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1 THE COURT: Good morning,  
2 everyone. Please be seated. The jury is ready  
3 if counsel are ready.

4 MR. McCALL: I think we have a  
5 just a couple of evidentiary issues that we need  
6 to raise with the Court that will affect  
7 potentially the scheduling later today.

8 THE COURT: Sure.

9 MR. McCALL: May I?

10 THE COURT: Please.

11 MR. McCALL: Thank you, Your  
12 Honor.

13 I think the first issue that I  
14 would like to raise is the government intends to  
15 offer two more e-mails today when we recall the  
16 case agent. They are Exhibits 757 and 758 which  
17 we have just added. I can pull them up. Now we  
18 would like to offer them through the case agent.  
19 They were found by Linda Grody during her  
20 computer forensic report, but I think that given  
21 the nature of the testimony she's really just a  
22 custodian at the end of the day and that what  
23 she does is prepare the record and then the case  
24 agent goes in and pulls whatever e-mails he

deems relevant and this is one of two e-mails that we intend to offer, particularly in light of the cross-examination of Linda Grody that focused on a number of e-mails which between David Matusiewicz and Niki Hannevig.

-This is just 1 example how the government offers limited emails instead of surrounding emails to put the entire story in proper context.

THE COURT: Do you have a hard copy of this, Mr. McCall?

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

THE COURT: Sure. Or is it in the binder?

MR. McANDREW: It's not, Your Honor. We just printed it out. I have a hard copy back here.

THE COURT: All right. Hand it up if you would, but I think I have been able to read it on the screen. So let me hear from the defense, or do you want to do the other exhibit? This is 757. Should we take them one at a time?

MR. McCALL: Yes. Just so the Court is tracking the government's position here, again, on the cross-examination, Mr. Bostic went into some detail about the e-mails between Matusiewicz and Hannevig and the

1 suggestion that these were done for I think the  
2 purpose of getting legal assistance... And if you  
3 look at the top of that, the top half which is I  
4 believe, that goes to motive and intent, and it  
5 suggest also a different conversation that was  
6 occurring between these two individuals and we  
7 think that's relevant to this case.

8 THE COURT: All right. So should  
9 we debate 757 with defense or do you want to go  
10 to 758? Let's do 758. It looks like they're  
11 somewhat related.

12 MR. McCALL: 758 is along the same  
13 lines. And what we are focused on, right, there  
14 you go.

15 THE COURT: In the center.

16 MR. McCALL: In the center. And  
17 you know, that line is directly relevant to  
18 David Matusiewicz's criminal intent as it  
19 relates to Christine Belford where it says, God  
20 forgive me but my priorities lately revolved  
21 around Matthew 18.5.7 but who so shall offend  
22 one of these little ones which believe in me, it  
23 were better for him that a millstone were hanged  
24 around his neck and that he were drowned in the

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depth of the sea, I know vengeance is mine  
sayeth the lord, but we are made in his image,  
aren't we?

Not only is that relevant standing  
alone as to his criminal intent with respect to  
Christine Belford, but that language mirrors a  
letter that Thomas Matusiewicz sent to  
Dr. Bocanagra.

THE COURT: I understand the  
government's position. Mr. Bostic? Ms. Chavar?

MR. BOSTIC: Your Honor, I believe  
that with respect to these, 758 first, we talk a  
lot about context and completeness in terms of  
the documents that are being offered before this  
Court. I believe that taken out of context,  
these e-mails here present a picture that's not  
entirely true from my perspective, and the only  
way I can rebut that is to get in the e-mails,  
for example, that I had to redact and others  
that we can't get in unless the defendant  
testifies.

So it is fighting a battle with  
both hands tied behind my back so to speak,  
because he has a right not to testify and the

1 government is using selected pieces of e-mails  
2 and what have you throughout this prosecution.

3 So I think that the Court should  
4 balance the probative value of these against the  
5 prejudice of the defendant in the context of  
6 this litigation. At this point we stand before  
7 the Court I have not filed a 609 motion because  
8 it's unlikely Mr. Matusiewicz will testify.

9 MR. McANDREW: I'm sorry, did you  
10 say likely or unlikely?

11 MR. BOSTIC: I said it's unlikely  
12 that he will testify. If he were, I would file  
13 a 609. Things can change. I would say to the  
14 Court the balance here is to utilize these  
15 e-mails to the extent David Matusiewicz takes  
16 the stand, but outside of that give me some  
17 leeway to move in all the other e-mails that I  
18 think would put this in context.

19 THE COURT: Mr. Bostic, in terms  
20 of moving in all the e-mails if I were to lean  
21 in that direction, I think I would be more  
22 inclined to let in e-mails immediately  
23 surrounding these communications rather than all  
24 e-mails, and so, I think you may have a point

1 about the need to have that balance, but why  
2 would we go beyond what's on the need before and  
3 after this particular exchange.

4 MR. BOSTIC: That's a fair  
5 question, Your Honor. There are a series of  
6 e-mails starting I believe in probably May of  
7 2012, Niki Hannevig and several other  
8 individuals talking about litigating none pro  
9 tunc petition. Just the one or two that come  
10 right in front do not put this in context.

11 THE COURT: All right.

12 MR. BOSTIC: And that's part of  
13 the problem that we have. And that's true for  
14 other e-mails which I'll bring more closely to  
15 the Court's attention. For example, there is an  
16 E-mail, I don't remember the wording offhand,  
17 but I had it on the tip of my tongue before I  
18 came over today, but it's one of a series of  
19 e-mails over a period of several weeks, I know  
20 exactly what it is. There is an e-mail with  
21 respect to a conversation between David  
22 Matusiewicz and Amy Matusiewicz in which they're  
23 talking about Halloween, and Amy Gonzalez is  
24 sending David Matusiewicz a photo of her

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It never rises





1 daughter dressed up in a Halloween costume, and  
2 they have a conversation about that. And then  
3 David wrote the e-mail be prepared to be caring  
4 for them this time next year. That context is  
5 missing. And unless Ms. Gonzalez takes the  
6 stand or David Matusiewicz takes the stand, we  
7 have an incomplete and bias one-sided record  
8 because the government has card blanche to use  
9 these e-mails and just put up limited pieces.

