8 A. Well, I saw a lot of police cars, yes.

9 Q. Okay. You saw a lot of police cars. Did you see
10 policemen?

11 A. Yes.

12 Q. Okay.

13 A. Some of them were actually sitting in cars to block the
14 entrance so that people wouldn't come in the parking lot.

15 Q. Okay. But there was -- there was a lot of hustle and
16 bustle over there?

17 A. Yes.

18 Q. Okay. And you're noticing that as you're making the turn
19 going toward the bus stop?

20 A. I noticed that my first trip up to Lovers Lane.

21 Q. Okay.

22 A. This is not my first trip at 11:00 in the morning.

23 Q. Okay.

24 A. So going up at 10:00, whatever my other time points -- I
25 can't remember time points like that. But in any case,

1 whatever time it was me going up the previous trip, that's when
2 I noticed the police cars. And because there was nobody on my
3 bus. And on Saturday I generally have seniors that got off to
4 go into that bank.

5 Q. Okay.

6 A. There was no one on the bus.

7 Q. Okay. But the time that you pick up the passengers, I
8 guess you notice again that there's a lot of activity over
9 there?

10 A. Yes.

11 Q. And you said you saw that the police cars were cordoning
12 off the parking lot?

13 A. Yes.

14 Q. Okay.

15 A. Each time I went past, there were more officers, more
16 cars.

17 Q. Okay.

18 A. Later on, fire trucks.

19 Q. How many times did you pass the Wells Fargo?

20 A. I pass it twice, going and coming back.

21 Q. Okay.

22 A. Going -- so however many trips. I had five trips, then I
23 would have passed it ten times.

24 Q. Okay. So at the point where you pick up the two
25 passengers, how many times had you already passed the Wells

1 Fargo?

2 A. Four.

3 Q. Four times?

4 A. Yes.

5 Q. Okay.

6 A. I would definitely have to look at the time schedule
7 again. This is not one that I have done in eight months.

8 Q. Okay.

9 A. So --

10 Q. No, that's good enough. If your best recollection is four
11 times, we'll go with that.

12 A. Okay.

13 Q. Now, DART buses are big?

14 A. Yes.

15 Q. And they are -- are they loud?

16 A. Yes.

17 Q. Okay. They're louder than a car?

18 A. They're louder to you on the outside than it is for me on
19 the inside.

20 Q. Okay. So -- but are they louder than a car on the inside?

21 A. Yes.

22 Q. Okay. And they've got special braking systems?

23 A. Yes.

24 Q. Okay. As a bus driver, there's a lot that you have to be
25 aware of?

1 A. Yes.

2 Q. You've got to be aware of traffic as you're pulling into a
3 stop?

4 A. Yes.

5 Q. And then you have to be aware of traffic as you're pulling
6 out of a stop?

7 A. Yes.

8 Q. You have to be aware of how close cars are to you?

9 A. Yes.

10 Q. As well as you have to be on the lookout for civilians
11 trying to cross the street to get to the bus stop?

12 A. Yes.

13 Q. Safe to say, there's a lot of information that you're
14 interpreting as you're driving the bus?

15 A. Yes.

16 Q. Okay. And there's a lot of information that you're
17 interpreting as you're approaching a stop?

18 A. Yes.

19 Q. One of the things that you testified to is you're looking
20 at the potential passengers, sort of checking them out a little
21 bit?

22 A. Yes.

23 Q. And you're doing all that, as well as a bunch of other
24 functions --

25 A. Yes.

1 Q. -- as you're approaching a stop?

2 A. Yes.

3 Q. Now, when you pick up the passengers, there are two at
4 that time?

5 A. Yes.

6 Q. And you didn't see any of those passengers with a bicycle
7 or anything?

8 A. No.

9 Q. Okay. They were just -- they were just standing at the
10 bus stop?

11 A. Yes. we have a bike rack on the bus.

12 Q. You have a bike rack. But neither of the passengers had a
13 bike?

14 A. No.

15 Q. Okay. Other things that you're in charge of is passenger
16 safety?

17 A. Yes.

18 Q. You need to make sure that passengers are behind that
19 yellow line?

20 A. Yes.

21 Q. That's the regulation that you have to follow and they
22 have to follow?

23 A. Yes.

24 Q. Okay. You also have to do things like collect fares?

25 A. Yes.

1 Q. And on that occasion, you discussed or you testified a
2 little earlier that your machine wasn't working, so you had to
3 type it in yourself?

4 A. I have to manually start it, set it up.

5 Q. Okay.

6 A. So each time somebody gets on, no, I don't keep --
7 manually do something. I just hit a button.

8 Q. Oh, okay. So I guess you have to manually start it up at
9 the beginning of the morning?

10 A. Yes.

11 Q. Or the beginning of your shift?

12 A. Or if I get off to go to the bathroom, I would make it so
13 nobody else could get passes out of it.

14 Q. Okay. There are also other things that you have to worry
15 about, like signaling --

16 A. Yes.

17 Q. -- when you're driving the bus.

18 Like a normal car, you have to signal your intention?

19 A. Yes.

20 Q. Okay. Is it safe to say that driving a bus is more
21 complicated than, let's say, driving a car?

22 A. For you, probably, yes.

23 Q. Okay. Well, for you, because you've been doing it for 23
24 years, you're an expert at it?

25 A. Well, not an expert, but I probably drive the bus better

1 than I drive my car, because I spend more hours driving the
2 bus.

3 Q. Okay. But all the things that you have -- all the
4 information that you have to take into account, you're
5 multitasking all at one time?

6 A. Yes.

7 Q. Is it safe to say you're multitasking?

8 A. Well, not all -- not really like while you're behind the
9 wheel driving. You're multitasking when people get on the bus
10 to do other things. But when you're driving, you pretty much
11 are facing the street and driving. You may be listening, but
12 doing all those things, per se, not necessarily, no.

13 Q. Okay. And let me maybe broaden my question a little bit.

14 All the things that you're taking -- the information
15 you're taking in, you're watching the stop coming up. You're
16 looking for people crossing the street. You are looking for
17 other cars, because you're a really wide and long bus.

18 All those things you're doing, you're doing at the
19 same time as you're driving the bus?

20 A. Yes.

21 Q. Okay. Now, compared to a car, you're not doing all those
22 same things when you're driving your regular car?

23 A. You should be.

24 Q. I'm sorry?

25 A. You should be.

1 Q. Okay. Well -- but you're not worried about bus stops and
2 trying to look at bus stops in advance when you're driving a
3 regular car. You're not looking at the passengers at the bus
4 stop.

5 A. No.

6 Q. Okay. So there are a few things that are different when
7 you're driving a bus?

8 A. Yes.

9 Q. Okay. So you said that you were -- you testified a little
10 while ago that you were driving the bus?

11 A. Uh-huh.

12 Q. And then there's this yellow line?

13 A. Yes.

14 Q. And then right behind the yellow line next to you is your
15 son?

16 A. Yes.

17 Q. And you -- you -- I recall you testifying that he's a big
18 guy?

19 A. Yes.

20 Q. He's a 17-year-old --

21 A. Yes.

22 Q. -- now?

23 At the time he was 16?

24 A. Yes.

25 Q. I think you mentioned that he is 300 pounds?

1 A. well, he -- about 275.

2 Q. Okay. So 275.

3 How tall is he?

4 A. Almost six foot. Probably 5-11.

5 Q. So 5-11, six foot, 275 pounds. Is that his current height
6 and weight?

7 A. Yes.

8 Q. Okay.

9 A. I mean, it hasn't changed that much, I don't think.

10 Q. So in December 8th was he also the same height and the
11 same size?

12 A. I would say yes.

13 Q. Okay. So 5-11, 275. That's a big gentleman.

14 A. (Indicating in the affirmative)

15 Q. And when you said that the passenger came on, he was next
16 to your son?

17 A. Yes.

18 Q. But behind the yellow line?

19 A. No. He stood in the doorway --

20 Q. Oh.

21 A. -- for a good seven, eight minutes talking.

22 Q. Okay.

23 A. I had to tell him to come behind the --

24 Q. Okay. So, initially, he was above the yellow line?

25 A. Right. He's standing in the door.

1 Q. Okay.

2 A. Literally, almost against the doors.

3 Q. Okay. So when he gave the card to get his ticket, before
4 he did that, where was he standing?

5 A. So he gets on the bus, and he walks past my son, saying,
6 "Just a minute, I got" -- you know, "I got to get my pass.
7 I've got to get my fare."

8 Q. Okay.

9 A. So he goes behind him, behind us --

10 Q. Okay.

11 A. -- to do -- again, I don't know what he's doing. I'm just
12 going to say going in his wallet or whatever. He comes back
13 with this voucher.

14 Q. Okay.

15 A. with a little card. It looks like a card.

16 Q. Okay. And those vouchers, could you describe what type of
17 people have those vouchers?

18 A. Typically, people that have come from Social Services,
19 welfare, food stamps, WIC, hospital.

20 Q. Okay.

21 A. Parkland.

22 Q. Would a -- let's say would a homeless person have that
23 kind of voucher?

24 A. Yes.

25 Q. And what are those vouchers used for?

1 A. Just for a bus pass for the day.

2 Q. Okay. And they can ride anywhere that day with that
3 voucher?

4 A. In Dallas for that day, yes.

5 Q. Okay.

6 A. It's not good on the Fort Worth system. That's --

7 Q. Okay. So it's only good on the Dallas system?

8 A. Yes.

9 Q. Okay. If they wanted to go all the way to Fort Worth,
10 they would have to get on a different set of buses?

11 A. Right. And I believe they have to pay additional fare.

12 Q. Okay. But in Dallas, that allows them to drive all day
13 long --

14 A. Right.

15 Q. -- with that voucher?

16 A. At that particular time, till 3:00 a.m., yes.

17 Q. Okay. Till 3:00 a.m.?

18 A. Yeah.

19 Q. Now, so he goes behind you, he's getting his fare, and
20 then after that he goes in front of the yellow line and puts in
21 his voucher?

