

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Magistrate's No. 11-4M
)
EMERSON BEGOLLY)

GOVERNMENT'S APPEAL OF DENIAL OF PRE-TRIAL DETENTION

And now, comes the United States of America, by and through David J. Hickton, United States Attorney for the Western District of Pennsylvania, and Margaret E. Picking, Assistant United States Attorney for said district, and respectfully appeals the order of United States Magistrate Judge Ervin S. Swearingen entered on Thursday, January 6, 2011, in the above-captioned criminal matter and respectfully moves this Honorable Court to order the defendant detained pending trial as a danger to others and the community.

INTRODUCTION

This is an appeal from an order denying the government's request that the defendant named above, Emerson Begolly, be detained pending trial, in accordance with the Bail Reform Act, Title 18, United States Code, Section 3141, et seq. This case was initially heard by United States Magistrate Judge Ervin S. Swearingen. Following a preliminary examination and detention hearing for the foregoing defendant on Thursday, January 6, 2011, Magistrate Judge Swearingen found that the defendant was not a risk of flight and did not pose a danger to the community. For the

reasons set forth below, it is respectfully submitted that the Magistrate Judge's finding that the defendant does not constitute a danger to the community is incorrect and should be reversed. We respectfully ask that the order of Magistrate Judge Swearingen be reversed, and that defendant Begolly be ordered detained pending trial as a danger to the community.

On January 5, 2011, a two-count criminal complaint was filed by Special Agents of the Federal Bureau of Investigation (FBI) against the defendant. Count One alleged that the defendant intentionally and unlawfully forcibly assaulted and inflicted bodily injury upon an officer or an employee of the United States, specifically, two members of the FBI, while those persons were engaged in or on account of their performance of their official duties, in violation of Title 18, U.S.C., §§ 111(a)(1) and (b); and, furthermore, that the defendant did knowingly possess a firearm, in furtherance of such crime of violence in violation of Title 18, U.S.C., § 924(c)(1)(A)(i). The government filed a simultaneous request for pre-trial detention on that date. Following a preliminary examination and detention hearing on January 6, 2011, Magistrate Judge Swearingen held that there was probable cause to believe that the defendant had committed the crimes alleged in the complaint, but that he posed neither a danger to other persons and the community nor was he a risk of flight. Accordingly, Magistrate Judge Swearingen ordered the defendant to be released on bond to the Renewal Center, setting bond at \$25,000

unsecured, that he surrender his U.S. passport, and that he not obtain another passport. The Magistrate Judge also ordered the defendant to obtain mental health counseling and treatment and that he not contact potential witnesses in this matter, with the exception of his mother.

Following this ruling, counsel for the government asked the Court to stay its ruling and grant temporary detention of the defendant for twenty-four hours to permit the government to perfect an appeal to this Honorable Court. Magistrate Judge Swearingen granted the government's request. On the following day, January 7, 2011, within the 24 hour period, United States District Judge Nora Barry Fischer granted the government's emergency request for a stay and ordered temporary detention of the defendant until this Honorable Court could conduct a de novo hearing.

FACTS OF THE CASE

At the preliminary examination and detention hearing on January 6, 2011, the government presented the testimony of FBI Supervisory Special Agent Michael Christman. A copy of the Criminal Complaint and supporting Affidavit are incorporated herein as Government's Exhibit 1. The government ordered an expedited transcript of the combined preliminary examination and detention hearing, which was obtained on January 7, 2011. A copy of that transcript is incorporated herein in full, as Government's Exhibit 2.

In view of the fact that the transcript in its entirety is available for the Court's review, we will submit herein only salient excerpts from that transcript. We deliberately have not undertaken to repeat the testimony in its entirety.

FBI Supervisory Special Agent Michael Christman testified that he has been an FBI agent for approximately nineteen years, but had no involvement in the within investigation of Emerson Begolly and prepared no reports in connection with the case. In fact, all information he was providing at the hearing was on information received. (D.H.T. 3-4).¹ Christman testified that FBI agents traveled to Clarion County, Pennsylvania, on January 4, 2011, to speak with and detain the defendant so that two search warrants could simultaneously be executed at two locations. (D.H.T. 5). Christman testified that FBI agents approached a vehicle in which the defendant was a passenger in a Burger King restaurant parking lot. Defendant was seated in the front passenger seat, while his mother, Joan Kowalski was the driver. Kowalski exited the vehicle and went into the Burger King restaurant, while the defendant waited in the front passenger seat of the vehicle. At that time two FBI special agents approached the vehicle. Special Agent Brad Orsini approached the rear passenger door of the vehicle, while Special Agent Edward Daer (sic), somewhat behind Special Agent Orsini, approached the front passenger door of the vehicle.

¹ D.H.T. refers to detention hearing transcript.

Special Agent Orsini opened the rear passenger door and advised the defendant that he and Special Agent Daer were FBI agents and they sought to speak to the defendant.

The defendant screamed. By that time, Special Agent Daer had opened the front passenger door of the vehicle. As the defendant screamed, both agents observed the defendant going for something in the vicinity of his lower right-hand jacket pocket.

As the defendant reached with his right hand for the pocket area of the jacket, both agents tried to grab the defendant. Daer grabbed the defendant's right arm and held it against his body to prevent his access to the jacket pocket, and Agent Orsini joined in, trying to subdue the defendant, who was yelling and resisting their attempts to calm him. (D.H.T. 8-10).

Agent Daer physically entered the car with his back to the vehicle's dashboard and proceeded to wrestle with the defendant, trying to pin his right arm against his body to avoid his access to the front jacket pocket. From the rear of the vehicle, Agent Orsini tried to calm the defendant down and said on several occasions we're with the FBI, we're police officers, calm down, calm down. As the defendant continued to resist, the agents continued to wrestle with him in an effort to subdue him, calm him, and deny him access to the right front pocket of his jacket. While this was taking place, the defendant made numerous attempts to bite the agents. While wrestling with the defendant, agents tried to move their hands and arms in a manner that would avoid the

defendant's ability to bite them. The wrestling spilled out onto the parking lot, where agents continued to attempt to subdue the defendant. At some point, they were successful in getting handcuffs on the defendant and subduing him. However, Begolly continued to resist even in the parking lot, yelling and wrestling with the agents. (D.H.T. 11-13).

Once the agents had subdued the defendant with handcuffs, Daer noticed that blood was pouring or leaking from the hand area of Special Agent Orsini. Orsini was now aware that he had been bitten by the defendant and sought medical treatment on the scene. Shortly thereafter, Daer noticed that he, too, had puncture wounds to his right hand and that he was bleeding, also from bites that had been administered by the defendant during the altercation. (D.H.T. 13). Both Agents Daer and Orsini received tetanus shots as a result of being bitten by the defendant and Agent Daer has received follow-up care to ascertain whether he has contracted hepatitis or other possible transmittible (sic) diseases. (D.H.T. 15-16).

Once the defendant was handcuffed, agents performed a pat-down search. In defendant's lower right hand jacket pocket, agents found a fully loaded 9 millimeter Makarov handgun. The safety on the handgun was off and there was a round in the chamber of the handgun, that is, the gun was capable of being fired. Agents also recovered from defendant's right side breast pocket two fully loaded magazines suitable for use in the Makarov 9 millimeter

handgun that was found. (D.H.T. 16).

Eventually, Ms. Kowalski came out of the Burger King restaurant and approached the car after the defendant was in handcuffs, but was still in an agitated state. Defendant asked Kowalski if she was "in on this". She replied yes, that she loved the defendant and wanted to get him help. Begolly angrily referred to his mother as "Judas". (D.H.T. 17-18).

Supervisory Agent Christman testified that Begolly's demeanor went from a very agitated state to a very calm demeanor after he was taken back to the Pittsburgh area by FBI agents, following his arrest. (D.H.T. 18).

Supervisory Agent Christman testified at length to information received by the FBI from the defendant's mother, Joan Kowalski. Ms. Kowalski's statement included the following:

Emerson Begolly owned an AK-47 rifle, which she had seen. Begolly's father, Shawn Begolly, had numerous firearms, and had started to acquire additional firearms when they moved to New Bethlehem. She advised that she could not control the defendant and that he had been off his medication for approximately 2 years. She believed that he needed therapy. She described the defendant's affliction as Asperger's Syndrome. Kowalski claimed that the defendant's father had encouraged the defendant to not take his medication, thinking that the prescription of psychotropic drugs was designed to cause addiction. Kowalski stated that the defendant had been a student at Penn State University and that he had suffered from "a melt down" and had withdrawn from classes in December 2010. (D.H.T. 19-22). Kowalski further advised that defendant was not employed and spent his entire day on the computer on Internet chat sites. She stated that the defendant took long walks to occupy his time, frequently possessing a firearm on those walks. She also stated that the defendant's father had taken photographs of the defendant while he was wearing a Nazi uniform and that

the father fostered the defendant's interest in Nazism and the acquisition of weapons. The witness identified two photographs, Government's Exhibits 1 and 2, of photographs of the Defendant in what appeared to be a Nazi uniform, both taken at an earlier age. (D.H.T. 23-24).

An Islamic chant, attributed to Alshashanni, wherein that name was used interchangeably with Emerson Begolly, (D.H.T. 28), was read into the record. Among other chants included in the verse were the following:

"Grab my gun and my ammo, strap my kamarband (sic) onto my chest, get dressed up in my camo, martyrdom is what I wanted best, blow their heads right off their shoulders, grab my gun and my ammo ... martyrdom is what I wanted best, I am not afraid to die, grab my gun and ammo ... martyrdom is what I wanted best". (D.H.T. 30-31).

Christman described Kowalski's attempt to have the defendant involuntarily committed to a mental health treatment facility on January 4, 2011. On an admission form (Government's Exhibit 4), Kowalski stated the following:

On several occasions within the last month, including today, Emerson has espoused his desire to die as a martyr in a violent manner while bringing others down with him. I fear for my son's safety as well as for those around him. Not only his brother heard Emerson issue such threats, the federal agents bore witness today to these remarks. In addition, I viewed web postings this morning in which he advocated carrying out Jihad abductions - - Jihad abductions and terrorist threats. I've also heard these statements in the past frequently. (D.H.T. 33-34, 37).

Christman also testified that Begolly underwent a preliminary examination by a psychiatrist on staff and that the FBI was advised that, although Begolly was in need of treatment, there was no room in the facility at that time. (D.H.T. 38).

Shea Begolly told FBI agents that his brother, Emerson, wanted to die as a martyr. According to Shea Begolly, the defendant had talked recently about dying as a martyr and killing others as well. He also made reference to the obtainment (sic) of virgins in the afterlife should he do so. Shea Begolly also told the FBI that the defendant had frequently talked about being a martyr and killing himself and killing others, as well as being rewarded in the afterlife with virgins for so doing. (D.H.T. 40).

In approximately 2001, according to the defendant's mother, the defendant first expressed an interest in Nazism. In fact, Kowalski received a telephone call in 2001 from a white supremacy group, wanting Begolly to be involved or in charge of a Nazi movement. (D.H.T. 40-41).

Kowalski also indicated that the defendant had been diagnosed with Asperger's Syndrome and that he had an IQ of approximately 160. Defendant told Kowalski because she is not a Muslim, she would burn. He also advised Kowalski he believed he was being watched and that he takes a weapon along with him on long walks in the event he is confronted by law enforcement. (D.H.T. 40-41).

The defendant indicated that he wanted to travel to Chechnya to fight with his brothers and described Chechnya as his motherland. According to Joan Kowalski, defendant is not of Chechen origin. Kowalski told agents defendant was very awkward

socially and isolated himself from others. The defendant made comments to Kowalski that he is not long for this world, or words to that effect. Kowalski advised agents that the defendant had obtained a passport and wanted to travel overseas. (D.H.T. 42-43).

The defendant's father, Shawn Begolly, was interviewed by the FBI and acknowledged that his son did have a passport. (D.H.T. 44). Defendant's father testified via proffer that the defendant lived with him at his farm because he could not get along with his mother and that he did carry a firearm on the farm. Shawn Begolly also testified to the ruse used by the FBI that caused the defendant to leave his father's home on the morning of January 5, 2011. Neither Shawn nor his wife Tiffani has a criminal record. Defendant's father is a corporate educator who travels around to different businesses teaching about computers. He also teaches part-time at Penn State. Defendant proffered his father and stepmother as possible third party custodians. Shawn Begolly had an interest in buying and selling military uniforms on Ebay. Shawn Begolly would state that the defendant does not drive or have a driver's license. Defendant's father lived on a 100 acre farm in New Bethlehem. Defendant stays in his room all the time. (D.H.T. 87-89).

On cross examination by the Government, Shawn Begolly testified that his son Shea had moved into his own place approximately 3 to 4 weeks ago. His son, Emerson, had lived at his farm since approximately two weeks before Thanksgiving. Thus, he

believed Emerson had not been at his mother's home for at least six weeks. (D.H.T. 93-94). Prior to that, he visited his father's home on weekends or fall break and obtained transportation, normally through his father, but on rare occasions, through his mother. (D.H.T. 94). The defendant had an AK-47 which he purchased at Dunham's Sporting Goods in Natrona Heights. Defendant's father acknowledged that he had approximately 20 firearms, mostly hunting rifles, but also shotguns and handguns. Defendant's father acknowledged that he occasionally shoots with his son, Emerson, and that Emerson hunts "occasionally".

Defendant's father described the defendant as enjoying spending time alone and not belonging to any organization or groups. He likes to take walks on country roads, sometimes with the AK-47. The Makarov 9 millimeter handgun found in his possession on January 4, 2011 belongs to defendant's father. Defendant's father acknowledged that the defendant does not have a license to carry a concealed handgun, though they were attempting to acquire one, but admitted that he (father) has two Makarovs and he and the defendant each carry one while walking on the farm. (D.H.T. 95-97).

Defendant's father stated the defendant did well in psychology at Penn State, but other subjects weren't of much interest to him, so he was "kind of dropping out." (D.H.T. 99).

Defendant's father stated he knew his son got on the internet, but did not know what sites he visited "exactly", because

he has his own room, his own computer, and he and his wife have their own computers in their room. (D.H.T. 102).

Defendant's stepmother told the FBI that she has read a portion of the defendant's journal and saw a number of suicidal thoughts contained therein. Defendant's stepmother had read a poem authored by the defendant, whose general subject matter was causing physical harm to Jews. Defendant's stepmother brought the poem to defendant's father's attention. The father responded that the defendant was just going through a phase. (D.H.T. 46).

THE LAW

The Bail Reform Act provides that, with respect to certain specified crimes, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community. Title 18, United States Code, Section 3142(e). See also United States v. Giampa, 755 F.Supp. 665, 668 (W.D.Pa. 1990). According to Title 18, United States Code, Section 3142(e) (3) (B):

Subject to rebuttal...it shall be presumed that no condition or combination of conditions will reasonably assure...the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense under Section 924(c) of this title...

Where the presumption of community danger arises, a defendant must rebut the presumption by presenting "some credible evidence that he...will not pose a threat to the community." United

States v. Giampa, supra, 755 F.Supp. at 668. However, it is firmly settled that evidence pertaining solely to "character and lifestyle" or community ties is insufficient to meet this burden. See United States v. Strong, 775 F.2d 504, 508 (3d Cir. 1985); United States v. Delker, 757 F.2d 1390, 1396 (3d Cir. 1985) (legislative history of the Bail Reform Act shows that "presence of [a tie to the community]...has no correlation with the question of safety of the community.").

In determining whether a defendant poses a danger to the community, the following factors are to be taken into consideration:

- (1) the nature and circumstances of the offense charged, including whether the offense...is a crime of violence...or involves a firearm...;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including-
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and,
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or other release pending trial,...

Title 18, United States Code, Section 3142(g). See also United States v. Perry, supra, 788 F.2d at 106; United States v. Delker, supra, 757 F.2d at 1398-99.

The 18 U.S.C. § 924(c) count is considered a crime of violence, as is the assault on the FBI agents, which is the subject of the 18 U.S.C. § 111 count. United States v. Burks, 141 F.Supp.2d 1283(D.Kan.2001). Moreover, as noted above, because the Magistrate Judge found probable cause that the defendant committed an offense under 924(c)(1), it is presumed, subject to rebuttal, that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." See 18 U.S.C. § 3142(e) and (g)(1); United States v. Bibbs, 2007 WL 2212071(N.D.Cal.) (not reported in F.Supp.2d).

Pursuant to 18 U.S.C. § 3145(a), "[i]f a person is ordered released by a magistrate judge...the attorney for the government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order." The District Court reviews the pre-trial detention order de novo and "should not simply defer to the judgment of the Magistrate, but reach its own independent conclusion." United States v. Tyson, 2008 WL 4415298, at 2(D.V.I.Sept.23, 2008) (citing United States v. Rueben, 974 F.2d 580, 585-86(5th Cir. 1992); United State v. Leon, 766 F.2d 77, 80 (2d Cir. 1985) (noting that a reviewing Court "should fully reconsider a Magistrate's denial of bail")); cf. United States v. Delker, 757 F.2d 1390, 1394 (3d Cir. 1985) (holding that the Bail Reform Act, 18 U.S.C. §3145(b), et seq., contemplates de novo review by the District Court of a Magistrate's order for

bail pending trial).

Because the defendant is subject to the statutory presumption against bail for danger to the community, as set forth in 18 U.S.C. § 3142(e), the burden shifts to him to provide countervailing evidence supporting his pre-trial release. Evidence that may rebut the presumption against bail for reason of dangerousness can include "testimony by co-workers, neighbors, a family physician, friends, or other associates concerning the arrestee's character, health, or family situation, or evidence of steady employment. However, these factors, appearing singly, or in combination in the evidence, cannot compel a finding that the presumption of dangerousness has been overcome. Rather, the ultimate determination of the question is for the Court, based on all evidence and arguments adduced." United States v. Levy, 2008 WL 4978298 (E.D.Pa.), not reported in F.Supp.2d.

Notwithstanding the preference for release, Congress has mandated that certain crimes, even committed by persons who otherwise have no criminal history, are presumed to require pre-trial detention because of the danger persons who commit those crimes pose to the community. See United States v. Martinez, 2009 WL 5171853, at *5 ("when the defendant is charged with certain crimes, however, a presumption might arise that a defendant is a flight risk and a danger to the community."), quoted in United States v. Scott, 2010 WL 2292399 (D.N.M. 2010).

The concept of dangerousness as used in the Bail Reform

Act is substantially broader than is the term as used generally. See Delker, supra, at 1393. ("The legislative history...specifies that the concept of the defendant's dangerousness as used in the Act is to 'be given a broader construction than merely danger of harm involving physical violence.'") (quoting S.Rep.No.225, 98th Cong., 1st Sess. 12-13 (1983), reprinted in 1984 U.S.C.C.A.N. 1, 15 (Supp.9A)). Dangerousness includes the potential that a defendant might cause physical harm to another. It also incorporates the broader societal danger that a defendant might engage in non-violent forms of criminal activity which is a detriment to the community at large. See United States v. Cook, 880 F.2d 1158, 1161 (10th Cir. 1989).

Moreover, even when a defendant satisfies his burden of production, "the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the District Court." See United States v. Mercedes, 254 F.3d 433, 436 (2nd Cir. 2001), quoted in United States v. Stone, 608 F.3d 939, 945 (6th Cir. 2010). The presumption remains as a factor because it is not simply an evidentiary tool designed for the Courts. Instead, the presumption reflects Congress's substantive judgment that particular classes of offenders should ordinarily be detained prior to trial. See United States v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985), abrogated on other grounds by United States v. O'Brien, 895 F.2d 810 (1st Cir. 1990).

THE ARGUMENT

The defendant has not rebutted the presumption that he

poses a danger to the community. By way of proffer, the defendant offered the statement of his mother, Joan Kowalski, who evidently suffers from mental health issues of her own. Nevertheless, Kowalski identified her son as suffering from Asberger's Syndrome, claimed he is uncontrollable, had been off his medication for two years, carried an AK-47 rifle, and was in need of treatment. So concerned was defendant's mother, that she sought to have him involuntarily committed to a psychiatric hospital, advising doctors there through her written statement on admission that her own son posed a danger to himself and others. The government's evidence also established that defendant was no longer attending Penn State, was unemployed, and spent much of his time alone on his computer, or taking walks with his AK-47 rifle. Begolly frequently expressed a desire for martyrdom.