10 THE COURT: Let me hear back from  
11 the government on the issue of putting context  
12 to 757 and 758.

13 MR. McCALL: If there is  
14 additional e-mails that relate to this string  
15 that the defense wants, that's fine.

16 THE COURT: All right.

17 MR. McCALL: I would object to  
18 going outside of that because I don't think  
19 that's -- that's not the rule, that wouldn't  
20 fall I think in the parameters of the rules of  
21 completeness.

22 THE COURT: I'm going to overrule  
23 the objection to 757 and 758, but I'm going to  
24 grant leave to the defense to introduce into the

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record e-mails and I'll rule on the scope of it  
that put this in context.

With respect to the reference to  
Ms. Gonzalez and Halloween, I'm not going to  
rule on that now. Mr. Bostic, my memory of that  
e-mail was somewhat different. I recall it not  
that they would be trick or treating next year,  
but rather Ms. Gonzalez would be caring for the  
children. Let's hold that in abeyance for the  
time being.

MR. BOSTIC: I just want to say,  
Your Honor, the response does not mention trick  
or treating, but I think the context explains  
the nature of the conversation so I wanted to be  
clear.

THE COURT: I didn't mean to  
misrepresent your argument, but in terms of how  
I recall the specific document, I'm less  
concerned about a misleading impression to the  
jury than could be here so the objection is  
overruled as to these two and then we will  
revisit maybe over the lunch break how we put  
these in context.

What else do we have, Mr. McCall?

1 MR. McCALL: Just so I'm clear  
2 with respect to this e-mail, we will introduce  
3 it through Agent Gordon.

4 THE COURT: Yes, sir.

5 MR. McCALL: Thank you, Your  
6 Honor.

7 Now, we over the course of the  
8 weekend, we noticed up two additional witnesses.  
9 These are witnesses that would testify to David  
10 Matusiewicz's actions and demeanor immediately  
after the shooting.

*Last minute witnesses  
that were ironically  
interviewed in Feb 2013  
being offered at this  
point in trial to say how  
David was calm during  
a time of chaos.  
We were taught to stay  
calm + pray during chaos.  
It is also embedded in  
any medical professionals  
training to stay calm in  
calamity. Who wants a  
Dr. or nurse that freaks  
out under stress? It never  
goes well.*

The proffer for both of these  
witnesses is Michael Tacconelli and Alicia  
Gunter, would be as follows: Mr. Tacconelli is  
the judicial officer for Judge Buckworth.  
Ms. Gunter is a judicial case administrator at  
the New Castle County Courthouse.

18 On the morning of the shooting  
19 they were both at their respective workstations.  
20 Ms. Gunter heard the gunfire first and went into  
21 the room where Mr. Tacconelli was. He put her  
22 into a robe room while he went to see what was  
23 happening in the lobby. Realizing there was  
24 chaos and the shooting situation in the lobby,

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1 he went back retrieve Ms. Gunter from the robing  
2 room, put her into courtroom 1B and there were a  
3 number of four to six civilians that were in the  
4 hallway and he escorted them into the safety of  
5 courtroom 1B.

6 When they were in courtroom 1B,  
7 the civilians that were in there included David  
8 Matusiewicz. And what both Mr. Tacconelli and  
9 Ms. Gunter observed is as follows: All of the  
10 people in the room with the exception of  
11 Mr. Matusiewicz were frantic, were asking,  
12 what's going on, trying to figure out the  
13 situation, so on and so forth. They had a very  
14 -- a demeanor that was consistent with the  
15 gravity of the situation. They will testify  
16 that David Matusiewicz, however, sat by himself  
17 calmly in the back with his hands crossed and  
18 didn't say anything to anybody to the point  
19 where they, Ms. Gunter, who has never met David  
20 Matusiewicz before, walks up to Mr. Tacconelli  
21 and says something is not right with him, what's  
22 going on with him, and it caused Mr. Tacconelli  
23 to take notes as to each person in the room,  
24 what their demeanor was, focusing on David

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Matusiewicz.

So the government wants to offer that evidence. It's relevant as to his knowledge and his intent which is squarely, squarely at issue in this case as the Court is aware.

THE COURT: When did these

witnesses come to light, Mr. McCall?

9

MR. McCALL: So we found out about

10

Ms. Gunter last week on Wednesday night when we

11

were interviewing another witness and she told

12

us that we should talk to Ms. Gunter and another

13

woman. So the government went out, spoke to

14

Ms. Gunter, and then went back and reexamined

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the prior statement that Tacconelli had given to

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the Delaware State police officers which was

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very short, it was a two- or three-line

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statement that happened right after the

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shooting, and we didn't pay it as much attention

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until we spoke to Ms. Gunter and realized what

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we believe to be the significance of her

22

testimony.

23

THE COURT: Have you shared with

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the defendants all of the information you have

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because  
he was  
calm =  
he  
obviously  
conspired  
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to the  
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1 concerning both witnesses?

2 MR. McCALL: Yes. The statement  
3 by Tacconelli was supplied right after the  
4 shooting, as soon as we got the interview notes  
5 from Ms. Gunter on Thursday night we produced  
6 them to defense counsel.

7 THE COURT: Was that Thursday  
8 night that they were produced?

9 MR. McCALL: Yes. And I followed  
10 up this weekend with another e-mail summarizing  
11 the witnesses testimony.

12 THE COURT: Let me hear from the  
13 defense, please.

14 MR. BOSTIC: Your Honor, I am  
15 going to be direct. This feels like trial by  
16 ambush, bottom line. The government had over  
17 two years, since February 11, 2013, to pull its  
18 case together. And we, based on what we  
19 understood they were presenting, including their  
20 witness list, prepared a defense for  
21 Mr. Matusiewicz.

