

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CR No. 22-15
)	Washington, D.C.
vs.)	October 12, 2022
)	9:00 a.m.
ELMER STEWART RHODES III, ET AL.,)	
)	Day 9
Defendants.)	Morning Session
)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 COURTROOM DEPUTY: All rise. The Honorable
3 Amit P. Mehta presiding.

4 THE COURT: Please be seated, everyone.

5 COURTROOM DEPUTY: Good morning, Your Honor --
6 please be seated, everyone.

7 Good morning, Your Honor. This is Criminal Case
8 No. 22-15, the United States of America versus Defendant No.
9 1, Elmer Stewart Rhodes III; Defendant 2, Kelly Meggs;
10 Defendant 3, Kenneth Harrelson; Defendant 4, Jessica
11 Watkins; and Defendant 10, Thomas Edward Caldwell.

12 Kate Rakoczy, Jeffrey Nestler, Alexandra Hughes,
13 and Louis Manzo for the government.

14 Phillip Linder, James Lee Bright, and Edward
15 Tarpley for Defendant Rhodes.

16 Stanley Woodward and Juli Haller for
17 Defendant Meggs.

18 Bradford Geyer for Defendant Harrelson.

19 Jonathan Crisp for Defendant Watkins.

20 And David Fischer for Defendant Caldwell.

21 All named defendants are present in the courtroom
22 for these proceedings.

23 THE COURT: Okay, everyone. Good morning.
24 Hopefully everybody is well.

25 I understand there are some preliminary matters

1 concerning some physical evidence that may be introduced at
2 some point today?

3 MR. WOODWARD: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. WOODWARD: The government has advised that it
6 intends to introduce certain Facebook messages. Your Honor
7 is familiar with these. And we have an objection to their
8 introduction under the rule of completeness. I'll pull them
9 up so Your Honor can see. These are additional messages
10 where the context is unavailable to Mr. Meggs and so
11 Facebook does not provide the government with the messages
12 to which Mr. Meggs is posting a response.

13 JC, if I can impose upon you, maybe this is now up
14 on the screen here.

15 So we have a Facebook business record. This is
16 Government's Exhibit 6868.2. We see that, as part of the
17 exhibit, Mr. Meggs is doing some searches. Mr. Meggs also
18 apparently posts this image. We would separately object to
19 the image as being irrelevant and unfairly prejudicial.

20 And then later on here, there are comments that
21 Mr. Meggs is posting, but the government has not provided --

22 THE COURT: Can you go back to the image?

23 MR. WOODWARD: Yes, Your Honor. "Apparently Home
24 Depot sells everything we need to build a guillotine." And
25 so I think that the prejudice of this picture speaks for

1 itself. I won't belabor the point.

2 THE COURT: What's the date of the posting?

3 MR. WOODWARD: The date of posting of the image,
4 Your Honor, is December 23rd of 2020. I'm sure the
5 government will point out that after posting this image,
6 Mr. Meggs writes, "We need to get these politicians and let
7 them know who runs this country."

8 Again, our concern is that we don't have all of
9 the content here. We don't know what Mr. Meggs is
10 responding to, we don't know what others may have written or
11 said.

12 While I'm not able to identify for the Court a
13 case that addresses electronic evidence of this nature,
14 there is precedent for the exclusion of evidence, where the
15 rule of completeness cannot be satisfied. And so in the --
16 where the government had presented a recording, for example,
17 that is partially destroyed or inaudible, it is well within
18 the Court's discretion to suppress such evidence or preclude
19 the admission of such evidence because it is misleading.

20 To provide Your Honor with a case cite, we would
21 note that -- we'd note, two, *United States versus Abroms*,
22 A-b-r-o-m-s, 947 F.2d 1241, that's out of the Fifth Circuit,
23 and *United States versus Devous*, or *Devos*, D-e-v-o-u-s, 764
24 F.2d 1349. And that's out of the Tenth Circuit.

25 The point is, Your Honor, the government, of

1 course, can elicit testimony to the effect that there is
2 missing content here, but we don't know what that content
3 is. And because of the way the records are provided to us,
4 presenting these posts out of context would be unfair to
5 Mr. Meggs, and so we'd ask that the Court not permit their
6 admission through its agent today.

7 There are some physical evidentiary objections we
8 have, but if the Court wants to take those now or deal with
9 Facebook first.

10 THE COURT: Yeah, let's just take these one at a
11 time.

12 MR. WOODWARD: Yeah.

13 THE COURT: Well, so I guess -- can the government
14 shed some light on what it understands to be the way in
15 which these appear on Facebook.

16 MR. NESTLER: Yes, Your Honor.

17 First of all, the fact that Mr. Meggs is
18 commenting on someone else's post is irrelevant. If
19 Mr. Woodward would prefer, we can elide that and redact that
20 portion.

21 What's relevant is that Mr. Meggs, and these are
22 actually in reverse chronological order, the way they come
23 from Facebook. So Mr. Meggs on December 23rd writes, "We
24 need get these politicians and let them know who runs this
25 country." And then within seconds he posts a photo. As

1 we'll hear from a Facebook representative and an FBI agent,
2 you can't post a photo and write the text at the same time.
3 So that's why the text and the photo were in separate posts
4 basically.

