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legal  
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cure up the issue. Is this the witness --  
rather, is this the incident in which Christine  
Belford allegedly was dressed in a provocative  
manner at an office party and there was maybe  
overtures to another person at the party?

MS. CHAVAR: The testimony  
wouldn't be that she was dressed provocatively,  
but it would be that she was there, she was  
drinking and that she made a pass at him. And  
it's not so much this prior sexual misconduct,  
When Attorney Hitchings took the stand, he said  
that Christine Belford was fired. This event  
occurred on New Year's Eve in 2005. David Scott  
Osbourne will testify that he told David about  
it, and then afterwards Christine just didn't --  
wasn't at work, so --

THE COURT: As I recall, the point  
with Mr. Hitchings was to test credibility of  
Ms. Belford and whether she had confided in him  
the fact that there had been an incident. And  
the question was asked on cross-examination, he  
said yes, I was aware, she had talked to me  
about an incident involving Mr. Osbourne, so for  
those purposes, I'm not sure where this goes. I

Rudy + Erin -  
as always,  
Thank you both  
so much + God  
bless you!  
onward christian  
soldiers!  
peace + blessings,  
AMY

have a 401 problem with this, relevance, all right. Because we're so far upstream from 2005, it's before the divorce, correct?

MS. CHAVAR: Yes.

THE COURT: And this has to do with what may have resulted in them splitting up. The defense, seems that -- the Defendant's concern about the example being set by Ms. Belford is already in the record with testimony actually from the Government's case about her 29-year-old boyfriend who she said was a real cutie and the fact after her husband left she had him there, then the husband came back then the young man came back. So any of that tableau for want of a better word is already there for the jury. How do we get back to 2005 in a pre-divorce incident that has anything to do with the case?

MS. CHAVAR: It was really 2006, New Year's Eve 2005, carried over into 2006. It was out of the ordinary behavior and shocking to David and we did open by saying that during the time period before the kidnapping, because -- which is relevant, because the Government has

already said that he only brought up these allegations of sexual abuse when they came back, once he was arrested. We put -- what's an issue is what was in his mind and what was going on before he left. Why didn't he say something beforehand and what was he dealing with with Christine Belford. Which may have given him the suspicion. So to that extent, I do believe it's relevant. Also, what my recollection is of what Timothy Hitchings said is she said something to me about it. This young man was going to say that it wasn't just nothing, that it was very uncomfortable for him, screaming uncomfortable and out of the blue and he was very shocked by the behavior. So it goes to her credibility.

MR. BOSTIC: The Government has testimony on the record. This is the other part, that David fired this woman at that time period. And it sets up the stage that David is vindictive then, he's vindictive as we go forward to 2013. And he's involved in threatening or killing her, whatever, however they put the case is, so we think it's extremely important to set the stage as to why this woman

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was asked not to be at the office anymore.

THE COURT: There was a couple that was having obviously some domestic dispute and worked in the same workplace, would he be vindictive if he says hey, I don't want you in the office either or is that just the nature of the best when the marriage is breaking up?

MR. BOSTIC: Right now we have a one-sided presentation by the Government that David fired this woman and what the Court is saying, if I may, it comes down to argument that the parties can make, but I can't even have the platform to make the argument that the firing wasn't about vindictiveness, rather it was about an incident that occurred in the office. Because right now it would be a one-sided picture being painted.

THE COURT: Let's talk 412. Government, how does 412 come into play here? Because I haven't drilled down on the case law in 412, but without looking to literal terms of the rule and the commentary, I'm not a hundred percent sure that where no one here is charged with sexual misconduct other than the defense

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*From what I remember regarding Christine having to be let go from the office was because due to the PFA she signed against David, she was still working at the practice. David had to cancel seeing his patients & the office was losing money because David couldn't even go to his own practice if Christine was there. David called another eye dr for a job for Christine.*

allegation -- Government says false allegation  
against Christine Belford, is the rule really in  
play?

MR. McCALL: Absolutely. I mean,  
my reading of the rule is that it doesn't have  
to be pigeon holed into a sexual assault case.  
It talks about any sexual behavior of the  
victim. That's the plain language of the rule  
and the cases that the Government cited for the  
Court in its e-mail indicated that verbal acts,  
sexual proposition falls within the gambit.

THE COURT: I'm accepting it falls  
within the definition of sexual conduct and I  
raised that question and you've answered it.

MR. McCALL: I think the plain  
language of the rule clearly incorporates the  
past sexual behaviors of victim, which this  
falls, this falls squarely -- I mean, the rule  
doesn't say only in cases of sexual assault or  
rape, so on and so forth. That's not the  
language of the rule. That just talks about the  
past sexual behaviors of the victim and this  
would fall in that category. And then once it  
does, it triggers all the notice problems that

I've indicated.

THE COURT: Let me go --

MS. CHAVAR: I just note that the two cases cited by the government in their e-mail are cases where the victim was victim of a sex crime and in those cases, they weren't allowing the attack on the victim again, by bringing it in, these acts of prior sexual misconduct. I don't -- it's not the case that we have here. If I tried to find a case that didn't involve where the victim was the victim of a sex crime where this rule applied and I'm certain if Government found one, they would have told us about it.

MR. McCALL: I would just -- I would note also that in my research it talks about civil and criminal cases, but a lot of occurs in workplace harassment so on and so forth, which isn't a sexual assault or rape case. But in terms where there's cases where there's pornography in the work place and things like that and whether or not a victim, their past sexual behavior gave the men in the workplace the idea that putting pornography up

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is appropriate.

THE COURT: There is the gravamen of the offense was still sexual in nature that's the difference.

MR. McCALL: But the heart have this case, the heart of this case is a false allegation about Christine Belford's sexual behavior as relates to her children.

THE COURT: Which makes it sue I general /WRUS in some ways.

MR. BOSTIC: Your Honor, what I think I would reemphasize is what Ms. Chavar has said. There's no allegation here with respect to the Defendant being charged, Christine Belford being the victim of a sexual offense. We're not trying to get this in to show promiscuity or anything like that. We are putting it in for two reasons. The Government put this in their case in chief that she was fired and here's the reason that she was fired. We've also -- we've also been a lot of discussion about whether she was acting in bizarre ways or what have you. I suggest to the court secondarily, it tends to support that that

is the case, at least with respect to that time period. But the most important thing is that the defense needs a similar platform.

THE COURT: Here's what I'm going to do. This is a very tough call, but I'm going to allow it, but I'm going to allow it with a cautionary instruction to the members of the jury. This is not intended to attack character of Christine Belford, it was only introduced as background for what's going on in the marriage at the time and background for her leaving the place of work.

MR. McCALL: Judge, if you're going to let them attack her character in this way --

THE COURT: I'm not, that's what the cautionary instruction is.

MR. McCALL: That's essentially what's happening. Without providing us any notice. Another fair reason for the firing, if you will, was because of the PFA issues that swirled around the divorce in January of 2006. So if they get to call Christine Belford a person that's engaged in sexual propositioning



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of David Matusiewicz's colleagues, then we should be allowed to put into evidence the fact that he was hearing voices, he was communicating threats to Christine Belford and she called the police and that's the reason why she got fired.

THE COURT: Give me the time of the PFA?