22 We now have this proposed  
23 testimony of witnesses who do not -- have never  
24 had any contact with Mr. Matusiewicz, doesn't

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1 know how he responds under stress, but yet the  
2 government is proffering them to say well, he  
3 was more calm than Sally, Moe, in courtroom 2B  
4 or what have you.

5 If we're going to go down this  
6 route, I'm asking the Court for hiatus. I want  
7 the list of every witness, every person in the  
8 courthouse on the day of the shooting so I can  
9 talk to every individual and ask them how did  
10 the person standing next to them respond,  
11 because that's the only way I can defend this  
12 point in time. I think the government has put  
13 on an abundance evidence here including the last  
14 two e-mails that we discussed before this Court.  
15 The timing is truly prejudicial as to  
16 Mr. Matusiewicz.

17 THE COURT: I understand your  
18 position. Government, I am very troubled by  
19 this. When did you intend to call these  
20 witnesses, today?

21 MR. McCALL: We intended to call  
22 them today, Your Honor.

23 THE COURT: I'm leaning strongly  
24 against allowing the government to call the



1 witnesses, but I'm going to take that under  
2 advisement. I assume we won't get to them  
3 before the lunch break.

4 MR. McCALL: That's correct, Your  
5 Honor.

6 THE COURT: How do you respond to  
7 the defense argument that with no prior  
8 knowledge of Mr. Matusiewicz, the inference that  
9 you're asking the jury to draw may be a stretch.

10 MR. McCALL: I don't think that --  
11 let me just step back for a moment. I need to  
12 address something that Mr. Bostic just said.  
13 This is not a trial by ambush, first of all.  
14 And I just want everyone to take a moment, when  
15 they begin their case as Mr. Bostic has provided  
16 me a ton of expert discovery at the last minute,  
17 you know, consider whether the government is  
18 actually engaged in trial by ambush as you just  
19 said, we're talking about two very short fact  
20 witnesses.

21 THE COURT: I don't want to get  
22 into the characterization. When I say I'm  
23 troubled, it's not that I'm suggesting this was  
24 slight of hand on the part of the government,

1 I'm troubled from the standpoint of impact,  
2 that's all and troubled from the standpoint of  
3 opportunity to prepare.

4 MR. McCALL: Let's take that. I  
5 have produced Mr. Tacconelli's statement which  
6 does talk about Mr. Matusiewicz's very calm  
7 demeanor, unusually calm demeanor, that was  
8 produced to defense counsel a year-and-a-half  
9 ago.

10 Yes, Mr. Tacconelli wasn't on the  
11 witness list, but up until June 8th, that issue  
12 was conceivably in play. So you know, as the  
13 Court has said, these are, you know, trials are  
14 organic and as we proceed down and listen to the  
15 defense arguments, particularly when they're  
16 making the argument that he had no knowledge of  
17 what was going on in the courtroom that day and  
18 then we subsequently come into information that  
19 indicates he had a reaction that would indicate  
20 he did know, or at least something the jury  
21 could consider in making its determination --

22 THE COURT: All right. Let me ask  
23 you to provide the Court with the statement from  
24 Mr. Tacconelli that was presented as part of the

1 discovery.

2 Now, let's bring the jury in and  
3 get moving. All right?

4 MR. McCALL: Yes, Your Honor.

5 THE COURT: Mr. Bostic, something  
6 you want to add. Mr. Ibrahim, go ahead.

7 MR. IBRAHIM: Your Honor, I don't  
8 know if the Court wants to review the materials  
9 and resume argument, I would like to be heard on  
10 because it affects my client. Mr. Tacconelli's  
11 statement is pretty brief. The only issue I  
12 have, we're talking about a courthouse employee  
13 where a shooting took place after there has been  
14 a substantial passage amount of time, a  
15 substantial amount of media, portraying this  
16 particular trial that that person may or may not  
17 have read and now what is the reliability of  
18 that material coming in at that juncture.

19 THE COURT: Understood.

20 Mr. Bostic, Ms. Chavar, you wanted to add  
21 something?

22 MS. CHAVAR: New matter.

23 MR. BOSTIC: Let me finish the old  
24 matter.

1 not known, I allowed as a matter of fairness the  
2 government to ask about the context of the  
3 conversation, but that out-of-court statement is  
4 not substantive evidence that you may consider  
5 for purposes of fact finding in the case, it was  
6 to give you the context of the relationship of  
7 the conversation. All right?

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

11 THE WITNESS: Kate Edwards,  
12 K-A-T-E, E-D-W-A-R-D-S.

13  
14 KATE EDWARDS,

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

18 MR. WEEDE: If I may, Your Honor.

19 THE COURT: You may.

20 MR. WEEDE: Your Honor, the  
21 government will be referencing Exhibit 14, but  
22 we won't be moving it into evidence. I  
23 discussed that with defense counsel.

24 MR. BOSTIC: Your Honor, can we

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see the court at side-bar briefly.

(Side-bar discussion:)

MR. BOSTIC: Your Honor, I apologize, Your Honor, just in an abundance of caution, I just wanted to ask you who this witness was. There have been a lot of e-mails, I didn't --

THE COURT: It's our fourth week in trial. Everyone is a little tired. It doesn't hurt to check.

Who is next just while we're here?

MR. McCALL: We're going to have Cosgrove next who is the employer and then after her we'll have Peggy Mitchell and Peggy Mitchell is one of the two individuals that housed the Matusiewicz's the night before the shooting.

MR. IBRAHIM: The Matusiewicz's.

MR. McANDREW: Not Amy, Lenore, Tom and David.