5 But our position is that they run together and
6 that they are two and the same. And you see it said 16:58.
7 53 is the post, is the text, and then he posts this picture
8 of a guillotine.

9 And you can see the time 16:59:15, so just a few
10 seconds later.

11 So this is December 23rd and this is Kelly Meggs,
12 an expression of his own intent, which is to obviously harm
13 politicians. Highly probative. We understand that there's
14 prejudice to the defense.

15 THE COURT: I'm sorry, can you just help me orient
16 myself?

17 MR. NESTLER: Sure.

18 THE COURT: So am I -- in other words, from a
19 chronological standpoint as you go up, in other words, I'm
20 looking at page 1. Are those the latest-in-time posts?

21 MR. NESTLER: Yes.

22 THE COURT: All right. So if we look at page 2.

23 MR. NESTLER: So page 2 is just the photo.

24 THE COURT: Right.

25 MR. NESTLER: This photo was attached to this

1 metadata that you see here on page 1.

2 THE COURT: Right. Okay.

3 So that is posted at -- on 12/23 at, what is that,
4 12:59 p.m., we think, or is that five hours off of UTC.

5 MR. NESTLER: 11:59 p.m. -- it's 11:59 a.m.

6 THE COURT: 11:59, I'm sorry, right, 11:59 a.m.
7 Okay.

8 And when's the prior posting to that? That is.

9 MR. NESTLER: It's at 11:58 and 53 seconds.

10 THE COURT: Mr. Meggs comments, "We need to get
11 these politicians and let them know who runs the country."
12 So if that were in response to someone else's post or
13 comment, is there any way to know that based upon --

14 MR. NESTLER: It is in response to someone else's
15 post, because Mr. Meggs is commenting.

16 THE COURT: Okay.

17 MR. NESTLER: So if you see here, it says, "Type
18 comments."

19 THE COURT: I see. All right.

20 MR. NESTLER: Now, because of the way Facebook
21 complies with search warrants, Facebook does not provide the
22 underlying message. So if it was a direct message thread
23 between Mr. Meggs and somebody else, Facebook would have
24 provided both parties' comments or both parties' posts,
25 communications, messages. But because Mr. Meggs is just

1 commenting on what someone else put out there online on
2 their own page or something else, this, I suppose in
3 Facebook's eyes, stands alone. So Mr. Meggs writes this
4 comment.

5 THE COURT: And can I ask, is there a way to
6 discern whether -- you'll have to forgive me, because I will
7 be showing my ignorance because I've never had a Facebook
8 account; but I understand you can sort of respond to what
9 somebody else who you follow posts and you could
10 alternatively sort of directly respond to someone similar to
11 like a direct message.

12 MR. NESTLER: Correct.

13 THE COURT: Now, is there a way to discern which
14 of those two this posting reflects?

15 MR. NESTLER: There are likely is. I'm not aware
16 of that right now. We do have a representative from
17 Facebook intending to testify here and we could elicit those
18 facts as necessary.

19 My assumption from looking at this is that this is
20 more of a public comment than it is a direct comment,
21 because if it was in a direct message, it would be in the
22 direct message, I guess, portion of the search warrant
23 return. And Mr. Meggs has many direct messages from other
24 people. This is in a different section that Facebook
25 provided for Mr. Meggs' comments. Typically those would be

1 on other people's sort of home pages, someone who posted.

2 THE COURT: That's why I'm asking, because if this
3 is a response directly in a direct message, then that seems
4 to me to be of a different quality, particularly if the
5 original message to which he's responding is something
6 that's directed to Mr. Meggs or a group within which he
7 is -- a smaller group in which he is a participant?

8 MR. NESTLER: It was not made as part of a direct
9 message.

10 THE COURT: Okay.

11 MR. NESTLER: So we have the entire Facebook
12 search warrant return. This text and this photograph were
13 not located in a direct message conversation, and we have, I
14 don't know, many direct message conversations. So this was,
15 by process of elimination, not a direct message
16 correspondence.

17 THE COURT: Okay.

18 So this is something that he follows somebody or
19 has seen something and this is his response to whatever
20 somebody else has posted.

21 MR. NESTLER: Correct.

22 THE COURT: Okay.

23 MR. NESTLER: And, again, we are comfortable
24 getting rid of the idea that he was commenting on something.
25 What's relevant is his own words and the photograph that he

1 posted.

2 THE COURT: Okay.

3 MR. WOODWARD: We don't disagree with the
4 government's characterization of the message. It is not a
5 direct communication with somebody else, we appreciate the
6 Court's drawing that distinction. It is, however, in
7 response to something. And so for purposes of the record,
8 when one comments in response to someone else's post, they
9 are directly communicating with that person. It is also
10 true that they are communicating in a way that is visible to
11 the world.