MR. McCALL: Within weeks. This opens up an entire -- an entire collateral that matter that we've --

THE COURT: That's fair. On the notice issue, I think the notice issue I waffle on because it's not entirely clear to me that this is a 412 situation. But now defense, how do you respond to the fact that if I allow this to happen that I'm creating another potential --

MR. BOSTIC: Your Honor, the Court instructed all parties not to get into matters that occurred prior with respect to PFA and what have you. The firing relates back to that time frame. We did not open up the door, we are trying to close it now.

THE COURT: You are.

MR. BOSTIC: They opened up the

Regarding David hearing voices + communicating threats to Christine were these actually facts or just her way to get a divorce as officer Stamper testified in court? Remember - Milinda Kula wrote an affidavit stating that when Chris had David in prison, she would have his house, his business + his precious children. (recorded + transcribed.) phone call Jan 2004

door. We are trying to close it now. Their opportunity to rebut, when they open up the door and we're trying to close it --

THE COURT: Okay. Counsel, this is a ruling that will make no one happy including the Court, but give me the exact date of the PFA.

MR. McCALL: I'd have to go back and look.

THE COURT: Go back and grab that and then I'm going to ponder this.

MR. McANDREW: We've been redacting that information from the exhibits throughout the case, so I'm not sure we have an exhibit handy.

MS. CHAVAR: Do you have the date of the court hearing or the date that --

THE COURT: When was the petition filed is what I want to know?

MR. CHAVAR: January 2nd.

THE COURT: And she was hired when? The incident happened on --

MR. McCALL: I think the testimony from Mr. Hitchings was he didn't talk about the

reason why she was fired, he just said there was a separation and that she was subsequently not working there and had been fired. There was no getting into it as to what the specific reasons were, PFA, this supposed encounter with this man, so on and so forth. The record is completely clean and devoid of that.

THE COURT: How about we have a stipulation and the stipulation is that the firing of Christine Belford from the Defendant's optometry practice had, you know, has nothing to do with this case and you're not to consider that as any evidence of ill will on the part of David Matusiewicz toward Christin.

MR. McCALL: That's fine.

THE COURT: That's where we're going to go. If the government is willing to give me that stipulation, I'm very concerned about the timing of this and the rule, but I think if we get that stipulation, that deals with the issue of prejudice that the Defendant's are concerned about, without saying inadvertently potential inflammatory things about a deceased victim. So that's how I'm

going to handle it, all right?

MR. BOSTIC: Very well, Your Honor.

MR. EDELIN: Your Honor, there's another issue about Capuchina's website that I saw e-mails floating around about.

MR. WEEDE: Your Honor, if I may, it's my understanding that Mr. Bostic, through his investigator, wants to introduce screen shots of Gilbert Capuchina's website and introduce that through his, his investigator. The Government would object to this for two reasons. One, foundation. There's no evidence that this website was up or in the same state at the time these polygraphs were taken, which would be 2011 and more importantly, it's hearsay.

THE COURT: It sounds like hearsay.

MR. WEEDE: It's hearsay and using it to bolster Capuchina's reputation as a polygraph expert in terms of what his training is in terms --

THE COURT: May I ask you a

question. Is Mr. Capuchina testifying?

MR. BOSTIC: Your Honor, we are not calling Mr. Capuchina, but let me say this to the Court with respect to that. It is not bolstering him in any way. It is what was available to Lenore Matusiewicz and Amy Gonzalez when they searched and located this polygrapher.

THE COURT: That deals with hearsay, but how do you deal with the foundation?

MR. BOSTIC: Your Honor, it's not coming in for the truth of the matter inserted in the documents. It's coming in to say this is what they understood.

THE COURT: I agree that you can solve the hearsay problem. How do you solve the foundation problem?

MR. BOSTIC: The website itself indicates it was copywritten and up and running from 2009. And I think, again, we talked about platforms. The Government is welcome to put in any evidence to contradict the fact that it existed at that point in time, but it should not mean that the defense should be hampered by

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showing this to, to the jury.

MR. McANDREWS: Is there any evidence that the Defendants looked at the website?

MR. BOSTIC: I don't have to -- I don't have to put it out there, the fact is this is the public, in the public domain and it is who this person, what this person puts out there as his advertisement.

MR. IBRAHIM: Just, just for the record purposes. And I advised Ms. Chavar and Mr. Bostic of this. The concern that I have, first of all, in my motion in limine I did attach the pages from the websites, so I think the Court is actually, had an opportunity to view them. In context of not necessarily in advance of this, but they were raised summarily to the Court. The concern that I have number one, the cover sheet, the entire polygraph of both Amy Gonzalez and Lenore Matusiewicz is in evidence. There's been questioning about it. The top page says that it was requested by Tom Matusiewicz. The concern I have is that getting into this website may or may not, but does

create an issue as far as what the government is able to do in terms of rebuttal concerning Mr. Capuchina's ability, expertise as a polygraph examiner.

THE COURT: Here's where I come out on the issue. I agree that you could have solved the hearsay problem, but I don't see how the foundation can relate, both because we can't say what it would have been at the relevant point in time and I think Mr. McAndrew makes an appropriate point which is that we don't have evidence that the Defendants would have consulted the website. While I understand that's a burden on your client's fifth amendment right not to testify, with the right not to testify comes certain types of disadvantages including certain things you may not be able to provide in your case, so I think --

MR. BOSTIC: Your Honor, the problem is that it's not even a fifth amendment issue for David Matusiewicz. Because he did not get involved in hiring these individuals and I can't call Amy Gonzalez, I can't call Lenore Matusiewicz. And these are the individuals that

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engaged and had the polygraph done. And again, the court said to me earlier with respect to a piece of evidence, well, Mr. Bostic, you can argue to the contrary. The Government can argue to the contrary as to whether or not this site existed in 2009 as it purports to be.

THE COURT: That goes more to prejudice than admissibility.

MR. BOSTIC: The other piece of it from my perspective and I just lost my train of thought.

THE COURT: Take your time. It's Monday morning. Give you a chance to recalibrate.

MR. WEEDE: Your Honor, if I may.

THE COURT: Well, let him --

MR. BOSTIC: The other piece of it is the Government introduced Mr. Capuchina and this polygraph. And I think it's just fair for Defendant who himself doesn't have knowledge about the engagement to put forth what Mr. Capuchina puts out to the world. As I said, right now, I would ask the Court to bifurcate and allow me to call Amy or Lenore Matusiewicz

on that sole issue, because the fact is that how else can David Matusiewicz get a fair trial here? They are saying this polygraph is no good, they are saying this person, we just know his name. I'm saying we know more than just his name, we know this is what he projects to the world and this was in 2009 because it says on the copyright --

THE COURT: It says copyright 2009, but that doesn't tell us time frame.

MR. WEEDE: It doesn't tell us what content was on the website in 2009. One, there's no evidence that either Lenore or Amy actually viewed this website.

THE COURT: We have been over that.

MR. WEEDE: Your Honor, the last point is, if they want to call Roberto Capuchina to testify, they can certainly do that, and the Governmen's position is if he does that, he puts this issue in play, we call a rebuttal expert to say well, this polygraph examination was administered, it was inconclusive and this is the reason why.

THE COURT: And this what Mr. Ibrahim is pointing out.

MR. IBRAHIM: If that were to happen I would renew my motion in limine to bring in my experts.

MR. EDELIN: As I would.