MR. McCALL: She is going to get into statements and conversations she had with David and Lenore both the night before the shooting and then with Lenore the morning of the shooting, including things like Lenore telling

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her that Tom and David told her where their wills were before they left so on and so forth, there is going to be a lot of testimony about those types of conversations.

THE COURT: All right. So everybody has the context. Right. Good. All right. Let's get to it.

(End of side-bar discussion.)

MR. WEEDE: If I may, Your Honor.

THE COURT: You may

DIRECT EXAMINATION

BY MR. WEEDE:

Q. Ms. Edward, if you could introduce yourself to the members of the jury?

A. I'm Kate Edwards.

Q. Where do you work?

A. Probation and parole officer for the State of Delaware.

Q. How old have you had that job?

A. Approximately seventeen years.

Q. And in your context, is it fair to say your job involves what I'll refer to as pretrial supervision?

A. Yes.

*Peggy Mitchell's testimony was previously sent. As stated previously, prior to any trips we always discussed wills + things of that nature. That just shows we are responsible + realistic people to acknowledge that an accident could happen. This does not equal conspiracy.  
I know a son + mother along with a husband + wife with children who even take separate planes going to the same destination in case of an accident.*

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1 Q. And pretrial supervision generally  
2 involves what?

3 A. Pretrial supervision is  
4 supervision after the arrest and prior to court.

5 Q. Okay. So turning the clock back  
6 to 2009, was one of the people who you  
7 supervised Lenore Matusiewicz?

8 A. Yes.

9 Q. Do you see her in the courtroom?

10 A. Yes.

11 Q. And could you identify her,  
12 please?

13 A. She is the woman seated at the  
14 table on the right side with the gray blazer on.

15 THE COURT: Identification noted  
16 for the record.

17 MR. WEEDE: Thank you, Your Honor.

18 BY MR. WEEDE:

19 Q. Did she have certain pretrial  
20 conditions of release?

21 A. Yes.

22 Q. And did one of those conditions  
23 involve what's called a no contact order?

24 A. Yes.

1 Q. And what was the no contact order  
2 in question?

3 A. She had a no contact order with  
4 the victims of the case that she was pending in  
5 Superior Court.

6 Q. And that would include Christine  
7 Belford as well as Laura, Leigh and Karen  
8 Matusiewicz; correct?

9 A. Yes.

10 Q. Did you have a conversation with  
11 her as far as what that no contact order meant?

12 A. Yes.

13 Q. If you could explain it to the  
14 members of the jury, please?

15 A. Sure. When I first met with her I  
16 explained thoroughly the no contact requirement  
17 of her supervision, that would be to have to  
18 contact with the victims, that did include not  
19 going to the victims' residence, but that also  
20 meant no kind of contact through third-party  
21 members, she couldn't send text messages,  
22 e-mails, phone calls, nothing.

23 MR. WEEDE: Your Honor, if I may  
24 approach, Government's Exhibit 14?



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THE COURT: You may.

BY MR. WEEDE:

Q. Can you take a look through Government Exhibit 14, for me, Ms. Edwards.

A. Yes.

Q. What is that?

A. This is a sentencing order.

Q. For whom?

A. For Ms. Matusiewicz through Superior Court.

Q. And you say Ms. Matusiewicz, that would be Lenore Matusiewicz?

A. Yes.

Q. What's the date of that order?

A. September 10th, 2009.

Q. And what was Ms. Matusiewicz's convicted of?

A. She was convicted of three counts of endangering the welfare of a child.

Q. And she has a jail term that's imposed?

A. Correct.

Q. What's the length of the jail term?

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A. It's different on each one of the counts. Did you want me to --

Q. The total amount?

A. The total amount, it was eighteen months of level five, which is incarceration.

Q. Was there probation to follow?

A. Yes.

Q. How much time, how much probation followed?

A. Eighteen months.

Q. All right. Now, if you could turn your attention to page three of that, please.

Is there also a no contact order in the sentencing provision?

A. Yes.

Q. Could you read that into the record, please?

A. Yes. It is defendant is to have no contact with Karen, Laura or Leigh Matusiewicz or Christine Belford, their home, schools or daycare.

Q. Okay. And so there comes a time where Ms. Matusiewicz is eventually released from jail; correct?

1 A. Correct.

2 Q. And do you remember what that date  
3 is?

4 A. When she was released from jail it  
5 was September 16th, 2010.

6 Q. Okay. So after she is released  
7 from jail, she is on probation?

8 A. Correct.

9 Q. And where does she -- let me step  
10 back.

11 Prior to her release from prison,  
12 would she have had the conditions of her  
13 probation reviewed with her?

14 A. Yes, while she was still  
15 incarcerated.

16 Q. And that would include the no  
17 contact provision that you just referenced?

18 A. Correct.

19 Q. Did she actually serve out her  
20 probationary sentence in Delaware?

21 A. No, it was transferred to the  
22 State of Texas at her request.

23 Q. So at that point, the tell wear  
24 probation's role is, are they directly

1 supervising her at that point or is Texas?

2 A. No, Texas is.

3 Q. Is there a point where she is  
4 released from probation?

5 A. Yes.

6 Q. When is that?

7 A. Her probation ended September 6th  
8 of 2011.

9 Q. Okay. Now, after she's actually  
10 off probation, do you remember getting a call  
11 from her in October of 2011?

12 A. Yes.

13 Q. And well first of all, she left  
14 you a message; right?

15 A. Correct.

16 Q. You called her back?

17 A. Yes.

18 Q. What was that conversation about

19 A. She had some questions about her

20 probation, mainly in regards to any contact with  
21 children, that was the most specific question,  
22 and any special conditions that were involved  
23 with her supervision.

24 Q. And that specific date of the call

*mom was afraid she wouldn't even be allowed around Tabiana so she called the p.o. so she wouldn't violate*

1 was October 19th, 2011?