12 THE COURT: Right.

13 But I mean, that's really the key distinction is
14 that when somebody posts something in a way that this has,
15 it's not a direct communication -- well, let's put it this
16 way. It's not exclusively or solely a direct communication
17 with the person to whom they're responding. This is a
18 public post visible to anyone, assuming that the original --
19 assuming that both Facebook accounts are public accounts.
20 And is there any reason to think that --

21 MR. WOODWARD: I don't know.

22 THE COURT: -- these were not public accounts?

23 MR. WOODWARD: It may not have been a public
24 account. I can't represent to the Court that it was not
25 available to the public.

1 We would submit that that is not the determining
2 factor, FRA 106 --

3 THE COURT: No. I understand it's not the
4 determining factor, but it's a factor. And if Mr. Meggs is
5 posting something publicly, it seems to me to, frankly,
6 diminish the need to establish "context" when this is
7 clearly probative of his state of mind. I mean, your view
8 may be this is sort of satirical and --

9 MR. WOODWARD: Rhetoric.

10 THE COURT: And it's just that, but that's one
11 view, and ultimately it's the jury's decision how to view
12 this. I mean, it's not clear to me how -- what the context
13 would be, particularly since your view is this is rhetoric
14 or satirical, it's not something that is actually something
15 that requires an original posting to understand the
16 response.

17 MR. WOODWARD: We don't know what we don't know,
18 Your Honor.

19 THE COURT: Sure.

20 MR. WOODWARD: This is the United States of
21 America. The idea that they cannot call Facebook and find
22 out what message this was posted in response to, that's just
23 not tenable to us. We appreciate that Facebook provides its
24 subpoena responses in the way that it does, but it's
25 Facebook. They have access to all of this content. If we

1 ask them, we're sure that they can get the message. The
2 government didn't do that and it should be held to the
3 standard that FRA 106 requires. If they can't complete the
4 communication, then it ought not to be admissible as
5 potentially --

6 THE COURT: But, again, I think, you are --
7 I'm going to look at your cases, but it's not clear to me
8 it's a, "communication," which is why I think the
9 distinction that's being made here is an important one.

10 If somebody says something on Facebook and
11 Mr. Meggs just decides to respond, that is a very different
12 action, it seems to me, than someone who is directly
13 responding to a communication from someone else that is
14 directed to Mr. Meggs.

15 So if I'm on Facebook and somebody has posted
16 something that's funny, witty, what have you, or something
17 that is provocative and I simply just respond to that,
18 I mean, for example, we don't even know if Mr. Meggs had a
19 relationship with whoever the original -- to whomever he was
20 commenting.

21 MR. WOODWARD: Isn't that the point? That we
22 don't know, right? And we don't know --

23 THE COURT: Well, it's part of the point.

24 But my point to you is that if this is simply a
25 posting by him on a public -- in a public manner that's not

1 a direct response to somebody who's making an inquiry of
2 him, it seems to me that the need for completeness is
3 diminished rather greatly than if the circumstances were
4 different.

5 MR. WOODWARD: We appreciate the Court's
6 distinction, and, of course, respectfully disagree.

7 But we just don't know what we don't know. And
8 the digital age invites this kind of scrutiny and we don't
9 think that the government has a legitimate excuse for not
10 providing Mr. Meggs with all of the content that Facebook
11 has. Facebook has this information, the government could
12 have accessed it and did not.

13 THE COURT: Well, let me ask Mr. Nestler. I mean,
14 how difficult would it be to subpoena Facebook to get this
15 information?

16 MR. NESTLER: Well, it's content. So a subpoena
17 would not suffice. We would need a search warrant to obtain
18 the information.

19 And I don't know the --

20 THE COURT: You would need a search warrant to
21 obtain --

22 MR. NESTLER: Content.

23 THE COURT: -- content of someone else's --

24 MR. NESTLER: Of anyone's.

25 THE COURT: -- Facebook page. I guess that's

1 right.

2 MR. NESTLER: We would need a search warrant to
3 obtain anyone's content. And Facebook -- well, 2703 has its
4 own body of case law, and Facebook has many of lawyers, and
5 Facebook, in response to standard search warrants served by
6 the government, does not provide underlying comments
7 because -- I don't want to speak for Facebook but
8 I understand that they interpret 2703 and our standard
9 language and rider to our search warrants to not include
10 content from other individuals that are not directly
11 interacting with the target of the search warrant, which is
12 why we get the full message threads but we don't get the
13 underlying photograph or post that the target has commented
14 on.

15 THE COURT: Okay.

16 All right. When's the government intending to
17 introduce this?

18 MR. NESTLER: Later today, Your Honor. Probably
19 this afternoon.

20 THE COURT: Okay.

21 Mr. Woodward, can you just confirm the citations
22 for me so I have an opportunity to review them?

23 MR. WOODWARD: Yes.

24 From the Fifth Circuit -- just for the record, we
25 would note that it is not a photograph, it is a meme.

1 I don't know how to spell that. He did not create it. He's
2 re-posting it. I don't know that that's what Your Honor
3 is -- I don't know, Your Honor thought otherwise. But
4 there's no evidence that he created this.

5 THE COURT: No, I figured as much. I figured this
6 was something that was out there and he just cut and pasted,
7 or however it works, to just, you know, post it.