22 A. Yes. He stands at the fare box.

23 Q. Okay. And the fare box is above the yellow line?

24 A. Yes.

25 Q. Okay. And so you said he stood there for several minutes?

1 A. He didn't stand at the fare box. He stood in that area of
2 the door. So now he stepped back away from the fare box, and
3 he's standing in the door.

4 Q. Okay. He's standing in the doorway?

5 A. Yes.

6 Q. Okay. Which is above the yellow line?

7 A. Yes.

8 Q. And the bus is already moving?

9 A. Yes.

10 Q. Okay. So the bus is moving, and he's above the yellow
11 line, but, you know, in the door well next to the fare box?

12 A. Yes.

13 Q. Okay.

14 A. We're only talking two or three feet here.

15 Q. Okay.

16 A. It's --

17 Q. That was my next question. So it's only two or three feet
18 from you?

19 A. Two or three feet from the fare box, yes.

20 Q. Okay. So two or three feet from the fare box. How many
21 feet from you, roughly?

22 A. Probably from here to here.

23 Q. Okay.

24 A. So however -- it's not far.

25 Q. Let's say five feet?

1 A. Okay.

2 Q. Okay. Is that -- is that a good estimate?

3 A. Yes.

4 Q. And so that person tells you that -- when you ask, "what's
5 going on at the Wells Fargo?" he says, "The police are looking
6 for me." But you don't take it seriously?

7 A. No.

8 Q. You hear a lot of stuff on the bus?

9 A. Lots.

10 Q. From all walks of life?

11 A. Yes.

12 Q. You hear a lot of stories?

13 A. I do hear a lot of stories.

14 Q. Okay. And so at that point you weren't concerned?

15 A. No.

16 Q. Because you had heard a lot of stories in the past?

17 A. Because it didn't seem plausible that the police are
18 looking for you but yet they're across the street --

19 Q. Okay.

20 A. -- staring at the bus stop. Like, there's lots of cars
21 sitting here, and he's only -- I don't know -- 200 feet across
22 the street. So if they're looking for you, then you're not
23 lost.

24 Q. Okay. And at that point he was just standing at the bus
25 stop?

1 A. Yes.

2 Q. So it's not like he was running. He was just standing --

3 A. Yes.

4 Q. -- when you approached?

5 A. Yes.

6 Q. So you took that information along with his story, and you

7 sort of said it's not plausible?

8 A. Right.

9 Q. And --

10 A. I said, "It doesn't make sense."

11 Q. I'm sorry?

12 A. That's what I said.

13 Q. Okay.

14 A. I said, "It doesn't make sense."

15 Q. Okay. So you say it doesn't make sense?

16 A. Uh-huh.

17 Q. When you put the two and two together?

18 A. Yes.

19 Q. Okay. And then he's -- he's talking about some other

20 things. He's talking about things at the bank?

21 A. Yes.

22 Q. And at that point, do you still think it's not plausible

23 or it doesn't make sense, I'm sorry?

24 A. His -- the words that -- his conversation -- just normal

25 human beings, if you're having a problem at one Wells Fargo,

1 then you go to another. You don't keep going back and forth
2 there three or four times, having a problem with the same
3 person.

4 Q. Okay.

5 A. So, again, it's, you know, "Why are you doing that, sir?
6 Go to another bank," which is what I suggested to him.

7 Q. Okay. Now, how long after that conversation did you give
8 your first statement to the police?

9 A. Probably over an hour.

10 Q. Okay. So there had been a span of an hour --

11 A. Yes.

12 Q. -- before you first talked to the police?

13 A. Yes.

14 Q. Now, before you first talked to the police, what was the
15 timeframe that that gentleman got off the bus, approximately,
16 to the best of your recollection?

17 A. Before I talked to the police?

18 Q. Yes, ma'am.

19 A. Probably -- probably an hour and 15 minutes.

20 Q. Okay.

21 A. The duration of the route that I -- the duration of my
22 trip, I spent 28 minutes at Richland College, then I come all
23 the way back to Lovers Lane.

24 Q. Okay. And so -- but after that conversation, you said it
25 was an hour that you talked to --

1 A. well, if you put the schedule back up here, I can tell you
2 what time I got back to Lovers Lane.

3 Q. Okay.

4 MR. RODRIGUEZ: Can we have that? Ms. Toro, can we
5 have the schedule?

6 (Pause)

7 MR. RODRIGUEZ: Can we blow that up, at least the top
8 part of the schedule?

9 BY MR. RODRIGUEZ:

10 Q. Does this help, Ms. Lumpkin, in order for you to
11 determine?

12 A. It looks like I left Richland College at -- well, you-all
13 don't have the same system here, but --

14 Q. You can just tell -- you can just tell us. You don't have
15 to use the system, because it --

16 A. Well, I was trying to guesstimate the time, what time I
17 needed -- I should have arrived. But it had to be at 12 -- you
18 -- this -- this paper is not the paper that we use to drive by.

19 Q. Okay.

20 A. This is something that the passengers have, so that's why
21 I'm looking at it differently, because I don't generally read
22 this.

23 Q. Okay.

24 A. So if it says I left here at 11:56 -- which I don't feel
25 like I left there at 11:56. I think more likely I left there

1 closer to 12 -- seems like it was 12:18 or 12:21. In any case,
2 I would get back to Lovers Lane station, according to this, at
3 12:34. But that -- that's not correct.

4 Q. Okay.

5 A. I would get back to Lovers Lane station at 1:09 -- I would
6 leave Lovers Lane station at 1:09. So it's every other line
7 here.

8 These are all the buses that's in there.

9 So I left -- I left at 11:14.

10 I come across here to get there at 11:56.

11 The next time I pull out, it's going to be 12:31.

12 I'm going to leave Lovers Lane station -- leave
13 Lovers Lane station 1:09.

14 So I got there on time. I was on time that whole
15 day.

16 Q. Okay.

17 A. I was on time until they detained me.

18 Q. Okay. So there might be a different schedule --

19 A. The way it's set -- we don't -- the way it's set up, we
20 read it differently.

21 Q. Okay.

22 A. we have -- our operator's paddle doesn't look like this.

23 Q. Okay.

24 A. It's called a paddle, but it doesn't look like that.

25 Q. Okay.

1 A. But 1:09 sounds about right, because I remember having the
2 28-minute break. The 28-minute break -- I remember my break.
3 So that's why -- I'm going according to that.

4 Q. Okay. So either way, your first statement to the police
5 from your conversation with the passenger was at least an hour?

6 A. Yes.

7 Q. Was it an hour and a half or closer to an hour?

8 A. It would have been -- it would have been more than an
9 hour.

10 Q. Okay.

11 A. But not an hour and a half.

12 Q. Okay. So somewhere between an hour and an hour and a
13 half?

14 A. (Indicating in the affirmative)

15 Q. Okay. Now, have you ever -- in your time as a DART bus
16 driver, have you ever picked up homeless riders -- homeless --
17 homeless?

18 A. Yes.

19 Q. The homeless?

20 A. Yes.

21 Q. And they usually have a voucher --

22 A. No.

23 Q. -- to ride?

24 A. No. No.

25 Q. Okay.

1 A. Some of them don't have fare at all.
2 Q. Okay.
3 A. Some of them have cash, actually have a fare.
4 Q. Okay. So some homeless have cash?
5 A. Yes.
6 Q. And then some homeless could have a fare, a fare card or
7 one of those vouchers?
8 A. Yes.
9 Q. And some --
10 A. Or some of them could actually have a ticket.
11 Q. Some could have a ticket?
12 A. The actual -- they may have got it from somebody.
13 Somebody may have gotten off the bus who's no longer using that
14 pass, and they give it to them.
15 Q. Oh, okay. And then you said some of them might not even
16 have a ticket at all?
17 A. Right. Don't have their fare at all.
18 Q. Okay. Do you still allow them to ride the bus?
19 A. Sometimes, yes.
20 Q. Okay. Does -- do -- in your experience with homeless
21 riders, do they sometimes carry bags with them?
22 A. Lots.
23 Q. Okay. And when you mean by lots -- what do you mean by
24 that? Can you explain that?
25 A. Lots -- lots of bags. Not necessarily a duffel bag or a

1 backpack, but bags. Walmart, Tom Thumb, plastic bags.

2 Q. Okay. Is it because they carry all their belongings with
3 them?

4 A. I don't know if it's all of them, but they have a lot with
5 them.

6 Q. Or -- but they -- some of them do carry lots of bags?

7 A. Yes.

8 Q. Okay.

9 A. Some of them even have the shopping cart, the grocery cart
10 full of stuff.

11 Q. Okay. Has anyone -- in your 23 years as a bus driver in
12 any of your locations, has any passengers ever left their stuff
13 on your bus?

14 A. Only when I was working the airport.

15 Q. Okay. What kind of items were left on the bus when you
16 were working at the airport?

17 A. Duffel bags, suitcase, phone.

18 Q. Luggage?

19 A. Luggage.

20 Q. Okay. And just so we're clear, I want to backtrack a
21 little bit.

22 How long is your overall route?

23 A. From Lovers Lane to Richland College?

24 Q. Yes. Yes, ma'am.

25 A. Probably about 48, 52 minutes.

1 Q. Okay. So I -- would that be --

2 A. That's if everything is going smoothly, no wheelchairs,
3 walkers.

4 Q. So that's one leg from Richland College all the way to
5 Lovers Lane?

6 A. That's considered a trip, yes.

7 Q. That's one whole trip?

8 A. Yes.

9 Q. And that's 48 minutes?

10 A. 48, 52 minutes, yes.

11 Q. Okay. 48 to 52, roughly?

12 A. Yes.

13 Q. Taking into account traffic lights --

14 A. Yes.

15 Q. -- walkers, wheelchairs?

16 A. Somebody might get on with 600 pennies.

17 Q. Okay. And then the trip back would be roughly the same
18 amount of time?

19 A. Yes.

20 Q. 48, 52 minutes?

21 A. Yes.

22 Q. And so an up-and-back trip, which would be, I guess, two
23 trips --

24 A. A roundtrip.

25 Q. A roundtrip, that would be almost two hours --

1 A. Yes.

2 Q. -- roughly?

3 A. Yes.

4 Q. Okay.

5 A. We don't instantly pull out the minute we pull into our
6 end point unless we're running late.

7 Q. Okay.

8 A. So let's say I was supposed to leave at 1:09. I might
9 have gotten there at 1:04. I will sit there and wait until
10 1:09.