2 A. Yes.

3 Q. And what did you tell her about  
4 having contact with the children as vis-à-vis  
5 her probation sentence?

6 A. I informed her that she was no  
7 longer on probation, so there were no probation  
8 restriction, however, that I did not know if  
9 there were any restrictions outside of probation  
10 and that she should contact her attorney and the  
11 court system if she had questions about it.

12 MR. WEEDE: A moment, Your Honor.

13 THE COURT: Certainly.

14 MR. WEEDE: That's all I have at  
15 this time, Your Honor.

16 THE COURT: Is there any  
17 cross-examination?

18 MR. EDELIN: Your Honor, just very  
19 briefly.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. EDELIN:

23 Q. Ma'am, good morning.

24 A. Good morning.

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Q. How are you?

A. Good. How are you?

Q. Well, thank you.

MR. EDELIN: Your Honor, may I approach and retrieve the document?

THE COURT: Of course.

BY MR. EDELIN:

Q. Ma'am, and I may have missed it if you already said it, so I apologize, but this was a guilty plea; correct?

A. Correct.

Q. Which means Ms. Matusiewicz came in to court, admitted her wrongdoing and accepted the punishment of the court?

A. Correct.

Q. And I believe the plea was to three misdemeanors; is that correct?

A. I don't have a copy of the plea agreement. I was not in the court at the time of her sentencing.

Q. Would it be listed on here?

MR. EDELIN: Your Honor, may I approach?

THE COURT: You may.

1 THE WITNESS: That's just the  
2 sentencing order so that would have been what  
3 happened at sentencing. The plea agreement  
4 would not be on here.

5 Q. Well, would the, I guess the  
6 crimes that she pled guilty to that she admitted  
7 to, would those be listed on that report?

8 A. Yes.

9 Q. Am I correct that they were  
10 misdemeanors?

11 A. Yes.

12 Q. And my understanding of your  
13 testimony is that at some point after she had  
14 completed her jail sentence and after she had  
15 \* completed her probation, she then contacted you  
16 and asked her about her ability to contact the  
17 children?

18 A. Correct.

19 MR. EDELIN: Thank you, Your  
20 Honor.

21 MR. WEEDE: No redirect, Your  
22 Honor.

23 THE COURT: Thank you. The  
24 witness is excused, unless there is any other

1 cross-examination.

2 Thank you, ma'am.

3 Members of the jury, as we're  
4 waiting for the next witness, let me go back to  
5 something I visited with you earlier and that is  
6 to say you know that Ms. Matusiewicz pled guilty  
7 to these misdemeanors. You may not consider  
8 that evidence in any way to suggest her guilt  
9 here, it is only relevant to background in terms  
10 of the crime with which she is now charge, so we  
11 allow for a very limited purpose and with that  
12 specific caution.

13 MR. WEEDE: Your Honor, may I  
14 retrieve the document, please?

15 THE COURT: Of course.

16 MR. WEEDE: Thank you.

17 MR. McCALL: Your Honor, we call  
18 Andrea Coll.

19 THE COURT: I see her awaiting to  
20 enter.

21 MR. McCALL: Judge, I'm going to  
22 be using exhibits 357 and 360 with this witness.

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



1 for the.

2 THE WITNESS: A-N-D-R-E-A,  
3 C-O-L-L.

4

5 ANDREA COLL,

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

9 DIRECT EXAMINATION

10 BY MR. McCALL:

11 Q. Good morning, ma'am?

12 A. Good morning.

13 Q. Could you please introduce  
14 yourself to the jury?

15 A. My name is Andrea Coll and I'm  
16 mediator with the State of Delaware Family  
17 Court.

18 Q. I'm sorry, I couldn't hear. Your  
19 role again?

20 A. Mediator, Family Court.

21 Q. Can you tell the jurors how long  
22 you have held that position for?

23 A. About eighteen years.

24 Q. What is the training very briefly

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1 that you have received to be a mediator in  
2 Family Court?

3 A. A bachelors degree in some sort of  
4 social science, physical science, criminal  
5 justice, sociology and then on-the-job training.

6 Q. Can you tell the jurors what your  
7 duties and responsibilities include as a  
8 mediator at Family Court?

9 A. Sure. I work with civil cases,  
10 helping people resolve issues in regards to  
11 child support, custody, visitation.

12 Q. I want to talk about the process  
13 in Family Court when two parties have an issue  
14 or a dispute over child support. Okay?

15 A. Sure.

16 Q. Can you describe for us the  
17 process for filing a petition if a party wants  
18 to modify their child support payments?

19 A. Sure. They'll either come into  
20 the Family Court Division and file a petition or  
21 they can pull the information off of our  
22 website. Once a petition is filed with the  
23 court, it then goes to our case processing  
24 department in which it's scheduled and then it

1 comes to mediation.

2 Q. Let me make sure I understand. If  
3 a party is out of state, they don't live in  
4 Delaware; right?

5 A. Yes.

6 Q. They go to the Family Court  
7 website?

8 A. They can, yes.

9 Q. What do they do?

10 A. They can pull the information off  
11 of the website, print it out, fill it out, mail  
12 it in.

13 Q. And then once it's received by  
14 Family Court, what happens in that situation  
15 where you have an out-of-state party?

16 A. Once it's received then it's  
17 scheduled, then it's referred to a mediator. If  
18 that party is out of state, they can request for  
19 a teleconference to participate the mediation by  
20 telephone.

21 Q. Now, in the context of these child  
22 support or requests to modify child support, do  
23 they always first come to a mediator like  
24 yourself or do they go right to a Family Court

1 judge?

2 A. It depends on the situation. If  
3 there has been a history of domestic, any kind  
4 of criminal no contact hearing or PFA it could  
5 bypass the mediation arena.

6 Q. But not always?

7 A. Not always.

8 Q. Now, once a mediator like yourself  
9 gets assigned a case, just walk us through,  
10 what's the process that you go through to get  
11 ready for the mediation?