8 MR. WOODWARD: The two cases we cited earlier are
9 *United States v. Abrams*, A-b-r-o-m-s, 947 F.2d 1241;
10 *United States v. Devous*, D-e-v-o-u-s, 764 F.2d 1349.

11 You know, we're not persuaded by the government's
12 concern about obtaining a search warrant. We're in trial,
13 there's a judge here. You know, if Facebook wants to come
14 in and explain why the message that Mr. Meggs is responding
15 to is not at all relevant in this trial, it sounds like
16 they're going to be here anyway. The FBI is going to
17 testify throughout the trial, so the idea that it needs to
18 be admitted today, despite the fact that there would be
19 context that might be -- I'm not sure this is something we'd
20 want to get into in front of the jury, but if Facebook is
21 coming, then they can defend the scope of their search
22 warrant response to the Court. This is one where we can't
23 unring the bell. When the jury sees this, they are going to
24 associate it with Mr. Meggs.

25 I think the other reason why context is important

1 here is because we presume the government seeks to admit
2 this as against all of the defendants and not just
3 Mr. Meggs. And so it's especially prejudicial for everyone
4 who had no role in creating, posting, or otherwise
5 disseminating --

6 THE COURT: Well, that latter issue is more easily
7 resolved. It's not clear to me that this is a statement in
8 furtherance of the conspiracy, but I don't know what the
9 government's view is on that.

10 MR. NESTLER: Correct, it's a statement of intent
11 by Mr. Meggs'.

12 THE COURT: Right.

13 But to put a point on it, you're not seeking to
14 admit this against the other defendants?

15 MR. NESTLER: We are. Mr. Meggs' statement of
16 intent during the time of the conspiracy is relevant
17 evidence of the intent of all of the defendants during the
18 time of the conspiracy.

19 And to be clear about it, Your Honor, this post
20 was made on December 23rd. On December 22nd, 23rd, 24th,
21 Mr. Meggs is posting on Facebook to other individuals about
22 plans to go to D.C. and what they plan to do while they're
23 in D.C., including statements evocative of violence, which
24 we're going to be introducing through this Special Agent
25 later this afternoon. This is all part and parcel of the

1 same thing.

2 MR. WOODWARD: If it's not admissible under FRE
3 80 -- co-conspirator exception, forgive me for remembering
4 the number, then it's not admissible as against the
5 conspiracy. The government can't bootstrap a statement as
6 against a conspiracy by claiming that it's an admission of a
7 party-opponent and then admitting that as against all of the
8 conspirators.

9 THE COURT: I don't think that's what I heard
10 Mr. Nestler say. He's not saying this is a statement of a
11 party-opponent. It's, what, 803(3) --

12 MR. NESTLER: Correct.

13 Admissions of party opponents, we will concede
14 after the time of the conspiracy as to their past conduct,
15 would be admissible against those defendants. But other
16 hearsay exceptions, like statements against interest and
17 statements of future intent.

18 THE COURT: Right. I mean, this is an 803(3),
19 then existing mental, emotional or physical condition, a
20 statement of the declarant's then existing state of mind,
21 such as motive, intent, or plan, or emotional, sensory or
22 physical condition or -- meet the exception.

23 All right. Well, look, let's -- we'll deal with
24 this is this afternoon after I've got a chance to look at
25 the cases.

1 MR. NESTLER: Yes, Your Honor.

2 And I believe Mr. Woodward had physical evidence
3 issues to address also.

4 MR. WOODWARD: Your Honor, the government is
5 intending today to introduce --

6 (Pause)

7 THE COURT: Okay. All right.

8 So what else do we need to do before we bring the
9 jury in, or can we wait until later on in the day to...

10 MR. NESTLER: The Court's brief indulgence.

11 (Counsel conferred off the record.)

12 MR. WOODWARD: Your Honor, the government is
13 intending to admit firearms in evidence today. And as the
14 Court is aware, we have held the government to its burden to
15 authenticate such items of evidence. We understand that the
16 only way to authenticate certain firearms that were obtained
17 and are alleged to belong to co-defendants Dolan and
18 Moerschel is through hearsay evidence. And so we object to
19 their introduction absent the government's ability to
20 properly authenticate those items. It doesn't have
21 evidence -- I don't understand that it has evidence other
22 than hearsay.

23 MR. NESTLER: We disagree about the hearsay issue
24 that Mr. Woodward raised.

25 So Mr. Dolan's firearms, as Your Honor may recall,

1 Your Honor ordered Mr. Dolan on the record and in a court
2 filing, which Your Honor could take judicial notice of, to
3 produce all of his firearms to his Pretrial Services
4 Officer.

5 He did and then the FBI collected those firearms
6 from his Pretrial Services Officer and logged them on in an
7 FBI evidence log and they've now been -- that was a Miami
8 division and that's been shipped up to D.C.

9 So an FBI agent from Florida, not the FBI agent
10 who personally collected them, would indicate that, one, the
11 Court ordered Mr. Dolan to turn his firearms in. And then,
12 two, an FBI evidence log indicates that these firearms and
13 related firearms accessories were collected by the FBI
14 agents in Miami. So we don't see the hearsay issue there
15 for Mr. Dolan.