The defendant presented the proffer of his father, Shawn Begolly, who was then offered for cross-examination by the government. Though Shawn Begolly offered to serve as third-party custodian for his son, we submit that he made damaging admissions while on the stand. For example, defendant's father admitted that his son frequently spent time alone on the internet and that he was unaware of the sites his son visited while on the computer. Defendant's father also admitted that his son often took long walks, sometimes with his AK-47 rifle. By way of explanation, defendant's father offered that, on occasion, defendant would encounter stray animals on his father's 100 acre farm, necessitating the need for his AK-47. We respectfully submit that

one does not use an AK-47 assault rifle to fend off a stray animal. Defendant's father also admitted that he permitted his son to carry a concealed handgun and that the concealed 9MM Makarov handgun found in defendant's possession on January 4, 2011, by the FBI was his firearm. Moreover, defendant's father admitted that the defendant did not have a permit to carry this handgun.

These admissions by Shawn Begolly, combined with other evidence of dangerousness produced by the government at the detention hearing concerning photographs taken by defendant's father of the defendant in a Nazi uniform, father's description of defendant's disturbing poem as evidencing "just a phase" the defendant was going through, evidence that defendant's father possessed twenty firearms on his Clarion County farm, and other evidence adduced concerning defendant's father not only renders Shawn Begolly an inappropriate third-party custodian, but, more importantly, do not rebut the presumption that defendant is a danger to others and the community at large.

Moreover, the Renewal Center, where the Magistrate Judge proposes sending the defendant, is a non-secure halfway house from which the defendant could escape at any time.

In summary, the evidence thus far establishes that the defendant is a 21 year old loner with mental health issues, who writes disturbing messages and lyrics espousing violence to others, as well as suicidal ideation. On January 4, 2011, this defendant bit and attempted to shoot two FBI agents with his father's loaded 9MM handgun, which he carried concealed in a jacket pocket, in

violation of law.

This defendant simply has not rebutted the statutory presumption that he poses a clear and present danger to the community. In addition, the government is prepared to offer additional evidence of the defendant's danger to the community at a de novo hearing to be conducted before this Honorable Court. This evidence was not available to the government at the first detention hearing.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this Honorable Court order the defendant detained pending trial in this matter.

Respectfully submitted,
DAVID J. HICKTON
United States Attorney

s/ Margaret E. Picking
MARGARET E. PICKING
Assistant U.S. Attorney
PA ID No. 28942

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

United States of America)

v.)

Case No. 11-4M)

EMERSON BEGOLLY)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 4, 2011 in the county of Clarion in the Western District of Pennsylvania, the defendant(s) violated:

Code Section
18 USC Sections 111 (a)(1) and (b)
and
18 USC Section 924(c)(1)(A)(i)

Offense Description
Did intentionally and unlawfully forcibly assault and inflict bodily injury upon a person designated in section 1114 of Title 18, United States Code, that is, an officer or an employee of the United States or of any agency in any branch of the United States Government, to wit, two members of the Federal Bureau of Investigation, while those persons were engaged in or on account of the performance of official duties and knowingly did possess a firearm, in furtherance of such crime of violence.

This criminal complaint is based on these facts:

See attached Affidavit.

[X] Continued on the attached sheet.

[Signature]
Complainant's signature
GARY T. MORGAN, JR., SPECIAL AGENT
Printed name and title

Sworn to before me and signed in my presence.

Date: Jan. 5, 2011

[Signature]
Judge's signature

City and state: Pittsburgh, Pennsylvania

Ervin S. Swearingen, U.S. Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Magistrate No. 11-4M
)
EMERSON BEGOLLY)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Special Agent Gary T. Morgan, Jr. having been duly sworn, do hereby depose and state the following:

1. I, Gary T. Morgan, Jr., am a Special Agent of the Federal Bureau of Investigation (FBI), and I have been so employed for approximately seven (7) years. Prior to my current employment, I was an intelligence analyst employed by the DEA for approximately six years. As a Special Agent with the FBI, I am responsible for the investigation of offenses which violate Title 18 of the United States Code.

2. This Affidavit is submitted in support of a Criminal Complaint for Emerson Begolly, charging Begolly with assault on an individual while that individual was engaged in, or on account of, the performance of his official duties with an agency of the United States, to wit: the Federal Bureau of Investigation (FBI), and in the commission of said acts used a deadly or dangerous weapon or inflicted bodily injury upon said FBI agents, in violation of Title 18, United States Code, Sections 111(a) and (b). The Affidavit is also submitted in support of a charge of violating Title 18, United

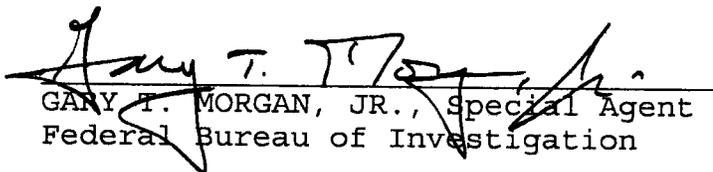
States Code, Section 924(c)(1), possessing a firearm in furtherance of a crime of violence, that is, the assault of the FBI agents. I have not included herein each and every fact known to me in this investigation, but only the facts necessary to support the Complaint. Furthermore, the information set forth herein is based on information received from other agents participating in the investigation.

3. On the morning of January 4, 2011, FBI agents were conducting a criminal investigation in the New Bethlehem, Pennsylvania area. Begolly was a subject of the investigation and the agents had reason to believe that he might be armed. FBI agents approached an automobile in the parking lot of a fast food restaurant in New Bethlehem. Begolly was seated alone in the vehicle in the front passenger seat. One of the agents opened the rear passenger door and identified himself as an FBI agent, and stated "we want to talk to you," or words to that effect. Another agent opened the passenger door where Begolly was sitting. Begolly screamed and immediately reached toward his jacket. The agents believed he was attempting to retrieve a firearm. At that point, the FBI agents attempted to prevent him from obtaining a firearm and a struggle ensued. Agents attempted to control Begolly, Begolly bit both agents and drew blood. They eventually brought him under control. In the part of his jacket for which he was reaching, the agents discovered a loaded 9 millimeter handgun, with

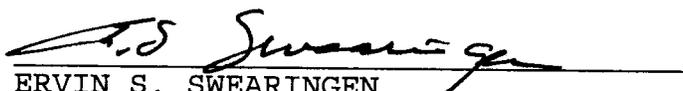
the safety off and a round in the chamber, which had been concealed on Begolly's person. Begolly was then taken into custody.

WHEREFORE, your affiant has probable cause to believe that the defendant, Emerson Begolly, has committed an assault upon employees of the FBI while they were engaged in and on account of their official duties, in violation of Title 18, United States Code, Sections 111(a)(1) and (b), and possessed a firearm in furtherance of a federal crime of violence, in violation of Title 18, United States Code, Section 924(c)(1).

The above information is true and correct to the best of my knowledge, information, and belief.


GARY T. MORGAN, JR., Special Agent
Federal Bureau of Investigation

Sworn to and subscribed to before me
this 5th day of January, 2011.


ERVIN S. SWEARINGEN
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMERSON BEGOLLY,

Defendant.

Criminal Action

No. 11-4 M

Transcript of proceedings on January 6, 2011,
United States District Court, Pittsburgh, Pennsylvania,
before Ervin S. Swearingen, Magistrate Judge

APPEARANCES:

For the Government: Margaret E. Picking, Esq.

For the Defendant: Marketa Sims, Esq.

Court Reporter: Richard T. Ford, RMR, CRR
6260 U.S. Courthouse
Pittsburgh, PA 15219
(412) 261-0802

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

1 (Proceedings held in open court; January 6, 2011).

2 THE COURT: This is the matter of the United States
3 versus Mr. Emerson Begolly, if I am pronouncing that
4 correctly.

5 I have the Pretrial Services report and I assume
6 everyone does as well.

7 MS. SIMS: Yes, Your Honor.

8 THE COURT: If the Government is ready to proceed.

9 MS. PICKING: We are, Your Honor.

10 I call Supervisory Special Agent Michael Christman.

11 THE COURT: Mr. Christman.

12 MICHAEL CHRISTMAN, a witness herein, having been first
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. PICKING:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Please state your full name and spell your last name.

19 A. Michael, middle initial A, last name Christman,
20 C-H-R-I-S-T-M-A-N.

21 MS. SIMS: Your Honor, to the extent there are any
22 other witnesses in the courtroom, I would move to sequester
23 witnesses.

24 MS. PICKING: I do not believe there are. There
25 are not, Your Honor.

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1 THE COURT: Okay.

2 BY MS. PICKING:

3 Q. Agent Christman, how are you currently employed?

4 A. I am currently employed as a Supervisory Special Agent
5 with the Federal Bureau of Investigation in Pittsburgh.

6 Q. How long have you been assigned to Pittsburgh?

7 A. Approximately three years.

8 Q. Do you have prior law enforcement experience?

9 A. I do not, not prior to the FBI.

10 Q. Prior to being assigned to the Pittsburgh division
11 where were you located?

12 A. I have been an FBI special agent in the Salt Lake City,
13 Utah, field office, that was for approximately five and a half
14 years. I was also a special agent in the FBI's Cleveland
15 field office for approximately eight years. Followed by an
16 approximate two-year stint at FBI headquarters as a
17 supervisory special agent.

18 Q. So in its entirety how long has been your FBI career?

19 A. Approximately 19 years.

20 Q. What unit do you currently supervise?

21 A. Currently I supervise the FBI's criminal enterprise
22 squad.

23 Q. What does that consist of?

24 A. Investigation of federal violations regarding gang
25 matters, drug matters, organized crime matters, and some

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1 violent crime matters.

2 Q. Did you participate in any way in the investigation of
3 the Defendant presently before the Court, Emerson Begolly?

4 A. No, I did not.

5 Q. Have you nevertheless seen photographs of Mr. Begolly?

6 A. Yes.

7 Q. Can you tell the Court whether he is one in the same as
8 the Defendant seated in court today?

9 A. Yes, he is.

10 Q. Did you prepare any reports in connection with this
11 case?

12 A. No, I did not.

13 Q. Did you participate in any way in any part in the
14 search teams that took place two days ago?

15 A. No, I did not.

16 Q. Is the information you are providing today on
17 information received from other agents?

18 A. Yes, it is.

19 Q. Agent Christman, I would like to direct your attention
20 to the date of January 4th of 2011.

21 MS. SIMS: Your Honor, to the extent this witness
22 is going to testify as a hearsay declarant for her witnesses
23 who are not appearing, we would ask for their reports since we
24 are permitted to impeach hearsay declarants under the Federal
25 Rules of Evidence. So we would ask for any witness that this

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1 witness is going to testify as to what they would say if they
2 were here, that those reports be produced.

3 THE COURT: What is the Government's position?

4 MS. PICKING: Your Honor, I don't know that
5 anything needs to be produced at this point. However, I can
6 clear up with the agent that this is so recent an arrest that
7 there aren't any reports available concerning the arrest.

8 BY MS. PICKING:

9 Q. Is that correct?

10 A. That's correct. I have not seen or reviewed any arrest
11 reports.

12 THE COURT: I guess that answers that question at
13 this point in time anyway. Thank you, ma'am.

14 MS. PICKING: Thank you, Your Honor.

15 BY MS. PICKING:

16 Q. Sir, again, directing your attention to January 4th of
17 2011, did you receive information that fellow FBI agents of
18 the Pittsburgh division were going to travel north of
19 Pittsburgh to the city of New Bethlehem, Pennsylvania?

20 A. I am sorry, could you repeat the question.

21 Q. Were agents traveling to Clarion County, Pennsylvania,
22 and did they do so on January 4th of 2011?

23 A. Yes.

24 Q. For what purpose?

25 A. To speak with and detain the Defendant so that two

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1 search warrants could simultaneously be executed at two
2 locations.

3 Q. And the Defendant was Mr. Begolly?

4 A. Yes, ma'am.

5 Q. Have you received information as to what transpired --

6 MS. SIMS: Excuse me, Your Honor, I am sorry, I
7 didn't mean to interrupt counsel. We would ask the affidavits
8 in support of the search warrants be produced since these are
9 apparently statements of the witnesses who are going to be
10 testifying as hearsay declarants. So we would ask for the
11 affidavits in support of the search warrants that were being
12 executed as the Defendant was detained.

13 MS. PICKING: Actually one has nothing to do with
14 the other, to be perfectly candid, Your Honor. Search
15 warrants that were being executed have nothing to do with the
16 reason we are presently before the Court. They are related,
17 of course, but one does not rely upon the other.

18 THE COURT: In spite of that, this has to do with
19 the arrest and actions that took place during the arrest, and
20 that's what these charges are. It doesn't relate to the
21 search, the Government says they are not related at all, but
22 even if they were, I don't think it has anything to do with
23 the charge that is here present.

24 MS. PICKING: It does not. I don't want to state
25 that it's not logically related, but it has nothing to do with

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1 these charges and we will not be relying upon that in any
2 fashion.

3 MS. SIMS: Your Honor, I recognize it has nothing
4 to do with relating to the assault of the officers, 924(c),
5 but based on the exhibits I have been provided by the
6 Government is they do intend to argue to this Court that what
7 they presume to be the Defendant's political beliefs are
8 relevant to whether he should be detained by this Court.
9 Specifically, anti-Semitism, Your Honor, and so to the
10 extent -- I do believe the search warrants do directly address
11 the Government's belief that Mr. Begolly here is not entitled
12 to espouse those beliefs and I do believe that is the subject
13 of the search warrants. So we think that it would pertain to
14 that part of it.

15 I don't want to steal their thunder what they are
16 going to argue --

17 THE COURT: I understand. If that becomes part of
18 the testimony, we might have to revisit that question.

19 MS. SIMS: Thank you, Your Honor.

20 THE COURT: Yes, ma'am. Are you ready?

21 MS. PICKING: Yes, I am, Your Honor, thank you.

22 BY MS. PICKING:

23 Q. Sir, we were talking about what happened on January 4th
24 of 2011. Can you tell us, please, what did happen?

25 A. On January 4th, 2011, at a Burger King restaurant

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1 located in Clarion County, two FBI special agents approached a
2 vehicle in which the Defendant was a passenger. The vehicle
3 was parked in the Burger King restaurant parking lot.

4 The first agent approached the rear passenger
5 door --

6 MS. SIMS: Excuse me, Your Honor. I would object
7 based on lack of foundation. This witness has testified that
8 he did not receive nor review any reports of this matter. So
9 I think it -- before he testifies, I think a foundation should
10 be relayed -- laid as to the basis for his testimony.

11 THE COURT: I assume oral reports, but if you want
12 to lay the foundation, it can't hurt for the record.

13 BY MS. PICKING:

14 Q. There were no reports, is that correct, Agent?

15 A. Yes.

16 Q. You have reviewed the criminal complaint and affidavit?

17 A. Yes, ma'am.

18 Q. That has been provided to Ms. Sims, is that correct?

19 A. Yes, ma'am.

20 Q. As well as the Court?

21 A. Yes, ma'am.

22 Q. Were you interviewed in my office earlier today in
23 preparation for today's hearing?

24 A. Yes.

25 MS. PICKING: Your Honor, that is the extent of his

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1 testimony.

2 MS. SIMS: Your Honor, if his testimony is limited
3 to knowledge he gained from the criminal complaint, that's
4 before the Court. I don't see what is to be gained from his
5 testimony.

6 MS. PICKING: Your Honor, regardless -- that is our
7 purpose.

8 THE COURT: I overrule that objection for sure. Go
9 ahead, please.

10 MS. PICKING: Thank you, Your Honor.

11 BY MS. PICKING:

12 Q. You indicated that Mr. Begolly was to be a passenger or
13 was a passenger, excuse me, in that car?

14 A. Yes, ma'am.

15 Q. Front or rear seat?

16 A. Front passenger seat.

17 Q. Who, if you know, was driving?

18 A. His mother, Joan Kowalski, was the driver of the
19 vehicle.

20 Q. Would you spell the last name, please.

21 A. K-O-W-A-L-S-K-I.

22 Q. Tell us what happened at the parking lot.

23 A. Joan Kowalski exited the vehicle, went into the Burger
24 King restaurant, while the Defendant waited in the front
25 passenger seat of the vehicle. At that time two FBI special

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1 agents approached the vehicle. Special Agent Brad Orsini
2 approached the rear passenger door of the vehicle. Special
3 Agent Edward Daer somewhat behind Special Agent Orsini
4 approached the front passenger door of the vehicle.

5 Special Agent Orsini opened the rear passenger door
6 and advised the Defendant that they, referring to himself and
7 Special Agent Daer, were FBI agents and that they sought to
8 speak to the Defendant.

9 Q. What happened then?

10 A. The Defendant screamed. At that time Special Agent
11 Daer had opened the front passenger door of the vehicle. As
12 the Defendant screamed, both agents observed the Defendant
13 going for something in the vicinity of his lower right hand
14 pocket of his jacket. The jacket was described to me as a
15 field jacket, similar to what some military personnel might
16 wear.

17 As the Defendant reached with his right hand for
18 that pocket area of the jacket, both Special Agent Daer and
19 Orsini tried to grab the Defendant. Special Agent Daer
20 grabbed the Defendant's right arm, held his right arm against
21 his body to prevent access to this jacket pocket, while
22 Special Agent Orsini joined in in trying to subdue the
23 Defendant who was yelling and resisting their attempts to calm
24 him.

25 Q. Where was Agent Daer, front or back seat?

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1 A. Agent Daer, again, entered the vehicle through the
2 front passenger door where the Defendant was seated.

3 Q. How about Agent Orsini?

4 A. Agent Orsini, again, entered the vehicle through the
5 rear passenger door.

6 Q. You indicated that Agent Daer tried to restrain
7 Mr. Begolly's right arm, is that correct?

8 A. Yes.

9 Q. Was this after Mr. Begolly reached for his jacket
10 pocket as you have described?

11 A. Yes.

12 Q. Did Agent Daer, if you know, physically get into the
13 car to try to restrain him?

14 A. Yes, he did. Agent Daer physically entered the car
15 with his back to the vehicle's dashboard and, for back of a
16 better word, proceeded to wrestle with the Defendant while
17 trying to pin his right arm against his body to avoid access
18 to the front jacket pocket.

19 Q. Agent Orsini, what was he doing in the rear?

20 A. Agent Orsini likewise tried to calm the Defendant down.
21 Said on several occasions, we're with the FBI, we're police
22 officers, calm down, calm down. And as the Defendant
23 continued to resist, the agents continued to wrestle with the
24 Defendant in an effort to subdue him and, again, continued to
25 try to calm him down and deny him access to that right front

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1 pocket of his jacket.

2 Q. What was Mr. Begolly doing while this was occurring?

3 A. Mr. Begolly was speaking in a very excited manner and
4 was, again for lack of a better word, wrestling or trying to
5 thwart the agents' attempts to calm him down.

6 Both agents advised that during this wrestling with
7 the Defendant, the Defendant made numerous attempts to bite
8 both of the agents. While they were wrestling him, they tried
9 to move their hands and arms in a manner that would avoid the
10 Defendant's ability to bite them.

11 Q. Did this occur, that is the biting movements, occur
12 while Mr. Begolly was still in the car?

13 A. The biting movements did occur while Mr. Begolly was in
14 the car. Subsequently as the agents continued to at this
15 point apprehend the Defendant, the wrestling spilled out onto
16 the parking lot ground area of the Burger King restaurant
17 where again agents continued to identify themselves and
18 attempt to subdue the Defendant. And at some point they were
19 successful in getting handcuffs on the Defendant and subduing
20 the Defendant.

21 Q. In fact, did Mr. Begolly continue to resist even in the
22 parking lot?

23 A. Yes, ma'am.

24 Q. What did he do?

25 A. Again, he continued to yell and he continued to wrestle

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1 or fight back in terms of the agents' efforts to subdue him.