MR. BOSTIC: If we can't put this on for this limited purposes, then I will, in fact, bring Mr. Capuchina and ask him about when he put this website and whether -- and how he was contacted by these individuals, whether he knew them beforehand, so -- because I cannot always be in a situation where our evidence is limited and we don't get the same foundational basis to argue these things in closing, so that's how I would proceed. And that's --

MR. EDELIN: And so Your Honor, my understanding, then, is the Government is going to give us notice at this point that they wish to call their rebuttal witness, the Court will make a ruling on whether or not they are allowed, I think that then opens -- did I misstate that?

MR. McANDREW: Put on our rebuttal

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case?

MR. EDELIN: You have to get a ruling, because he said your expert doesn't come in, so my question is you are going to say you want to call a witness, the court has to make a ruling.

MR. McANDREW: Call who? I'm sorry.

MR. EDELIN: Bradley.

MR. McANDREW: In rebuttal?

MR. WEEDE: The Court hasn't ruled we are allowed to bring him in.

MR. EDELIN: If they get to call Bradley, we're going to want to call O'Rourke.

MR. IBRAHIM: It's an issue.

THE COURT: I think Bradley is out of the case and will remain out of the case until we have Mr. Capuchina.

MR. IBRAHIM: And the other issue is with Mr. Capuchina, I mean, if he's being offered by David Matusiewicz for the limited purpose of just testifying about when I put this website together and launched it and he's not talking about the polygraph, then I would be

objecting to rebuttal from Bradley on those grounds and if it's allowed, then I should be allowed to provide sir rebuttal concerning the validity of the polygraphs. And you know, I mean, we're talking about something that's pretty legit on the second go around.

The government questioned the original polygraphs done by Mr. Capuchina because he was not FBI & they did not like the format of his questions. Mr. Capuchina evaluated & calculated all of the tracings & noted no deception indicated. The govt's FBI expert evaluated & calculated the polygraph done by Mr. Capuchina & noted that the polygraph was inconclusive according to him. The 2nd polygraph

Mom & I both took again done by the FBI defense experts showed no deception. These were denied being admissible in court. This was critical for us in showing what our true intentions really were - harassment vs protecting the children.

THE COURT: Here's what I'm going to suggest. Who are your witnesses that are ready to go, Mr. Bostic?

MR. BOSTIC: Your Honor, we have Mr. Denby, we have I believe Dave Mitchell. We have --

THE COURT: Do you have Mr. O'Rourke?

MR. BOSTIC: O'Rourke, he should be here.

THE COURT: Here's what I'd like to suggest. Let's proceed with those witnesses and -- and let's everybody take a deep breath.

MR. IBRAHIM: We did work something out, though. We're going to do a -- with reference to testimony of Michael Solon, there was the issue concerning character testimony that I elicited on cross-examination.

In 2006, I had David's money from cashing out a previous investment because after Christine's comment to M'Linda Kula that once she had David in prison she would have his house his business + his precious children along with threatening to kill him on more than 1 occasion, we were afraid Christine was only after David's money.

David even hand wrote an emergency will in 2006 leaving everything, especially the authority to parent his children, to me prior to his divorce from Christine should anything happen to him. I have a copy of this, but will have to

see if I have it in the paperwork here.  
- I legally transferred David's money to several places out of the country, Bank of New Zealand, Bank of Nicaragua, etc starting in 2006 as requested.

- David called me from Central America one time in 19 months from a payphone. I spoke with him + let him know that the authorities were looking for him, mom + the girls. I did not know where my mother + brother were when they left with the girls nor did they ever tell me.

I never called my brother because I didn't have any numbers to call and didn't know where he was.

I did not report to the authorities the 1x David called me because I did not know where he was.

The govt wouldn't allow my character references to use the terms "law abiding or truthful" to describe me because of this.

Just like my lawyer argued if they thought I was involved in the kidnapping in any way, they should have charged + convicted me.

NO PROOF

What we've agreed to do and whenever the Court would like it to be, we are agreeing to a silent strike in his testimony in response to my question of asking him if he was a truthful and law abiding citizen? And he said yes, correct.

THE COURT: Silent strike meaning you will not be arguing it?

MR. McANDREW: It will be stricken from the record, but we don't need to tell the jury it's being stricken. We can direct the Court to the portion of the transcript that has that particular question and answer.

MR. BOSTIC: There's another piece that I will mention. I was reading the testimony. In fact, I noted when Katie Moffa was asked this question and answered yes, the government elicited from Katie Moffa in her testimony about fear and so on and so forth, that David Matusiewicz had a gun collection. And they leave it like that, okay. There are a lot of guns in this case, the Government is well aware that David's gun collection was collected by his father and presumably 99 percent of it was turned over to the law enforcement back in

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2006, okay. We have that in the record. I was not about to jump up and object to Katie Moffa's testimony, but that's something I need corrected too, because --

THE COURT: Let's take the lunch break first. We have a jury waiting. I would like to get that jury working, right, for a whole lot of reasons.

MR. BOSTIC: Sure.

THE COURT: And return to this issue. I'm not going to do the stipulation about the employment right away for two reasons I want to craft it a little better and make sure it's acceptable to you. Let's get the jury in. We've got witnesses ready to go and get them engaged again.

MR. BOSTIC: At this time I ask the Court's permission to release Mr. Osbourne, if necessary, until this issue is resolved.

THE COURT: Right. But I understand I have a commitment from the Government and all we're talking about is the wording of that stipulation. Extremely unlikely that he will be coming up today.

Should we bring in the jury,  
Mr. Bostic?

MR. BOSTIC: Yes, Your Honor.

THE COURT: All right. Thank you.

(Jury entering the courtroom at  
10:45 a.m.)

THE COURT: Good morning, ladies  
and gentlemen. Please be seated. Welcome back  
on this the first day the federal courts are in  
session in the 239th year of our independence.

Did everyone keep Cousin Ernie at  
bay at the barbecue over the weekend.

THE JURY: Yes, sir.

THE COURT: Thank you. We I  
assure you have been in court as you have been  
waiting for us hard at work on evidentiary  
issues. We even worked out a stipulation we'll  
present today that will eliminate one witness so  
you are serving even as you are waiting. After  
the attorneys are e-mailing the judge with  
different positions and so forth, we had a lot  
to discuss. We appreciate your patience.

I know there was some concern with  
whether we would have a midmorning break. We're



already at midmorning. So we'll go ahead now  
and continue to make forward progress.

And I believe, Mr. Bostic,  
Ms. Chavar, you're at bat.

MS. CHAVAR: Thank you, Your  
Honor. David Matusiewicz calls Eugene Denby.

THE COURT: All right.

THE CLERK: Place your right hand  
on the bible. Please state and spell your name  
for the record.

THE WITNESS: My name is Eugene  
Denby, E-U-G-E-N-E, last name D-E-N-B-Y.

EUGENE DENBY,

the deponent herein, having first  
been duly sworn on oath, was  
examined and testified as follows:

DIRECT EXAMINATION.

BY MS. CHAVAR:

Q. Good morning, Mr. Denby.

A. Good morning.

Q. Would you introduce yourself to  
the jury, please.

A. My name is Eugene Denby and I

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originate from Dublin, Ireland and I'm living in Donna, Texas.

Q. Is Donna, Texas near McAllen?

A. Very close.

Q. Are you employed?

A. Yes.

Q. How are you employed?

A. I'm a property manager for a storage facility in Donna.

Q. And the name of that facility?

A. Is AAA Storage.

Q. How long have you been employed there?

A. Seven years.

Q. Did you know Tom Matusiewicz?

A. I did.

Q. And how did you know him?

A. I knew him as a customer. He was a customer of mine. He come in and out and pay his rent on the storage unit. And we would chitchat every time he would come in.