16 For Mr. Moerschel -- I'm sorry, do you want me to
17 pause there, Your Honor?

18 THE COURT: No, I'm just thinking it through.

19 I mean, I gather what Mr. Woodward's concern is
20 that the FBI agent saying -- I mean, I suppose the FBI agent
21 could testify that the Court issued an order and that he
22 then received the firearms from Pretrial Services and that
23 the Pretrial Services Officer to his understanding was
24 Mr. Moerschel's Pretrial Services agent. I suppose he could
25 not testify that the Pretrial Services Officer, in fact,

1 received the firearms from Mr. Dolan, because that would be
2 hearsay.

3 MR. NESTLER: Correct, and we agree that there's a
4 break in the chain there and that would go to weight, not
5 admissibility, and Your Honor was clear we could pull up the
6 transcript in the order about the date he had to turn it in
7 by and who he had to provide them to, and then we could have
8 the FBI log saying that an FBI agent from Miami collected
9 those firearms -- collected firearms from Mr. Dolan's
10 Pretrial Services Officer.

11 And so we offered a stipulation, the defense
12 doesn't want one, that's fine, but we can make the
13 evidentiary showing without -- well, without using hearsay.

14 MR. WOODWARD: We were surprised to learn that the
15 government may not expect Mr. Dolan to testify. That's
16 obviously the way to authenticate the firearms. The
17 government seized the items the way it did, that's its
18 investigative prerogative. We're not -- this is not about
19 chain of custody insofar as the -- we would be arguing about
20 the weight of the evidence. This is about whether those
21 items actually belonged to Mr. Dolan and the government can
22 prove.

23 This issue grows when we talk about why the
24 government is seeking to admit the items. The Court's aware
25 that this is not a gun case. This is not a case where any

1 illegal possession or use of firearm -- well, I'm going --
2 I'm not going to take that too far -- possession of firearms
3 is being alleged. The government is then going to say that
4 these particular firearms were present at a hotel for the
5 QRF on January 6th. It cannot prove that those particular
6 firearms were present at the hotel. And so there's a lot of
7 inferences that are going to come into play because
8 Mr. Dolan owned firearms.

9 And so absent his testimony that those are his
10 firearms, the government cannot authenticate, cannot
11 establish that the firearms belong to him.

12 THE COURT: So what if the Pretrial Services
13 Officer came in and testified that "I received these
14 firearms from Mr. Dolan."

15 MR. WOODWARD: That doesn't establish that they
16 belonged to Mr. Dolan.

17 THE COURT: Sure, they do. He walked in with
18 them, turned them in.

19 MR. WOODWARD: I think --

20 THE COURT: You can get up and argue that those
21 really aren't his and he turned in somebody else's firearms.

22 MR. WOODWARD: That's correct.

23 THE COURT: That would seem to me not a terribly
24 convincing argument.

25 MR. WOODWARD: We appreciate Your Honor's

1 perspective always.

2 But we don't believe that Pretrial Services
3 testifying that any firearm that was provided to Pretrial
4 Services is sufficient to provide -- to authenticate those
5 items as having belonged to Mr. Dolan.

6 THE COURT: I don't think that's right. All
7 Pretrial Services would have to do is say "Mr. Dolan
8 delivered the following firearms to me on a certain date,"
9 and that establishes that these were good firearms delivered
10 by Mr. Dolan pursuant to a court order.

11 Now, if you want to then get up and argue that we
12 don't really know that these were, in fact, Mr. Dolan's
13 firearms and they could have belonged to somebody else and
14 he was turning in firearms that really weren't subject to
15 the court order, I guess you could try that. But it doesn't
16 seem to me that that would be a terribly fruitful way for
17 you to go.

18 But if what you're insisting is the government
19 find the Pretrial Services agent, bring that person in to
20 say these are the firearms that I received from Mr. Dolan,
21 I suppose that's what they'll need to do.

22 MR. WOODWARD: I don't think we would make the
23 government or the Court go through that exercise.

24 THE COURT: Okay. Then what are we fighting
25 about?

1 MR. WOODWARD: I think maybe then transitioning to
2 Mr. Moerschel, I think the argument may be a bit more
3 convincing because in that case, Mr. Moerschel did not
4 provide the firearms, his attorney provided the firearms
5 after Mr. Nestler advised the attorney that he would obtain
6 a subpoena forthwith if the firearms were not voluntarily
7 turned over to the FBI. So there's a lot more context.

8 THE COURT: So do we need to call the lawyer in to
9 testify now?

10 MR. NESTLER: Again, so my statement to the lawyer
11 is not hearsay, it's a directive, or a request, depending on
12 how one interprets it.

13 And the lawyer, in response to my statement,
14 provided a firearm and firearm accessories to an FBI agent
15 in Fort Myers, Florida.

16 So we can have the FBI agent in Fort Myers,
17 Florida, and in and testify that these firearms are provided
18 on this date and time from this lawyer, or we could reach a
19 stipulation which we offered, or we could just have our
20 Florida FBI agent, who we plan to testify later today, a
21 different agent, say that an FBI evidence log indicates that
22 these firearms were collected from Mr. Moerschel's lawyer on
23 X date.