2 Q. If you know, sir, had Mr. Begolly already been told
3 numerous times, we're the police, calm down?

4 A. Yes. As I stated, Special Agent Orsini on numerous
5 occasions identified himself as an FBI agent who wanted to
6 speak with Mr. Begolly. And I think on some occasions even
7 used the word "police officer" in trying to calm down the
8 Defendant.

9 Q. What happened next?

10 A. Once the agents had subdued the Defendant with
11 handcuffs, Special Agent Daer noticed that blood was pouring
12 or leaking from the hand area of Special Agent Orsini.
13 Special Agent Orsini now was aware that he had in fact been
14 bitten by the Defendant, and Special Agent Orsini then sought
15 some type of medical treatment on scene in terms of band-aids
16 and things like that to stop the bleeding.

17 Likewise, some point shortly thereafter Special
18 Agent Daer noticed that he had puncture wounds I believe to
19 his right hand and that he was bleeding as well, again, from
20 bites that had been administered by the Defendant during this
21 altercation.

22 MS. SIMS: Your Honor, I would move to strike that
23 last testimony about the bites. I believe the testimony was
24 that both men noticed they had puncture wounds. There has
25 been no testimony that either man -- in fact, I think the

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1 testimony was the opposite, that they noticed they had these
2 wounds. There has been no testimony that they witnessed
3 themselves being bitten.

4 THE COURT: There was testimony earlier about
5 attempts that --

6 MS. SIMS: There were attempts, yes, Your Honor,
7 but there has been no testimony these gentlemen knew in fact
8 they had been bitten.

9 MS. PICKING: Well, let me phrase it another way.

10 THE COURT: Okay.

11 MS. PICKING: If I may, Your Honor.

12 THE COURT: Please.

13 BY MS. PICKING:

14 Q. Did Agent Daer have puncture wounds on his hands before
15 he began wrestling with Mr. Begolly?

16 A. No, ma'am.

17 Q. Did Agent Orsini?

18 A. No, ma'am.

19 Q. Did they afterward?

20 A. Yes, ma'am.

21 Q. Did someone shout out repeatedly, he's biting, he's
22 biting?

23 A. Yes, ma'am.

24 Q. You indicated that Agent Daer first noticed blood on
25 the hand of Agent Orsini?

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1 A. Yes.

2 Q. Before himself?

3 A. He noticed that the blood was dripping or pouring from
4 the agent's hand.

5 Q. Was it then that he examined his own hands?

6 A. Yes, ma'am.

7 Q. I don't think I asked you, but where was Agent Orsini
8 injured?

9 A. I believe Agent Orsini's injury was to his left hand.
10 And Special Agent Daer's injury was to his right hand.

11 Q. What did Agent Daer observe when he looked at his hand?

12 A. Again, he observed two puncture wounds and some blood
13 trickling from that wound.

14 Q. To your knowledge, did Agent Daer obtain any medical
15 treatment on scene, that is in the parking lot of the Burger
16 King?

17 A. To my knowledge, he did not obtain any treatment on
18 scene.

19 Q. Only Agent Orsini did that?

20 A. Agent Orsini did, yes.

21 Q. Are you aware of whether either or both of these
22 special agents obtained tetanus shots following this incident?

23 A. It's my understanding that both Agent Orsini and Agent
24 Daer have received tetanus shots as a result of being bitten
25 by the Defendant.

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1 Q. Are you aware of whether Agent Daer has received any
2 type of follow-up care?

3 A. I believe Agent Daer is -- or is seeking follow-up care
4 with respect to being checked for hepatitis and other possible
5 transmittible diseases.

6 Q. From whom?

7 A. From the bite administered by the Defendant.

8 Q. Now, sir, you indicated that agents were able to secure
9 the handcuffs on Mr. Begolly in the parking lot of the Burger
10 King?

11 A. Yes, ma'am.

12 Q. Did they then get him to his feet and conduct a body
13 search of any kind?

14 A. Yes, ma'am.

15 Q. Tell us what happened.

16 A. Once the Defendant was handcuffed, agents performed a
17 pat-down search of the Defendant, and in the lower right hand
18 jacket pocket that I have referred to as the Defendant trying
19 to get access to that pocket, agents found a fully loaded
20 9 millimeter Makarov handgun. The safety on the handgun was
21 off and there was a round in the chamber of the handgun.

22 Q. Was the clip of the handgun also loaded?

23 A. Yes.

24 Q. When you say the safety was off, what does that mean?

25 A. That the gun was capable of being fired.

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1 Q. Did the FBI also recover any additional clips of
2 ammunition?

3 A. Yes. In the right side breast pocket of the jacket
4 agents recovered two fully loaded magazines that were suitable
5 for use in the Makarov 9 millimeter handgun that was found.

6 Q. Did agents determine to whom, if anyone, that
7 particular Makarov 9 millimeter handgun was registered?

8 A. I don't know the answer to that.

9 Q. Now, sir, at some point did Ms. Kowalski come out of
10 the Burger King restaurant?

11 A. Yes, ma'am.

12 Q. Did she approach the car where her son was located?

13 A. She approached the vehicle. The Defendant was in
14 handcuffs. The Defendant was still in an agitated state. And
15 the Defendant asked Joan Kowalski if she was in on this.

16 Q. What was the reply?

17 A. Her reply was, yes, and that she loved the Defendant
18 and she wanted to get him help.

19 Q. What happened then?

20 A. It's my understanding that the next thing to happen is
21 the Defendant is at some point placed into an FBI vehicle and
22 another agent accompanies Joan Kowalski back to her residence
23 and at some point thereafter two search warrants are executed,
24 one search warrant at the residence of Joan Kowalski and one
25 search warrant at the residence of the Defendant's father,

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1 Shawn Kowalski.

2 Q. After Ms. Kowalski at the parking lot of the Burger
3 King restaurant acknowledged that, yes, she was somehow
4 involved in this, did Mr. Begolly make any reply to his
5 mother?

6 A. Mr. Begolly angrily called or referred to his mother as
7 Judas.

8 Q. In route back to the FBI office did Mr. Begolly make
9 any statements? Did he change his demeanor at all?

10 A. Agents advised me that Mr. Begolly very quickly went
11 from a highly agitated state to a very calm state. And very
12 early on in their conversation with the Defendant the
13 Defendant indicated that he wanted a lawyer.

14 Q. Now, sir, do you have any information about what
15 Mr. Begolly was doing after he was taken back to the
16 Pittsburgh area by FBI agents, where he went before being
17 processed? If you don't, please just tell us.

18 A. I have limited information as to what happened, yes.

19 Q. In terms of Mr. Begolly's demeanor, can you share any
20 other observations made by the agents that day?

21 A. Again, the observation that I heard was he very quickly
22 again went from a very agitated state to a very calm state,
23 very calm demeanor.

24 Q. Now, sir, can you tell us, please, whether Ms. Kowalski
25 lives in the vicinity of any public schools?

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1 A. I have been advised that she lives in the vicinity of
2 four public schools.

3 Q. Can you tell us, please, whether prior to January 4th
4 of this year Mr. Begolly was at least a part-time resident of
5 her home?

6 A. Yes, he was.

7 Q. Did Ms. Kowalski ever indicate over the last several
8 days to the FBI that her son had possessed or owned any
9 weapons?

10 A. Yes, she did.

11 Q. What type of weapon did she describe?

12 A. I believe she referred to her son's weapon as that AK
13 thing, referring to an AK-47 rifle.

14 Q. Did she say she had ever seen him with it?

15 A. Yes, she had.

16 Q. Did Ms. Kowalski indicate whether Mr. Begolly's
17 father -- who lives some distance away, is that correct, up in
18 the New Bethlehem area?

19 A. Yes, ma'am.

20 Q. Did she indicate whether or not his father, Mr. Shawn
21 Begolly I believe is his name, had any firearms?

22 A. She indicated that the father did have numerous
23 firearms. In fact, I think her comment was that since he had
24 moved to the farm, which I assume is the New Bethlehem
25 residence, he had started to acquire more and more firearms.

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1 Q. As Mr. Begolly was being propped up against the car in
2 the Burger King parking lot by federal agents, was he
3 overheard to make a statement of any kind about his future?

4 A. I don't know.

5 Q. Okay. Did the agents have some concern for
6 Ms. Kowalski's safety at the Burger King parking lot?

7 A. Yes, they did.

8 Q. Did that have anything to do with her getting out of
9 the car and going into the Burger King?

10 A. Certainly.

11 Q. In fact, had they told her to do so to get away from
12 the car?

13 A. Yes, ma'am.

14 Q. Was Ms. Kowalski interviewed by FBI agents over the
15 past several days?

16 A. Yes, ma'am.

17 Q. Was Ms. Kowalski asked the nature of any relationship
18 Mr. Emerson Begolly might have with his siblings?

19 A. Yes, ma'am.

20 Q. What did she reply?

21 A. I believe she identified the Defendant's brother as
22 Shea Begolly, that's S-H-E-A, and indicated that they did not
23 have a good relationship, they were not close. She described
24 the two of them as night and day and said that Shea Begolly
25 often taunted and teased the Defendant for his desire to be

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1 Muslim or Islamic beliefs.

2 Q. Do you know approximately how old Emerson Begolly is?

3 A. He's approximately two years younger than the
4 Defendant. So approximately 19 years of age.

5 Q. I was asking about Emerson Begolly.

6 A. Emerson Begolly is 21 years of age. I believe he will
7 be 22 in March of this year.

8 Q. And Shea is how old?

9 A. Approximately 19.

10 Q. To your knowledge, does the Defendant have any other
11 siblings beside Shea?

12 A. Not to my knowledge.

13 Q. In connection with your interview of Ms. Kowalski, did
14 Ms. Kowalski -- this is over the past couple of days, all of
15 this is restricted from January 4th to today's date -- did
16 Ms. Kowalski indicate anything about Mr. Emerson Begolly, the
17 Defendant's prior medical problems, psychiatric problems,
18 anything of that nature?

19 A. Yes.

20 Q. What did she say?

21 A. She said that she could not control the Defendant. She
22 indicated that the Defendant has been off his medicine for
23 approximately two years and that she wants the Defendant to be
24 on his medicine.

25 She also thought that the Defendant needed therapy.

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1 She described the Defendant's condition as Asperger's
2 Syndrome. Said that the Defendant was very introverted and
3 was critical of the fact that the Defendant's father, Shawn,
4 had somewhat encouraged the Defendant not to take his
5 medication.

6 Q. Why was that, if she knew?

7 A. According to Joan Kowalski, Shawn Begolly thought that
8 the prescription of the psychotropic drugs had been designed
9 to addict the Defendant.

10 Q. So he was encouraging the Defendant not to take them?

11 A. That is my understanding, yes.

12 Q. She could not control him, that is Ms. Kowalski?

13 A. That's what she said, yes.

14 Q. Did Ms. Kowalski indicate whether or not the Defendant
15 was a student anywhere?

16 A. Ms. Kowalski -- or Joan Kowalski advised that the
17 Defendant had been a student at Penn State University, I
18 believe the New Kensington campus, but that in December he had
19 suffered from, to quote her, a meltdown and withdrawn from
20 classes.

21 Q. Do you know approximately the date? If you don't,
22 that's all right.

23 A. I believe it was on or around December 13th, 2010.
24 Sometime in December of 2010.

25 Q. Did Ms. Kowalski indicate whether or not the Defendant

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1 was employed anywhere?

2 A. She advised that the Defendant was not employed.

3 Q. Did Ms. Kowalski advise the FBI what he did all day?

4 A. She advised that the Defendant spent the entirety of
5 the day on the computer, on Internet chat sites, and also I
6 think she said that the Defendant also took long walks to
7 occupy his time, frequently taking those long walks in
8 possession of a firearm and I believe on some occasions a
9 camera so he could photograph what he was seeing during these
10 long walks.

11 Q. Now, sir, did Ms. Kowalski indicate whether or not
12 Shawn Begolly, the father of the Defendant, had taken any
13 unusual photographs of Emerson Begolly?

14 A. Yes, she did.

15 Q. What type of photographs?

16 A. Joan Kowalski advised that Shawn Begolly had taken
17 photos of the Defendant while the Defendant was in a Nazi
18 soldier uniform or Nazi officer uniform. And that Shawn
19 Begolly fostered the Defendant's interest in Naziism and the
20 acquisition of weapons.

21 Q. In fact, did Ms. Kowalski also indicate -- excuse me.
22 Strike that.

23 MS. PICKING: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes, ma'am.

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1 BY MS. PICKING:

2 Q. Sir, I would like to show you what have been marked as
3 Government's Exhibits 1 and 2 for identification. Can you
4 identify who is depicted in the photos?

5 A. According to Joan Kowalski, the Defendant, Emerson
6 Begolly, is depicted in both of these photographs.

7 Q. Is he wearing anything unusual?

8 A. He is wearing a, it appears to me, to be a Nazi
9 officer's uniform.

10 Q. Going to Government's Exhibit 1 for just a moment, can
11 you tell us the approximate age of the individual depicted in
12 that photo?

13 A. Again, according to Joan Kowalski, the Defendant, who
14 is depicted in this photograph, was approximately 11 or 12
15 years of age, and she had believed that this photograph was
16 taken sometime around 2001.

17 Q. And Government's Exhibit 2, the approximate age of that
18 individual?

19 A. I am not sure what his age would be in this photograph.

20 Q. Would you agree that the individual depicted in
21 Government's 2 at least looks to be a bit older than the
22 individual depicted in Government's 1?

23 A. Yes, he does.

24 MS. PICKING: I offer what has been marked as
25 Government's Exhibits 1 and 2 into evidence as Government's

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1 Exhibits 1 and 2.

2 THE COURT: Any objection?

3 MS. SIMS: No objection, Your Honor.

4 THE COURT: Thank you. Entered without objection.

5 BY MS. PICKING:

6 Q. Now, sir, have you, or fellow agents I should say, come
7 into possession of a poem of some kind purportedly written by
8 the Defendant, Emerson Begolly?

9 A. Yes, ma'am.

10 Q. Or a song or a poem?

11 A. Yes, ma'am.

12 Q. Something set to verse?

13 A. Yes.

14 MS. SIMS: Again, Your Honor, I would object based
15 on foundation. If the Government is going to introduce this
16 exhibit as being authored by Mr. Begolly, I think there needs
17 to be some foundation laid that he is in fact the author of
18 it.

19 THE COURT: I agree.

20 MS. PICKING: We will do so.

21 THE COURT: Thank you, ma'am.

22 BY MS. PICKING:

23 Q. Sir, do you know -- and, if so, tell us how you know
24 before you answer the question -- do you know whether or not
25 Mr. Begolly, the Defendant, Emerson Begolly, has utilized a

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1 Muslim name?

2 A. Yes, he has.

3 Q. Do you know what that name is?

4 A. Last -- I believe you call it last name Alshashedi.

5 Q. Do you know whether the poem or verse that I am going
6 to ask you about in a moment is attributed to that individual?

7 A. Yes, it is.

8 MS. SIMS: Your Honor, same objection. I don't
9 think we have heard any foundation for how he knows that this
10 handle belongs to this Defendant.

11 THE COURT: Would you like to give a little more
12 foundation if you can.

13 MS. PICKING: Certainly, Your Honor.

14 BY MS. PICKING:

15 Q. Sir, how do you know that that Muslim name is connected
16 to this Defendant?

17 A. Joan Kowalski advised interviewing FBI agents that
18 Alshashedi was the Muslim name taken by the Defendant.
19 Additionally, I reviewed a number of public source
20 information, I guess we would call them Internet posts, in
21 which people describe Alshashedi as the Defendant, Emerson
22 Begolly.

23 MS. PICKING: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes, ma'am.

Christman - Direct

1 BY MS. PICKING:

2 Q. Sir, I show you what has been marked as Government's
3 Exhibit 3 for identification. Do you recognize Government's
4 3?

5 A. I do.

6 Q. What is it, sir?

7 A. It is an Islamic chant or the text from an Islamic
8 chant that was taken from an Internet site.

9 Q. To whom, if anyone, is it attributed?

10 A. It is attributed to, again, last name Alshishani.

11 Q. Can you spell that for our court reporter?

12 A. I can. A-L-S-H-I-S-H-A-N-I.

13 MS. PICKING: Your Honor, I offer what has been
14 marked as Government's Exhibit 3 into evidence as Government's
15 3.

16 THE COURT: Any objection?

17 MS. SIMS: Yes, Your Honor. I don't believe that
18 it's been established that this is the work of the Defendant.
19 First of all, we heard the handle was Alshashedi, not
20 Alshishani. And I don't believe there's been any evidence
21 that the poem is by this Defendant.

22 Then we had further evidence that anonymous
23 Internet posters claim that Alshashedi or Alshishani, whatever
24 it happens to be, I am not too clear at this point, is the
25 Defendant. I don't think that's sufficient to establish that

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1 this piece of literature was authored by this Defendant, even
2 in the relatively relaxed standards of this hearing.

3 THE COURT: I want to say it is of some question to
4 me which is it, is it spelled one way and pronounced another?
5 I am a little confused as to that.

6 MS. PICKING: Certainly.

7 THE COURT: If you could clear that up.

8 MS. PICKING: I will try to.

9 BY MS. PICKING:

10 Q. Do you have any other information connecting this poem
11 or verse to this Defendant?

12 A. Yes, I do.

13 Q. Do you have public source information connecting the
14 verse to this Defendant?

15 A. Yes.

16 Q. Only from a public source am I interested in at this
17 point. An open source I think is what you called it.

18 A. Yes.

19 Q. How can you further attribute that verse to this
20 Defendant, using only open sources?

21 A. Again, the others discussing this poem in this open or
22 public source describe the name here, Alshishani, and say they
23 have seen that name used interchangeably with Emerson Begolly,
24 or they have identified the name Alshishani and said that was
25 in fact Emerson Begolly.

Christman - Direct

1 THE COURT: The open public source, could you be a
2 little bit more --

3 MS. PICKING: Certainly.

4 BY MS. PICKING:

5 Q. Can you tell us what that source is, the public source?

6 A. Again, they are Internet sites where some of the
7 authors of -- some of the authors are being called or depicted
8 Islamic jihadist, these are the sites they communicate on and
9 the sites others look at and offer comment to what is being
10 communicated.

11 And with respect to one I saw, an author of -- I
12 don't know if we can call it a blog, saying this -- basically
13 says Alshishani has had other things on this site and he is
14 also known as Emerson Begolly.

15 MS. SIMS: Your Honor, I would renew my objection.
16 We have an anonymous poster on a blog which has not been
17 identified by his HTML site, that's simply -- if the
18 Government is saying this Court should find probable cause and
19 detain this Defendant based on this poem, I think we need
20 something to identify this man as the author other than
21 somebody, an anonymous person on an anonymous blog which
22 hasn't been identified which blog it is saying that Emerson
23 Begolly is Alshishani or whatever. I don't think we are
24 anywhere close to establishing that this poem was authored by
25 this gentleman.

Christman - Direct

1 THE COURT: I have to disagree with you. I do feel
2 there is sufficient foundation for the entrance of this
3 exhibit and I will admit it.

4 MS. PICKING: That would be Government's 3,
5 Your Honor.

6 May the agent be permitted to read the poem so the
7 record is clear?

8 THE COURT: Yes, ma'am. It's in evidence.

9 MS. PICKING: Thank you, sir.

10 THE WITNESS: "Grab my gun and my ammo, strap my
11 kamarband onto my chest, get dressed up in my cammo, martyrdom
12 is what I wanted best.

13 "Hit them with my rocket launcher, grab my gun and
14 my ammo, strap my kamarband onto my chest, get dressed up in
15 my cammo, martyrdom is what I wanted best.

16 "Blow their heads right off their shoulders, grab
17 my gun and my ammo, strap my kamarband onto my chest, get
18 dressed up in my cammo, martyrdom is what I wanted best.

19 "Pack my pickup with explosives, grab my gun and my
20 ammo, strap my kamarband onto my chest, get dressed up in my
21 cammo, martyrdom is what I wanted best.