Q. How long was he a customer there?

A. I want to say maybe he was there for maybe a year.

Q. And you say that you would chitchat with him when he came in?

A. Yeah.

Q. What would you talk about?

A. Me and Tom, just talk about everything in general. Actually, I have an entertainment business also down there.

Q. You have an entertainment business?

A. Yeah.

Q. Would you tell the jury about that?

A. Yeah, I do Las Vegas nights theme parties, parties for fundraisers and all sorts of stuff and Tom knew I was doing that. And he said he would always like to go to Vegas, but never knew how to play the games. I said come on in and I'll teach you how to play. Tom would come in and spend a little time there, and that's how I met Tom.

Q. Now, have you ever seen this man sitting over here before?

A. No.

Q. So if I told you that's David

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Matusiewicz.

A. Okay.

Q. You have never seen him before?

A. No.

Q. So he's never been -- has he ever been at the storage facility?

A. Not in my office, no.

Q. When was the last time that you remember seeing Tom Matusiewicz?

A. The last time I seen Tom, it might have been I think February he came in to pay for his storage, and he told me he was leaving town for a little bit. And just chitchat for a little bit. And the last thing we said is I'll see you when you get back.

Q. And that was in early February?

A. I believe so, yeah.

Q. And what kind of mood was he in?

A. Always happy Tom. Tom is a very pleasant man.

MS. CHAVAR: One moment, please.

THE WITNESS: Okay.

BY MS. CHAVAR:

Q. Did you know Tom Matusiewicz by

any other name?

A. No.

Q. Do you know what name his storage unit was rented under?

A. I think it might have been under Jesse.

Q. Jesse?

A. Yeah.

Q. Do you know who Jesse is?

A. No.

Q. Okay.

A. I didn't know who Jesse was, actually.

Q. Now, he gave you a check?

A. Correct.

Q. And that check was -- do you remember what month that check was for payment on?

A. Maybe.

Q. For what month of storage?

A. It might have been -- he might have paid it for a month. I think he paid it for a month.

Q. Is that common to pay a month in

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advance?

A. All the time, yeah, people pay six months ahead and stuff like that, yeah.

MS. CHAVAR: Thank you, Mr. Denby.

THE WITNESS: Thank you.

THE COURT: Any questions from the government?

MR. McCALL: Yes, Your Honor. May I proceed?

THE COURT: You may.

MR. McCALL: Thank you

CROSS-EXAMINATION

BY MR. McCALL:

Q. Mr. Denby, good morning, sir.

A. Good morning.

Q. At your storage facility, your customers, they have their own independent access to their individual storage lockers; correct?

A. Correct.

Q. So you, for example, don't know what people are putting in to their storage lockers necessarily?

A. No idea.

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Q. No idea; correct?

A. No.

Q. And you don't know what they're taking out?

A. No.

Q. And they can come at all sorts of time of the day; is that right?

A. Yeah, they have their own PIN to come in and out.

Q. They have their own PIN?

A. They have their own PIN to come in and out and access the facility.

Q. What's your standard day at the storage facility?

A. What, time?

Q. 9:00 to 5:00?

A. Yeah, 9:00 to 5:30.

Q. People can come in after that; correct?

A. Yes.

Q. And people can come in before that; correct?

A. Correct.

Q. Even when you're there during the

day you're not watching what everybody is doing;  
correct?

A. That's correct.

Q. And you had no idea what was in  
Tom Matusiewicz's storage locker; is that  
correct?

A. No, no idea.

MR. McCALL: Thank you, sir.

THE COURT: Any redirect,

Ms. Chavar?

MS. CHAVAR: No, Your Honor.

THE COURT: Any cross from any of  
the other defendants?

MR. EDELIN: No, Your Honor.

MR. IBRAHIM: No, sir.

THE COURT: Thank you, sir.

You're done.

THE WITNESS: Thank you.

MR. BOSTIC: Your Honor, on behalf  
of David Matusiewicz, we would call Rene Flores.

THE COURT: All right.

THE CLERK: Place your right hand  
on the bible. Please state and spell your name  
for the record.

THE WITNESS: My name is Rene Flores, R-E-N-E, F-L-O-R-E-S.

RENE FLORES,

the deponent herein, having first been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOSTIC:

Q. Good morning, Mr. Flores. Would you state your name again for the ladies and gentlemen of the jury, please.

A. My name is Renee Flores.

Q. Sir, and where do you currently live, just the city, the city and state?

A. Right now we live in Perryland, Texas, right outside of Houston.

Q. And prior to living there, was there a point in time where you lived in the McAllen area of Texas?

A. Yes.

Q. Now, was that during the time frame of 2009, 2010, up until what -- 2015, or how long did you live in the McAllen, Texas

area?

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area?

A. Almost ten years.

Q. Ten years?

So were you living there in the time frame of 2009 to say the end of 2014?

A. Yes, sir.

Q. Now, sir, are you currently employed?

A. I'm retired.

Q. And prior to retiring, what line of work were you in?

A. I worked for Synergy Wealth Services for thirty years.

Q. What did you do for that company, sir?

A. We work with engineers with the drawings and the tools that they made, we did changing on the tools in the drawings, revisions.

Q. Now, I want to draw your attention to the time period of late 2009, early 2010. I'll wait until you have your drink.

A. Okay.

MR. EDELIN: Your Honor, could we



move the microphone a little bit closer?

THE COURT: Yes, sir, could you pull the microphone a little closer. That's great. Thank you, sir.

BY MR. BOSTIC:

Q. Did there come a point in time that you met an individual known to you as Tom Matusiewicz?

A. Yes, sir.

Q. And what was the time frame, if you remember? Was it 2009 or 2010, to the best of your ability to recall?

A. It's right around there. I don't have the dates, but we knew him.

Q. Okay. And now you said you live in the McAllen, Texas area. Can you be more specific as to where in Texas were you living at the time that you met Tom Matusiewicz?

A. We live on the highway named 1015.

Q. Is that FM 1015?

A. I'm sorry?

Q. Is that FM?

A. Yes, sir, FM 1015.

Q. Okay. And when you met Tom

Matusiewicz, could you describe for the ladies and gentlemen of the jury where he lived in relation to where your house was located?

A. If I came out of my property, I would take a left turn approximately a mile-and-a-half, and he would live there, north from me.

Q. Now, were any neighbors in between where you were located, your house and where Tom Matusiewicz's house was located?

A. There are a few neighbors there. It's a rural area, so there wasn't very many -- not that many homes.

Q. Are you familiar with the property at which Tom Matusiewicz lived?

A. Yes, sir.

Q. On that highway?

A. Yes, sir.

Q. I'm going to show you what's marked in this case earlier as Government Exhibit 73-B. Do you recognize that, sir?

A. Yes, sir.

Q. And what do you recognize it to be?

A. I recognize what?

Q. What do you recognize this photograph to depict?

A. This is the home where they lived.

Q. Now, did you on occasion ever have the opportunity to visit or be on the property depicted there in that photograph?

A. Yes, sir.

Q. Now, how well did you know Tom Matusiewicz? Were you bosom buddies? Were you casual friends? What was the relationship like?

A. He was a casual friend. To me he was like a nice man.

Q. Now, so did there ever come a point in time that you visited inside of the premises there at 73 -- I'm sorry, depicted in the photograph?