11 Q. Okay.

12 A. Okay?

13 Q. All right.

14 A. We don't leave early, but we do leave late.

15 Q. Okay. Or you leave on time?

16 A. Or we leave on time.

17 Q. Okay. And you mentioned that there's this partition
18 behind you?

19 A. Yes.

20 Q. Is it like a -- is it made of Plexiglass or wood or steel?

21 A. It's a wall.

22 Q. It's a wall?

23 A. It's --

24 Q. Is there something on there?

25 A. Sometimes it has the GPS of the route, so it's calling out

1 Abrams.

2 Q. Okay.

3 A. But because my system was not working, that couldn't have
4 possibly been working either.

5 Q. Okay.

6 A. But it's still on a wall.

7 Q. Okay. How big is it? How thick is it?

8 A. Thick?

9 Q. Yeah. Is --

10 A. It's more like the back of a booth, because it's -- my
11 seat is sitting in there.

12 Q. Okay.

13 A. So it's more like a cubbyhole --

14 Q. Okay.

15 A. -- if you want to call it.

16 Q. All right.

17 A. We put a wall right here.

18 Q. And then how far behind you does it extend?

19 A. Just as thin as the wall.

20 Q. Okay. All right. So it's just a wall, then?

21 A. Yes.

22 Q. Okay.

23 A. It kind of goes around me, like a cubbyhole.

24 Q. Now, back to the passenger, you said that at one point he
25 was a couple of feet away from the fare machine, standing in

1 sort of the entry well?

2 A. He was standing --

3 Q. Okay.

4 A. -- in the doorway.

5 Q. And how often -- or -- he was standing in the doorway?

6 A. Yes.

7 Q. Okay. Is that --

8 A. So if I had -- I would not have been able to open up the
9 door.

10 Q. Okay. Because he was standing there?

11 A. Yes.

12 Q. And the bus was already in motion?

13 A. Yes.

14 Q. Okay. You said passengers aren't allowed to be in front
15 of the yellow line?

16 A. Yes.

17 Q. And did you ever tell him you have to get behind the
18 yellow line?

19 A. Yes.

20 Q. Okay. Approximately how much time was he in front of the
21 yellow line while the bus was moving?

22 A. Probably about six, seven minutes.

23 Q. Okay.

24 A. He was talking.

25 Q. And he was saying things that you didn't find believable

1 or nonsense or something like that?

2 A. Yes.

3 Q. Okay.

4 MR. RODRIGUEZ: Just a moment, Your Honor, please.

5 (Pause)

6 MR. RODRIGUEZ: Pass the witness, Your Honor. Thank
7 you.

8 THE COURT: Redirect?

9 MS. EGGERS: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. EGGERNS:

12 Q. Ms. Lumpkin, let me ask you. You said you've been doing
13 this for 23 years?

14 A. Yes.

15 Q. Can you drive a bus and talk?

16 A. Absolutely.

17 Q. Can you drive a bus and listen?

18 A. Yes.

19 Q. If somebody says, "I need to get off here," do you stop
20 the bus?

21 A. Yes.

22 Q. No trouble hearing?

23 A. No.

24 Q. Okay. Did you have any trouble hearing on December 8th
25 that man say, "I think they're looking for me"?

1 A. No.

2 Q. Did you have any trouble hearing that man say, "I left a
3 bomb in there"?

4 A. No.

5 Q. Did you say -- have any trouble hearing the man say, "I
6 got a problem with that white female teller"?

7 A. No.

8 Q. Did you have any problems hearing that man say, "I'm going
9 to teach her"?

10 A. No.

11 Q. Your son -- is it pronounced Diavionn?

12 A. Diavionn.

13 Q. Diavionn.

14 Is he your youngest child?

15 A. Yes.

16 Q. Why was he riding the bus that day?

17 A. I want to say that he was on punishment, but I can't
18 remember what he was on punishment for.

19 Q. Does that just mean he didn't do homework or something
20 like that?

21 A. Yes.

22 Q. Okay. Why does he ride the bus with you -- why does he
23 stand there, I guess?

24 A. He feels like he's my protector.

25 Q. Okay.

1 A. He just wants to stand next to his mom. He's a spoiled
2 brat. Sorry.

3 THE COURT: You're under oath.

4 THE WITNESS: He is. He is.

5 BY MS. EGGERS:

6 Q. But you know you can't discuss your testimony, so you
7 can't tell him what you just said.

8 A. Okay.

9 Q. Let me ask you, Ms. Lumpkin, you said you've been doing it
10 for 23 years. And Mr. Rodriguez and I, we're not bus drivers,
11 so we've never driven a bus. Is it like driving a car but a
12 really long car at the end of the day?

13 A. Technically, it's not, because people have the
14 misconception that you're driving this long vehicle. We don't
15 look back there and drive back there. We don't drive behind
16 us; we drive in front of us. So for us, it's like driving our
17 car, because this is only the space that we are working with.

18 Q. Okay.

19 A. We're concerned about the back when we're making turns,
20 which is the reason why we use our mirrors.

21 So we don't drive back there. So I think people have
22 that misconception.

23 Q. Okay. So it's like driving a car?

24 A. The wheel turns the wheel just like it turns the wheel of
25 your car, maybe because I've been doing this for so long.

1 Q. The gas on the right and the --

2 A. Yes.

3 Q. Okay.

4 A. The same thing.

5 Q. All that kind of stuff?

6 A. Yes.

7 Q. Do you have any more trouble, since you've been doing it
8 for so long, carrying on a conversation in a bus any different
9 than you would in a car?

10 A. No. The same way.

11 Q. Now, looking at the schedules -- and I recognize -- I'm
12 going to go Government's Exhibit -- Demonstrative Exhibit B
13 just so we can see it.

14 So you said that you spoke with the police -- just
15 because y'all were talking times and all that kind of stuff, so
16 we'll look at it. You said you spoke with the police when you
17 got back down to Lovers; is that correct?

18 A. Yes. Yes.

19 Q. Okay. So on the route -- or on the line that you were, it
20 looks like you would have gotten up to -- sorry. Looks like
21 you would have gotten up to Richmond -- Richland College at
22 11:56?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. Okay. So we have to go to the other -- the other one.

2 A. To see when I come back, yes. On you-all's schedule, yes.

3 Q. Yeah, it's different than yours.

4 So let's go to the opposite direction.

5 And so you were talking about you get a break at the
6 end; is that right?

7 A. Yes.

8 Q. Okay. So if we go 11:56 -- and what time -- you said the
9 times on these are what time you pull out; is that right?

10 A. Yes.

11 Q. Okay. So you would have been pulling out of Richland
12 College on that 11:56 one. You would have -- is it 12:19?

13 A. Well, no, it looks like the 12:24. That looks more like
14 it.

15 Q. Well, no, look over here --

16 A. Okay.

17 Q. -- at Richland College side. I know it's not what you
18 normally look at. Look at this side, Richland College.

19 A. Okay. So it would have been 12:19.

20 Q. Okay. And so it would have been when you got back down to
21 Lovers Lane, then, on that one. So about an hour and a half?
22 12:59?

23 A. Yes.

24 Q. Let me ask you this, because the suggestion is this. The
25 suggestion is that you can't remember this conversation in an

1 hour and a half.

2 Do you have any memory problems?

3 A. No.

4 Q. Did you have any memory problems telling the police what
5 that man had said to you --

6 A. No.

7 Q. -- that had the flaps on his ears and the FUBU outfit on?

8 A. No, I didn't have any problems.

9 Q. So when they asked you what -- what had been said to you,
10 you told them what had been said to you?

11 A. Yes.

12 Q. Did the man that get on the -- got on the bus, did he say
13 the word "bomb"?

14 A. Yes.

15 MS. EGGER: Nothing further, Your Honor.

16 THE COURT: Recross?

17 MR. RODRIGUEZ: Thank you, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. RODRIGUEZ:

20 Q. Not to be nitpicky, Ms. Lumpkin, but a CDL is a special
21 license?

22 A. Yes.

23 Q. Okay. Do you have to take more tests to pass a CDL than
24 you have to take to get a regular license?

25 A. Yes.

1 Q. And do people that take the CDL sometimes have to take it
2 more than once?

3 A. Yes.

4 Q. Okay. And is the steering wheel exactly the same in terms
5 of the size and the shape and the angle on a bus as it is in a
6 car?