22 "Railroad spikes prepared as shrapnel, grab my gun
23 and my ammo, strap my kamarband onto my chest, get dressed up
24 in my cammo, martyrdom is what I wanted best.

25 "Exploding like a supernova, grab my gun and my

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1 ammo, strap my kamarband onto my chest, get dressed up in my
2 cammo, martyrdom is what I wanted best.

3 "I am not afraid to die, grab my gun and my ammo,
4 strap my kamarband onto my chest, get dressed up in my cammo,
5 martyrdom is what I wanted best.

6 "We're at war and I'm a soldier, grab my gun and my
7 ammo, strap my kamarband onto my chest, get dressed up in my
8 cammo, martyrdom is what I wanted best.

9 "For my brothers and my sisters, grab my gun and my
10 ammo, strap my kamarband onto my chest, get dressed up in my
11 cammo, martyrdom is what I wanted best.

12 "This is revenge for your war crimes, grab my gun
13 and my ammo, strap my kamarband onto my chest, get dressed up
14 in my cammo, martyrdom is what I wanted best.

15 The hors al Ayn.

16 Q. Would you spell that, please.

17 A. A-Y-N.

18 Q. Read that again, please, and spell the three words.

19 A. "The hors" -- I am sorry. "The -- H-O-O-R -- hoor,
20 hour, H-O-O-R, al, A-L, Ayn, A-Y-N, are waiting for me, grab
21 my gun and my ammo, strap my kamarband onto my chest, get
22 dressed up in my cammo, martyrdom is what I wanted best.

23 "Amber's blue eyes and her blonde hair, grab my gun
24 and my ammo, strap my kamarband onto my chest, get dressed up
25 in my cammo, martyrdom is what I wanted best.

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1 "My words are bullets coming at you, grab my gun
2 and my ammo, strap my kamarband onto my chest, get dressed up
3 in my cammo, martyrdom is what I wanted best."

4 MS. SIMS: Your Honor, I would ask that the witness
5 read the last verse of the poem, which I think is quite
6 germane to the point that the Government is trying to make
7 here.

8 THE COURT: It certainly is part -- if it is
9 something that wasn't read and he is reading the whole thing,
10 he needs to read the whole thing. Of course, I didn't have it
11 in front of me, I don't know what he read and what he didn't.
12 But if you tell me he didn't read the whole thing --

13 MS. SIMS: I believe the last verse was not read.

14 MS. PICKING: I thought it was, but I would be
15 happy to include it.

16 THE COURT: I certainly agree if it's in evidence
17 and purported to be read, it should be read in its entirety.

18 MS. PICKING: Do you know the first line?

19 MS. SIMS: "My words are bullets coming at you."

20 MS. PICKING: Yes, he did read that.

21 THE COURT: He did say that.

22 MS. SIMS: Thank you, Your Honor.

23 THE COURT: He did read that part. I remember it.

24 Thank you.

25 BY MS. PICKING:

Christman - Direct

1 Q. Sir, did Ms. Kowalski in her interviews of the past
2 couple of days describe her son Emerson as a danger to himself
3 or others?

4 A. Yes. She did so in the course of interviews with
5 agents and she also did so on a mental health commitment form.

6 Q. Would you tell us when that occurred.

7 A. On January 4th, 2011.

8 Q. Two days ago?

9 A. Yes, ma'am.

10 Q. What was the purpose of filling out the commitment
11 form?

12 A. It was to have the Defendant committed for psychiatric
13 care.

14 Q. To what location did Ms. Kowalski travel, if you know?
15 What hospital?

16 A. I don't remember the name of the psychiatric hospital.

17 Q. Did agents accompany Mr. Begolly?

18 A. Yes, they did.

19 Q. Was Mr. Begolly in fact in custody as of the incident
20 you described?

21 A. Yes, he was.

22 Q. Ms. Kowalski went also?

23 A. Yes, she did.

24 Q. When Ms. Kowalski got to the hospital, did she fill out
25 a handwritten form?

Christman - Direct

1 A. Yes. Again, I referred to it as a mental health
2 commitment form.

3 Q. Has a copy of her handwritten statement together with
4 her signature been brought to court today?

5 A. Yes, it has.

6 Q. Would you recognize it if you saw it again?

7 A. Yes, I would.

8 Q. I now show you what has been marked as Government's
9 Exhibit 4 for identification. Do you recognize Government's
10 4?

11 A. Yes, I do.

12 Q. What is it, please?

13 A. Again, it's what I referred to as a mental health
14 commitment form authored by Joan Kowalski on January 4, 2011.

15 Q. Does it pertain to this Defendant, Emerson Begolly?

16 A. Yes, it does.

17 Q. Does it purport to bear her signature at the end?

18 A. Yes, it does.

19 MS. PICKING: I offer what has been marked as
20 Government's 4 for identification into the evidence as
21 Government's 4.

22 THE COURT: Any objection?

23 MS. SIMS: I beg your pardon, Your Honor?

24 THE COURT: Any objection to this?

25 MS. SIMS: Yes, Your Honor. Ms. Kowalski is a

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1 woman who is under psychiatric treatment. When I interviewed
2 her this morning, she actually had a psychiatric counselor
3 with her. She's also an alcoholic.

4 MS. PICKING: Well, I --

5 MS. SIMS: Excuse me, may I finish with my
6 objection first? She suffers from excessive compulsive
7 disorder.

8 MS. PICKING: I would like to object without
9 stating the testimony. I believe Ms. Sims is testifying as to
10 what Ms. Kowalski would say.

11 MS. SIMS: Your Honor, that's entirely proper in a
12 detention hearing that I proffer testimony. This witness has
13 testified regarding statements made to him.

14 I interviewed Ms. Kowalski and I can assure this
15 Court that within a minute of speaking with her it became
16 quite apparent to me that this woman is mentally unstable.
17 She was so unstable she was unable to speak with me further
18 until handing the phone to her psychiatric counselor who was
19 on scene with her because I needed to find out the information
20 considering how Mr. Begolly here got to the Burger King.

21 I have since learned and pieced together through
22 discussions with other family members that she is under
23 psychiatric treatment. She suffers from excessive compulsive
24 disorder. She is an alcoholic.

25 She -- and I think it is highly unfair given the

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1 inflammatory statements made in this document by Ms. Kowalski
2 under unbelievably stressful conditions, Your Honor, this
3 woman was approached by the FBI and told, we can get your son
4 some psychiatric help because we don't like what he is putting
5 on the Internet. She was then coerced into telephoning her
6 ex-husband and getting his son on the phone. Told him that
7 his grandmother, who he is very close to, was near death and
8 he needed to immediately come down to see her because in fact
9 they were estranged and Mr. Begolly was living with his
10 father, not with his mother.

11 She then drove up, retrieved him. They went to the
12 Burger King. She got out of the car. And then the events
13 unfolded that the Court has heard about, which prompted the
14 comment, you are a Judas, you told me my grandmother was dying
15 and look what's happened.

16 I really believe that if the Court is going to
17 credit testimony from this very unstable woman, that she needs
18 to be in here, Your Honor. This is not an FBI agent, this is
19 a very unreliable source.

20 THE COURT: The question here as I see it is if
21 that document was presented to this facility by this lady.

22 MS. SIMS: I will stipulate to that, Your Honor.

23 THE COURT: Pardon me?

24 MS. SIMS: I would stipulate that she did submit
25 this document.

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1 THE COURT: Okay. So I think on that basis, but
2 bearing in mind the statement you just made, I will take it
3 with that admonition, if you will, as to what her condition is
4 according to you. So I will treat it in that light. But I
5 think it has been established that it was something filed at
6 that facility by her and for that reason I will admit it in
7 evidence.

8 MS. SIMS: Thank you, Your Honor.

9 MS. PICKING: May the agent read the content of the
10 statement into the record? It is very short.

11 THE COURT: It is in evidence. Again, yes.

12 THE WITNESS: "On several occasions within the last
13 month, including today, Emerson has espoused his desire to die
14 as a martyr in a violent manner while bringing others down
15 with him. I fear for my son's safety as well as for those
16 around him. Not only has his brother heard Emerson issue such
17 threats, but federal agents also bore witness today to these
18 remarks. In addition, I viewed web postings this morning in
19 which he advocated carrying out jihad abductions -- jihad
20 abductions and terroristic threats. I have also heard these
21 statements in the past frequently."

22 BY MS. PICKING:

23 Q. The follow-up printed on the page, "on the basis of the
24 information," do you see where I am indicating?

25 A. Yes, I do.

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1 Q. What does it say?

2 A. On the basis of the information I gave above, I believe
3 that Emerson Winfield Begolly is in need of involuntary
4 examination and treatment. I request that, and it says check
5 A or B, and it says, notice that B can only be checked by a
6 physician, a police officer, the county administrator, or
7 his/her delegate. She checked box A.

8 Q. Does the document bear her signature?

9 A. Yes, it does.

10 Q. And the date of 1/4/11?

11 A. Yes, it does.

12 Q. Now, sir, was this particular document, Government's 4,
13 filled out at the time FBI agents took Mr. Begolly to the
14 psychiatric hospital two days ago, January 4th --

15 A. Yes, it was.

16 Q. -- 2011?

17 If you know, sir, was Mr. Begolly examined by any
18 hospital personnel?

19 A. He underwent a preliminary examination by a
20 psychiatrist on staff, and my understanding is that FBI agents
21 were advised that although he was in need of treatment, there
22 was no room in the facility at that time.

23 MS. SIMS: Your Honor, I would object without the
24 psychiatric records being produced as to this agent, who did
25 not speak with the psychiatrist or with personnel at Western

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1 Psych regarding what, if anything, was said. I think it is a
2 very simple matter to produce those records.

3 We were not given sufficient time to get them or we
4 would have. But I don't think it is fair for this witness who
5 didn't even speak with the personnel when there are medical
6 records that could answer this question as to why this man was
7 not committed to Western Psych.

8 THE COURT: Well, I will have to note that this
9 information is also contained in the Pretrial Services report,
10 which was verified by --

11 MS. SIMS: I don't believe it was verified with
12 Western Psych, Your Honor.

13 THE COURT: No, I understand that. But it was
14 verified by the father and stepmother. So for that reason I
15 am going to overrule your objection.

16 MS. PICKING: Thank you, Your Honor. If Ms. Sims
17 would be so kind as to sign a release for those documents, I
18 would be happy, happy to provide those to the Court.

19 Ms. Sims?

20 MS. SIMS: We are not going to be signing any
21 releases of the documents, Your Honor. We will obtain the
22 documents in due course, though.

23 THE COURT: Thank you, ma'am.

24 BY MS. PICKING:

25 Q. Sir, did Defendant's brother, Shea Begolly, make an

Christman - Direct

1 indication to FBI agents, again over the last couple of days,
2 that his brother, Emerson, wanted to die as a martyr?

3 A. Yes, he did. I believe he indicated that the Defendant
4 had talked recently about dying as a martyr and killing others
5 as well. And also made reference to the obtainment of virgins
6 in the afterlife should he do so.

7 Q. Now, sir, in line with that information, did Mr. Shea
8 Begolly make any other statements to the FBI over the last
9 couple of days about Emerson?

10 A. Again, I am aware -- I am aware that he indicated that
11 the Defendant had frequently talked about being a martyr and
12 killing himself and killing others, as well as being rewarded
13 in the afterlife with virgins for so doing.

14 Q. According to Ms. Kowalski, when did Mr. Begolly first
15 express an interest in Naziism?

16 A. In approximately 2001 he expressed an interest in
17 Naziism, which again she somewhat attributed that to the fact
18 that his father, Shawn Begolly, had fostered that interest
19 again through taking of pictures and so on.

20 Q. In fact, did Ms. Kowalski indicate that in that same
21 year, 2001, she got a phone call from a white supremacist
22 group?

23 A. Joan Kowalski recalled that sometime around 2001 after
24 these photographs of the Defendant in the Nazi uniform would
25 have been -- may have been posted or seen by somebody, he

Christman - Direct

1 received a call by somebody who wanted him to be in charge or
2 be involved in a Nazi movement.

3 Q. What, if any, response did she give, if you know?

4 A. She was not aware specifically of what the -- of what
5 the name of the movement was.

6 Q. Did Ms. Kowalski indicate that Mr. Emerson Begolly was
7 in fact diagnosed with Asperger's Syndrome?

8 A. She indicated that at approximately six years of age he
9 was diagnosed with Asperger's Syndrome.

10 Q. Did she know anything about his level of intelligence?

11 A. I believe she referred to him as brilliant and
12 indicated that he had an IQ of approximately 160.

13 Q. Did the Defendant tell Ms. Kowalski that because she is
14 not a Muslim, her life will go in a certain direction?

15 A. Yes. The Defendant made disparaging remarks I believe
16 that Joan Kowalski would burn because she was not a -- because
17 she was not a Muslim.

18 Q. Did he indicate that he thought he was being watched?

19 A. He did on occasion tell Joan Kowalski that he believed
20 he was being watched.

21 Q. And that he takes a weapon along with him on long walks
22 for protection?

23 A. She thought that -- the answer is yes. She added that
24 she believed that he took the weapon with him on long walks in
25 the event that he was confronted by law enforcement.

Christman - Direct

1 Q. Did the Defendant indicate that he wanted to travel to
2 Chechnya?

3 A. Yes, he did.

4 Q. For what reason, if you know?

5 A. According to Joan Kowalski, the Defendant spoke of
6 traveling to Chechnya to fight with his, I believe he used the
7 word, brothers.

8 Q. Did he describe Chechnya as his motherland?

9 A. Yes, he did.

10 Q. Do you know whether the Defendant is of Chechnyan
11 origin?

12 A. According to Joan Kowalski, the Defendant is not of
13 Chechnyan origin.

14 Q. To her knowledge, did she have any Chechnyan heritage
15 or ethnicity?

16 A. To her knowledge, she had none.

17 Q. Did she make any statements regarding the Defendant's
18 social affiliations, if any?

19 A. She claimed that the Defendant was very awkward
20 socially and isolated himself from others.

21 Q. Has the Defendant, according to Ms. Kowalski, stated on
22 a regular basis that he is not long for this world, or words
23 to that effect?

24 A. Yes. According to Joan Kowalski, the Defendant did
25 make those comments.

Christman - Direct

1 Q. How recently did he last make the comment, I am not
2 long for this world, or words to that effect?

3 A. I am not sure.

4 Q. Did Ms. Kowalski know whether her son Emerson had
5 obtained a passport?

6 A. She advised that he had obtained a passport, and my
7 recollection was that the passport was for a proposed trip to
8 Poland for a wedding.

9 Q. Had the Defendant indicated to Ms. Kowalski that he
10 wanted to travel overseas?

11 A. Yes, he did.

12 Q. That he wanted to go to Chechnya and die for his
13 country?

14 A. Yes.

15 Q. Which presumably meant Chechnya?

16 A. Yes.

17 MS. SIMS: Excuse me, Your Honor, I would move to
18 strike that last question as it's inappropriate as to what he
19 presumably meant when he said he wanted to die for his
20 country. It is calling for speculation, it is argumentative.

21 THE COURT: Sustain the objection.

22 BY MS. PICKING:

23 Q. Did the FBI say what country, ask what country?

24 A. I believe Chechnya.

25 Q. Did Ms. Kowalski indicate that her son, the Defendant,

Christman - Direct

1 had videos of himself shooting the AK-47?

2 A. Yes. She indicated that he did have videos of himself
3 shooting the AK-47.

4 Q. Did the FBI over the last couple of days ask
5 Mr. Begolly whether he had any other knives or weapons, any
6 weapons of any kind other than firearms?

7 A. I am not sure about that.

8 Q. Was Shawn Begolly, Defendant's father, interviewed by
9 the FBI?

10 A. I know FBI agents spoke with him, yes.

11 Q. Did he say anything about his son Emerson acquiring a
12 passport?

13 A. He acknowledged that his son did have a passport.

14 Q. Did he know for what purpose he had obtained it?

15 A. I believe he also said that his son had a passport and
16 that his son had talked about traveling to Poland for a family
17 wedding.

18 Q. Was the Defendant's stepmother also interviewed?

19 A. Yes.

20 Q. Did she have any knowledge about the Defendant recently
21 acquiring a passport?

22 A. Yes.

23 Q. Did she know why?

24 A. I recall that she believed that the Defendant -- or
25 that she stated that the Defendant talked about traveling in

Christman - Direct

1 Europe. And, again, that the Defendant had a passport.

2 Q. Did the Defendant's stepmother indicate that the
3 Defendant had changed his appearance in any way when he
4 obtained his passport?

5 A. Yes. The stepmother, who I believe is Tiffani Begolly,
6 T-I-F-F-A-N-I, she thought it odd that the Defendant had a
7 beard, went to get his passport picture clean-shaven, and
8 shortly thereafter regrew the beard.

9 Q. Did the stepmother indicate that the Defendant had
10 indicated any suicidal ideation to her?

11 A. The stepmother, again, indicated that she read the
12 Defendant's or a portion of the Defendant's diary or journal
13 and she saw a number of suicidal thoughts contained in that
14 diary or journal.

15 Q. Did Shea Begolly indicate that his brother, Emerson
16 Begolly, had recently expressed any thoughts of martyrdom or
17 suicide?

18 MS. SIMS: Your Honor, I would object to the form.
19 I am not sure what thoughts of martyrdom are.

20 THE COURT: Quite frankly, that has already been
21 asked and answered, that very same line of questioning. So
22 for that reason I don't think we need to go over it again.

23 MS. PICKING: Thank you, Your Honor.

24 May I have just a moment, Your Honor?

25 THE COURT: Yes, ma'am.

Christman - Direct

1 BY MS. PICKING:

2 Q. Was the stepmother interviewed about a poem? I am not
3 talking about this poem we just read in, but a poem?

4 A. It is my understanding that she was.

5 Q. What, if anything, did the father reply when he was
6 asked about the poem?

7 A. The father replied that -- well, the father replied
8 that the Defendant was just going through a stage when she
9 questioned the content of the poem.

10 Q. What was the general subject matter of the poem,
11 according to the stepmother?

12 A. It was Jews and causing harm, physical harm to Jews,
13 which concerned her.

14 Q. So she questioned the father about it?

15 A. Yes. She brought that to the father, Shawn's
16 attention, and, again, the father's response was that the
17 Defendant was merely going through a stage.

18 Q. Finally, when the FBI agents were at the parking lot of
19 the Burger King restaurant on January 4th, 2011, were they
20 carrying out their official duties as FBI agents?

21 A. Yes, they were.

22 MS. PICKING: Thank you very much, Agent Christman.
23 That's all the questions I have.

24 THE COURT: Any cross?

25 MS. SIMS: Yes. May we have a brief recess,

Christman - Cross

1 Your Honor?

2 THE COURT: I think that would be a wonderful idea.
3 About a ten-minute one.

4 MS. SIMS: All right.

5 THE COURT: We will begin again at 20 after 3.
6 (Recess taken).

7 (Back on record in open court).

8 THE COURT: Okay. Have we got all the necessary
9 people now?

10 MS. SIMS: I think so, Your Honor.

11 THE COURT: Make yourself comfortable.

12 THE WITNESS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. SIMS:

15 Q. Good afternoon, Agent Christman.

16 A. Good afternoon.

17 Q. Now, you testified at some length here and appear to
18 have a very deep and exhaustive knowledge of this case. Would
19 you say that's fair?

20 A. I would say I do not have deep and exhaustive knowledge
21 of the case.

22 Q. Okay. Well, you spoke at length with Agent Orsini
23 about the case?

24 A. Yes.

25 Q. And you spoke at length with Agent Baer?

Christman - Cross

1 A. It's Daer. I did not speak to Agent Daer.

2 Q. So the primary source then for your testimony here is
3 your conversations with Agent Orsini, correct?

4 A. Agent Orsini and several other agents.

5 Q. Who would those be?

6 A. Agent Morgan.

7 Q. Okay.

8 A. And I believe Agent McBride, I believe.

9 Q. Now, Agent Orsini is the lead agent on the case,
10 correct?

11 A. I would say he is the lead agent. I believe he is.

12 Q. Agent Orsini in fact has a history of being disciplined
13 by the FBI for repeatedly falsifying evidence vouchers,
14 affidavits, things of that nature when he was posted in the
15 Newark office, is that correct?