A. Yes.

Q. And you are aware of the name David Matusiewicz; am I right?

A. Yes.

Q. And you know this gentleman here is David Matusiewicz; right?

A. Yes.

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Q. Sitting next to my colleague.

Now, you're aware of Lenore Matusiewicz, you recognize her?

A. Yes.

Q. Do you know Amy Gonzalez, the daughter?

A. Yes.

Q. Now, when you first visited the home there, would it be fair to say that it was at a time prior to David Matusiewicz living at that house?

A. Yes.

Q. And when you went inside the front door of the house, can you describe for the ladies and gentlemen the state of condition inside of the house?

A. Well, there was a lot of boxes throughout the trailer, a lot of papers around, and it was kind of cluttered, you know, stuff on the cabinet, like that. Kind of like a hoarding type of people, you know, that put a lot of stuff up. They don't want to throw away anything.

Q. Now, let me show you a photograph

that I will represent to you was an exhibit in this case, 76-A. And I show you this photograph. Can you see it?

A. Yes.

Q. How does this photograph comport with what you just said? Is it consistent with what you just said, or is it cleaner or less crowded or more crowded?

A. It's every bit like that. And maybe more boxes, regular boxes. These are plastic boxes. There were a lot of boxes, paper boxes.

Q. And these many boxes and the plastic tubs and stuff I think you just testified were present in the home prior to --

MR. McCALL: Objection. Leading.

THE COURT: I'll overrule.

BY MR. BOSTIC:

Q. -- prior to David Matusiewicz coming to live at that house?

A. Yes, I remember being in there before.

Q. Now, there were certain sheds on the property there a mile-and-a-half away from



in you; am I correct? Certain sheds, a couple of sheds?

A. Yes, sir.

Q. Let me show you what's marked as Government Exhibit 74-A. Do you recognize that as one of the sheds, a photograph of one of the sheds on that property?

A. Yes.

Q. During the course of your visiting the property there, did you have occasion to see anyone interacting with this shed?

A. No.

Q. Did you ever see anyone coming or going from the shed?

A. No.

Q. Do you know who owned or controlled that shed, if you know?

A. Mr. Matusiewicz, Sr.

Q. Is that Tom Matusiewicz?

A. Yes. Tom.

Q. And how do you know that? Do you understand -- what makes you say that he owned and operated that shed?

A. Well, it was on his property.

Q. Let me ask you -- let me show what's marked as Government Exhibit 74-B. Do you recognize that photo, what's depicted in that photo?

A. That probably is what it looked like when the shed was open.

Q. Had you ever seen that shed open at any time that you came or went by the property?

A. It was probably open when I came by, but I didn't see anybody in there, anybody live there or anything.

Q. Do you recall a conversation in which -- with Tom Matusiewicz when, or any interaction with Tom Matusiewicz when he removed something from the shed to discuss with you, do you recall that?

A. Most of the time it was closed. If I went in there --

Q. Not if you went in there, do you recall having a conversation with Thomas Matusiewicz in which he removed something from the shed in a discussion with you, not that you went in, but that Tom went in and removed

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something and discussed it with you?

A. You're saying that I went in there  
and --

Q. No, no, no, that you were present  
on an occasion when Tom went in there to get  
something to discuss with you, that's my  
question, did that happen, if you recall?

A. I don't understand the question,  
sir.

Q. I withdraw the question, then.

Let me ask you this: At any time  
that you went by when you may have seen on  
occasion that shed opened, did you see any  
weapons in there?

A. No.

Q. And you would agree with me that,  
I think you said this, most often you said --

MR. McCALL: Objection. Leading.

THE COURT: Overruled.

Q. Most often when you saw the shed,  
it was closed and that lock was on it, or a lock  
was on it?

A. It was locked.

Q. Thanks.

Now, with respect to a second shed, I'm going to show you what's previously been marked as Government Exhibit 74-I. Do you recognize that shed?

A. Yes.

Q. And with respect to both of these sheds, do you recall whether the first time that you met Tom Matusiewicz and been to that property, whether both those sheds were erected on the property at that time?

A. As far as I know, they were both there.

Q. Now, with respect to the shed that's I guess red, white and blue, or blue white and red, however you want to do it, did you ever see that shed in the state other than closed and locked like this?

A. It was closed all the time.

Q. Now, you're aware of -- let me ask you if you recognize what's depicted in this photograph 73-G, the trailer, do you recognize that?

A. Yes.

Q. And have you ever had occasion to

interact with anyone with respect to that trailer?

A. It was parked there for the longest time. It wasn't moved very much.

Q. Was there a time, a point in time that you had an opportunity or did interact with someone in connection with that trailer, a problem with the trailer?

A. I went with Tom one time to put some propane on it, and fix a tire on it.

Q. Now, you are aware that there was a small Honda Civic that was part of the residence there in Edcouch?

A. Yes.

Q. And have you had on occasion an opportunity to see that car round and about the property or on the highway?

A. Yes, sir, I did.

Q. First of all, who, if anyone, did you see driving that car?

A. That was Tom's vehicle. He drove it all the time, as far as I know.

Q. I'm sorry, go ahead, please.

A. As far as I know, he drove it all



the time, that's what he drove. I never saw him drive anything else.

Q. Now, with respect to the state and condition of the inside of that vehicle, have you had the opportunity in the past to see inside of that vehicle?

A. Yes, I did.

Q. Can you describe for the ladies and gentlemen of the jury what you saw and the state of the contents of the vehicle?

A. It's a pretty beat up Honda. It looked like it had been wrecked in front, put together by a bungy cord of some type, scratches on the side.

Q. With respect to the inside when you would see Tom driving it, can you describe --

A. It was all cluttered. Cluttered. He had a tank of gasoline.

Q. Let me show you what's been marked previously as Government 728-B. When you say a tank of gasoline, you have seen this before; right?

A. I remember that he had that. He

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The gov'ts theory was that my dad had a gas can + shovel in his Honda civic to possibly torture or bury someone. Dad used his car as a farm truck + always had a can of gas in his car + shovel because he has run out of gas many times + in Texas there are dirt roads you get stuck on + have to dig yourself out.

Rene testified the vehicle was cluttered + real messy all the time - meaning you would not have seen any weapons in there.

had a lot of fishing equipment, clothes, rumped clothes. It was kind of messy, real messy inside all the time.

MR. BOSTIC: Now, if I may have a moment, Your Honor?

THE COURT: You may.

MR. BOSTIC: Thank you, Your Honor. I have no further questions. I tender the witness to the government.

THE COURT: Mr. McCall, you may proceed.

MR. McCALL: Thank you, Your Honor

CROSS-EXAMINATION

BY MR. McCALL:

Q. Mr. Flores, good morning, sir.

A. Good morning.

Q. How are you? Welcome to Wilmington.

A. Thank you.

Q. Starting with the Honda Civic, you never saw any firearms in the Honda Civic; is that correct, when Tom was driving around?

A. No.

Q. Did you see an assault rifle when

you saw Tom Matusiewicz driving the Honda Civic?

A. I never saw any weapons in the vehicle.

Q. Not a .357 revolver; correct?

A. I never saw any firearms.

Q. How about thirty to fifty filled clips of .223 rounds of ammunition?

MR. BOSTIC: Your Honor, I'm going to object. The witness has indicated he hasn't seen any firearms or anything of that nature when he saw the car driving around.

THE COURT: I think that does cover it, Mr. McCall, the fact that no weapons. You can ask ammunition.