7 A. No.

8 Q. Okay. So there are differences?

9 A. Yes.

10 Q. Okay.

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

12 THE COURT: Any objection to excusing the witness?

13 MR. RODRIGUEZ: No objection, Your Honor.

14 MS. EGGERS: No objection.

15 MR. DE LA GARZA: Not from the Government, Your
16 Honor.

17 THE COURT: Thank you. You may step down.

18 You're excused.

19 (witness excused)

20 THE COURT: The Government may call its next witness.

21 MR. DE LA GARZA: The Government calls Diavionn
22 Fowler.

23 (Pause)

24 MR. DE LA GARZA: Sorry, Your Honor. Diavionn
25 Fowler.

1 (Pause)

2 THE COURT: Will you raise your right hand, please?

3 (The witness was sworn)

4 THE COURT: All right. Be seated, please. And speak
5 into the microphone.

6 (Pause)

7 MR. DE LA GARZA: May I proceed, Your Honor?

8 THE COURT: You may.

9 DIAVIONN FOWLER, GOVERNMENT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MR. DE LA GARZA:

12 Q. What's your name?

13 A. Diavionn Fowler.

14 Q. How do you spell your first name?

15 A. D-I-A-V-I-O-N-N.

16 Q. How old are you?

17 A. 17.

18 Q. Are you the son of Jacqueline Lumpkin?

19 A. Yes, sir.

20 Q. Do you go to high school?

21 A. Yes.

22 Q. Which high school?

23 A. Lakeview Centennial.

24 Q. Mr. Fowler, do you remember back in December of last
25 year -- I think it was on a Saturday, December the 8th --

1 A. Uh-huh.

2 Q. -- riding with your mother as she was driving the 583
3 route from Lovers Lane to Richland College?

4 A. Yes.

5 Q. Do you remember a man getting on the bus who said
6 something about a bomb?

7 A. Yes.

8 Q. And do you remember where that man got on the bus?

9 A. I don't remember the street. I just remember it was
10 across the street from a bank.

11 Q. And when you ride the bus with your mother, where do you
12 stand?

13 A. I usually stand towards the front of the bus, close to
14 her.

15 Q. Why do you stand so close to your mom?

16 A. I don't know. It's just a mama's boy thing. I don't
17 know. I just want to be close to her.

18 Q. Are you also kind of protective of your mother?

19 A. Yes.

20 Q. Have you ever seen anybody get aggressive with your mother
21 on the bus?

22 A. No.

23 Q. Do you think that's because you're standing next to her
24 most of the time?

25 A. Yes.

1 Q. Mr. Fowler, the man who got on the bus across from the
2 bank --

3 A. Uh-huh.

4 Q. -- what kind of outfit was he wearing?

5 A. He was wearing a blue jean, one -- like a one-piece-type
6 thing, a gray -- a tan hat that covered his ears and came over
7 his face, is mostly what I remember.

8 Q. Do you remember how tall he was, roughly?

9 A. 6-1, 6-2, maybe.

10 Q. Did he have a cane or a walker with him?

11 A. No.

12 Q. Do you remember that gentleman talking about something
13 that happened at a bank?

14 A. Yes. He mentioned that someone in the bank wasn't giving
15 him the money he was asking for, and that he was just annoyed
16 with the whole situation.

17 Q. And what did he say specifically as you recall about a
18 bomb?

19 A. He came on the bus, and my mom had asked him what was
20 going on at the bank, because there was cops around it. And he
21 said that they -- that he thinks they are looking for him and
22 that he left a bomb in the bank.

23 Q. And when you were riding in the bus that day, did you have
24 your earbuds in?

25 A. Uh-huh.

1 Q. Do you listen to music, typically, when you ride with your
2 mom?

3 A. Yeah.

4 Q. Was your music up so loud that you couldn't hear what he
5 said?

6 A. No.

7 Q. Do you ever turn it up so loud that you can't hear what's
8 going on around you?

9 A. No.

10 Q. Do you remember anything else he said besides talking
11 about a bomb and the bank?

12 A. I remember him talking about where he's from or stuff like
13 that.

14 Q. And what did he say about that?

15 A. He said he was from somewhere like along a river or from a
16 river or something like that, and that his job was to give
17 money to people that needed it.

18 Q. His job was to give money to people? Is that what you
19 said?

20 A. Yeah. Like, that's what he described his job as.

21 Q. Okay. Anything else you remember him talking about?

22 A. No.

23 Q. Okay. When he was talking to you, what's the furthest
24 away he was from you?

25 A. Maybe a few inches. He stood fairly close to me.

1 Q. Was it a comfortable distance for you?

2 A. Not really.

3 Q. Did you ask him to step away from you?

4 A. No.

5 Q. Okay.

6 A. I just ignored him, kind of.

7 Q. Are you a pretty easygoing guy with stuff like that?

8 A. Yeah.

9 Q. You don't have to worry about people bothering you much,
10 right?

11 A. No.

12 Q. In terms of the way he looked, did he appear angry, or did
13 he appear happy or sad?

14 what was his emotional state, according to what you
15 saw?

16 A. He appeared relaxed, like nothing was really bothering him
17 or fazing him.

18 Q. Can you remember how long he stayed on the bus?

19 A. Maybe about 20 or 30 minutes.

20 Q. Okay. Do you remember where he got off?

21 A. No.

22 Q. Okay. And when he got on the bus, did he immediately just
23 volunteer that, "They're looking for me," or did your mom ask
24 him some questions?

25 A. The only thing my mom said was that -- she asked why there

1 was cops around the bank, and then he said that he thinks that
2 they're looking for him and that he left a bomb at the bank.

3 Q. Did you ever talk to the police that day?

4 A. No.

5 MR. DE LA GARZA: Pass the witness, Your Honor.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MS. MORGAN:

9 Q. Good afternoon, Mr. Fowler.

10 A. Good afternoon.

11 Q. I'm going to -- could you speak up just a little bit?

12 A. Okay.

13 Q. Okay. You're a little bit soft-spoken. I was having
14 trouble hearing some of the things you said.

15 Now, on that day when y'all got to Skillman and
16 Abrams, it was apparent that something was going on at the
17 Wells Fargo, right?

18 A. Yes.

19 Q. Police everywhere?

20 A. Yeah.

21 Q. People weren't allowed to go anywhere near it?

22 A. No.

23 Q. Okay. Now, when you saw the guy in the denim one-piece
24 get on the bus, he was just waiting there at the bus stop,
25 right?

1 A. Uh-huh.

2 Q. Is that a "yes"?

3 A. Yes.

4 Q. Okay. He didn't put a bike on the bus or anything like
5 that?

6 A. No.

7 Q. He wasn't running or hiding?

8 A. No.

9 Q. He was just waiting at the bus stop?

10 A. Yes.

11 Q. All right. And -- now, I know you didn't talk to any
12 officers on that day, but back in February of this year, you
13 did speak with Agent Keighleigh, correct?

14 A. Yes.

15 Q. And your mom was there?

16 A. Yes.

17 Q. All right. And during that conversation, you told Agent
18 Keighleigh that Mr. Stallings said he left his bags in the
19 bank, right?

20 A. Yes.

21 Q. And that the bank employees believed there might be a
22 bomb?

23 A. I don't know what the bank employees said.

24 Q. No, no, no. That Mr. Stallings --

25 A. Oh.

1 Q. Or -- no, I'm sorry. The guy in the denim --

2 A. Uh-huh.

3 Q. -- said he had left his bags in the bank, right?

4 A. Yes.

5 Q. And that the bank employees believed there might be a
6 bomb?

7 A. I'm not understanding your question.

8 Q. Okay. I think I heard you say a moment ago that the guy
9 on the bus said, "I left a bomb in the bank."

10 A. Yes.

11 Q. That's your testimony today?

12 A. Yes.

13 Q. Okay. But back in February when you talked to Agent
14 Keighleigh, do you remember telling him that the guy said he
15 left the bags in the bank, right?

16 Do you remember that part?

17 A. Yes.

18 Q. And that the bank employees believed there might be a bomb
19 in the bag?

20 A. I don't remember saying anything about employees. I
21 remember saying that he left -- that he said he left his things
22 in the bank.

23 Q. Okay. So that's what your recollection is today?

24 A. Yes.

25 Q. Okay. All right. And have you talked to your mom about

1 what happened since it happened?

2 A. Yes.

3 Q. Yeah, multiple times?

4 A. Yes.

5 Q. Yeah, probably talked about it that day?

6 A. Yes.

7 Q. Y'all probably talked about it back in February after you
8 talked to the agent?

9 A. Yes.

10 Q. Okay. So you and your mom have talked about this
11 countless number of times?

12 A. Yes.

13 Q. Okay. All right. And while you were on the bus, you were
14 the person who was standing very, very -- almost too close to
15 the guy, right?

16 A. Yes.

17 Q. Okay.

18 MS. MORGAN: Give me just one second.

19 (Pause)

20 BY MS. MORGAN:

21 Q. All right. And I know I asked -- you know, you talked to
22 your mom about what happened back in December and then again in
23 February. And then at some point, in the last couple of
24 months, I assume, the Government reached out and let you know
25 that there was going to be a trial, right?

1 A. Yes.

2 Q. And have you spoken with them since that time?

3 A. Yes.

4 Q. Okay. And I assume that you also spoke to your mom some
5 more?

6 A. Yes.

7 Q. Okay. All right. So that's been sort of an ongoing
8 thing?

9 A. Yes.

10 Q. All right.

11 MS. MORGAN: Nothing further. Thank you.

12 THE COURT: Redirect?

13 MR. DE LA GARZA: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 MR. DE LA GARZA:

16 Q. Mr. Fowler, when the man on the bus was talking to you,
17 were you asking him any questions back?

18 A. No.

19 Q. Were you giving him any kind of responses?

20 A. Kind of like "okay," "uh-huh," "sure" type of answers.

21 Q. You weren't really interested in having a conversation
22 with him, were you?

23 A. No.

24 Q. When you ride the bus with your mom, do you hear a lot of
25 people say a lot of different things?

1 A. Yes.

2 Q. Okay. And regarding you meeting with myself and Ms.
3 Eggers and Agent Keighleigh, we've met -- you've met with me
4 now twice, right?