16 MS. PICKING: Objection, not at issue in the
17 preliminary examination.

18 MS. SIMS: Your Honor, I think --

19 THE COURT: It has to do with credibility, and if
20 that's where he got the information, I will overrule the
21 objection.

22 BY MS. SIMS:

23 Q. Can you answer the question?

24 A. I am sorry, could you repeat the question.

25 Q. Yes. In fact, Agent Orsini was disciplined several

Christman - Cross

1 times when posted at the Newark office by the FBI for
2 falsifying evidence vouchers and for falsifying affidavits,
3 signing other agents' names to them, signing other agents'
4 initials to them, things of that nature, correct?

5 A. To be honest, I don't know.

6 Q. Is your testimony to this Court that you have never
7 heard that Agent Orsini had a disciplinary history at the FBI,
8 that this is the first time you have heard that?

9 MS. PICKING: Your Honor, I don't think that's what
10 he said.

11 THE COURT: Well, he can answer that question. I
12 think it clarifies his answer.

13 THE WITNESS: I am aware that he has a disciplinary
14 history. I am not aware of what he has been disciplined for.

15 BY MS. SIMS:

16 Q. Okay. So you are not aware that he was specifically
17 disciplined for lying on evidence vouchers and on affidavits
18 and signing other agents' names?

19 A. Absolutely not. I am not aware of that.

20 Q. You are not aware he is not even permitted to sign
21 affidavits anymore by the FBI because of that history?

22 A. Again, I am not aware of that.

23 Q. This all came to light, did it not, in the prosecution
24 of Cyril Wecht, correct?

25 A. Again, I am not aware of -- I am not aware of what he

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1 was disciplined for. I am aware that he has been disciplined.

2 I am not aware of what for.

3 Q. You didn't apprise yourself of that before deciding
4 whether to credit his account of what occurred here?

5 MS. PICKING: Objection, argumentative.

6 THE COURT: I agree. I think it is asked and
7 answered.

8 MS. SIMS: Thank you, Your Honor, I will move on.

9 THE COURT: Thank you.

10 BY MS. SIMS:

11 Q. So Agent Orsini and the other agents originally
12 contacted Ms. Kowalski, Joan Kowalski, the Defendant's mother,
13 in connection with the search warrant on her house, correct?

14 A. Yes, that's my understanding.

15 Q. Was that the first contact or had they had previous
16 contact with her about the concerns they had about her son,
17 Emerson?

18 A. I am only aware -- I am only aware that she was
19 contacted in the early morning hours of January 4th, 2011.

20 Q. Is it your testimony that there was no previous contact
21 between Joan and the FBI regarding Emerson's postings on the
22 Internet?

23 A. I don't know if there were to be honest.

24 Q. Could be, could not be, correct?

25 A. Again, I don't know. I am only aware of January 4th,

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1 2011.

2 Q. Okay. The contact that was made with Joan, that was a
3 contact by phone on January 4th, correct?

4 A. Again, I don't know how the contact was made.

5 Q. So you haven't familiarized yourself with that?

6 A. No.

7 Q. Contact was made with Joan, and the agents indicated
8 that they had a search warrant for her house, correct?

9 A. I believe that was part of what was indicated, yes,
10 that they had a search warrant for her house as well as a
11 search warrant for Shawn Begolly's house as well.

12 Q. What was the crime that the search warrant was
13 searching for evidence for?

14 A. Again, I don't know.

15 Q. You don't know why they were searching Joan's house and
16 Shawn's house?

17 A. I haven't seen the search warrant affidavit, I haven't
18 seen a face sheet. I am not aware of why or what they were
19 searching for.

20 Q. Or what crime they were investigating, if any?

21 A. I mean, I could speculate.

22 Q. Please don't.

23 THE COURT: Yes, that's not good.

24 THE WITNESS: I couldn't tell you.

25 BY MS. SIMS:

Christman - Cross

1 Q. So they told Joan they had a search warrant. Did they
2 go to her house in the early morning hours of January 4th?

3 A. Again, I am not sure when they initially contacted her.
4 At some point they did go to her house and accompany her to
5 the vicinity of Shawn Begolly's house. So I am aware at some
6 point there was a contact that was in person.

7 Q. Did the search occur prior to the agents and Joan going
8 up to New Bethlehem to Shawn's house?

9 A. It did not.

10 Q. So they had the warrant, they didn't search the house,
11 they had Joan go with them up to New Bethlehem to Shawn's
12 farm, correct?

13 A. I am sorry, could you repeat that.

14 Q. So they had the search warrant in hand, they went, they
15 got Joan from her house and took her up to New Bethlehem or
16 she drove her own car up to New Bethlehem to Shawn's house?

17 A. That's correct.

18 Q. Prior to doing that, the agents had Joan call Emerson,
19 correct?

20 A. Yes.

21 Q. And tell him a lie, tell himself that his grandmother
22 was very ill and that he needed to come to his grandmother's
23 side immediately, correct?

24 A. I don't know whether or not his grandmother is ill, but
25 I do know that call was -- it was a ruse type call. It was

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1 not based out of concern for his grandmother or to help him
2 see his grandmother. I don't know if his grandmother is ill
3 or not. Again, I don't want to speculate whether she's ill or
4 not.

5 Q. At this time Emerson was not living with Joan, correct?

6 A. I don't know. I know that he was residing with his
7 father. I don't know if it was on a temporary basis or if it
8 was a visit. I don't know.

9 Q. In fact, Joan and Emerson were not getting along, were
10 they?

11 A. Again, I don't know whether they got along or not.

12 Q. Well, didn't Joan -- I believe your testimony on direct
13 is at length that Joan had all kinds of problems with Emerson
14 and that she was highly concerned about his behavior and she
15 could not control him, correct?

16 A. That was part of my testimony.

17 Q. Right. So she said, I can't control him?

18 A. She did say that, yes.

19 Q. Not uncommon lament for a mother of a young man,
20 correct?

21 MS. PICKING: Objection.

22 THE WITNESS: I don't know whether that would be
23 common or not.

24 BY MS. SIMS:

25 Q. So he wasn't living there; she said, I can't control

Christman - Cross

1 him; and she then called him with a ruse call to say, you must
2 get down here immediately.

3 You say you don't know if it had to do with his
4 grandmother being sick or not, that wasn't shared with you,
5 what the nature of the ruse was?

6 A. The reason I am answering the way I am is I am assuming
7 that the ruse wouldn't work if there wasn't some type of
8 possibility that the grandmother was ill. So whether she was
9 ill or not, I am not sure. Again, I know that that was not
10 the concern. The concern was getting him to travel back
11 towards Natrona Heights with his mother.

12 Q. In fact, the ruse was needed because Emerson and his
13 mother -- Emerson wasn't coming down to see his mother, they
14 were estranged, correct?

15 A. The ruse was needed because agents wanted to execute
16 search warrants at two locations, and the concern was that if
17 they approached Shawn Begolly's residence, that it could
18 result in physical harm either to agents or citizens. So the
19 thought was that we will detain or secure the Defendant away
20 from the residence to ensure the safety of agents and officers
21 as well as the public.

22 Q. But it wasn't adequate for Joan to simply call Emerson
23 and say, I am your mother, I need to see you, come down here?
24 That wasn't adequate, right?

25 A. It would not have been adequate, no.

Christman - Cross

1 Q. Because he wasn't coming down unless it was a serious
2 situation such as his grandmother being ill, correct?

3 A. I don't believe that's correct. Again, my belief is
4 that it would not have been adequate because agents would have
5 wanted some control over his whereabouts before they executed
6 search warrants. Again, wanted to make sure that when they
7 executed search warrants he at least at some point was
8 detained, we knew where he was, and that would assure safety
9 in terms of executing the search warrants.

10 Q. And it was necessary for his mother to trick him to get
11 him to come meet his mother?

12 MS. PICKING: Objection, asked and answered.

13 THE COURT: Yes.

14 MS. SIMS: Withdrawn, Your Honor.

15 THE COURT: You have exhausted that one, yes.

16 MS. SIMS: Withdrawn, Your Honor.

17 BY MS. SIMS:

18 Q. She then proceeded to New Bethlehem and picked up
19 Emerson at his father's farm, correct?

20 A. Yes, ma'am.

21 Q. She then pulled into the Burger King also in
22 New Bethlehem, correct?

23 A. Yes, ma'am.

24 Q. She then told Emerson, I am going to go get iced tea,
25 wait here; right?

Christman - Cross

1 A. I am not sure what she told him. I am sure that she
2 was advised or consulted with in terms of finding a reason to
3 get into the Burger King restaurant. I don't know what that
4 reason would have been.

5 Q. Then she left her son in the passenger seat and she
6 walked into the Burger King, correct?

7 A. Yes, ma'am.

8 Q. There were already numerous agents present at the
9 Burger King, correct?

10 A. Yes, ma'am.

11 Q. Approximately how many, sir?

12 A. I could not tell you.

13 Q. Fifteen?

14 A. Again, I couldn't tell you how many.

15 Q. Something like that, correct?

16 A. It would have been an adequate number to secure and
17 detain a person or arrest a person, if need be. So how many
18 that was, I couldn't tell you.

19 Q. Ten?

20 THE COURT: He has answered that question.

21 MS. SIMS: Thank you, Your Honor.

22 BY MS. SIMS:

23 Q. So then what occurred is -- so agents didn't then
24 arrive, they were already in place, correct?

25 A. I know that some agents were in place, particularly

Christman - Cross

1 Special Agent Orsini, Special Agent Daer. I know they were in
2 place at the Burger King, which was -- which I believe was the
3 plan for them to be in place there.

4 Q. They were all in undercover, plainclothes, correct?

5 A. It's my understanding that they were dressed soft,
6 which means to me they were not wearing uniforms or they were
7 not marked as police officers. They were in a covert
8 capacity.

9 Q. So they are like a sweater or suit and tie or T-shirts,
10 but not a raid jacket?

11 A. Correct.

12 Q. Then I believe it is your testimony that Agents Daer
13 and Orsini approached the vehicle that Mr. Emerson was sitting
14 in, correct?

15 A. Yes, ma'am.

16 Q. And they actually opened two of the doors, correct?

17 A. Yes, ma'am.

18 Q. As they opened the doors you said that they -- did they
19 direct him to come out of the vehicle?

20 A. No, ma'am. The initial contact again was Special Agent
21 Orsini advising that we are from the FBI, we would like to
22 talk to you. That was met with a scream and an immediate
23 gesturing or attempting to by the Defendant, to take his right
24 arm towards the right front pocket of his jacket.

25 At that point, believing that he was possibly going

Christman - Cross

1 for a firearm, agents responded to try to physically restrain
2 him from doing that.

3 Q. My question, though, was if they were just going to
4 approach the vehicle and engage him in conversation, why did
5 they open the doors?

6 A. It's my understanding that they approached him and
7 opened the doors in the manner that they did out of fear for
8 safety of the public and safety of agents.

9 Q. Okay. But they didn't approach him and say, we are
10 going to open the doors, they just suddenly opened the doors,
11 correct?

12 A. Again, it's my belief that using stealth in opening the
13 doors was their plan to, again, talk to him and potentially
14 detain him while not providing him ample opportunity to get to
15 a weapon, which some other type of slower approach and
16 announce would have given him.

17 Q. Okay. So he's been told his grandma's gravely ill,
18 there is a stop for iced tea, he is waiting for his mom to
19 come back with an iced tea, and suddenly the doors of the car
20 are opened by two men?

21 A. That's correct.

22 Q. His response was to scream?

23 A. That's my understanding, yes.

24 Q. Now, the agents were aware, were they not, that
25 Mr. Emerson suffers from Asperger's Syndrome, correct?

Christman - Cross

1 A. I am not sure what they were aware of. I would assume
2 they were briefed on the Defendant's background and history,
3 but, again, I don't know what they were aware of and what they
4 weren't aware of.

5 Q. Well, they had talked extensively to Joan about the
6 Defendant's weird behavior and she can't control him and
7 things of that nature, correct?

8 A. When you say they --

9 Q. The agents.

10 A. Well, Special Agent Orsini, again I am sure he had a
11 conversation with Joan Kowalski. I don't know that Ed Daer
12 participated in that conversation or if he was already in
13 place at the Burger King restaurant.

14 Q. Well, in fact, Agent Orsini had a personal relationship
15 with Joan prior to this case ever starting, correct?

16 MS. PICKING: Objection, relevance.

17 MS. SIMS: Your Honor, I think it is highly
18 relevant.

19 THE COURT: I overrule the objection.

20 THE WITNESS: I don't know. I have heard, not from
21 Agent Orsini, that Agent Orsini knew the family. I don't know
22 what that means. So other than that, I can't describe what
23 type of relationship or whether or not he had a relationship.
24 I did hear that he knew the family, whatever that meant.

25 BY MS. SIMS:

Christman - Cross

1 Q. And, in fact, when he spoke to Joan, he said, I became
2 involved in this because I know you, I have a relationship
3 with you, and I am concerned about your family, correct?

4 A. Again, what I had heard or was my understanding that
5 Agent Orsini was selected for this based on the belief that he
6 did know the family and that his presence might otherwise calm
7 a volatile situation.

8 Q. So he was selected because he knew the family?

9 A. I believe so.

10 Q. But he didn't actually know Emerson, correct?

11 A. I don't know.

12 Q. So you don't know whether Emerson would have recognized
13 him or not?

14 A. I don't know that.

15 Q. There was a relationship with Joan, though, as far as
16 you know?

17 A. Again, what I heard was he knew the family. I don't
18 know what that entailed.

19 Q. You said they opened the doors, they did not announce
20 themselves prior to opening the doors, there was a scream,
21 then they announced themselves?

22 A. Again, Agent Orsini opens the rear passenger door
23 first. Agent Daer subsequently follows up by opening the
24 front passenger door where the Defendant was sitting. As
25 Agent Orsini opened the rear passenger side door, he advised

Christman - Cross

1 that we're from the FBI, we want to talk to you.

2 Q. This is while the Defendant is screaming?

3 A. I think that is met with a scream is my understanding.

4 I don't know if the Defendant screams prior to that or while
5 he is saying that or after he says that. But there is the
6 opening of the door, the identification, the request to talk,
7 and there is a scream. It may be simultaneous, it may be
8 after, I am not sure.

9 Q. It may be that the Defendant didn't hear the original
10 identification because he was screaming, is that a
11 possibility?

12 A. I don't know.

13 Q. You said that then the agents got into the car with the
14 Defendant, is that true, or is that how you heard it?

15 A. Well, again, how I describe it is when the Defendant
16 motions or moves his right arm toward his front right jacket
17 pocket, Special Agent Daer immediately makes entry into the
18 vehicle and pins the Defendant's right arm up against his
19 torso to try to deny him access to whatever he is trying to go
20 for in that right-hand pocket.

21 At some point at that time or shortly thereafter
22 Special Agent Orsini then enters through the rear as well and
23 again tries to assist Special Agent Daer in detaining the
24 Defendant and preventing him from getting whatever he is
25 trying to get out of the pocket.

Christman - Cross

1 Q. So Agent Daer and Agent Orsini are both armed,
2 correct?

3 A. Yes.

4 Q. But neither one of them drew their weapon, correct?

5 A. I don't believe that's correct.

6 Q. You don't think either one of them -- I am sorry, it
7 was a bad question and not a totally clear answer.

8 Neither one of them actually drew on the Defendant,
9 correct?

10 A. No, that's not correct.

11 Q. You think they did take a gun out?

12 A. Yes. I think -- I will tell you what I think. Special
13 Agent Orsini when he saw the Defendant gesture or move his
14 right arm for his right front pocket and Special Agent Daer in
15 response grabs the Defendant and enters the vehicle and pins
16 the Defendant's arm, it is my understanding that for a brief
17 moment Special Agent Orsini did draw his weapon and
18 immediately thereafter holstered based on the realization that
19 he needed to make entry into the vehicle and assist Agent Daer
20 in subduing or detaining the Defendant.

21 Q. Because now Agent Daer and the Defendant are tussling
22 inside the vehicle and if he's pointing a gun he could
23 accidentally shoot somebody, the wrong person?

24 A. That's a possibility.

25 Q. So he put the gun back?

Christman - Cross

1 A. Yes, he reholstered his weapon.

2 Q. He jumped in the vehicle in the back seat?

3 A. Yes, he made entry through the back seat.

4 Q. Then he is like trying to reach over the passenger

5 because the Defendant was seated in the passenger, the front

6 passenger seat, correct?

7 A. Correct.

8 Q. So he is now, Agent Orsini is now trying to reach over

9 the passenger seat and assist Agent Daer who is also in the

10 front passenger seat trying to get the Defendant immobilized?

11 A. I believe so, yes.

12 Q. Did they then drag the Defendant from the vehicle?

13 A. My understanding is that as the -- as I described

14 earlier, as the wrestling continues, they are able to pull the

15 Defendant from the vehicle, at which time the Defendant

16 continues to resist. The wrestling continues and it's -- it

17 continues on the ground to the Burger King parking lot, at

18 which time they were successfully able to get handcuffs on the

19 Defendant and subdue him.

20 Q. Now, the Defendant is about 150 pounds?

21 A. I believe -- I believe I saw a report where he is

22 listed as 6 foot 3, 150 pounds approximately.

23 Q. So he is a skinny guy?

24 A. I believe so.

25 Q. Now, there were, as you mentioned earlier, there were a

Christman - Cross

1 number of other agents in the area. Did they try to assist
2 the struggle that was occurring?

3 A. I don't know what other agents in the area did. I know
4 that at least one other agent did make a hurriedly rush toward
5 the car and did try to assist Agents Daer and Orsini, and I
6 think that was at the point where they were subduing the
7 Defendant on the parking lot ground at the Burger King
8 restaurant.

9 So I think, yes, at least one other agent that I
10 know of did rush on scene to assist and I don't know exactly
11 what point he gets there, but it is my understanding that it
12 is when they are already outside of the car, they are on the
13 ground of the parking lot.

14 THE COURT: His machine is running out of charge,
15 so he needs to gets a battery.

16 (Recess taken).

17 (Back on record in open court).

18 THE COURT: Okay, we are good to go now.

19 MS. SIMS: Thank you, Your Honor.

20 BY MS. SIMS:

21 Q. Who was the agent who came to assist?

22 A. Joe Bieshelt. Let me spell that. I believe it is
23 B-I-E-S-H-E-L-T.

24 Q. Did he draw his weapon?

25 A. I don't know.

Christman - Cross

1 Q. Now, you testified at some length regarding various
2 statements that were provided to the FBI by Joan Kowalski,
3 correct, in your direct testimony?

4 A. Yes, ma'am.

5 Q. Who did she make those statements to?

6 A. Special agents of the FBI.

7 Q. But you don't know to whom she made them?

8 A. I don't specifically know who she made some of the
9 statements to. Some were made to Special Agent Orsini and
10 some may have been made to other special agents.

11 Q. Among the things that she told the FBI was that her son
12 had purchased an AK-47, correct?

13 A. Again, I believe she said her son possessed an AK-47.

14 Q. She didn't have any knowledge as to how he came about
15 this AK-47?

16 A. I am not sure if she did or not. She didn't -- what I
17 know is she didn't tell anybody that, how he came to possess
18 it or -- that I don't know.

19 Q. And your investigation did not uncover any evidence
20 that he unlawfully possessed this AK-47, correct?

21 A. Again, I don't know that.

22 Q. He is not charged with unlawful possession of an AK-47,
23 is he?

24 A. No, not at this time, no.

25 Q. He has no prior felony conviction, correct?

Christman - Cross

1 A. He does not.

2 Q. Joan also had made various statements of a fairly
3 derogatory nature regarding her ex-husband, Shawn Begolly,
4 correct?

5 A. I guess you would call them derogatory in terms of him
6 fostering some of the behavior of the Defendant.

7 Q. And did you get the impression that Joan and Shawn are
8 good friends these days?

9 A. I don't know.

10 Q. Well, she said that he had moved numerous firearms to
11 his farm. What was the basis of her saying that? What was
12 the basis of her knowledge? Did she explain that?