MR. McCALL: That was my question.

THE COURT: I think it goes to ammunition.

THE WITNESS: I never saw any ammunition or ammo or firearms or weapons, I never did.

MR. McCALL: Judge, may I have a moment to retrieve two of my exhibits?

THE COURT: You may.

BY MR. McCALL:

Q. So, Mr. Flores, I think you indicated that you were a casual friend of Thomas Matusiewicz; is that correct?

A. Yes, sir.

Q. So you would see him periodically, like trying to get a sense --

A. He would drive by or I would come over, but that was it. Just for a few minutes. He would come over and borrow a tool or just to say hello.

Q. So just so I understand, he will come over to your house, maybe borrow a tool; is that right?

A. Yes, sir.

Q. Just say hello; is that right?

A. Yes.

Q. Stay for a minute or so and then leave?

A. Sometimes we had a refreshment or something.

Q. And then when you would come to his house, same thing, you were coming to borrow a tool or get something that you needed for your house, was that typically the nature of the

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contact?

A. Yeah, just stop by, just stop by and say hello. Just say hello.

Q. If you were in the house, it was just a brief hello, how are you doing, I need this, I need that, and then you would leave?

A. That's it.

Q. Is that it?

A. Right. Stay for a little while and then leave.

Q. Now, the last time you saw Tom Matusiewicz was when are we talking, 2012?

A. The last time I saw Tom was a couple of days before he came to come over here, him and his son and his wife were having a jury of some sort trial here or something, and he wanted me to feed his dogs.

Q. So you came over and saw him --

A. So maybe two days before they left to come over here is the last time I saw him.

Q. And just so the jury understands, you and I have never met before; correct?

A. Never.

Q. Now, you were interviewed by



someone from Mr. Bostic's office, is that correct, prior to coming in here today?

A. I just said hello to him.

Q. Did he have an investigator come meet with you, he being Mr. Bostic down in Texas?

A. He came over.

Q. Okay. Mr. Bostic came. Did you know, in the course of your interview, did anybody take notes at the interview? Did you notice anybody writing when you were telling them information, if you know, if you remember?

A. He may have written something in there. I wasn't paying that much attention to what he was doing.

Q. Did he have anybody with him? Did Mr. Bostic have anybody with him?

A. That lady right there.

Q. Anybody else?

A. No.

Q. Now, so you saw Tom Matusiewicz and Dave Matusiewicz and Lenore Matusiewicz about two days or so before they came up --

A. I saw Tom, yes.

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Q. And prior to that, when was the last time, when was the last time you saw him?

A. It would be like a week or so. It wasn't like I would see him every day, just every once in a while he would come by and say hello.

Q. And you indicated that you had been in their house before; is that correct?

A. That's correct.

Q. And had you been in the house when David Matusiewicz had moved in?

A. Right.

Q. So you had been in the house both when David Matusiewicz was not living there; is that correct?

A. Right.

Q. And when he was living there; is that correct?

A. Right.

Q. And again, that was going back two years, three years now; is that right?

A. Yeah, whatever date it is. I'm not sure on the dates.

Q. Sure.

Q. And when you were in the house, that Edcouch house that we're talking about, you testified that it was cluttered; right?

A. Yeah, I don't want to use that word, but just seem like there are a lot of boxes and a lot of paperwork around.

Q. And fair to say you didn't take an accounting of like what boxes were in the house and where they were; right?

A. No, I didn't do that.

Q. Is that right?

A. I would just stay in there for a little while. I didn't go inside too much.

Q. You weren't focused on what box was where in what room, so on and so forth?

A. No, none of my business what boxes were there.

Q. Your business there was to talk to Tom or Lenore about whatever it was the issue was; is that correct?

A. That's correct.

Q. And I think you indicated that most of the boxes were paper boxes that you saw; is that right?

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A. There were a lot of paper boxes, just normal paper boxes, plastic boxes like the ones that were there.

Q. Now, I'm going to put this back up. This is Government Exhibit 76-A. I mean, again, we're talking going back two years, two-and-a-half years; right?

A. Yes.

Q. So you wouldn't know like if this was the condition of the desk exactly when you were in the house at any given point; correct? You don't remember those specific papers being on the desk when you were in the house?

A. I can't even see that -- those boxes in there. But it kind of looked like that.

Q. It kind of looked like that; is that right?

A. Right.

Q. Is that right, sir?

A. Yes, the paperwork was, the boxes and paperwork.

Q. My point, my question is, you just don't know as you sit here what specific boxes

were in the house, out of the house?

A. No. There is no way I could say what boxes were there.

Q. I'm sorry?

A. There is no way I could say what kind of box was there.

MR. McCALL: May I have one moment, Your Honor?

THE COURT: You may.

MR. McCALL: Judge, thank you.

Mr. Flores, thank you, sir.

THE COURT: Mr. Bostic, any

redirect?

MR. BOSTIC: No. Thank you, sir.

THE COURT: Any cross from other

defendants?

MR. EDELIN: Nothing, Your Honor.

THE COURT: Mr. Ibrahim?

MR. IBRAHIM: I just have one or two.

THE COURT: Mr. Flores, one other attorney has some questions.

THE WITNESS: Okay.

BY MR. IBRAHIM:

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Q. Good morning, sir. How are you?

A. How are you doing, sir?

Q. I just have a few questions for you. If any of my questions aren't clear enough, let me know and I'll do my best to rephrase it. Okay?

A. Okay.

Q. First of all, you testified that before Tom left to come to Wilmington for some court hearing, that you had some discussions with him about him looking after some part of the house; correct?

A. He wanted me to feed the dogs. He had about half a dozen dogs.

Q. Let me --

A. He wanted me to feed them.

Q. Let me put up what's marked Government Exhibit 73-D. That is one of the pups?

A. It looked like the front door. Oh, I'm sorry. I see the dog. Yeah. That was one of the dogs.

Q. Did you feed that dog?

A. I didn't see the dog.

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Q. That pup is sitting there pretty good.

Now, in the course of your discussions with him about feeding the dogs, did you have any discussions with him about when he was going to come back?

A. Yes. I asked him how long do you want me to feed them, how long are you going to be gone, he said about ten days.

Q. Okay. I understand you were a casual friend. Did you make any plans with how you would know when he got back or when you could stop stopping by and feeding the pups?

A. He just said he would be back in ten days. I just thought he would be back in ten days. There was plenty of dog food for ten days or more. I wasn't worried. I didn't think nothing of it.

Q. Had you made any social plans for him for his return?

A. No. Other than he could continue feeding his own dogs, that's all.

MR. IBRAHIM: Thank you, sir.

THE COURT: Anything further from

any counsel?

MR. BOSTIC: No, Your Honor.

MR. McCALL: No Your Honor.

THE COURT: All right. Thank you,  
Mr. Flores. You may step down, sir.

THE WITNESS: Thank you.

THE COURT: The record will  
reflect that the witness used the papers on the  
Judge's bench as an example of document  
disarray, not once, but twice.

MR. McCALL: Judge, may I approach  
and put these back?

THE COURT: Of course.

MR. McCALL: Thank you.

MR. BOSTIC: Your Honor, if I may,  
the defense, David Matusiewicz, would call David  
Mitchell to the stand, please.

THE COURT: All right.

MR. McANDREW: Your Honor, may we  
approach, briefly.

THE COURT: You may.