5 A. Yes.

6 Q. Okay. What did I tell you when I met with you? What was
7 the first rule that I told you?

8 A. To say what I know.

9 Q. Right.

10 Did I tell you to tell the truth?

11 A. Yes.

12 Q. Okay. That was number one, right?

13 A. Yes.

14 Q. Okay. And I met with you and your mother together because
15 you're a minor under Texas law, correct?

16 A. Yes.

17 Q. Okay. And I asked your mother's permission to speak to
18 you separately at one point, didn't I, when we met at
19 Starbucks?

20 A. Yes.

21 Q. Okay. Have you ridden that route before with your mother?

22 A. Yes.

23 Q. About how many times?

24 A. I couldn't tell you. A few times, at least.

25 Q. When you say, "a few," are you talking more than five

1 times?

2 A. More than five, yes.

3 Q. More than 20 times?

4 A. Yes.

5 Q. Okay. And that day, do you remember your mom having put
6 you on punishment?

7 A. I was on punishment, yes.

8 Q. Can you tell the jury what you were on punishment for?

9 MS. MORGAN: Objection, relevance, and outside the
10 scope.

11 THE COURT: It doesn't appear to relate to the cross.

12 MR. DE LA GARZA: I was just simply -- I'll withdraw
13 the question, Your Honor.

14 THE COURT: Okay.

15 BY MR. DE LA GARZA:

16 Q. Did you see your mother talk with the police officers --

17 A. Yes.

18 Q. -- at one of the DART stations?

19 A. Yes.

20 Q. Okay. Was that on more than one occasion?

21 A. Yes.

22 Q. Okay.

23 MR. DE LA GARZA: May I have a moment, Your Honor?

24 THE COURT: You may.

25 (Pause)

1 MR. DE LA GARZA: Pass the witness, Your Honor.

2 THE COURT: Recross?

3 MS. MORGAN: Just one quick question.

4 RECROSS-EXAMINATION

5 BY MS. MORGAN:

6 Q. You just were speaking with Mr. De la Garza about meeting
7 with him at Starbucks. I know that you met with Agent
8 Keighleigh back in February at Starbucks. Was this a separate
9 meeting from that one?

10 A. Yes.

11 Q. Okay. All right. So you've had multiple Starbucks-based
12 meetings?

13 A. Two.

14 Q. Two?

15 A. Yes.

16 Q. Okay. All right. Thank you.

17 MS. MORGAN: Nothing further.

18 THE COURT: Any objection to excusing the witness?

19 MR. DE LA GARZA: No, Your Honor.

20 MS. MORGAN: No, Your Honor.

21 THE COURT: You may step down. You're excused.

22 Thank you.

23 (Witness excused)

24 MS. EGGERS: Your Honor, may we briefly approach?

25 THE COURT: Well, I was going to ask the Government

1 THE COURT: Members of the jury, that means that
2 these exhibits are not in evidence and will not be present for
3 you in the jury room to consider in your deliberations.

4 All right. You may proceed.

5 MS. MORGAN: At this time, Your Honor, the defense
6 would call Agent Aaron Keighleigh.

7 | (Pause)

8 THE COURT: Raise your right hand, please.

9 (The witness was sworn)

10 THE COURT: All right. Be seated, please. And speak
11 into the microphone.

12 AARON KEIGHLEIGH, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

14 | BY MS. MORGAN:

15 Q. Good morning, Agent Keighleigh.

16 A. Good morning.

17 Q. How long have you been an FBI agent?

18 A. I've been with the FBI for almost 16 years now. I've been
19 an agent for 13 of those years.

20 Q. okay. And what were you before you were an agent?

21 A. I was a scientist in our laboratory in Washington, D.C.

22 Q. Okay. What sort of work were you doing there?

23 A. I was in a unit called the Explosives Unit, and we focused
24 primarily on post-blast crime scene investigation.

25 Q. Okay. All right. And I assume to become an agent you

1 have extensive training?

2 A. Yes, ma'am.

3 Q. And you specifically would have explosives training,
4 correct?

5 A. Yes, ma'am.

6 Q. But you also have the more general training in evidence
7 collection?

8 A. Yes, ma'am.

9 Q. In investigation?

10 A. Yes, ma'am.

11 Q. Interviewing?

12 A. Yes, ma'am.

13 Q. All of the procedures that you need to follow as far as
14 writing reports and that kind of thing?

15 A. Yes, ma'am.

16 Q. All right. And when you interview witnesses and collect
17 evidence in a case, you then prepare what's called an FBI 302?

18 A. Correct.

19 Q. And that's a report?

20 A. Yes.

21 Q. Okay. And that's something where, when you're doing the
22 interview or the investigation, the portion of the
23 investigation, you're taking notes, right?

24 A. Yes.

25 Q. Okay. or making a recording or doing whatever?

1 A. Yes.

2 Q. All right. And then afterward you go back, and close in
3 time you write a report about what you learned?

4 A. Yes.

5 Q. All right. And that's an important part of your job?

6 A. Sure.

7 Q. All right. And those reports are supposed to contain the
8 essential information that you had learned during that part of
9 your investigation?

10 A. Yes. Those reports are -- they're summary in nature.
11 They're a summary of what we've learned, yeah.

12 Q. Okay. But you want to be sure that what you're putting in
13 there is accurate?

14 A. Oh, yes.

15 Q. Okay. You may not put every single detail?

16 A. Yes.

17 MR. DE LA GARZA: Objection, Your Honor, leading.

18 THE COURT: This is an adverse witness. I'll
19 overrule the objection.

20 BY MS. MORGAN:

21 Q. Okay. And so the information that you're putting in --
22 sorry -- may not be full and complete, but it's all accurate?

23 A. Yes.

24 Q. All right. And you write the reports for any number of
25 reasons but one of those reasons is that there's also often a

1 time delay between part of the investigation and, you know,
2 when you might end up testifying at trial?

3 A. Yes.

4 Q. All right. Now, you were involved in leading this
5 investigation fairly soon after it occurred, correct?

6 A. I mean, that's kind of subjective in nature, I guess.

7 Q. Okay. Well, I'll break it up. It was too many questions
8 there.

9 when did you become involved?

10 A. I became aware of the incident the day that it happened,
11 on December 8th --

12 Q. Okay.

13 A. -- 2018.

14 Q. All right. So -- and when you became aware, were you then
15 aware that you were likely going to be involved in the
16 investigation?

17 A. Not necessarily. I became aware through the Bomb Squad
18 commander, because that's a typical thing. If there's a Bomb
19 Squad response, then we're notified that there's something
20 going on that they're responding to, so that's the capacity in
21 which I was notified.

22 Q. Okay. That's the information you learned on the 8th?

23 A. On the 8th, yes.

24 Q. Okay. When did you learn more information?

25 A. I believe -- you know, I really don't recall how many

1 times, you know, how many conversations I had or how often. I
2 believe my initial communication with my superiors to initiate
3 an investigation was in January.

4 Q. Well, at the very least you were involved in an interview
5 on December 11th of 2018, correct?

6 A. I may have been. I'd have to see the report to --

7 Q. Do you want me to grab your 302?

8 A. Yeah, if you have it.

9 Q. I do.

10 (Pause)

11 MS. MORGAN: May I approach?

12 THE COURT: You may.

13 BY MS. MORGAN:

14 Q. I'm showing you what I believe to be one of your reports
15 to help refresh your recollection.

16 (Pause)

17 A. Yes.

18 Q. Has your recollection been refreshed as to the date?

19 A. Yes.

20 Q. Okay. I'll take it back.

21 So having reviewed your 302, were you involved in a
22 witness interview in this case as early as December 11th of
23 2018?

24 A. Yes, it appears so.

25 Q. Okay. So very early on?

1 A. Yeah.

2 Q. All right. And then I assume maybe you quibbled a bit
3 when I asked you about whether you were leading the
4 investigation, because early on you were working -- at least
5 early on you were also working with, I believe, Sergeant -- I
6 could be wrong -- Walton from the Dallas Police Department?

7 A. Corporal Walton, yes.

8 Q. Corporal Walton?

9 A. Uh-huh.

10 Q. Okay. All right. Now, during the course of your
11 investigation, you learned a lot about Mr. Stallings.

12 A. I did.

13 Q. You learned that around the time that all this took place
14 he was homeless?

15 A. Yeah. I don't know -- I think that was kind of what we
16 assumed. I don't know that I -- that I really knew that,
17 because I didn't, you know -- my investigation didn't yield
18 anything to either -- either way, I guess.

19 I couldn't find -- I couldn't find any physical
20 address or any location for him here; but, again, I didn't know
21 for -- necessarily for a fact that he was homeless. It just --
22 we just kind of assumed that.

23 Q. Okay. You believed him to be living in and out of
24 homeless shelters --

25 A. Yes, yes.

1 Q. -- at the time?

2 A. Yes.

3 Q. Okay. And the reasonable inference therefrom is that he
4 would have been homeless?

5 A. Yes, ma'am.

6 Q. All right. Now, you know some things about homelessness?

7 A. A little bit.

8 Q. Okay. You know it can often be difficult for people
9 living on the streets to do things that are very simple for the
10 rest of us?

11 A. I can imagine.

12 Q. Obtaining ID, obtaining vital, statistical documentation
13 like birth certificates, that sort of thing?

14 A. Sure.

15 Q. Okay. All right. You also learned that Mr. Stallings had
16 a bank account at Wells Fargo?

17 A. I did.

18 Q. All right. And that that bank was open and active through
19 December 8th of 2018?

20 A. Yes, ma'am.

21 Q. All right. That he was making regular withdrawals from
22 many different Wells Fargos in the area?

23 A. Yes, ma'am.

24 Q. All right. Now, during your investigation in this case,
25 you interviewed at least 11 different people, correct?

1 A. Yeah, approximately.

2 Q. Okay. All right. And of those, only one of the
3 interviews was recorded, correct?

4 A. Yes. I did not participate in the interview that was
5 recorded.

6 Q. Well, I believe your initial interview on December 11,
7 2018, with Ms. -- or, no, no. Not that date. I apologize.
8 The January 15, 2019 interview of Ms. Rojas, in which
9 Officer -- sorry -- Corporal Walton was present and he made an
10 audio recording?