24 It's the equivalent of having the FBI execute a
25 search warrant on someone's house.

1 THE COURT: No, I'm not disputing that.

2 I mean if -- look, I think, you know, all they
3 have got to do is lay the predicate by a preponderance of
4 the evidence that the objects belong to the person that they
5 purport to belong to.

6 And if what the testimony is going to be is that
7 there was a government directive to Mr. Moerschel's counsel
8 or Mr. Moerschel to turn over the firearms and they have an
9 FBI agent who will then say, shortly after that directive
10 was issued, that they collected firearms from
11 Mr. Moerschel's lawyer, I think that's sufficient to lay the
12 foundation for admissibility that these were Mr. Moerschel's
13 guns.

14 Now, you know, again, you're welcome to
15 cross-examine the FBI agent that you don't really know
16 whether these came from Mr. Moerschel, but, again,
17 I'm not sure that's terribly fruitful.

18 MR. WOODWARD: No, Your Honor. Again, this is not
19 for us about weight, this is about admissibility.

20 THE COURT: Right.

21 MR. WOODWARD: If the Court is prepared to
22 overrule our objection, we'll simply say for the record, our
23 preference would be that the FBI agent, as Mr. Nestler
24 proposes, testifies that these guns were received. We don't
25 want the government to be reading a stipulation about the

1 seizure of firearms. We've made our objection for the
2 record. We think that those items are inadmissible absent
3 direct knowledge that they belong to the individuals in
4 question, which the government, I think, agrees it cannot
5 provide. The Court's, of course, free to overrule our
6 objection and then we would ask --

7 THE COURT: But I guess the question is, how is
8 this any different than a search warrant? In other words,
9 find guns in somebody's home, you don't need the owner of
10 the home to come in and say, yeah, these are my guns. In
11 fact, oftentimes the person won't do that because they've
12 got a Fifth Amendment privilege, right. Instead, you get
13 the agent to come in and say, we found this in somebody's
14 home and then the inference has to be drawn by the jury that
15 the guns, in fact, belong to the particular person. And so
16 I'm not sure why this is any different than that.

17 MR. WOODWARD: Well, I think there's usually an
18 extra layer.

19 To the extent that the ownership is contested,
20 right, because often gun cases don't involve clear chain of
21 custody, then usually the government will come in and
22 provide additional circumstantial evidence to suggest that
23 the defendant is, in fact, a resident there. So mail matter
24 or other indicia of reliability to suggest that the weapons
25 were seized from the place of residence of the defendant.

1 THE COURT: Right. It's hard for me to suspect
2 that there's a whole lot more that's an indicia of
3 reliability, than, for example, Mr. Moerschel, in fact,
4 having his lawyer turn guns over. I mean, that's fairly
5 strong evidence that they belong to Mr. Moerschel.

6 MR. WOODWARD: But now we're conflating the two
7 issues.

8 The question is what evidence is required of the
9 government to authenticate --

10 THE COURT: Right.

11 MR. WOODWARD: -- a particular physical item.

12 THE COURT: Right. And all they're authenticating
13 is that these were the items that were turned over by
14 Mr. Moerschel's lawyer.

15 MR. WOODWARD: And our position is the only way
16 for the government to do that is to rely on hearsay
17 evidence. Mr. Moerschel's lawyer told us that these were
18 Mr. Moerschel's firearms, and that's hearsay.

19 THE COURT: Again, this is a question of
20 admissibility, and I think, I think, I'm quite confident,
21 that you can rely on hearsay to establish grounds for
22 admissibility.

23 MR. WOODWARD: We won't belabor the point.

24 THE COURT: I think that's -- I don't -- do you
25 disagree with that?

1 MR. WOODWARD: I do, but I don't have a case, so
2 I'll go over and do a little quick research.

3 THE COURT: Questions of admissibility can rely on
4 hearsay. And, you know, obviously the reliability of the
5 hearsay is relevant, but, you know, I don't think I am
6 barred from considering hearsay as a foundational matter to
7 determine whether something is admissible or not.

8 MR. WOODWARD: I'll look.

9 Mr. Nestler agrees with you. I trust his --

10 MR. NESTLER: It's easy to agree with you,
11 Your Honor.

12 MR. WOODWARD: I'll look very quickly.

13 THE COURT: Take a look.

14 MR. WOODWARD: I don't think he's going to put
15 these on first.

16 MR. NESTLER: No, no. This is going to be this
17 afternoon.

18 THE COURT: Let's line the jury up.

19 MR. NESTLER: Just to be clear, the FBI agent who
20 collected the guns from Mr. Moerschel's lawyer and the FBI
21 agent who collected the guns from Mr. Dolan's Pretrial
22 Services Officer, we were not intending to call because we
23 thought it would not be particularly relevant. We were
24 having a different FBI agent summarize his review of the
25 records that he saw in the FBI's files. And so that's

1 another issue we wanted to make sure the Court and counsel
2 were you aware of, if there was an objection to that, we can
3 get these two FBI agents up here from Florida at some point
4 to testify. We didn't think it would be particularly
5 helpful, but we wanted flagged that issue.