(Side-bar discussion:)

MR. McANDREW: Your Honor, I just  
want to ask with this witness, I have the sense

copy  
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Flores

Weede?

MR. WEEDE: No, Your Honor.

THE COURT: Thank you, doctor.

THE WITNESS: Thank you.

MR. EDELIN: Your Honor, with the Court's permission, we may go slightly out of order. I believe David Mitchell is in the hallway.

THE COURT: All right, Mr. Edelin.

MR. EDELIN: If I might stick my head out.

THE COURT: Ladies and gentlemen, you will recall that though ordinarily we do defendant, defendant, defendant, because of scheduling issues I've allowed the counsel here to mix and match in the course of their defense, keeping in mind that each defendant might need to be viewed separate.

DAVID MITCHELL,

the deponent herein, having first been duly sworn on oath, was examined and testified as

follows:

BY MR. EDELIN:

Q. Mr. Mitchell, good afternoon, sir.

A. Good afternoon.

Q. How are you.

A. I'm well.

Q. You've been here all morning, I understand.

A. That's correct.

Q. Thank you for being patient with us. I believe you have introduced yourself, but please do so again.

A. My name is David Mitchell.

Q. I believe, sir, that you drove here, you live relatively close by; is that fair?

A. That's correct, yes.

Q. It's my understanding in fact that you have an Elkton, Maryland address?

A. That's correct, I live almost exactly where the three states meet.

Q. Okay. Sir, you and I had a chance to speak for the first time earlier this afternoon over the lunch break?

A. That's correct.

Q. And I told you that I wanted to



talk to you briefly and have you relate to the jury your experience with Ms. Lenore Matusiewicz on the day of the shooting?

A. That's correct, yes, sir.

Q. My understanding from prior testimony is that you were actually at your residence with Ms. Lenore?

A. Yes.

Q. And I believe you were getting some calls and some updates from your wife, who was Peggy Mitchell?

A. That's also correct, yes.

Q. And you're aware that she was here earlier in this trial and testified?

A. Indeed.

Q. Okay.

MR. EDELIN: And Your Honor, I'm, for lack of a better word, leading a little bit, just to expedite things.

THE COURT: Hearing no objection, you may. I'm sure the Government will let us know.

MR. EDELIN: Thank you, Your Honor.

BY MR. EDELIN:

Q. Sir, my understanding is that you got the call about the events that were going on in the courthouse from your wife; is that right?

A. That is correct, yes.

Q. And you relayed that conversation to Ms. Lenore?

A. Immediately.

Q. And obviously upon hearing that information, she had a reaction?

A. Absolutely.

Q. Could you explain to the ladies and gentlemen of the jury what that reaction was?

A. I would probably best describe it as shell shock, oh, my gosh, that type of reaction. I use the term deer in the headlights, just stunned. \*

Q. And sir, you said you used the term deer in the headlights, you used that term when you were interviewed by the FBI? \*

A. I did read that, yes.

Q. They came and they talked to you and they interviewed you and they reduced your

interview to writing?

A. Correct.

Q. And I believe that's the FBI 302, where you said you did read that?

A. That's correct. I had an opportunity to review it this afternoon.

Q. Okay. Sir, it is also my understanding, based on what your wife told us and based upon what I believe I read in your 302, that Ms. Lenore then made a phone call?

A. That's true.

Q. After you had relayed to her the events that were going on in the courthouse?

A. Yes.

Q. Could you tell the ladies and gentlemen of the jury what that phone call was?

A. Well, that telephone call was to try to get in touch with the Department of Social Services to meet the children at their residence when they got off of the school bus. They -- her -- that was her desire to make sure that the children were looked after.

Q. And she called the appropriate authorities to go get the children, to try to

alert them that somebody needs to go get the children?

A. Well, I'm sure that was the purpose of the call. I wasn't eavesdropping.

Q. Okay.

A. I don't know what words she uses, but that was the reason she was making the telephone calls.

Q. Okay.

MR. EDELIN: Your Honor, if I can just approach the table very briefly?

THE COURT: You may.

BY MR. EDELIN:

Q. Sir, we have also had testimony -- what number is this -- about Government Exhibit 241, which is a Vistakon bag. I believe this was left in your house at some point during that visit?

A. That's correct, yes.

Q. And it's my understanding that Ms. Lenore did not bring this bag into the house?

A. Frankly, I don't know who brought it into the house.

Q. Okay. Did you see Ms. Lenore with

it? You didn't see anybody with it?

A. I saw no one with it.

Q. Okay.

MR. EDELIN: Your Honor, that's all I have. Thank you.

MR. McANDREW: Thank you, Your Honor.

BY MR. McANDREW:

Q. Good afternoon, Mr. Mitchell?

A. Hello.

Q. Mr. Mitchell, so on the day of the shooting you were asked just a couple questions about the day of the shooting. The day of the shooting you first learn of the shooting at the courthouse how?

A. From my wife. She was at work and I believe she heard on the local radio station that there had been a shooting at the courthouse.

Q. All right. When you say she was at work, where is that?

A. She works for Wilmington University. She was I believe en route to work.

Q. And your wife's name?

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A. Peggy Mitchell.

Q. All right. Same Peggy Mitchell who testified in this case earlier?

A. Absolutely.

Q. All right. And obviously she heard that and got in touch with you. How was that, how did she get in touch with you?

A. She called on the home telephone number.

Q. Okay.

A. And just mentioned that there had been a shooting at the courthouse.

Q. All right. At that time what forensic was she able to tell you about the shooting?

A. I believe at that time she said it had something to do with a custody battle.

Q. All right. Any identification on the participants in the shooting at that point?

A. I don't believe with that phone call there was.

Q. All right. But you conveyed that to Lenore Matusiewicz?

A. Yes, I did.

Q. All right. And her reaction was to seek to call DFS; is that right?

A. Not at that point. I believe it was after the second telephone call, excuse me, from my wife that identified the Matusiewicz name that that's when that telephone call took place.

Q. So there was a second phone call?

A. That's correct.

Q. From Peggy to you?

A. That's right. Someone that she had, who previously had worked for her had listened to the radio broadcast.

MR. BOSTIC: Your Honor, I'm going to object to this. We're speaking to hearsay, someone that worked for Ms. Mitchell told her something that she then relayed to this witness.

MR. McANDREW: This was all elicited by the defense.

MR. BOSTIC: I'm sorry, I did not elicit it, Your Honor.

MR. McANDREW: Your co-counsel did.

MR. BOSTIC: Your Honor, for the

record, there are no co-counsel here. I  
represent David Matusiewicz, and with  
Ms. Chavar.

THE COURT: Do I need to limit  
this?

MR. McANDREW: For the record,  
Mr. Bostic didn't object when Mr. Edelin stood  
up and asked about Lenore Matusiewicz.

THE COURT: Do I need to limit  
this or can you proceed without our need to  
visit side-bar.

MR. McANDREW: I'm not sure how we  
would limit it at this point since we're already  
on this issue.

THE COURT: All right.

(Side-bar discussion:)

THE COURT: My assumption,  
Mr. Bostic's concern is that the initial radio  
reports identified David Matusiewicz as the  
shooter. Am I correct, Mr. Bostic?

MR. BOSTIC: Yes.

THE COURT: That's what --

MR. McANDREW: I wasn't tracking.

THE COURT: Mr. McAndrew, do we

*Inaccurate  
reporting*

need to steer out of that?

MR. McANDREW: I can. I wasn't tracking.