13 A. I don't know.

14 Q. And, in fact, a number of firearms were found at
15 Shawn's farm which was searched, correct?

16 A. I don't know that either.

17 Q. You don't know what was found on Shawn's farm?

18 A. I don't know.

19 Q. Well, after the agents brought -- after Mr. Begolly was
20 taken into custody and arrested at the Burger King, he was
21 brought back to Joan's house, correct?

22 A. I believe so, yes.

23 Q. The agents attempted to question him, but you testified
24 he invoked his right to an attorney, correct?

25 A. Again, I believe my testimony was immediately at the

Christman - Cross

1 Burger King he asked to speak to a lawyer.

2 Q. So even though he asked to speak to a lawyer at the
3 Burger King, they still brought him back to Joan's for
4 questioning, correct?

5 A. I don't believe they brought him back for questioning,
6 no.

7 Q. What was the purpose then of bringing him back to
8 Joan's rather than taking him to a magistrate?

9 A. He hadn't been -- at that point he had not been charged
10 with anything.

11 Q. But he had been arrested, correct?

12 A. I don't know at what point he was arrested. As was
13 described to me, at some point there was an attempt to have
14 him committed to a mental facility. So I can't tell you -- I
15 can't tell you when he was arrested, but at that point I don't
16 believe he was arrested.

17 Q. He was handcuffed and placed in the back of an FBI
18 vehicle I believe is your testimony?

19 A. No, my testimony was he was handcuffed on the parking
20 lot ground of the Burger King restaurant.

21 Q. Okay.

22 A. And I am aware he was transported or driven back to
23 Joan Kowalski's residence. I am not aware of the manner that
24 he was transported. I assume he was -- I assume he remained
25 handcuffed for safety reasons, but I don't know. I don't have

Christman - Cross

1 firsthand knowledge of that.

2 Q. Was he provided with Miranda warnings at the scene?

3 A. I don't know.

4 Q. But even without the Miranda warnings being invoked,
5 correct, he said, I want a lawyer?

6 A. Again, my understanding is immediately he asked for a
7 lawyer.

8 Q. And he was then taken to up to Joan's, which was some
9 distance from New Bethlehem because they were up in New
10 Bethlehem and they went all the way to Natrona Heights, right?

11 A. Yes.

12 Q. So it is about a 40-minute drive?

13 A. I believe.

14 Q. So they take him a 40-minute ride to Joan's and
15 question him the whole way, correct?

16 A. Again, I don't know they ever questioned him.

17 Q. Is it your testimony they did not?

18 A. I don't know.

19 Q. They got to Joan's. They brought him inside the house,
20 sat him down, and questioned him some more, correct?

21 A. Again, I don't know that.

22 Q. You have not discussed this with Agent Orsini, any
23 other agent --

24 MS. PICKING: Objection, asked and answered.

25 MS. SIMS: I will move on, Your Honor.

Christman - Cross

1 THE COURT: He answered it twice actually.

2 BY MS. SIMS:

3 Q. He was -- going back to Joan for a minute. You said
4 the agents were aware of Mr. Emerson having diagnosed with
5 Asperger's. Were the agents aware Joan was under psychiatric
6 treatment?

7 A. I don't know what they were aware of in terms of her
8 health or lack of health or mental stability. I don't know.

9 Q. Were they aware she is an alcoholic in Alcoholics
10 Anonymous?

11 A. I have since heard that she was an alcoholic. Again, I
12 don't know if -- I don't know if prior to January 4th that was
13 known and, if so, by whom. I don't know. I have heard since
14 that she has a drinking problem or is an alcoholic.

15 Q. And younger brother Shea is a drug addict, correct?

16 A. I don't know that.

17 Q. You haven't heard that from anybody?

18 A. No, I have not.

19 Q. Ms. Kowalski also expressed her disapproval because she
20 claimed that Shawn Begolly photographed Emerson wearing a
21 quote-unquote, Nazi uniform, correct?

22 A. What was the first part of the question, I am sorry?

23 Q. Joan told the agents that she disapproved of Shawn
24 because he had photographed Emerson wearing a, what she
25 termed, a Nazi uniform?

Christman - Cross

1 A. I don't believe she -- I don't believe she said she
2 disapproved of Shawn. I think she said she disapproved of him
3 photographing her son in the uniform.

4 Q. And the uniform you are referring to is the one
5 depicted in the pictures previously admitted as Government's 1
6 and 2?

7 A. Yes, ma'am.

8 Q. Do you consider yourself an expert on Nazi uniforms?

9 A. No, ma'am.

10 Q. Can you testify under oath to this court that what is
11 depicted in that picture is in fact an authentic Nazi uniform?

12 A. I cannot.

13 Q. Does it have -- does the uniform have anywhere on it a
14 swastika?

15 A. Not that I can see, no.

16 Q. Was a swastika not in fact the insignia of the Third
17 Reich?

18 A. Yes.

19 Q. So, in fact, you can't be sure whether this is a Nazi
20 uniform at all, can you?

21 A. I can tell you that it is a -- it is a German military
22 uniform. Above and beyond that, no, I am not an expert in
23 military uniforms, no.

24 Q. Okay.

25 A. I do see a symbol that I recognize as a German symbol.

Christman - Cross

1 Q. That would be the iron cross?

2 A. Yes, ma'am, it would be.

3 Q. Okay. And, in fact, Tiffani Begolly was interviewed by
4 the FBI you testified, correct? That would be Shawn's second
5 wife?

6 A. I would say yes, she was interviewed, spoken to.

7 Q. She indicated that in fact both Shawn and Emerson are
8 quite interested in military uniforms and buy and sell them on
9 eBay, correct?

10 A. I didn't see anything to that effect, ma'am.

11 Q. Did you speak with the agent who interviewed Tiffani?

12 A. I did not. I am not sure who interviewed Tiffani.

13 Q. But you said you were fairly certain that Tiffani had
14 said that she read Emerson's diary?

15 A. Yes, ma'am.

16 Q. Are you sure it was a diary and not just some papers he
17 left lying around?

18 A. It was described to me as a diary or journal.

19 Q. By whom?

20 A. By Special Agent McGuire as well as the complainant in
21 this matter.

22 Q. So Joan told you that Shawn's new wife read Emerson's
23 diary?

24 A. No, no.

25 Q. Okay.

Christman - Cross

1 A. Tiffani Begolly, when spoken to by agents, advised that
2 she had previously looked at the Defendant's journal or diary
3 and saw suicidal thoughts depicted in the journal or diary.

4 Q. Did she explain what time period this diary pertained
5 to?

6 A. There was nothing that I reviewed or saw or was told
7 that would have given a time period for it.

8 Q. Wasn't it in fact these were loose papers that were
9 written when the Defendant was about 11 years old?

10 A. I don't know that.

11 Q. You don't know anything about it, do you?

12 A. Yes, I don't know.

13 Q. Now, you also testified that Joan at some point
14 testified there was a mysterious phone call from some sort of
15 Nazi or white supremacist or something like that, correct?

16 A. Yes, ma'am.

17 Q. There is no evidence that Emerson ever joined any Nazi
18 group or white supremacist group, correct?

19 A. None that I am aware of, no.

20 Q. In fact, the investigation has not uncovered that he
21 has any contact with or affiliation with any such group,
22 correct?

23 A. I am not aware of that, ma'am.

24 Q. In fact, I believe your testimony was he has Asperger's
25 Syndrome and his mother described him as antisocial, isolated,

Christman - Cross

1 and socially awkward, correct?

2 A. Yes, ma'am.

3 Q. So he is not up in the woods burning crosses with
4 anybody or anything like that, correct?

5 A. I don't know.

6 Q. You have no knowledge to that effect, correct?

7 A. That's correct.

8 Q. Now, the injuries that Detectives -- excuse me, that
9 Special Agents Orsini and Agent Daer sustained, were those
10 injuries photographed?

11 A. I don't know.

12 Q. When an agent -- you said you have been an agent for 19
13 years?

14 A. Yes, ma'am.

15 Q. Have you ever been injured in the line of duty?

16 A. No, ma'am.

17 Q. Would you say it's standard procedure if an agent is
18 injured during an encounter with a suspect that those injuries
19 are documented by being photographed?

20 A. I would say it's certainly good procedure, yes.

21 Q. You have no idea if any photograph was taken of these
22 alleged bites?

23 A. I don't.

24 MS. SIMS: I would ask if there are such
25 photographs they be produced.

Christman - Cross

1 MS. PICKING: If there are, I don't know about
2 them.

3 THE COURT: Sorry, you turned away.

4 MS. SIMS: I asked if there are photographs of the
5 alleged bites they be produced, and the prosecutor indicated
6 she was not aware if there were such photographs.

7 MS. PICKING: That's correct, Your Honor, I don't
8 know.

9 THE COURT: If it is part of the discovery, you
10 would furnish it.

11 MS. PICKING: I certainly would.

12 BY MS. SIMS:

13 Q. Now, Mr. Begolly also sustained injuries in the tussle,
14 correct?

15 A. I am not aware of that.

16 Q. Well, he has as he is sitting there now, he has an
17 abrasion on his right cheek, there is a red bruise on the
18 right cheek. Do you know if there was any effort made to
19 document his injuries?

20 A. Again, I don't know that.

21 Q. Nobody indicated to you what efforts were made to
22 document everybody's injuries who had an injury in this
23 encounter?

24 A. My knowledge of the injuries was what I described in my
25 testimony.

Christman - Cross

1 Q. And that I believe was that at some point, and I am not
2 sure whether it -- was it in the car -- or outside the car
3 that I believe you said Agent Daer noticed that Agent Orsini's
4 hand was injured, correct?

5 A. Correct. As the agents tried to detain or subdue the
6 Defendant in the car, they were yelling that he -- basically
7 that he was trying to bite them. One of the agents at least
8 was yelling, he's trying to bite. Both agents were aware of
9 his attempts to bite them. They timely get him subdued --

10 Q. Out of the car?

11 A. Out of the car in the parking lot of the Burger King.
12 Agent Daer notices that Agent Orsini's hand is dripping blood.
13 So at that point Agent Orsini is aware that the attempts to
14 bite him were successful and he seeks some medical attention
15 for his thumb.

16 At that point or shortly thereafter Agent Daer
17 notices that he's got puncture wounds and blood coming from
18 his hand as well.

19 Q. That was the first time that either one of them knew
20 they had been bitten, correct?

21 A. Yes.

22 Q. Now, you testified earlier that when the agents are
23 speaking to Joan, she said she could not control the
24 Defendant, he's off his medicine, he hasn't taken medicine for
25 two years. Correct?

Christman - Cross

1 A. Yes, ma'am.

2 Q. She never told you what medicine that was, did she?

3 A. No, she did not.

4 Q. You were never provided with any prescriptions given to
5 him by a doctor stating that he should take medicine, correct?

6 A. I was not, no.

7 Q. This was simply an opinion voiced by Joan that she felt
8 he should take some medicine, but she didn't specify what
9 medicine it was?

10 A. Again, not to my knowledge.

11 Q. Western Psych did not prescribe any medicine for him,
12 correct?

13 A. Correct.

14 Q. You are not aware of any medicine you can take for
15 Asperger's, correct?

16 A. I am not.

17 Q. Now, Emerson doesn't have a driver's license, correct?

18 A. That's correct.

19 Q. He doesn't drive, he doesn't know how, correct?

20 A. I don't know that.

21 Q. You are not aware that he in fact does not drive?

22 A. I am aware he doesn't have a license to drive.

23 Q. He has never had a license to drive, correct?

24 A. Correct.

25 Q. So in this line in this poem that says, "pack my pickup

Christman - Cross

1 with explosives," he doesn't have a pickup, does he?

2 A. I don't know.

3 Q. You have uncovered no evidence there is any vehicle
4 registered to him, correct?

5 A. That's correct.

6 Q. He doesn't tool around in a pickup?

7 A. That's correct.

8 Q. There's also a reference in this poem to a blonde girl
9 named Amber, right?

10 A. Yes, ma'am.

11 Q. You never identified any blonde girl named Amber,
12 correct?

13 A. I never did.

14 Q. Neither did any of the other agents to your knowledge,
15 correct?

16 A. Not to my knowledge.

17 Q. Now, after the Defendant was taken back to Joan's, a
18 search was conducted of Joan's, and all that was taken out of
19 Joan's was computers, correct?

20 A. I am sorry, I don't know what was taken out.

21 Q. There was no contraband seized, correct?

22 A. I don't know that, ma'am.

23 Q. And Shawn's place was also searched, you testified
24 earlier, correct?

25 A. Yes, ma'am.

Christman - Cross

1 Q. In fact, the way that was effectuated was Joan called
2 Shawn and then handed the phone to an FBI agent who told Shawn
3 and Tiffani to come out of their farm with their hands raised,
4 correct?

5 A. I am sorry, I don't know that. I am not aware of the
6 manner in which they executed the search warrant.

7 Q. In fact, numerous, numerous SUVs came up to Shawn's
8 farm as he and Tiffani exited with their hands raised,
9 correct?

10 A. I was not there, ma'am, I am not aware of that.

11 Q. What was taken from Shawn's place was his gun
12 collection and computers, correct?

13 A. I am not aware of what was taken.

14 Q. You are not aware of any contraband being taken from
15 there, correct?

16 A. I am not aware of anything being taken from there.

17 Q. Shawn and Tiffani were not arrested, correct?

18 A. Correct.

19 Q. They have not been charged with any crime?

20 A. Not that I am aware of.

21 Q. They were fully cooperative with the FBI, correct?

22 A. I couldn't say one way or another.

23 Q. I believe your testimony is that both Shawn and Tiffani
24 were interviewed, correct?

25 A. I believe my testimony was both of them spoke with FBI

Christman - Cross

1 agents. I am not sure what their demeanor was on scene and I
2 am not sure if it lasted long enough that it would be
3 considered an interview. I am not sure.

4 Q. Well, Tiffani was interviewed for three hours, correct?

5 A. I am not aware of that.

6 Q. Are you aware that's not true?

7 A. I am not aware either way.

8 MS. SIMS: If I could just have a moment,
9 Your Honor.

10 THE COURT: Yes.

11 BY MS. SIMS:

12 Q. Emerson was not committed at Western Psych, correct?

13 A. Yes, ma'am.

14 Q. They declined to admit him and he was brought to the
15 jail, correct?

16 A. Yes.

17 Q. Then eventually he made his initial appearance in this
18 court, correct?

19 A. Yes, ma'am.

20 Q. That would have been yesterday, correct?

21 A. Yes, ma'am.

22 Q. Approximately 3 o'clock, 4 o'clock maybe?

23 A. I don't know.

24 Q. Late in the afternoon?

25 A. It was yesterday afternoon, yes.

Christman - Cross

1 Q. Emerson was arrested or taken into custody at the
2 Burger King a couple of days ago, correct, on January 4th?

3 A. Again, I am not sure when he was placed under arrest.

4 Q. But he was taken into custody at Burger King at
5 approximately what time?

6 A. I don't know the time.

7 Q. Would it refresh your recollection if you looked at the
8 complaint?

9 A. Yes.

10 Q. I don't know how helpful it is going to be, if you look
11 at Paragraph 3, it says it was in the morning of January 4th.

12 A. I don't see a time on here.

13 Q. But essentially you said that you believed that Joan
14 was contacted initially prior to 7 a.m., like around 6:45,
15 7 a.m., something like that?

16 A. I believe she was contacted early in the morning on
17 January 4th, 2011.

18 Q. And agents went there, they contacted -- she contacted
19 Emerson up in New Bethlehem, told him the ruse, and then
20 shortly thereafter they proceeded up there to the
21 New Bethlehem Burger King, correct?

22 A. Yes.

23 Q. So morning sometime, maybe 9, 10, something like --

24 MS. PICKING: The witness has said he doesn't know,
25 Your Honor, I object.

Christman - Redirect

1 MS. SIMS: I will move on, Your Honor.

2 THE COURT: Yes. Thank you.

3 MS. SIMS: I have nothing further, Your Honor.

4 THE COURT: Thank you. Anything on redirect?

5 MS. PICKING: Just a couple of questions, I promise
6 not to go long-winded.

7 THE COURT: Okay, we will at least narrow it down a
8 little bit.

9 MS. PICKING: Thank you, sir.

10 REDIRECT EXAMINATION

11 BY MS. PICKING:

12 Q. Agent Christman, do you know whether the Defendant has
13 a license to carry a concealed weapon?

14 A. I do not know.

15 Q. Do you know whether Ms. Kowalski shares at least
16 partial custody of Mr. Begolly, Emerson Begolly?

17 A. It was my understanding that she does share partial
18 custody.

19 Q. When Mr. Begolly was not admitted at Western Psych two
20 days ago, January 4th, do you know whether the hospital
21 directly contacted the jail to make arrangements for his
22 admission into the psych ward?

23 A. Yes, they did.

24 Q. So he wasn't just put in general population, he was put
25 in a psychiatric ward?

Christman - Recross

1 A. That's correct.

2 MS. PICKING: Thank you. That's all I have,
3 Your Honor.

4 MS. SIMS: Can I have just a couple based on that,
5 Your Honor?

6 THE COURT: All right.

7 RECROSS-EXAMINATION

8 BY MS. SIMS:

9 Q. Mr. Begolly is 21 years old, isn't he?

10 A. Yes, ma'am.

11 Q. So he is not in anybody's custody, is he? I believe
12 you testified his mother has partial custody of him. He is an
13 adult, isn't he?

14 A. Yes. It is my understanding that he lives with his
15 mother and he lives with his father as well.

16 Q. Right. But he is not a minor, so he is not in
17 anybody's custody, correct?

18 A. Correct.

19 Q. You don't actually know what conversation took place
20 between Western Psych and the jail, correct?

21 A. I know that Western Psych made a recommendation in
22 terms of housing him and getting him psychiatric care in the
23 Allegheny County Jail. What was said, I don't know.

24 Q. And, in fact, Western Psych did not prescribe any
25 medication, correct?

1 A. Correct.

2 MS. SIMS: I have nothing further, Your Honor.

3 THE COURT: Thank you, ma'am.

4 Thank you, sir.

5 THE WITNESS: Thank you.

6 (Witness excused).

7 MS. PICKING: I have nothing further, Your Honor.

8 THE COURT: Thank you. Anything on behalf of the
9 Defendant by way of testimony?

10 MS. SIMS: No, Your Honor, just by way of proffer.

11 THE COURT: Okay.

12 MS. SIMS: Does the Court want to be heard on
13 probable cause first?

14 THE COURT: Is this a proffer or an argument?

15 MS. SIMS: I have an argument on probable cause and
16 a proffer on detention.

17 THE COURT: Okay. Whichever order you prefer.

18 MS. SIMS: Okay. I will just go ahead and proffer
19 on detention, Your Honor, if I may.

20 THE COURT: Yes.

21 MS. SIMS: Your Honor, it is clear from the
22 testimony that there's a few things that have not totally been
23 filled in here. My understanding from what I have been able
24 to learn, this is 5 o'clock last night, is that the -- and
25 this is based on my interview with Joan Kowalski. I spoke

1 with her at length this morning and with her psychiatric
2 counselor who was there with her at the time.

3 Ms. Kowalski explained to me that what occurred was
4 she was contacted at 6:45 a.m. on the 4th. That she -- by
5 Mr. Orsini, with whom she had a prior relationship. She did
6 not explain the nature of the relationship.

7 She indicated that Mr. Orsini told her that the FBI
8 believed that her son needed psychiatric help based on things
9 that he had posted on the Internet of a similar nature to what
10 we have seen here this morning.

11 Ms. Kowalski indicated that she believed that her
12 son did need psychiatric help. That he had moved out of her
13 home. Moved up to her ex-husband's home. She wasn't happy
14 about that. And she said that she would appreciate their help
15 in getting Mr. Begolly psychiatric help.