6 MR. WOODWARD: I think that for purposes of the
7 record, I don't know if it's your burden -- if the
8 government's burden or defense counsels' burden, but the
9 offer of proof would be that these agents would testify that
10 they received the firearms and that they understood the
11 firearms to belong to the individuals in question.

12 Our objection is that that testimony is hearsay
13 and that the Court cannot rely on that in --

14 THE COURT: But that's a different issue.

15 The question is, are you insisting that the
16 government bring the agents up? And if the answer is yes,
17 then we'll bring them up. But you cannot stand on an
18 objection that the testifying agent is relying upon
19 documentary evidence to establish that these were weapons
20 that were obtained from a different FBI agent who collected
21 them from a third party. So if we've got to call the agents
22 up, we'll call the agents up. Or you're going to stand down
23 on that objection. So which is it?

24 MR. WOODWARD: Well, if Your Honor is not prepared
25 to -- we don't desire to call the agents up simply to be

1 overruled by Your Honor for our objection.

2 THE COURT: Well, but, again, these are not --
3 that's not -- that's a separate issue, okay? They're not
4 being called up on the ultimate issue of whether these can
5 be established and argued to belong to other
6 co-conspirators. They're simply getting called to say this
7 is what we collected from this individual. And if you're
8 insisting that that person, the collecting agent, much in
9 the way that a search warrant agent who finds the weapon in
10 a home, is one way of bringing a weapon in, then we'll have
11 to do that.

12 The alternative is to say, look, I was the
13 property agent on a search warrant and I recorded this
14 weapon that another agent gave me, and that's effectively
15 what the government is seeking to do. So if you have a
16 problem with that latter approach, then we've got to bring
17 the agents in from Florida.

18 MR. WOODWARD: So I'm not -- I apologize for my
19 confusion.

20 We were not interested in a fruitless exercise.
21 Our objection is the government's, we submit, inability to
22 authenticate the items absent hearsay testimony.

23 We hear the Court to be skeptical of that
24 objection. If the Court is, in fact, going to overrule such
25 an objection, then we won't insist that the so-called

1 seizing agents come and testify. But if the Court is not
2 prepared to overrule the objection absent the seizing
3 agents, then maybe we do need them to come and testify.
4 I'm not sure if I'm being clear.

5 THE COURT: Well, let's put it this way. If what
6 you're asking me is your original objection that the
7 admissibility of this evidence turns on hearsay, prevents it
8 from being admitted, I'm inclined to overrule that
9 objection, because I do -- I think I can rely on -- well,
10 I can rely on hearsay -- let's put it this way.

11 The agent can come in and say, this was turned
12 over by this third particular party, this third party, and
13 this is the third party's relationship to the person who the
14 government contends owns the weapon. That, I think, is
15 enough to lay the foundation to get it in, and then the
16 government can argue that these belong to Mr. Moerschel or
17 Mr. Dolan, you've heard, ladies and gentlemen, because
18 they're Pretrial Services Officer turned them in their
19 pursuant to a court order or pursuant to a directive of the
20 government to counsel. So in terms of admissibility,
21 I think they've laid the foundation and they're good to go.

22 MR. WOODWARD: Okay.

23 THE COURT: But I'll confirm that based upon my
24 understanding that they can sort of rely on --

25 MR. WOODWARD: We'll share it as well if I find a

1 case.

2 THE COURT: -- what you call hearsay.

3 MR. NESTLER: Thank you, Your Honor.

4 COURTROOM DEPUTY: Jury panel.

5 (Jury entered the courtroom.)

6 THE COURT: All right. Please be seated,
7 everyone.

8 Ladies and gentlemen, good morning. Once again,
9 apologies for the late start. We had some preliminary
10 matters we needed to deal with but we are now ready to go.

11 Ms. Hughes.

12 MS. HUGHES: Thank you, Your Honor. The
13 government recalls Special Agent Justin Eller.

14 THE COURT: Mr. Woodward, take a look at Rule
15 104(a).

16 MR. WOODWARD: Yes, sir.

17 - - -

18 SA JUSTIN ELLER, WITNESS FOR THE GOVERNMENT, HAVING BEEN
19 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
20 FOLLOWS:

21 DIRECT EXAMINATION (CONTINUED)

22 BY MS. HUGHES:

23 Q Good morning, Special Agent.

24 A Good morning, ma'am.

25 Q If we could pull up what was conditionally

1 admitted, Government's Exhibit 1.S.672298.

2 Permission to admit and publish -- or permission
3 to publish, rather.

4 Special Agent Eller, you were asked some questions
5 about this message yesterday?

6 A Yes, ma'am.

7 Q And there's a reference in this message to someone
8 named Kelly. Do you see that in the message?

9 A Yes, ma'am.

10 Q What is your understanding about who this Kelly is
11 in the context of this message?

12 A My understanding this would be Kellye SoRelle.
13 It's just missing -- it would be K-e-l-l-y-e, I believe, is
14 the spelling of the name.

15 Q Correct. Thank you, Special Agent Eller.

16 And so when it says, "Hey, Stewart, I just read
17 the second part of your letter," is your understanding that
18 when there's a reference to you and Kelly, that Kelly is
19 Kellye SoRelle?