11 A. I don't recall that being the case. It may -- it may have
12 been.

13 Q. Okay. But you didn't record a single one of them?

14 A. No. I didn't, no.

15 Q. All right. Now, you interviewed Ms. O'Daniel?

16 A. I did.

17 Q. Okay. And you interviewed her back initially in
18 January of 2019?

19 A. Sounds about right.

20 Q. Okay. And at that time, you didn't record it?

21 A. Correct.

22 Q. But you did what we talked about; you took copious notes,
23 and you were very careful?

24 A. Correct.

25 Q. All right. And then you wrote your 302?

1 A. I did.

2 Q. And that would have contained any relevant information in
3 there?

4 A. Again, a summary of what she had told me, yes.

5 Q. All right. And at that time, Ms. O'Daniel didn't mention
6 to you that she had seen Mr. Stallings riding a bike on
7 December 8th, did she?

8 A. I'd have to refer to the report.

9 Q. To refresh? Absolutely.

10 (Pause)

11 Q. I may have misunderstood the testimony. It may be
12 irrelevant. But since I've asked it, I'll give you an
13 opportunity so you can answer the question.

14 A. Sure.

15 (Pause)

16 A. Okay.

17 Q. Okay. So there's nothing in your report about Ms.
18 O'Daniel mentioning seeing Mr. Stallings on a bicycle?

19 A. There is not.

20 Q. More importantly, you also interviewed Mr. Fowler back in
21 February of 2019, correct?

22 A. I did.

23 Q. All right. And that was much closer in time to the
24 incident that you were talking to him about than we are today?

25 A. Correct.

1 Q. All right. And you've talked to him since then?

2 A. I have.

3 Q. He's talked to his mom since then?

4 A. He has.

5 Q. He's talked to the attorneys for the prosecution since
6 then?

7 A. Yes, ma'am.

8 Q. All right. But back then, closer in time, when you talked
9 to him, you didn't record it?

10 A. I did not.

11 Q. And his mother was there when you were speaking with him?

12 A. She was.

13 Q. Okay. So she heard what he said?

14 A. She did.

15 Q. All right. And they weren't under any order not to
16 discuss afterward?

17 A. No.

18 Q. Okay. Now, during that interview, Mr. Fowler told you
19 that he had a conversation with the guy on the bus, right?

20 A. Yes.

21 Q. And that the guy on the bus told him, "I left my bags at
22 the bank. The people who work there think I left a bomb"?

23 A. Correct.

24 Q. Okay. So on that date, he did not tell you that the guy
25 on the bus said, "I left a bomb at the bank"?

1 A. Those were not his exact words, no.

2 Q. They were different words?

3 A. Correct.

4 Q. Okay. Because you can -- you know how to write down, "I
5 left a bomb at the bank," because -- sorry -- when you
6 interviewed Ms. Lumpkin back in December, that's what she told
7 you she heard, right?

8 She told you she heard the guy say, "I left a bomb at
9 the bank"?

10 A. So without looking at -- again, without looking at the
11 reports --

12 Q. If you'd like to refresh, I'm happy to have you refresh
13 your recollection.

14 A. Sure. But if I -- I probably would have put something in
15 quotation marks if I was trying to quote it exactly either way.

16 MS. MORGAN: May I approach?

17 THE COURT: You may.

18 (Pause)

19 BY MS. MORGAN:

20 Q. I'm showing you your 302s from Mr. Fowler's interview --

21 A. Thank you.

22 Q. -- and from the December interview of Ms. Lumpkin.

23 A. Thank you, ma'am.

24 (Pause)

25 A. I believe this report is missing a page. I'm sorry. I'll

1 review this one.

2 Q. Is it on the back?

3 A. Oh, I'm sorry. I didn't realize it was double-sided. I
4 apologize.

5 (Pause)

6 A. Okay. Thank you. Sorry about that.

7 Q. That's okay.

8 All right. So just to be clear, Ms. Lumpkin did tell
9 you that the guy on the bus said, "I left a bomb in the bank"?

10 A. That is correct.

11 Q. All right. But her son, Mr. Fowler, said that the guy on
12 the bus said, "I left my bags in the bank, and the bank
13 employees believe there may be a bomb in the bags"?

14 A. Yes. But, again, I wasn't quoting Mr. Fowler, so that's a
15 summary of what he told me, yes.

16 Q. There's a substantive difference between saying, "I left a
17 bomb," and saying, "I left a bag and someone thinks there might
18 be a bomb," correct?

19 A. Correct.

20 Q. Okay. And you understand that substantive difference?

21 A. Yes. That is what he told me. I'm just making it clear
22 that I'm not quoting him.

23 Q. Okay.

24 A. But that is -- yes, that is what he said.

25 Q. All right. And if you'd recorded those interviews, we

1 would be able to show the jury today exactly what each of them
2 said, correct?

3 A. Correct.

4 Q. All right. But we're in a situation where we can't do
5 that?

6 A. Correct.

7 Q. Was another part of your investigation was gathering
8 evidence?

9 A. Correct.

10 Q. All right. And including videos?

11 A. Correct.

12 Q. And so you -- I just wanted -- we have a 10-minute-long
13 video from Wells Fargo?

14 A. Yes.

15 Q. All right. And so you never went back and asked Wells
16 Fargo for a more extended video?

17 A. After I had received that one? Is that your question?

18 Q. At any point.

19 A. No.

20 Q. No. Okay.

21 And obtaining video is something that's somewhat
22 time-sensitive, correct?

23 A. Yeah, I think it depends. I'm not sure how long they keep
24 their videos; but, yeah, theoretically, it would be time-
25 sensitive.

1 Q. Okay. But if you had obtained a longer Wells Fargo video,
2 we would be able to show the jury today more information about
3 what the police response looked like, what the response in the
4 bank looked like, what the evacuation looked like, that sort of
5 thing, correct?

6 A. Yeah. I don't know how many -- how much of that would
7 have been on the video, but yes. Theoretically, yes.

8 Q. I mean, at least the part that happened inside the bank?

9 A. Yeah. From that camera angle, yeah. That's -- yeah.

10 Yes.

11 Q. All right.

12 MS. MORGAN: One moment.

13 THE WITNESS: Sure.

14 (Pause)

15 MS. MORGAN: Nothing further at this time.

16 THE COURT: Cross-examination?

17 MR. DE LA GARZA: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DE LA GARZA:

20 Q. Agent Keighleigh, we do have a recorded statement of the
21 defendant in this case, right?

22 A. We do.

23 Q. In fact, there's two recorded statements?

24 A. Yes.

25 Q. So the person who's on trial today, we have recorded

1 statements from that person about the incident?

2 A. we do.

3 Q. And those are Government Exhibits 13-A and 13-B, correct?

4 A. I believe so, yes.

5 MR. DE LA GARZA: Pass the witness, Your Honor.

6 THE COURT: Redirect?

7 MS. MORGAN: Yes, Your Honor. One moment.

8 (Pause)

9 REDIRECT EXAMINATION

10 BY MS. MORGAN:

11 Q. So we have statements made by Mr. Stallings, correct?

12 That's what the Government was asking you about?

13 A. Correct.

14 Q. All right. And in his statements, he never indicated that
15 he had intentionally perpetrated a bomb hoax?

16 A. He did not indicate that in his statement.

17 Q. All right. Now, we have those recorded statements because
18 Mr. Stallings was cooperative and answered questions?

19 A. Yes.

20 Q. But we don't have recordings of any of the other witness
21 statements from back when this actually happened?

22 A. we do.

23 Q. The one that Walton made of Rojas?

24 A. Yes.

25 Q. Okay. But all of your interviews, we have not a single

1 video?

2 A. Of my interviews, no.

3 Q. Okay. Or audio recording?

4 A. Of my interviews, no.

5 Q. Okay. And when I'm talking about your interviews, those
6 are the ones that you captured in 302s, but we also know that
7 you have spoken to those witnesses multiple, additional times
8 since then as well, correct?

9 A. Correct.

10 Q. All right.

11 MS. MORGAN: Nothing further.

12 THE COURT: Recross?

13 MR. DE LA GARZA: No, Your Honor.

14 THE COURT: Thank you, sir.

15 You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused)

18 MS. MORGAN: Your Honor, at this time the defense
19 rests.

20 (Defendant rests)

21 THE COURT: Ms. Eggers?

22 MS. EGGERS: Nothing further, Your Honor.

23 THE COURT: Does the Government close?

24 MS. EGGERS: Yes, Your Honor.

25 (Government closes)

1 doubt that he intentionally conveyed false and misleading
2 information that there was an imminent threat to personal
3 safety that was believed by reasonable people.

4 The actions that people took speak louder than words.
5 And the fact that everyone stayed in that bank for 30 minutes
6 coming and going speaks louder than anything they could say
7 here on the stand.

8 And so for all of these reasons, we would ask that
9 when you go back and deliberate and you look at all the
10 evidence, you note all of the places where reasonable doubt
11 exists.

12 And you can have one reasonable doubt, and you can
13 have another.

14 But when you guys see those doubts, we ask that you
15 find Mr. Stallings not guilty, because he's innocent.

16 Thank you.

17 THE COURT: The Government has 22 minutes and 12
18 seconds remaining.

19 MS. EGGERS: Thank you, Your Honor.

20 CLOSING STATEMENT

21 BY MS. EGGERS:

22 The defense started this trial with saying there were
23 two questions: Did the Defendant intend to create a bomb hoax
24 and would a reasonable person believe there was a bomb? That's
25 what they came in here on Monday morning -- or afternoon,

1 excuse me, and said. Those two were the questions.