16 She said that the agents then arrived at her home
17 7 a.m. and indicated that she would need to get Mr. Begolly to
18 come to some neutral location so that they could get him the
19 psychiatric help. They suggested that she -- between the two
20 of them cooked up the idea of telling him that his grandmother
21 was having violent seizures and was near death. Mr. Begolly's
22 grandmother is the person to whom he is closest in the world.

23 She then placed a telephone call up to the farm in
24 New Bethlehem. Spoke to Emerson. Said, your grandmother is
25 near death, she's having seizures, you need to come down

1 immediately. He immediately said, come get me.

2 She drove to the farm, picked him up. Went to the
3 Burger King. She said she was told to get away so she
4 wouldn't witness anything.

5 She went inside the Burger King. She said that
6 when she -- she did not see anything that occurred until she
7 came out and her son was in handcuffs.

8 She said she was then told by Mr. Orsini -- she
9 said prior to that she was told by the agents that her son had
10 not committed any crime, that no criminal charges were
11 contemplated, and they just wanted to talk to him about what
12 was on the Internet and get him some psychiatric help.

13 She said at that point Mr. Orsini said,
14 everything's changed, there will be criminal charges, but we
15 are going to try to get him to Western Psych, but we need to
16 talk to him, we are going to bring him up to your house to
17 talk to him.

18 They then proceeded to take her son up to her home
19 where her son was questioned extensively for about an hour,
20 hour and a half. She said during that time her son repeatedly
21 asked for an attorney. That he continued to be questioned.
22 And that eventually he was taken down to Western Psych.

23 Five hours went by. She said she was then called
24 and told there was no bed and they were taking him to the
25 jail.

1 So I think what we can conclude from all of this --
2 she also indicated to me her son has been diagnosed with
3 Asperger's and ADHD from an early age, from the age of about
4 six. And that he -- that the symptoms of that is he is highly
5 intelligent. That he has an IQ of -- she told me 160 as well.
6 But that he is extremely socially awkward, very isolated, and
7 doesn't always react in a normal way in social situations, and
8 this caused problems at school. As a result, he was enrolled
9 in college at Penn State in the eighth grade, not full-time,
10 and he has been taking college classes ever since that time.

11 So I think what we can conclude here is that prior
12 to those doors being opened at the New Bethlehem Burger King
13 Mr. Begolly was not going to be arrested. He was not actually
14 being investigated for any crime. At least that's what was
15 represented to the mother. And there has been nothing
16 different stated here.

17 They opened the doors. He was startled. He has a
18 serious condition, Asperger's, that is not -- it is not a
19 psychiatric condition like schizophrenia that you just get
20 somebody a pill. It's autism. And he apparently panicked.
21 We don't know what all transpired from there, that will be for
22 another day, but I think it's evident from the testimony that
23 there was testimony there was a stealth approach. That the
24 doors were flung open suddenly while he was concerned about
25 his grandmother and waiting for his mom to come back. And

1 that he panicked and screamed --

2 MS. PICKING: Are we proffering now or is this
3 argument, I am sorry?

4 MS. SIMS: It is both, Your Honor. I am offering
5 the mother's testimony.

6 THE COURT: Yes.

7 MS. SIMS: I would also proffer Mr. Shawn Begolly
8 is here in court and I will move onto that.

9 What I learned from Shawn Begolly is that he and
10 Tiffani were at home with Emerson and they received a phone
11 call from Joan saying that the grandmother was deathly ill and
12 having seizures and Emerson needed to come down immediately.
13 They were quite concerned.

14 That Emerson then left. That Emerson had been
15 living with them because he could not get along with his
16 mother and that he had permanently moved up to the farm. They
17 said because of his Asperger's he enjoys taking long walks in
18 the woods in nature. That he does carry a gun on the farm,
19 which is not unusual up in that part of the world up in
20 Clarion County in case he encounters whatever when he is out
21 in the wilderness.

22 And that subsequently they got a phone call from
23 Joan saying, you need to talk to somebody. That Shawn then
24 spoke with an FBI agent who said, basically, you're
25 surrounded, come out with your hands up. He and Tiffani then

1 came out with their hands up and there were literally tons and
2 tons of black and tan SUVs surrounding the property and that
3 there are people in full SWAT gear and they came into the
4 house, searched it, questioned both of them for hours and
5 hours. Tiffani was questioned for three hours. Shawn was
6 questioned for several hours. It was all about the postings
7 on the Internet.

8 They took Shawn's gun collection, which was in a
9 gun case and a normal way of storing firearms. They took all
10 the computers.

11 Shawn and Tiffani have no criminal record, either
12 one of them. Shawn is a corporate educator that travels
13 around educating at different businesses about computers. He
14 also teaches part-time at Penn State. We believe that they
15 are eminently suitable third party custodians.

16 Shawn has an interest in military uniforms and
17 buying and selling them on eBay, as do many, many other
18 people. There is certainly nothing untoward here in terms of
19 his being a father or anything of that nature.

20 I think what we have got here is, bizarre as it is,
21 is we've got two parents struggling over a child who is no
22 longer a child, who is 21 years old, and a mother who is
23 unstable and was sad and upset about her son as an adult
24 choosing to live with his father and this is now the result of
25 that situation.

1 We believe that the -- we would ask the Court to
2 implement the Pretrial Services recommendation. We don't
3 believe that home monitoring is required here. The Defendant
4 does not know how to drive, Your Honor. He does not have a
5 driver's license. He doesn't know how to operate a vehicle.
6 He is going to be living on a 100-acre farm in New Bethlehem.
7 He wouldn't have the ability to go anywhere if he wanted to.

8 He doesn't go anywhere as a rule. He stays in his
9 room all the time. He goes on the Internet and plays the
10 guitar and stuff like that and he goes to school. He is
11 enrolled at Penn State New Kensington. His mother was
12 supposed to re-enroll him for the spring semester, which was
13 supposed to start today.

14 So we would propose that he be released in
15 accordance with the recommendation of Pretrial Services. That
16 he be permitted to begin the spring semester at Penn State.
17 He is about a year from graduating.

18 With regard to the mental health, Your Honor, we
19 would have no objection to him seeing a therapist. However,
20 we would object to sharing that information with the
21 Government and with Pretrial Services other than we would
22 agree that they can verify that he is attending the mental
23 health. But as far as what he is telling them in the ins and
24 outs of it, we would object to that, as we have in other
25 cases, because we've had situations where that information is

1 then promptly turned over to the prosecution and used against
2 our clients at sentencing and at the trial.

3 So we believe that can be worked out between our
4 office and Pretrial, that he would be enrolled in therapy, and
5 that Pretrial would be able to verify that he is going and he
6 is complying with it, but they would not be privy to the
7 confidential communications between the therapist and
8 Mr. Begolly. So we would ask the Court to consider that.

9 We would ask the Court not to impose electronic
10 monitoring. We don't believe that given the circumstances
11 that it's going to really add anything here as far as assuring
12 the safety of the community, reasonably assuring the safety of
13 the community. There has been absolutely no showing that this
14 person is a danger to the community, much less a clear and
15 compelling showing, which is what's required in a hearing like
16 this.

17 The only violence that the Government gave
18 information that he's ever been involved in is while startled
19 and scared by this sudden appearance of these men he did not
20 know, he allegedly bit somebody. That is the allegation here.
21 It's not been established that he did that. I would say that
22 probable cause has been established.

23 But he's 21 years old and there is no history of
24 violence. There is a history of being an oddball. That's not
25 the kind of danger that the Bail Reform Act is aimed at.

1 As far as being a flight risk, this person has no
2 money. He is not employed. He is not receiving any benefits
3 from the Government. He is a full-time student dependent on
4 his family to support him.

5 He has no means to flee. He apparently got a
6 passport because he was interested in helping the Chechnyans
7 kick the Russians out of their country. But, again, we would
8 be happy to surrender his passport, and I think that would be
9 a standard condition.

10 For all his dreaming of going to Chechnya to help
11 the Chechnyans, he has never really been out of Western
12 Pennsylvania in his life. So he is long way from getting to
13 Chechnya.

14 Your Honor, I don't think there has been a showing
15 here by a long shot that this individual is clearly a danger
16 to the community or a flight risk such that no reasonable
17 conditions could be imposed, and I can tell you, Your Honor,
18 he needs to get out of that jail. I was there last night.
19 Per the instructions of the agents, he was in the psychiatric
20 unit. They told him overnight he would not be permitted in
21 general population. This boy was in a concrete cell block, no
22 furniture, slept on the floor, lying on the floor. And I was
23 not permitted to sit at a table with him. I was required to
24 sit on the floor myself and speak with him through a slot for
25 approximately an hour.

1 I think he is in pretty decent shape considering.
2 I thought I was going to be talking to somebody who had
3 serious psychiatric problems, and it became very clear to me
4 very quickly that I was talking to a very intelligent
5 individual and that he was remarkably calm and collected given
6 this ordeal and given the fact he has never been in any
7 trouble, never been in the criminal justice system, certainly
8 never been in jail.

9 There was initially a desire to get some help for
10 this young man. He is not getting any help in the ACJ and I
11 don't think that's where he belongs until we can sort this
12 whole matter out.

13 So I would ask the Court to release him to the
14 custody of his father. Thank you.

15 THE COURT: Thank you. Are you making your
16 proffered testimony people available for cross-examination if
17 need be?

18 MS. SIMS: Yes, Your Honor.

19 THE COURT: Any desire to cross in regard to the
20 proffer?

21 MS. PICKING: I would cross-examine the father or
22 is this just Ms. Sims you are indicating that I can
23 cross-examine?

24 THE COURT: Yes, I think you do. Is that correct?

25 MS. SIMS: I am sorry?

S. Begolly - Cross

1 THE COURT: You did offer him for cross, right?

2 MS. SIMS: Yes.

3 THE COURT: Fine.

4 MS. PICKING: I would call Shawn Begolly.

5 THE COURT: Mr. Begolly.

6 SHAWN BEGOLLY, a witness herein, having been first
7 duly sworn, was examined and testified as follows:

8 CROSS-EXAMINATION

9 BY MS. PICKING:

10 Q. Good afternoon, sir. Where do you currently reside?

11 A. In Mayport, PA, outside of New Bethlehem.

12 Q. Is that in Clarion County, Pennsylvania?

13 A. Yes.

14 Q. Do you currently reside there with Mrs. Begolly,
15 Tiffani Begolly, I believe?

16 A. Yes.

17 Q. Do you have any children with Tiffani Begolly?

18 A. No.

19 Q. Do you have any other children?

20 A. Shea Begolly, who lives in his own place.

21 Q. How long ago did he move into his own place, if you
22 know?

23 A. In December of this year, so it has only been three or
24 four weeks.

25 Q. And your other son would be the Defendant, Emerson, is

S. Begolly - Cross

1 that correct?

2 A. Uh-huh.

3 Q. Did Emerson spend any time in his mother's home in the
4 last month to six weeks?

5 A. Actually Emerson has been at the farm since before
6 Thanksgiving, probably about two weeks before Thanksgiving.
7 So I don't think he has been at his mom's for at least six
8 weeks.

9 Q. So he has been continuously in your home since before
10 Thanksgiving, spending the night, living there essentially,
11 since before Thanksgiving?

12 A. Yes.

13 Q. Prior to whatever time he moved into your home right
14 before Thanksgiving had he been residing at his mother's home
15 in Natrona Heights?

16 A. He was taking classes at Penn State New Ken, and Joan
17 was driving him back and forth to class.

18 Q. Because he doesn't have a driver's license as I
19 understand it?

20 A. Yes. Then he would come out to our house on weekends
21 or fall break or whatever the holidays were.

22 Q. How would he get to your home on the weekends?

23 A. I would usually pick him up.

24 Q. Would his mother sometimes bring him up to your home?

25 A. Very rarely, but once in awhile.

S. Begolly - Cross

1 Q. Does your son have an AK-47?

2 A. Yes.

3 Q. Do you know where he obtained it?

4 A. Dunham's Sporting Goods, Natrona Heights.

5 Q. When I say your son, I am referring to the Defendant,
6 Emerson.

7 A. Yes. He bought it legally just like anybody does.

8 Q. Do you have any firearms, sir?

9 A. Oh, yeah.

10 Q. How many firearms do you have?

11 A. About 20.

12 Q. Can you tell us just generically what types of firearms
13 you have?

14 A. I have mostly hunting rifles. I live in rural PA,
15 ma'am, and we cling to Bibles and guns up there. I have been
16 hunting since I was 12 years old. So I have some shotguns,
17 some rifles, and I also have some handguns.

18 Q. Do you shoot with your son, Emerson, from time to time?

19 A. Yes, we do.

20 Q. Where do you shoot?

21 A. We have about four or five target ranges on the farm
22 that we shoot.

23 Q. Do you shoot anything else? Do you hunt, for example?

24 A. Yeah.

25 Q. Does your son, Emerson, hunt also?

S. Begolly - Cross

1 A. Occasionally, yeah.

2 Q. Have you known your son, Emerson, to take the AK-47
3 back and forth between your home and his mother's home?

4 A. He just purchased the AK not long ago. So I think he
5 got it when he was -- because his mom lives about three blocks
6 from the Dunham's Sporting Goods. So when he got the gun, he
7 was living at her house and then brought it up to the farm.

8 Q. You believe that was fairly recently that he bought
9 that?

10 A. Yeah.

11 Q. Do you and your wife make your home alone when Emerson
12 is not there? In other words, it's just the two of you?

13 A. Uh-huh.

14 Q. Are you aware of whether Emerson has a passport?

15 A. Yes, I know he had a passport.

16 Q. Is it a US passport?

17 A. Yes.

18 Q. You are not of Chechnyan extraction, are you?

19 A. No.

20 Q. To your knowledge then Emerson is not?

21 A. From my understanding, his great-grandfather was a
22 Chechnyan. This would be Joan's mother's father.

23 Q. Joan's mother's father?

24 A. Yeah. Now, I don't have any evidence to verify that
25 either way, but --

S. Begolly - Cross

1 Q. Would you also describe your son as antisocial,
2 isolated, and socially awkward?

3 A. Well, he likes to spend time alone, you know, he
4 doesn't belong to any kind of organizations or groups. One
5 thing he likes to do is take walks out on the country roads.

6 Q. Does he take the AK-47 with him when he does?

7 A. Once in awhile he might.

8 Q. Just out on a walk?

9 A. Yeah. We have bear, coyotes, all kind of dangerous
10 critters.

11 Q. Do you know if Emerson owns any other firearms?

12 A. No.

13 Q. The Makarov 9 millimeter that was found in his
14 possession on January 4th, whose gun is that?

15 A. That's my gun.

16 Q. You are not aware of your son having a license to carry
17 that concealed?

18 A. No, but we were actually working on getting him a
19 permit. Sometimes when we are walking around on the farm I
20 have a pair of Makarovs and we each carry one.

21 Q. You each carry one on the farm?

22 A. Yes.

23 Q. At least up until now your son does not have a conceal
24 carry permit?

25 A. No, he doesn't.

S. Begolly - Cross

1 Q. And I presume you would carry them under your jacket in
2 your coat pocket, et cetera?

3 A. Uh-huh. I have a permit, by the way.

4 Q. Sir, are you currently teaching at Penn State?

5 A. Yes.

6 Q. What courses are you teaching at Penn State?

7 A. Actually at Penn State I teach in their continuing
8 education division.

9 Q. Is that on or off campus?

10 A. It's usually off campus. It's either/or.

11 Q. What kinds of courses do you teach?

12 A. Computers.

13 Q. Computers?

14 A. Yeah, all kind of software. You name it, I teach it.

15 Q. Are you teaching a course there this current semester?

16 A. I am teaching a class, actually I was supposed to be at
17 a class this evening, but I couldn't go because of the hearing
18 here. But I am currently teaching a class at Kittanning.

19 Q. So your son, Emerson, is currently enrolled at Penn
20 State?

21 A. Currently I don't know because he was supposedly going
22 to schedule a class and be re-enrolled this week with Joan.
23 That was one of the things he was supposed to do. When she
24 gave him that idea of his grandmother being sick, she wanted
25 him to stay a few days and get him enrolled.

S. Begolly - Cross

1 Now, one of the things that he -- one of the
2 statements brought up earlier is he dropped out of school. He
3 didn't drop out. He withdrew from a few classes, but he did
4 attend some of them. And Tiffani and I drove him to his final
5 exam. So like December 14th or whatever.

6 Q. Do you know what course that was in, his final exam?

7 A. Psych, I believe.

8 Q. Psychology?

9 A. Yeah.

10 Q. In fact, he did pretty well in psychology, didn't he?

11 A. Yeah, yeah.

12 Q. To your knowledge, what kinds of grades was he getting
13 in his other courses at Penn State?

14 A. Well the other subjects weren't of much interest to
15 him, so he was kind of dropping out. I don't know, he didn't
16 share with me exactly what grades he was getting.

17 Q. So would you agree that other than psychology you are
18 either not aware of what his other grades were or you didn't
19 think they were quite as good?

20 A. I don't think they were.

21 Q. Do you know if your son is permitted to return to the
22 Penn State campus?

23 A. I don't know that, no. Do you have that information?

24 Q. Well, unfortunately I can't answer your questions.

25 A. Okay.

S. Begolly - Cross

1 Q. You indicated, I believe, you have both long guns and
2 handguns at your home?

3 A. Uh-huh.

4 Q. Okay.

5 MS. SIMS: Your Honor, I would object. All of the
6 guns were seized by the FBI, so there currently are no
7 firearms in Mr. Begolly's home.

8 MS. PICKING: I should have said "had". You're
9 right. Had.

10 May I have just a moment to talk to the agents?

11 THE COURT: I was trying to sort that out too.

12 MS. PICKING: Had. Thank you.

13 THE COURT: Okay.

14 BY MS. PICKING:

15 Q. You are still licensed to have a firearm, are you not?

16 A. Uh-huh.

17 Q. So could go out tomorrow and buy more guns, couldn't
18 you?

19 A. Theoretically, yes. But I have a pile of guns that the
20 FBI currently has and there is no reason for me to go out and
21 get them when I will get them back some day.

22 Q. Well, you don't know whether you are going to get them
23 back, do you?

24 A. No, but I have already talked to the lawyer and I don't
25 plan on having those guns stored at my residence.

S. Begolly - Cross

1 Q. Okay. So if you don't get your guns back, the ones
2 that the FBI has -- and I am not saying that's going to
3 happen -- if you don't get your guns back, will you get other
4 guns?

5 A. Probably not.

6 Q. Why not?

7 A. Not at the time that all of this stuff is going on.

8 Q. You would wait until after this is all over with?

9 A. Yeah. I just want to do anything that's law-abiding.
10 I don't want to step out of the boundaries. If they say I
11 can't have a gun in the house with Emerson there because of
12 this, I won't have a gun in the house.

13 Q. Of course, you knew Emerson didn't have a conceal carry
14 permit, but you knew he was carrying a firearm at your
15 premises?

16 A. When you are walking around on the farm, it is not like
17 you are walking down a city street here. You don't need a
18 permit to carry a pistol on your own property.

19 Q. That's right, and you knew he was carrying a pistol on
20 your own property, not a rifle, but a pistol on your property?

21 A. Occasionally. We have a bunch of guns, sometimes we
22 will carry shotguns.

23 MS. SIMS: Your Honor, asked and answered. He
24 already testified they carried long guns and Makarovs around
25 the property.

S. Begolly - Cross

1 THE COURT: I am not real sure, but we got it
2 answered now.

3 MS. PICKING: Thank you very much, Mr. Begolly -- I
4 am sorry, Your Honor, one moment.

5 BY MS. PICKING:

6 Q. Do you know what types of use of the computer your son
7 employed, Emerson that is?

8 A. He got on the Internet.

9 Q. Do you know what sites he visited?

10 A. Not exactly because he has his own room, his own
11 computer, and we have our own computers in our rooms.

12 Q. So he would go into his room and use the computer and
13 you didn't pay any attention to what sites he was on?

14 A. Not necessarily.

15 Q. Do you know how many computers your son had?

16 A. Well, he has a newer computer that he got from Penn
17 State a couple years ago.

18 Q. Is that a desktop, laptop?

19 A. Laptop. There was an older IBM laptop that the FBI
20 seized. It was an old one of mine that I let him use until he
21 got his new computer.