12 A. I usually has five or eight cases  
13 and once I get the case calendar for that day, I  
14 will review the file, see what the issues are,  
15 check notices to make sure everything is on  
16 point for mediation going forward.

17 Q. You review your file and then the  
18 mediation occurs; is that right?

19 A. Yes.

20 Q. Where can the mediation or how can  
21 the mediation occur?

22 A. It occurs in our office.

23 Q. Can it also occur over the  
24 telephone?

1 A. Yes.

2 Q. On a teleconference?

3 A. Yes.

4 Q. What are the reasons the party  
5 might have to give to you or the court to have a  
6 mediation done over the telephone?

7 A. Typically, while I'm pretty easy  
8 but distance, a person who lives out of state,  
9 typically more than 100 miles away is granted a  
10 phone conference. If they ask for it, work  
11 commitments, babysitter issues and sometimes  
12 people do not feel comfortable being in the same  
13 room with the party.

14 Q. How about a party's financial  
15 ability to make it up for Delaware?

16 A. It's usually typically because of  
17 distance and they will say for financial  
18 hardship they cannot fly in or take the train in  
19 because of the long distance.

20 Q. When you start the mediation, how  
21 do you typically handle your mediations whether  
22 in person or over the phone? What is the  
23 process?

24 A. I introduce myself, tell them who

1 I am and then listen why they are in the  
2 mediation conference because it can take several  
3 weeks in between the petition being scheduled,  
4 so some people may forget exactly why they are  
5 being called into court.

6 Q. So you orient them into what the  
7 issues are; is that right?

8 A. Yes.

9 Q. What do you do with each party?

10 A. Then I just go through each  
11 party's side to figure out what their issues are  
12 and try to resolve the issues and try to get the  
13 parties to reach a compromise.

14 Q. If you're able to reach a  
15 resolution?

16 A. Yes.

17 Q. What happens?

18 A. If all parties are in agreement, I  
19 can draft up an order or their agreement, have a  
20 commissioner sign it and the parties can be on  
21 their way.

22 Q. What happens on the other side if  
23 you can't reach a resolution at the mediation  
24 hearing?

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1 A. Then typically I will draw up a  
2 report as to what is outstanding issues and  
3 schedule for a commissioner hearing.

4 Q. Just so we all understand, what is  
5 a commissioner in family court? What is the  
6 role of a commissioner?

7 A. A commissioner is similar to a  
8 judge. They are appointed by the Governor, but  
9 they typically just deal with child support  
10 issues, some criminal and abuse cases.

11 Q. If you're not able to reach a  
12 resolution and you have to schedule a hearing,  
13 is your appearance at that hearing mandatory?

14 A. Yes.

15 Q. Now, are there ways for a party to  
16 file something with the commissioner or the  
17 court so that they don't have to attend?

18 A. Yes. They have to file a formal  
19 motion with the court by telephone.

20 Q. What are some of the reasons that  
21 a party can give? Is financial hardship one?

22 A. Financial hardship, again  
23 traveling the distance due to the distance,  
24 workingrelated issues, although typically that's

1 not really a valid excuse.

2 Q. You better have a work issue?

3 A. Yes.

4 Q. What I would like to do is direct  
5 your attention now to a petition for  
6 modification of child support payments related  
7 to this case?

8 A. All right.

9 Q. Did you have an opportunity to  
10 participate in a mediation hearing involving a  
11 petition filed by David Matusiewicz?

12 A. Yes.

13 Q. Can you tell the jurors what was  
14 the petition that was filed by David  
15 Matusiewicz?

16 A. It was a petition for a child  
17 support modification decrease.

18 Q. Who was the party that he was  
19 filing the petition against?

20 A. Christine Belford.

21 MR. McCALL: Judge, I would like  
22 to offer and admit Government Exhibit 347.

23 THE COURT: Hearing no objection,  
24 you may.



1 BY MR. McCALL:

2 Q. And we're going to start at the top  
3 of the document. So we're looking at Government  
4 Exhibit 347; correct?

5 A. Yes.

6 Q. Can you tell the jurors what this  
7 is?

8 A. It is a petition for support  
9 modification decrease.

10 Q. That's what's checked?

11 A. Yes.

12 Q. And who is the petitioner in this  
13 case?

14 A. David Matusiewicz.

15 Q. Who is the respondent?

16 A. Christine Belford.

17 Q. And it lists their respective  
18 addresses; is that right?

19 A. Yes.

20 Q. Okay. And as you working your way  
21 down the document, ma'am, the middle portion  
22 where it says in the interest of and it lists  
23 three names; is that correct?

24 A. Yes.

1 Q. What is that? Can you explain to  
2 the jurors what does that box indicate and mean  
3 in the context of the mediation hearing?

4 A. If there's a support order with  
5 minor children, then the minor children's names  
6 and birthdates would be listed in that area.

7 Q. And that's the names that we see  
8 there?

A. Yes.

Q. As we continue to move down, it says the petition seeks a modification of the child support order dated and then it's blank and it alleges the following, I see one of the two boxes has a slash through; is that correct?

A. Yes.

Q. Again, help us understand what are we seeing here. What does this mean in the context of this petition?

18 A. The box that's checked means that  
19 there was not any activity in more than  
20 two-and-a-half years and either party can file  
21 for a review of the child support order without  
22 having to give a specific reason.  
23

24 Q. Nevertheless, it says there is

*Christine filed for the child support in 2009 upon the return of the children from Nicaragua per testimony of her lawyer Timothy Hitchings*

1 handwriting in the section that indicates  
2 required for No. 2, correct?

3 A. Yes.

4 Q. And what does that indicate?

5 A. It indicates that Mr. Matusiewicz  
6 is giving a reason for his modification. He was  
7 incarcerated from March of '09 to September of  
8 2012 and he has medical records determining that  
9 he is disabled.