2 Did the Defendant intend to create a bomb hoax?

3 In jury selection, I said -- I asked y'all about
4 actions speaking louder than words and what that means.

5 Yelling and cussing at Ms. Spahalic once she refused.

6 Yelling and cussing at another teller when she refused and then
7 throwing his drink at the window.

8 Yelling and cussing at Ms. Greenfield, throwing the
9 candy on her desk, and then making the mannerism he did once he
10 was forced to leave the bank.

11 Not returning to the bank for a full two months,
12 knowing good and well he had no business whatsoever being
13 there.

14 Going to 13 other banks during those two months
15 because he knew he couldn't return.

16 Actions speak louder than words

17 Entering a place he wasn't supposed to be.

18 Ms. Greenfield stood at that door and said, "Don't
19 ever" -- and she probably used some profanity -- "Don't ever
20 come back here." But he entered that Skillman and Abrams
21 branch with two empty bags.

22 We had to hear their cross-examination about all the
23 stuff that is in the bags. And you probably watched those
24 videos today and thought, goodness, why were all those
25 questions asked? Even the Defendant himself on the video said

1 the bags were empty, because they were. His worldly belongings
2 were not in those bags. Even listening to him on December
3 10th, he said the bags were empty, there's nothing in them.
4 There's nothing in the bags.

5 Deliberately placing the bags where he did.

6 Asking to speak with the manager and then immediately
7 walking out of the bank at approximately 10:43 a.m.

8 He didn't say, "Hey, I need to go across the street
9 to go to the bathroom." He said, "Just give me a minute to
10 collect my thoughts," and then he walked out. He did that by
11 design. He needed them to know that he was there, and then he
12 needed to get out of there, because this bomb hoax wasn't going
13 to work unless he knew that they knew he was the one that left
14 the bags.

15 Going across the street to a location where he could
16 see and just waiting.

17 He got what he wanted. He enjoyed every minute of
18 it.

19 You heard that the first officer didn't arrive until
20 approximately 11:08. That's 25 minutes after the defendant
21 walked out of the bank. What in the world was that man doing
22 for 25 minutes? I would submit to you, ladies and gentlemen,
23 he was just watching and waiting to see if the little game he
24 was playing worked. And lo and behold, it didn't.

25 Actions speak louder than words.

1 The Defendant gets on Ms. Lumpkin's bus at
2 approximately 11:25. We know it was between the 11:23 major
3 stop and the 11:29 major stop, which is just over 40 minutes
4 after he walked away from the bank.

5 That man never went up to any of those law
6 enforcement officers -- that's why you had to hear from some of
7 them -- and said, "Hey, I left the bags in the bank. Hey,
8 that's my stuff. Hey, I went across the street for 25 minutes,
9 and I'm back." He never did that. Because you know if he had,
10 that would have been brought out, and it wasn't brought out,
11 because he wanted to get the heck out of Dodge after he saw the
12 police had been called. He knew his plan had worked. That
13 bank was closed for the day because of what he had done.

14 The Defendant talks. "They're looking for me. I
15 left a bomb in there. I had a problem with a white female
16 teller."

17 I don't know if the suggestion here today is that Ms.
18 Lumpkin is a liar or if the suggestion is she just can't hear
19 and drive a vehicle. I'm not sure which one it is. Clearly,
20 they're suggesting that her son is a liar. That's clearly what
21 they're trying to tell you.

22 MS. MORGAN: Objection, denigrating the defense.

23 THE COURT: Overruled.

24 MS. EGGERS: But how -- how did Ms. Lumpkin know that
25 the Defendant had a problem with a white female teller? How?

1 She heard him say it. And lo and behold, none of those tellers
2 knew the Defendant [sic]. She didn't know the tellers. And
3 she knew that he had a problem with one of the tellers, because
4 she heard what he was saying, "I'm going to teach her."

5 So not only did the Defendant's actions speak, but so
6 do his words.

7 The Defendant talks, "I was at the other bank on
8 Saturday."

9 Exhibit 13-A.

10 "No threats ever. My own bank?"

11 I mean, he's playing -- playing coy. He's playing
12 the game. He's calm, cool, and collected in front of those law
13 enforcement officers.

14 "When I was there, it was 15 minutes to 1:00."

15 We know that's not the truth. Making it sound like
16 they just closed up before he could get back over across the
17 street.

18 "They tapered it off. I don't know why."

19 Empty bags and a bottle of vodka.

20 There's no explanation from that witness stand as to
21 why there's empty bags there. None of his stuff is in that
22 bag. A bunch of junk is in the bags. Not even a bunch.

23 "Why is the bank tapered off at 15 minutes to 1:00?"

24 "I didn't know what it was. I thought it was a
25 robbery."

1 well, finally he says the most logical thing. If
2 this man really was confused that day as to what was going on
3 over at that bank, most people, when they see police cars out
4 in front of a bank, everybody thinks it's a bank robbery. But
5 this man, when he gets on a bus, says, "bomb."

6 "I was wondering all weekend. I was, like, I hope
7 that doesn't have anything to do with me. So what's it about?"

8 Listen to those videos as Mr. De La Garza said to.
9 Listen to them. watch them. watch his actions. watch his
10 demeanor.

11 "I don't do like that. My own bank?"

12 well, y'all know that's a big, fat lie.

13 That man made a fool of himself repeatedly at that
14 bank. Repeatedly. He's not telling the police that, and you
15 know why.

16 Yes, in his own words he did this. He intended to
17 create a bomb hoax. He did it to teach her.

18 Judge Fitzwater is going to give you the
19 instructions, and I'm just pointing out the pages here. Page
20 7, lines 144 to 149.

21 I expect you're going to read that the intent of a
22 person -- and this is not a verbatim quote, but the intent of a
23 person or the knowledge that a person possesses at any given
24 time may not ordinarily be proved directly, because obviously
25 we can't get into somebody's head, but you may consider any

1 statements made, any acts done by that person, and all other
2 facts and circumstances received which may aid in your
3 determination of the Defendant's intent.

4 Ms. Morgan just suggested that the Government was
5 putting on the Defendant's prior actions and the way he acted a
6 fool at that bank to try and muddy the waters here. I
7 disagree. Y'all got to hear that, because otherwise you just
8 have a man coming in, leaving two bags at a bank.

9 It makes no sense otherwise as to why in the world he
10 would do this, why he would leave two bags, say, "I need to
11 talk to someone," walk across the street, flounder around for
12 25 minutes, and then get on a bus and say, "I left a bomb in
13 the bank. They're looking for me."

14 "I had a problem with a white female teller."

15 None of that makes any sense. You had to hear that
16 to know the whole story.

17 Did the Defendant intend to create a bomb hoax? Yes,
18 based upon his actions, he did.

19 Yes, in his own words, he did to teach her.

20 Would a reasonable person -- and this is the second
21 thing that the defense said on Monday afternoon -- would a
22 reasonable person believe there's a bomb?

23 Ladies and gentlemen, when y'all started this,
24 y'all -- y'all understood that you didn't come in here and lose
25 your reason and common sense. You didn't.

1 So a reasonable person who's been yelled at, who's
2 been cussed at, who's seen the Defendant knock over items,
3 who's seen the Defendant throw a drink, who's seen the
4 Defendant throw candy, who's seen the Defendant do what he did
5 when he got kicked out for the final time of that bank, what
6 does a reasonable person believe when that man then comes back
7 with two bags, says he needs to talk to someone, and then walks
8 out the front door, who's shown a mugshot for their ID, who's
9 been told never to come back?

10 That's what these women were faced with.

11 A reasonable person who sees the Defendant walk in
12 and place the bags at 10:43, who hears the Defendant ask to
13 speak to a manager, who then sees the Defendant walk across the
14 street, they had the ability to make -- and they had to make
15 it. I mean, this isn't a situation where somebody is pointing
16 a gun at them. It's a different type of situation.

17 Ms. Morgan, evidently, she would do things
18 differently. Good for her. These women didn't go running,
19 screaming from the bank. Ms. Morgan evidently would have.

20 MS. MORGAN: Objection, denigrating the defense.

21 THE COURT: Overruled.

22 MS. EGGERS: That's what Ms. Morgan wants you to
23 believe they should have done, run screaming from the bank.

24 You've got law enforcement that came in here,
25 Sergeant Contreras, and he said the protocol was followed.

1 They did this the right way.

2 MS. MORGAN: Objection, bolstering, vouching.

3 THE COURT: Overruled.

4 MS. EGGERS: They made the calls. The ladies got
5 behind the glass that could. No, they didn't go, you know,
6 running out of the building with their hair on fire.

7 who knows what could have caused it to go off if
8 something was in there? Is it a movement situation? Is it a
9 phone call situation?

10 MS. MORGAN: Objection, inflaming the passions.

11 THE COURT: Overruled.

12 MS. EGGERS: who after waiting approximately 25
13 minutes for the first officer to arrive at 11:08, and then the
14 Defendant still hasn't returned. That's the evidence.

15 what's he doing over there, ladies and gentlemen?
16 The only reasonable, logical conclusion is he was sitting back
17 and waiting, waiting to see if he had taught her that lesson,
18 the lesson he described to Ms. Lumpkin.

19 Would a reasonable person believe there was a bomb in
20 light of the Defendant's prior, repeated conduct towards these
21 employees at Skillman and his actions on December 8th? Yes, a
22 reasonable person would believe. Yes, multiple reasonable
23 persons did believe.

24 I'm going to get into now some of the Defendant's
25 arguments that I've heard.

1 Ms. Rojas overreacted and her fear was not
2 reasonable.

3 Ms. Greenfield overreacted and her fear was not
4 reasonable.

5 Ms. O'Daniel overreacted and her fear was not
6 reasonable.

7 And the suggestion is that the employees only feel
8 this way because they learned the FBI got involved.

9 Give me a break. Those ladies felt that 911 needed
10 to be called, their security needed to be called, and they
11 evacuated the bank.