22 And then -- well, just that. But that one was so
23 old, it barely worked. You know how slow computers can be,
24 you just want to throw them in the garbage.

25 MS. PICKING: Thank you, Mr. Begolly, that's all I

1 have.

2 THE COURT: Thank you. Nothing else of this
3 witness, right?

4 MS. SIMS: No, Your Honor.

5 THE COURT: Thank you very much, Mr. Begolly.
6 (Witness excused).

7 THE COURT: Let's sort out where we are here. You
8 have had your argument and your proffer and now we have taken
9 care of the other end of the proffer. So if there is anything
10 by way of argument at this point from the Government.

11 MS. PICKING: I have very brief argument,
12 Your Honor.

13 THE COURT: Yes.

14 MS. PICKING: Ms. Sims described the Defendant,
15 Emerson Begolly, as just an oddball, an eccentric, a loner.
16 Your Honor, on behalf of the Government, I am not prepared to
17 stake my safety or the safety of the community on Ms. Sims'
18 representations to the Court that this Defendant is just an
19 oddball, just a loner.

20 We need only open the newspaper or turn on the TV
21 to hear countless horrid tragic stories of young men in this
22 Defendant's age group committing various atrocities both here
23 and abroad. The shooting at Columbine, Virginia Tech. This
24 morning I heard on the news coming to work about a shooting in
25 Nebraska that I think occurred within the last 24 hours of a

1 student of a school principal and perhaps the vice principal
2 as well.

3 This Defendant may appear docile today, and I
4 submit that he does. He's a young man, slight of build. And
5 to my knowledge has not caused problems today, yesterday, or
6 since his arrest at least on January 4th.

7 I respectfully submit, Your Honor, that this young
8 man is similar to Dr. Jekyll and Mr. Hyde. Explosive one
9 moment, as we have seen, and docile the next. And it's those
10 explosive moments that concern the Government, Your Honor.
11 It's those moments when he's alone on the Internet espousing
12 violent acts, espousing suicidal ideation, incites violence in
13 others when he's on the Internet that are most troublesome to
14 the Government and we see over and over again in the TV news
15 and in the newspapers.

16 Your Honor, Ms. Kowalski over the last several days
17 has given various statements to the Government. This is the
18 Defendant's own mother. On one hand Ms. Sims would ask the
19 Court to believe that Ms. Kowalski's statements are not worthy
20 of belief because she has an alcohol problem. But on the
21 other hand Ms. Sims would have the Court believe that
22 Ms. Kowalski's statements to her last night and this morning
23 had the ring of truth. I submit to the Court, which is it?
24 She can't be credible on one hand and not credible on the
25 other hand.

1 Your Honor, I submit to this Court that there is a
2 lot of evidence that has been offered here today that supports
3 in many salient details the statements Ms. Kowalski gave to
4 the Government. Ms. Kowalski isn't mistaken, exaggerating, or
5 embellishing Government's Exhibits 1 and 2, those photographs.
6 She didn't make up that poem, which Government's Exhibit 3,
7 and which Special Agent Christman read to the Court today.
8 That statement she gave at Western Psych under her signature
9 dated just two days ago was not made up.

10 The statement of the Western Psych admitting
11 physician or psychiatrist to the FBI that the man is in need
12 of treatment was not made up, not a figment of Ms. Kowalski's
13 imagination or the result of any alcohol impairment, past or
14 present.

15 Mr. Begolly, Mr. Shawn Begolly, by his own
16 admission has some 20 firearms on his property, both long
17 guns -- "had," I said it again. Both had long guns and
18 handguns on his property. He says he's not likely to get any
19 more until this is over, that was his statement here today,
20 but how do we know that? We can't enforce that. This is a
21 man who lives in what he described as wild country where one
22 carries a gun to protect oneself. And, no, he wouldn't do
23 anything to run afoul of the law, the very individual Ms. Sims
24 seeks to be, if I understand her argument correctly, third
25 party custodian for this man?

1 The fact of the matter is, Your Honor, he knew that
2 his son carried a concealed weapon without permission, without
3 lawful permission from the Commonwealth of Pennsylvania, and
4 permitted him to do that anyway. We are not talking about a
5 rifle or a long gun, we are talking about a concealed handgun.

6 Most importantly, Your Honor, on January 4th of
7 this year this man, this docile looking young man of 21,
8 endangered the lives of two FBI agents in Clarion County, not
9 to mention others, other innocent passersby who might have
10 been in the parking lot that day, first by biting them and
11 then, more significantly, by attempting to draw a loaded
12 handgun ready to fire on these two agents, and just in case he
13 had two other clips of ammunition in his jacket, also loaded
14 clips of ammunition.

15 Your Honor, this man presents the classic case for
16 pretrial detention. If one looks at the Bail Reform Act, one
17 sees that the history and characteristics of this young man,
18 that his actions on the date of January 4th are a classic case
19 evidencing clear evidence and convincing evidence that he
20 poses a danger to other persons and the community.

21 There is a statutory presumption available to the
22 Government in this case, but I am not just asking the Court to
23 detain this man because of statutory presumption. There was
24 so much more this Court heard here this afternoon. But we
25 have a statutory presumption by virtue of the charge of

1 18 USC Section 924(c)(1)(A) in this case, that being the
2 possession of a firearm in furtherance of a crime of violence.
3 That crime of violence, of course, was the attack on the
4 agents and the biting of the agents.

5 Think about what these two agents and their
6 families are now having to go through. Aside from the obvious
7 danger of a loaded handgun, they have had to have shots,
8 painful shots. Agent Daer is now seeking additional treatment
9 for possible hepatitis or worse that this young man may have
10 contracted prior to the biting of this agent.

11 When Agent Orsini opened the door and Mr. Begolly
12 screamed, the very next thing that occurred was the struggle,
13 the fighting, the biting by Mr. Begolly. And that didn't
14 stop, Your Honor, that didn't stop at any time in the car, it
15 didn't stop out of the car, it didn't even stop after he was
16 handcuffed.

17 This man has expressed suicidal ideation. He has
18 expressed the desire to engage in violent acts against others
19 as well, and, according to Ms. Kowalski, Defendant's own
20 father, the father who would take third party custodianship of
21 this man, fostered his beliefs, encouraged him to get off
22 medication, photographed him in those uniforms, and
23 respectfully, Your Honor, I don't care if they are true and
24 authentic Nazi uniforms or not, they look like Nazi uniforms.
25 When someone falsely impersonates a police officer, they are

1 not looking to see if every stripe is in place in the uniform,
2 every insignia is in place in the uniform. Those look like
3 Nazi uniforms to any layman, including myself.

4 Your Honor, this man didn't have a right to bite
5 any FBI agent and he certainly didn't have the right to draw a
6 weapon on them.

7 Does this man need help? I am not a psychiatrist,
8 but certainly he should not be on a public street. I cannot
9 stake the safety of the community on it, and I respectfully
10 submit that he should be detained pending trial. Thank you.

11 THE COURT: Thank you. Anything further?

12 MS. SIMS: Yes, I would like to be heard briefly on
13 probable cause on the 924(c), Your Honor. There's two --
14 well, two charges here. There's the assault on a federal
15 agent, which we are conceding that probable cause was
16 established for assault on a federal agent.

17 THE COURT: Yes, ma'am.

18 MS. SIMS: We think it would be a jury question
19 whether it could be proved beyond a reasonable doubt as to
20 whether these were actual bites by the Defendant since the
21 agents certainly weren't aware when they were actually bitten,
22 there was no documentation of the injuries themselves. But
23 that's for another day at trial.

24 But we don't believe probable cause was established
25 for 924(c), which is charged as possession of a firearm in

1 furtherance of a crime of violence. The crime of violence
2 being the assault on federal officers.

3 I am looking here at the Third Circuit pattern jury
4 instructions, which I can provide to the Court, that's pattern
5 jury instruction 6.18.924A-1, "in furtherance of" defined.
6 Possession, quote, in furtherance of, close quote, means the
7 purpose of assisting in, promoting, accomplishing, advancing,
8 or achieving the goal or objective of the crime of violence.

9 I don't believe there was any testimony here that
10 would establish probable cause to believe the firearm was used
11 to assist in, promote, accomplish, advance, or achieve the
12 goal of biting these agents.

13 What we have here is alleged biting of the agents
14 and the firearm coexisting at the same time and place. But
15 there was absolutely not one shred of evidence that would
16 establish probable cause to believe that the firearm was used
17 in furtherance of the biting, that it assisted the ability to
18 bite in any way.

19 The testimony was there were two agents who got in
20 the car, there was tussling, and it is now inferred at some
21 point during the tussling Mr. Begolly bit the agents. But
22 there is nothing about the firearm assisting or promoting
23 that.

24 I do have that here, Your Honor, if I may approach,
25 the Third Circuit pattern jury instruction on furtherance. I

1 don't believe there has been probable cause established on the
2 924(c), Your Honor, and I don't believe ultimately that
3 Mr. Begolly will be indicted for that crime. The only reason
4 I believe it is charged here is to get the statutory
5 rebuttable presumption for detention. That's the only reason
6 it is even in here. This is clearly an assault on federal
7 agents case.

8 With regard to the firearm, there was no federal
9 offense in connection with this firearm. This is a state
10 misdemeanor carrying of an unlicensed firearm or carrying by a
11 person unlicensed to carry. That is a misdemeanor. And
12 Mr. Begolly could potentially be charged in state court with
13 that misdemeanor. So we don't believe probable cause was
14 established on the 924(c).

15 With regard to the Government's arguments,
16 Your Honor, he is a 21-year-old man, I don't know if the
17 Government is trying to argue there is some presumption that
18 21-year-old men are dangerous, but I don't think that is an
19 appropriate motive analysis. The Court has to look at the
20 facts on this particular Defendant, not his demographics.

21 The Government said he is explosive one moment.
22 The only testimony regarding any explosive behavior was that
23 when this man was sitting, ruminating and concerned about his
24 grandmother and waiting for his mom to come back, two strange
25 men flew open the doors of his car and he screamed and

1 wrestled with them. There was no other testimony of any other
2 incident of any type of explosive behavior of any kind.

3 There was -- in fact, the testimony was the
4 opposite. That this is a retiring, socially awkward person
5 who doesn't seek out conflict or get violent with other
6 people.

7 With regard to the injuries to the agents, there
8 was no testimony regarding medical treatment at the time to
9 treat the injury. There was testimony regarding tetanus shots
10 and things of that nature. There was no trip to the hospital.
11 There were no photos apparently taken to document these
12 injuries.

13 There was a heavy reliance based on Joan Kowalski,
14 the Defendant's mother, and the Government is asking the Court
15 to take this woman's testimony sort of as the truth here. But
16 she's not here. She could easily have been brought into court
17 for the Court to hear, and I think that would have been
18 advisable given the fact there is now testimony that is
19 impeaching in nature of this witness. This witness, the
20 Government has conceded, is an alcoholic, has an alcohol
21 problem I believe is what was said. She indicated to me, and
22 I have represented to the Court as an officer of the Court,
23 that she is currently under psychiatric treatment. And in
24 fact when I spoke to her this morning, there was a psychiatric
25 worker with her. That's a concern.

1 And there was also testimony that she was estranged
2 from the Defendant. He had -- she said he was out of control,
3 they weren't getting along, and he had chosen to live with his
4 father.

5 I have sympathy for this woman, Your Honor, but if
6 the Government is going to come in and say, take everything
7 she's saying as completely neutral, this woman is unstable,
8 mentally ill, and very distraught over this whole situation.
9 I just don't think that her statements regarding her son and
10 her ex-husband can carry the weight that would be required to
11 detain the Defendant without bond here. Not only is she not
12 credible, she was incredible, she is mentally ill.

13 I have never yet in 21 years practicing law,
14 Your Honor, seen somebody detained by poem. We have a poem
15 here. One of the lines of that poem is, "my words are
16 bullets." That is standard poetic license language. I am not
17 a poetry expert. It's a poem, Your Honor. You don't detain
18 people for things they write in poems unless they're
19 threatening poems that are sent to somebody or something of
20 that nature.

21 With regard to the need for treatment, Your Honor,
22 the Defendant has autism/Asperger's, which, as the Pretrial
23 Services officer indicated, Asperger is a high-functioning
24 form of autism which is congenital, something that happens to
25 the brain at birth. Could he use therapy to get through all

1 of this, especially now that he is in this fix? I wouldn't
2 doubt it, and we wouldn't have a problem with him being
3 enrolled in therapy.

4 With regard to the medication, there's been no
5 testimony to this Court that there is a medication that he
6 should be taking and that he's willfully failing to take
7 medication as we sometimes see with schizophrenics and other
8 types of psychotics. In that situation, and I have been in
9 that situation many times with clients, you just give the
10 person their Quanaxin or Sinequan or whatever and they get it
11 together. That's not what we have here.

12 There could be behavioral therapy he could get into
13 to help be less socially awkward and things of that nature.
14 But this isn't a case of somebody who should be on medication
15 who is not. That has not been established. And Western Psych
16 did not prescribe him medication. Nor has he been on
17 medication in his life. He was tried on Ritalin as a child.
18 It didn't work. It doesn't work for a lot of kids.

19 He was briefly on Risperdal. He developed a
20 dependence to it. It was tapered off by his doctor. His
21 doctor specifically informed him two years when he went off
22 the medication that you don't need medication, it won't help
23 you.

24 THE COURT: You know, we have passed the evidence
25 stage and I think you have gone a little beyond that now. I

1 really think I know more about this than anybody in the whole
2 world now. I just don't need to hear things two or three
3 times.

4 MS. SIMS: Let me try to wrap it up then,
5 Your Honor.

6 THE COURT: That would be super.

7 MS. SIMS: I think I may have already done that.

8 Your Honor, the Government also did say that with
9 regard to Mr. Begolly as a third party custodian that you
10 can't enforce the condition. We do this all the time. We
11 have a lot of folks in the Western District of PA here where
12 the fathers have firearms in the house and we always -- what's
13 done is they are removed from the house. Pretrial Services
14 goes and searches, makes sure they are not here, and the Court
15 can attach a condition that upon reasonable suspicion Pretrial
16 can go up there and look.

17 Again, I think the Court heard Mr. Begolly's
18 testimony. This is upstanding citizen. He has no criminal
19 record. He is a professor. I think the Court can feel
20 comfortable that if he represents to the Court he will not
21 have firearms in his home while his son is under indictment
22 and he can't have them, I think the Court can believe that.
23 There has been no testimony he is not being straight with the
24 Court in that regard.

25 And why do believe he is a proper third party

1 custodian? He has been fully cooperative throughout. His
2 home was searched, his guns were taken. He was interviewed by
3 the FBI. He has done everything the FBI told him to do. I
4 think he is certainly a very appropriate third party custodian
5 as Pretrial Services found.

6 Thank you, Your Honor.

7 THE COURT: I would invite the Government if they
8 wouldn't mind addressing this probable cause in regard to the
9 924(c).

10 MS. PICKING: Your Honor, first of all, we submit
11 that the complaint and affidavit as submitted give rise and
12 provide probable cause for the return of the indictment. This
13 is just the probable cause phase, the preliminary exam, where
14 we think there is sufficient evidence to both charges in the
15 indictment.

16 The Section 111 charge really relates to the 924(c)
17 charge. The charge under Section 111 is he forcibly assaulted
18 these FBI agents and inflicted bodily injury. There is a
19 20-year maximum with that Section 111 charge.

20 But the significance of the 924(c) charge, as it
21 relates to the Section 111 charge, is that certainly at the
22 point that the struggle ensued and they kept saying, the
23 agents that is, kept saying, calm down, we are the FBI, calm
24 down, there has been testimony that was said repeatedly, he
25 didn't calm down. He went almost immediately for this loaded

1 gun that was in his right jacket pocket, his right lower
2 jacket pocket. Certainly at that point he possessed that
3 firearm in furtherance of a crime of violence, not biting, but
4 assaulting the agents. It could be a bite, but it could also
5 be an assault because Agent Christman has said that Agent Daer
6 had to wedge himself into that car and constantly try to
7 restrain him.

8 They knew there was a gun, they suspected it based
9 on their training. They hadn't seen it, of course, but they
10 had to try to restrain this man to keep from him from getting
11 a loaded gun. Had they not, we could have two dead agents and
12 how many innocent bystanders shot by that firearm. That's
13 where the possession in furtherance of the crime of violence
14 comes in, and I respectfully ask both be held for trial.

15 MS. SIMS: With the Court's indulgence, 30 seconds,
16 Your Honor.

17 Your Honor, the Government can't have it both ways.
18 If he was going to use the gun to shoot the agents, then it is
19 not possession in furtherance of a crime of violence, he is
20 using the gun to commit the crime. What they have said -- I
21 mean, I think here you have to have another crime that it is
22 in furtherance of, whether it is a bank robbery or something
23 of that nature. So it is not a -- not a proper 924(c) charge.

24 THE COURT: Okay. Well, as everyone is aware, the
25 probable cause is not a huge burden of proof and the grand

1 jury will have to deal with this as well. But I am going to
2 find that probable cause exists as to each charge.

3 Could I possibly have a word with both the
4 Government and the defense in chambers, then I will come back
5 out and announce the decision in regard to the matter of bond,
6 if you all wouldn't mind.

7 (Recess taken).

8 (Back on record in open court).

9 THE COURT: I am going to release this gentleman on
10 bond on the condition that he reside at the Renewal Center.
11 And also that he surrender any passport he has, which I
12 understand has already been taken care of. That he not obtain
13 a passport. That he avoid any contact directly or indirectly
14 with any persons who are or may become any potential witnesses
15 in this investigation. And that he participate in a program
16 of mental health therapy and counseling as directed by
17 Pretrial Services and confirmed by them, that he is in fact
18 taking advantage of and enrolling in that program.

19 Is there any --

20 MS. SIMS: As we discussed in chambers, could the
21 Court clarify that the psychiatric treatment provider is not
22 to provide information regarding the communications between
23 Mr. Begolly and the psychiatrist, but simply confirm he is
24 complying with treatment?

25 THE COURT: Sure, I don't have any problem with

1 that. The details of the therapy not be relayed to Pretrial
2 Services, but that they have the right to verify at any time
3 that he is in fact receiving the program, if you will.

4 Yes, ma'am.

5 THE PROBATION OFFICER: Also, Your Honor, the
6 amount of the bond, is there an amount set?

7 THE COURT: Okay, I didn't realize that was part of
8 the action at this point. We will just set a \$25,000
9 unsecured bond on the condition that he reside at the Renewal
10 Center with the other conditions that I just mentioned.

11 From the Government?

12 MS. PICKING: Your Honor, I respectfully request
13 the Court to grant a temporary order of detention and stay its
14 order of relief for 24 hours so we can perfect an appeal.

15 THE COURT: As we also discussed in chambers, I
16 certainly have never turned that request down because I am not
17 the final arbiter in these matters, but we would expect the
18 motion to be filed within 24 hours.

19 MS. PICKING: Thank you, Your Honor.

20 THE COURT: Anything further then?

21 MS. PICKING: No, Your Honor, thank you.

22 MS. SIMS: Wait, excuse me, Your Honor, I have one
23 other question. There is a condition of no contact with
24 witnesses. Does that include -- I believe the Defendant's
25 mother is a witness in this matter.

1 THE COURT: That's quite correct. She did witness
2 at least some -- well, she was getting some tea, wasn't she,
3 at the time. But in any event, that would not include any
4 relatives.

5 MS. SIMS: Thank you, Your Honor.

6 THE COURT: Thank you all.

7 (Record closed).

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10

I N D E X

11

WITNESS	D I R E C T	C R O S S	R E D I R E C T	R E C R O S S
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12

For the Government:

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Michael Christman	2	47	81	82
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For the Defendant:

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Shawn Begolly	--	93	--	--
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C E R T I F I C A T E

20

I, Richard T. Ford, certify that the foregoing

21

is a correct transcript from the record of proceedings in the

22

above-titled matter.

23

S/Richard T. Ford _____

24

25