MR. IBRAHIM: Judge, the only thing I would add, I don't believe it was intentional, we have to be sensitive to any suggestion that it was a joint defense and co-counsel, since we're here.

THE COURT: I do think that point is well taken.

MR. McANDREW: Very well. I misspoke. I meant to say Mr. Edelin elicited that. There was no objection to it so the issue is fair game. I understand the objection now with David being the person that was initially identified.

MR. BOSTIC: Your Honor, I'm also concerned about double hearsay to the extent that they are -- if they're relying on anything while we're here why don't we see where it's going to. If it's just a course of events I'm not worried about hearsay.

MR. McANDREW: I was just putting a little flesh on the bones here in terms of the

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fact that the phone call came in, the information was relayed to Lenore and she makes the phone call to DFS. He came back well, there was more than one phone call, so that's why I was asking about the second phone call information.

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MR. EDELIN: There were more than one phone call. And so if the implication is that she didn't have any of this background information and just heard there was a disturbance at the courthouse, and then arbitrarily decided or preordained decided to call social services, that is not a proper impression to give this jury because that's not the case.

sue  
THE COURT: I think the witness already said after she heard the name Matusiewicz, because I was listening to that same concern and then I heard the witness fill in Matusiewicz without filling in David, and then I heard the next question and then I thought, might be David which is why I called the huddle.

I think your concern is addressed



by the elicitation of the last name Matusiewicz.  
I think we addressed we don't want to hear the  
first name David.

MR. EDELIN: Again, I'm not sure  
if that is a proper recitation either, because I  
don't think the call was made until she heard  
that it was Ms. Belford.

MR. McANDREW: Well, I don't think  
that's going to be the witness' testimony, but  
we'll see.

THE COURT: All right. Let's  
just --

MR. McANDREW: I think that's why  
it's probative, if she hears the name  
Matusiewicz, and goes and calls social services,  
somebody has got to get the kids, we got an  
issue.

MR. EDELIN: Which I don't think  
was the testimony, or which I don't think is  
what's in the 302.

THE COURT: Well, whether in the  
context the name Matusiewicz can be a little  
ambiguous given that Christine Belford was  
married to David Matusiewicz.

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MR. McANDREW: Well, was married.  
But I mean, you can bring that out if you want  
to redirect it, I'm just trying to establish the  
timeline here of what was said.

THE COURT: So anything else that  
you want to preview while we're here?

MR. McANDREW: I don't think so.

THE COURT: Great.

MR. McANDREW: No.

THE COURT: Good. Thanks.

(End of side-bar.)

THE COURT: Thank you for your  
patience, members of the jury.

You may continue, Mr. McAndrew.

BY MR. McANDREW:

Q. Mr. Mitchell, just to bring you  
back, we were talking about a second phone call.

A. Correct.

Q. From your wife to you, where the  
name, the last name Matusiewicz was mentioned;  
correct?

A. That's correct.

Q. All right. And I think you were  
explaining that there was a second call received

before Lenore made her phone call or asked to make a phone call to Division of Family Services; is that right?

A. To my recollection, that's exactly right.

Q. All right. Now, I think you also said that she made a statement, Lenore made a statement to the effect of the children getting off the bus, a concern about the children getting off the bus?

A. That's correct. Someone would have to be there to greet them when they came from school.

Q. Did she say how she knew they were getting off the bus?

A. No.

MR. McANDREW: No further questions. Thank you.

THE COURT: Anything further from any defense counsel?

Mr. Bostic, do you have any questions?

MR. BOSTIC: Yes, I do. If I may have a moment?

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THE COURT: . You may.

BY MR. BOSTIC:

Q. Can you pull up Government Exhibit -- if I may have a moment, please, before you post it on the screen.

Good afternoon, Mr. Mitchell.

A. Good afternoon.

Q. Can you pull up Government Exhibit 248 for me, please. Can you flip it around.

You were interviewed by the FBI concerning that black suitcase and the Vistakon bag that Mr. Edelin showed you earlier today; is that right?

A. That's correct.

Q. When you were interviewed by the FBI, you told them that Tom Matusiewicz brought in --

MR. McANDREW: Hold on.

Objection. Hearsay.

MR. BOSTIC: It's what he told them, this witness.

MR. McANDREW: Okay. It's still hearsay. It's an out-of-court statement.

THE COURT: If it's this witness.

MR. McANDREW: It's still hearsay.  
It's an out-of-court statement.

THE COURT: The witness is here.

MR. McANDREW: I understand that.

THE COURT: It's cross-examination  
at this point and I'm going to allow it.

BY MR. BOSTIC:

Q. Getting back to where we were.  
When questioned by the FBI about that black  
suitcase, you told them that Tom Matusiewicz  
brought that in?

A. I disagree. I don't know exactly  
who brought -- I didn't see that bag come in.

Q. I'm not talking about the bag, I'm  
talking about the black suitcase?

A. I'm sorry. The black suitcase  
came into the house. I don't recall seeing who  
deposited it there, who brought it into the  
house or put it there.

Q. Let me show you, if I may  
approach, Mr. Mitchell, and I will refer you to  
the government interview of you in this case.

MR. BOSTIC: If I may approach  
counsel.



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MR. McANDREW: Which date?

MR. BOSTIC: The date I have is February 13, 2013. Page four of eight. If I may approach.

THE WITNESS: Of course.

Q. I want you to read here.

A. To myself?

Q. To yourself.

A. (Witness reviewing exhibit.)

Q. Read the next page, this part right here.

A. (Witness reviewing exhibit.)

Okay. Is that not what I just said?

Q. Yes. And we'll talk about it.

Mr. Mitchell, you have had a chance to look at the statement prepared based on your interview with the government, you just saw it; right?

A. That's correct, yes.

Q. You would agree with me that from your recollection at that time, Tom brought in the black suitcase, Tom Matusiewicz?

A. According to what I just read, and what I'm recalling is that I assumed --

Q. Let me stop you there, and I'm going to ask you whether you said this specifically.

MR. McANDREW: Before you read it into the record, are you quoting him or is this --

MR. BOSTIC: I'm asking him, I'm going to ask him if he said this, and --

Q. Do you recall saying to the FBI agent at the time, "After Thomas brought in the large black suitcase"--

MR. McANDREW: I'm sorry, where are you reading from?

MR. BOSTIC: The same page, counsel.

MR. McANDREW: Yes. Where?

MR. BOSTIC: Page four of eight, the bottom paragraph that -- if I may approach counsel, Your Honor.

MR. McANDREW: Here it is.

MR. BOSTIC: Do you have it?

MR. McANDREW: Your Honor, for the record, he's reading something that's not a quote from the witness, impeaching the witness

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with something that's not the witness's statement.

THE COURT: Mr. McAndrew, he can ask the witness if this in any way changes his testimony. You can clarify later what the document represents.

MR. McANDREW: Thank you, Your Honor.

BY MR. BOSTIC:

Q. Mr. Mitchell, do you recall telling the case agent at that time, I think it was Joe Gordon, that after Tom brought in the large black suitcase, you noted another bag which you described as the Vistakon bag?

A. I don't recall saying after Thomas Matusiewicz brought in the bag, because I did not see him bring the bag in.

Q. Okay. Now, you also told the FBI that day that you saw David Matusiewicz with a small rectangular soft-sided bag in his room, or you saw that in David's room?

A. That's correct, yes.

Q. You never saw David Matusiewicz with this bag; am I correct?