12 Do you think that's fun for them to have to stay
13 after work till 3:00 sitting across the street when they should
14 have been long gone to go home? Do you think that was fun for
15 them?

16 Officers overreacted and their concern was not
17 reasonable.

18 Again, Ms. Morgan just said that the officers, they
19 should have just scoured the area to go find the guy and then
20 bring him back and say, "Hey, sir, what's in those bags in
21 there? Do you want to open them up for us?"

22 Ms. O'Daniel just wanted him trespass warned.

23 Listen to Government's Exhibit 5. And I don't have
24 it verbatim here, so listen to it. But I expect when you
25 listen to it you'll hear her say, "I need police. I have a

1 customer that actually -- who we have reported several times.
2 He came into my branch, and he left two bags. And he went
3 across the street to the liquor store. And then he exited the
4 liquor store and walked to the end of the building. He's
5 already been told he is no longer allowed to come to my
6 location. At this time my security response team would like to
7 press criminal trespass charges and consider him to have left
8 abandoned property. And I'm about to put them outside,"
9 referring to the bags, "my branch. what should I do?"

10 "Okay. But my" -- they tell her move the bags.

11 And she says, "Okay. But my concern is I have two
12 unknown bags sitting in my lobby right now, and I've been
13 requested by my branch to remove them. I don't feel
14 comfortable removing these. I don't want to touch them."

15 Listen to that. I'm going to use here in a few
16 minutes something we call victim blaming.

17 Ms. O'Daniel wasn't agitated enough on the phone
18 call, evidently. She didn't say the right words, because how
19 does anybody know how they're going to react when they have all
20 their employees with them in a building, trying to figure out a
21 man that's been told never to come back, that's acted the way
22 this man did, and then he comes in, makes his presence known,
23 conveys the information that he's there, and then walks out?

24 I guess it's her fault for not -- for not acting the
25 way the defense would like.

1 Ms. Lumpkin can't hear and listen and drive a bus.

2 Ms. Lumpkin's memory is so bad she couldn't remember
3 the Defendant said what the Defendant had said an hour and a
4 half later.

5 And that was the point of the cross-examination, I
6 guess, "How long after was it that you spoke with police?"

7 Ms. Lumpkin is lying.

8 How know [sic] about the issues with the white female
9 teller then?

10 Diavionn Fowler is lying.

11 The last part, Ms. Morgan was saying their policy was
12 insensitive.

13 Nowhere in the jury instructions are you going to
14 hear the Judge say, or in what you have, that if you don't like
15 someone's policy you can do this, you can play a hoax and make
16 them think that there's a bomb in there. Yet again, victim
17 blaming.

18 The Defendant just had the bags because he was
19 traveling to Kansas, but -- and the "but" with the three dots
20 is that clothing is not in the bags.

21 If he's moving to Kansas or traveling to Kansas,
22 where is his clothing, the clothing he had on just two days
23 earlier, December 6th?

24 They were empty bags. No pants, no undergarments,
25 one sock, none of the clothing.

1 And look at those photos. I've got the exhibits
2 there and the pages. Look at those photos of the different
3 outfits he had worn the month before.

4 The defense asked officer Rozenburg, "Well, isn't it
5 true that homeless shelters, they give out clothing?" And,
6 yes, they probably do. They do. Do you think they take it
7 back at the end of the day? Because that's what the suggestion
8 is. Because why wouldn't he still have it? Why wouldn't he
9 still have that clothing two days later? It would be in the
10 bags, if the bags actually had his belongings.

11 victim blaming.

12 They should have just violated the policy that
13 applies to everybody for this guy, the not giving money more
14 than once.

15 They should have just let money walk out the door
16 with anyone and everyone who walks in with a mugshot and their
17 name written on a sheet if they have an account with that name.

18 Their policy is not a defense, and you're not going
19 to see that being a defense in the jury instructions.

20 The Defendant suffers from short-term memory loss.
21 That's what he was trying to sell to the law enforcement
22 officers that day. But watch those videos, 13-A and B, on the
23 disk which is Government's Exhibit 13. Watch those, because
24 that doesn't hold water.

25 He is very specific in those. He says, "I hadn't

1 been there in two months." He remembered why he hadn't been
2 there.

3 The Defendant didn't just forget his bags and walk
4 away. His actions were deliberate.

5 One of the suggestions now is that he has to, like, I
6 guess, leave a note or call in a bomb threat or something like
7 that. There's nothing in the jury instructions that's going to
8 tell you that people have to do that to be guilty of this
9 crime. Nothing whatsoever.

10 what he did, the way he acted, notifying them and
11 leaving those bags, he conveyed a message all right, and they
12 heard it loud and clear.

13 The Defendant left his ID in the bags. Ms. Morgan
14 just made note of that.

15 I don't know if maybe the Defendant didn't realize
16 this is a federal crime in the United States of America. I
17 don't know. He did leave his, quote, ID in the bags, but that
18 was just to get them. He knew that some day he was going to
19 come back and get those after the police were gone. He waited
20 until Monday to do that. Maybe he didn't realize that the
21 United States of America, in this day and age, this is actually
22 a crime; you can't do these kinds of things.

23 He needed to make sure that he taught her.

24 Defendant wasn't angry on December 10, 2018. That
25 was asked of Ms. Herrera and Ms. Saric and then the law

1 enforcement officer today. And you can see it on the video.

2 None of these people were the females that were denying --

3 THE COURT: Five. Five minutes remain.

4 MS. EGGERS: -- that were denying him money.

5 You heard today there was sort of a suggestion that
6 Senior Corporal walton didn't testify and that you should take
7 something from that. This man put his -- put on a bomb suit,
8 not knowing what was in it.

9 MS. MORGAN: Objection, bolstering.

10 THE COURT: Overruled.

11 MS. EGGERS: This man protects this community for 20
12 years because something in a paper --

13 MS. MORGAN: Objection, facts not evidence.

14 THE COURT: Overruled.

15 MS. EGGERS: They're going to try and suggest that
16 you should impugn his actions that day. He had no idea.
17 Nobody out there knew what was in those bags except for the man
18 that got on the bus, the man that walked away, snickering the
19 whole way. "They're looking for me. I'm going to teach her."

20 This case isn't about Corporal walton.

21 The defense has basically made this case about
22 everyone and everything other than why we are here, and that's
23 the Defendant's actions.

24 Like I said, they victim blamed five ways from
25 Sunday.

1 MS. MORGAN: Objection, denigrating the defense.

2 THE COURT: Overruled.

3 MS. EGGERS: It's easy for the defense to sit here
4 and argue after the fact as to how someone should act. That's
5 easy to do. But none of these women had ever been through this
6 before, and they did the best they could.

7 They did not believe that there was an imminent
8 threat. That's the suggestion now, although that wasn't on
9 Monday what it was, but it is today what it is, that there
10 wasn't an imminent threat, that it wasn't -- they weren't
11 acting urgently enough. These cops who don't know the
12 Defendant from Adam all -- it was just suggested that they all
13 just did this, I guess, to get to have a fun day sitting in
14 their car doing nothing?

15 And then the conveying.

16 The elements of the offense are this:

17 The Defendant intentionally conveyed false or
18 misleading information.

19 The information was conveyed where an imminent threat
20 to personal safety could have been believed by a reasonable
21 person.

22 And that the information indicated that an activity
23 had taken, was taking, or would take place that would
24 constitute a violation.

25 The prohibitions with respect to explosives makes it

1 a crime to maliciously damage or destroy, or attempt to damage
2 or destroy, by means of an explosive, any buildings, or other
3 real property used in interstate or foreign commerce.

4 You're probably wondering why we kept asking about
5 whether or not they sent interstate wires, but we had to prove
6 that.

7 I told y'all in the beginning this is not television.

8 You're going to see on page 1 one of the first
9 instructions Judge Fitzwater gives you is that you can't be
10 influenced by bias, prejudice, or sympathy.

11 Ms. Morgan evidently thought the Government was
12 trying to suggest something here we weren't. We didn't bring
13 up the fact that he wasn't using a walker on those days to
14 suggest that he doesn't need one now. It couldn't be further
15 from the truth. We brought up the fact that he wasn't using a
16 walker back then so y'all wouldn't think that the man that left
17 the bags that can be seen on the video with the two bags put
18 the bags down and then got a walker outside and went across the
19 street with a walker. He's in a different condition now than
20 he was then.

21 Anyhow, but setting all that aside, you must not be
22 influenced by bias, prejudice, or sympathy.

23 You must not consider the matter of punishment as
24 well.

25 I asked everybody when we were in jury selection if

1 anybody says when you go back in that jury room, "I just -- I
2 don't like somebody. I don't like the way that prosecutor
3 looks. I don't like the way she smirks at us," or, "I don't
4 like the Defendant," for whatever reason, you can't be -- you
5 can't consider bias, prejudice, or sympathy. And I would ask
6 that one of y'all raise your hands and say, "Wait. Page 21,
7 Judge Fitzwater says we can't consider that."

8 Or if somebody else says, "Yeah, you know what? The
9 Government proved this case beyond a reasonable doubt, but I
10 don't want to see him get in trouble." "Wait, page -- line
11 192, we can't consider a sentence."

12 Did the Defendant intend to create a bomb hoax? His
13 actions --

14 THE COURT: One minute remains.

15 MS. EGGERS: -- show he did. His words on the day of
16 show he did.

17 Would a reasonable person believe there was a bomb?
18 You better believe it.

19 "They're looking for me. I left a bomb in there. I
20 had a problem with a white female teller, and I'm going to
21 teach her."

22 Ladies and gentlemen, I ask that you find this man
23 guilty and show him that in the United States of America this
24 is a crime.

25 Thank you.