10 Q. That's what he's saying, correct?

11 A. Yes.

12 Q. And then he lists a date on the  
13 bottom of this document as what?

14 A. October 14, 2012.

15 Q. Again as we continue to work our  
16 way down Page 2 of the document in the boxes, it  
17 says dependents and it's blanked out. What are  
18 those boxes based on your experience as a  
19 mediator. What does that indicate?

20 A. Any time a person is filing for a  
21 petition, there is a fee associated with the  
22 petition and if a person can't afford the fee,  
23 then they can file a motion to be found indigent  
24 and have the fee waived.

1 Q. And it indicates in Box 11 it  
2 lists it asks for the petition to list the  
3 names, ages of any dependents, correct?

4 A. Yes.

5 Q. And we see three names there,  
6 right?

7 A. Yes.

8 Q. This document was notarized on  
9 what date?

10 A. November 5, 2012.

11 Q. And it lists the notary as being  
12 from the state of Texas; is that correct?

13 A. Yes.

14 Q. Now, Ms. Coll once this petition  
15 was received by Family Court what happened?

16 A. Once it's received by the court,  
17 it then goes again to case processing. The  
18 motion itself actually gets is sent to the  
19 commissioner to find out whether or not the  
20 client can afford to pay a filing fee or not pay  
21 the filing fee and if the person is found not to  
22 be able to pay the filing fee, and the case will  
23 be sent for the normal course of business and  
24 scheduled.

1 Q. Was that, in fact, what happened  
2 in this case?

3 A. It seems to be, yes.

4 Q. You received this. This case was  
5 ultimately assigned to you?

6 A. Yes.

7 Q. What day was it placed on your  
8 calendar for mediation roughly?

9 A. The day of my mediation was  
10 December 10th.

11 Q. All right. Now, prior to actually  
12 handling the mediation, did you review the case  
13 file related to this mediation?

14 A. About a couple of days beforehand.

15 Q. What did your review of the file  
16 indicate?

17 A. I was just looking for the last  
18 support and then checking the petition and then  
19 again checking notices.

20 Q. Did you look into the total amount  
21 of arrears that was owed by David Matusiewicz to  
22 Christina Belford?

23 A. Yes, I actually went through the  
24 Delaware Child Support Enforcement website and

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was able to pull off the account statement.

Q. What does that indicate?

A. That Mr. Matusiewicz was in the arrears about \$60,000. \*

Q. What were the monthly payments that he was required to pay at the time?

A. At that time it was \$3,000 and some odd cents in current support and \$261 in arrears a month. \*

Q. That's an important point. I want to make sure the jurors understand. Help them understand what you mean when you say he owed \$3,000 a month in support and but \$261 in arrears?

A. For child support, you have a current support amount set in which a calculation is run based on a party's income. At that point there is an amount set for an amount to be paid forward. In an event that a party does not pay the support, the unpaid amount accrues, the arrears and for the amount accruing the person can come back and say I want payments established toward that. So you have a current support amount and back amount for that

1 arrears.

2 Q. What was the monthly payment that  
3 he owed?

4 A. \$261.

5 Q. Now, why was that significant as  
6 you were heading into this mediation?

7 A. Because it was relayed to by me by  
8 Ms. Belford and looking through the trial  
9 documents Mr. Matusiewicz's parental rights were  
10 terminated so he no longer owed the current  
11 support but he owed the back support.

12 Q. So he didn't owe the \$3,000 a  
13 month. He owed the arrears?

14 ~~X~~ A. Yes.

15 Q. And that was the \$261 a month?

16 A. Yes.

17 Q. With the balance in the  
18 neighborhood of \$60,000; is that right?

19 A. Yes.

20 Q. Okay. Now, as you began to  
21 prepare for the mediation, was this going to be  
22 a mediation where the parties were physically in  
23 front of you or over the telephone?

24 A. When I got the file, I knew that

1 the parties would be on the telephone.

2 Q. I want to show you Government  
3 Exhibit 358.

4 MR. McCALL: Judge, I would ask to  
5 admit and publish.

6 THE COURT: There are no  
7 objections. You may.

8 BY MR. McCALL:

9 Q. And you've seen this document  
10 prior to your testimony today; correct?

11 A. Yes.

12 Q. And the date of this letter is  
13 what?

14 A. December 2, 2012.

15 Q. And who is the signature on the  
16 letter?

17 A. Mr. Matusiewicz.

18 Q. And can you read this is to  
19 Family Court; correct?

20 A. Yes.

21 Q. It says, Dear sir or madam. Can  
22 you please read what's listed there?

23 A. Enclosed please find the financial  
24 report in the above captioned matter. In that I



1 am presently serving federal probation and  
2 cannot leave Texas without authorization from my  
3 probation officer and that the Family Court has  
4 recognized my status as a pauper and I cannot  
5 afford to travel to Delaware and I hereby  
6 request to be allowed to participate in this  
7 coming hearing on December 10, 2012 at 8:30 a.m.  
8 Eastern time by teleconference. Please send  
9 instructions as to the number to the call so  
10 that I may participate in the scheduled hearing  
11 by phone. Since time is of essence in this  
12 matter now, you may call or email with details.

13 Q. In this letter, it talks about a  
14 financial report. What is a financial report in  
15 the context of what you're doing with petitions  
16 for modification of child support and  
17 mediations?

18 A. Typically, a financial report is  
19 mailed out to parties with a notice for the  
20 hearing and that's just a form to fill out for  
21 your name, address, telephone number, basic  
22 contact information, employer information and  
23 wages.

24 Q. Now, prior to the actual mediation

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1 hearing, you actually spoke with David  
2 Matusiewicz on the telephone?

3 A. Yes.

4 Q. And the information that he  
5 relayed was consistent with this letter; is that  
6 right?

7 A. Yes.

8 Q. Can you tell the jurors when you  
9 spoke to Mr. Matusiewicz prior to the mediation  
10 hearing first what was the purpose of that call  
11 and then what happened?

12 A. The purpose of Mr. Matusiewicz  
13 calling was to inform me that he was in Texas  
14 and he couldn't afford to fly out to the  
15 mediation and requested to participate by  
16 telephone. I then asked if he had any financial  
17 information that he could fax to me and he said  
18 he did not have a fax machine, but he had mailed  
19 the information to the court, but I had not  
20 received it at that time.

21 Q. Ultimately, did you grant him the  
22 ability to participate the mediation hearing via  
23 the telephone?

24 A. Yes.

1 Q. Did you also talk to Christine  
2 Belford ahead of the mediation hearing?

3 A. I did.

4 Q. Did she indicate without getting  
5 into the details of the conversation whether she  
6 wanted to participate in person or over the  
7 telephone?

8 A. She preferred to participate by  
9 telephone because she was not sure that  
10 Mr. Matusiewicz was going to be physically  
11 present for the conference here in Delaware. At  
12 that point, I had not talked to Mr. Matusiewicz  
13 as of yet so I wasn't sure what his travel  
14 status was.

15 Q. And did you grant Christine  
16 Belford the ability to participate in the  
17 mediation hearing over the telephone?

18 A. Yes.

19 Q. Did she say why she didn't want to  
20 attend the mediation hearing in person?

21 A. She did. She did not feel  
22 comfortable being in the same room giving the  
23 history with the custody issues and all of the  
24 other issues. She didn't feel comfortable

sitting in the same room with him. And I said I don't know if he's coming in or not, but how about you participate by phone regardless of what he ends up doing.

Q. Now, the mediation takes place on December 10, 2012?

A. Yes.

Q. You get the parties on the telephone; is that right?

A. Yes.

Q. What happens?

A. Then I talked to the parties. I

let Mr. Matusiewicz know that due to the fact that his current rights had been terminated back in 2011, I believe the only issue that we have before us today or that day was dealing with the arrears and the balance of \$3,000 that he thought he still owed, he no longer owed, so we talked about the arrears balance.

Q. And that's the \$261 a month; is that correct?

A. Yes.

Q. So that's the only issue on the table now, correct?

The govt made it look like David "concocted" a court hearing to "lure" Christine to court. David & Christine both participated in the mediation by phone.

The govt said that David could have participated in the status hearing by phone as well, even though David received a notice to appear for court & failure to appear would result in consequences. As to where on that notice to appear does it state

that he could have participated by phone.

Well the same goes for Christine, she was even purportedly so scared to attend court that she called her therapist, Dawn Edgar, who told her not to go. Christine told Dawn that she was going to call the court to not attend, but she still went.

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1 A. Yes.

2 Q. You've explained that to the  
3 parties?

4 A. Yes.

5 Q. What do you say or what do you ask  
6 David Matusiewicz with respect to his position  
7 about paying \$261 a month for the arrears?

8 A. I asked him if the \$261 was  
9 satisfactory considering he no longer had to pay  
10 \$3,000 and he said, no, he couldn't afford to  
11 pay that and I said, well, what do you feel  
12 comfortable paying. He wouldn't give me an  
13 answer other than zero.

14 Q. So you asked for a figure other  
15 than \$261 and his response was how much?

16 A. He couldn't give me an answer  
17 other than zero.

18 Q. \$0?

19 A. Yes.

20 Q. Did you then ask Christine Belford  
21 what her position was?

22 A. I did.

23 Q. What was she

24 A. She wanted the \$261.

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Q. Since David Matusiewicz had indicated that anything other than \$0 was not satisfactory to him, what was the result of your mediation?

A. The mediation was then to be scheduled for a commissioner hearing to allow the parties to present evidence to support their case. In this case Mr. Matusiewicz was claiming disability and he applied for Social Security so he would have to bring that document into court.

Q. Now, you may have just mentioned a moment ago, if you did forgive me, prior to ending the mediation did you talk specifically to David Matusiewicz about his ability to attend the next hearing that you're going to have to schedule with the commissioner because you couldn't reach a resolution at the mediation?

A. I did. I told Mr. Matusiewicz due to the fact that he's claiming financial hardship and that he was in Texas, that he could file a motion with the court to ask the court's permission to participate by telephone. After that, he wouldn't have to physically be in Delaware.

1

Q. Did he indicate he understood

2

that?

A. I believe so, yes.

Q. Do you believe that he understood

that?

A. He said he did.

Q. Now, after the hearing ended, did you draft any court documents related to this matter?

A. I did. We have a mediation action

report that we do in cases when a resolution is

not met in the mediation. It just gives a

highlight of the outstanding issues and what

happened in mediation so at the next hearing to

have an indication as to what's going on.

Q. I want to show you Government Exhibit 360.

MR. McCALL: I will ask that it be moved into evidence and published.

THE COURT: Hearing no objection, you may.

BY MR. McCALL:

Q. What are we looking at here?

A. This is a child support notice to

David received the same notice in the mail that Christine received to appear for the court hearing with consequences for failure to appear if they didn't that was admitted into evidence.

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1 appear for a commissioner's hearing.,

2 Q. And it's to Christine Belford,  
3 correct?

4 A. Yes.

5 Q. And the date of the hearing is  
6 February 11, 2013?

7 A. Yes.

8 Q. And in the top portion it says to  
9 the above name party you are hereby directed  
10 today appear, correct?

11 A. Yes.

12 Q. And a similar document was sent to  
13 David Matusiewicz?

14 A. Yes.

15 Q. I want to show you Government  
16 Exhibit 359.

17 MR. McCALL: And I would ask that  
18 it be admitted and published.

19 THE COURT: No objection, you may.

20 BY MR. McCALL:

21 Q. Just by turning back to the  
22 mediation process again that occurred in this  
23 case, you fill out a record, correct, Ms. Cole  
24 after you're done the mediation?

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