20 A Yes, ma'am.

21 Q Thank, Special Agent Eller.

22 THE COURT: All right. Special Agent Eller,
23 thank you for your testimony. You may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: You may step down.

1 MS. HUGHES: The government now calls
2 Special Agent Joanna Abrams.

3 COURTROOM DEPUTY: Please raise your right hand.
4 (Witness is placed under oath.)

5 COURTROOM DEPUTY: Thank you.

6 THE COURT: Special Agent Abrams, good morning,
7 and welcome.

8 THE WITNESS: Good morning.

9 - - -

10 SA JOANNA ABRAMS, WITNESS FOR THE GOVERNMENT, SWORN

11 DIRECT EXAMINATION

12 - - -

13 BY MS. HUGHES:

14 Q Good morning, Special Agent Abrams.

15 A Good morning.

16 Q Could you please introduce yourself to the jury.
17 Could you please state and spell your name.

18 A My name is Joanna Abrams, J-o-a-n-n-a,
19 A-b-r-a-m-s.

20 Q Where are you employed?

21 A At the FBI.

22 Q What is your title?

23 A Special Agent.

24 Q What kinds of cases do you investigate at the FBI?

25 A I am currently on domestic and international

1 terrorism.

2 Q What office are you assigned?

3 A The Washington field office.

4 Q How long have you been with the FBI?

5 A About one year.

6 Q And did there come a time when you began
7 investigating the events of January 6th?

8 A Yes, at the end of December 2021.

9 Q Is that when you joined this investigation?

10 A Yes.

11 Q And over that time, what kinds of investigative
12 steps had you engaged in?

13 A I've conducted interviews of witnesses and
14 subjects, reviewed evidence, social-media posts, open source
15 videos, things of that nature.

16 Q And you mentioned you've conducted interviews.
17 Approximately how many interviews have you conducted?

18 A 25 or more.

19 Q For the purposes of your testimony today, Special
20 Agent Abrams, I would like to focus your attention on
21 individuals that comprise the southeast region and are
22 affiliated with the Oath Keepers.

23 If we could please put up what has previously been
24 admitted Government's Exhibit 1530.

25 Thank you, Mr. Nestler.

1 May the witness step out of the box for a moment?

2 THE COURT: You may, please.

3 Q Special Agent Abrams, if you could just identify
4 on Government's Exhibit 1530, who are the individuals in the
5 southeast region?

6 A First we have Joshua James.

7 Q And underneath Mr. James' name, it says "Hydro
8 AL." What does "Hydro AL" refer to?

9 A That is the name he used on Signal.

10 Q Thank you.

11 Who's below Mr. James?

12 A Here we have Roberto Minuta.

13 Q And who's below Roberto Minuta?

14 A This is Jonathan Walden and this is Rick Johnson.

15 Q And under Jonathan Walden, it has another name.
16 Could you please read what he went by?

17 A E-o-n-a-l.

18 Q And who is below Mr. Walden and Mr. Jackson?

19 A Mark Rhodes and Brian Ulrich.

20 Q And do they also have -- do they also have
21 monikers that they went by beneath their names?

22 A They do. Mark Grods has Sapper. And Brian Ulrich
23 uses Molon Labe or Bilbo.

24 Q And in terms of the events of January 6th, who
25 from these individuals went into the United States Capitol

1 on January 6th?

2 A All of them except for Rick Johnson.

3 Q Thank you. We can bring that down. Thank you,
4 Mr. Nestler.

5 For purposes of today's testimony, Special Agent
6 Abrams, I would like to focus you on the time period from
7 mid-November to early January but before January 6th. How
8 did individuals in this region predominately coordinate with
9 each other?

10 A They mostly talked through Signal.

11 Q Could we please put up for just the witness
12 Government's Exhibit 6803.1. You can scroll through,
13 Ms. Rohde. Thank you.

14 Special Agent Abrams, where are these messages
15 from?

16 A These are from a Signal chat called "OK FL
17 hangout."

18 Q Where were these messages found, on what device?

19 A Mr. Rhodes' phone.

20 Q And have you had an opportunity to compare these
21 messages to the messages that were extracted from
22 Mr. Rhodes' phone?

23 A Yes.

24 Q And are these a fair and accurate copy of those
25 messages?

1 A Yes.

2 MS. HUGHES: Government seeks to admit and publish
3 Government's Exhibit 6803.1.

4 MS. HALLER: Objection to form, Your Honor. We
5 would just note that in this format, it does not show
6 whether this is UTC or D.C. time.

7 THE COURT: Hang on.

8 Okay. That's the only objection, then.

9 MS. HALLER: I'm sorry, Your Honor, it's not --
10 because it's out of context, FRE 106. Thank you,
11 Your Honor.

12 THE COURT: 6803.1 will be admitted. To the
13 extent that there's a completeness objection, the defense
14 is, of course, free to identify any other statements it
15 thinks are necessary to complete any government evidence.

16 (Government's Exhibit 6803.1
17 received into evidence.)

18 MS. HUGHES: Thank you. If we could please
19 publish.

20 BY MS. HUGHES:

21 Q Special Agent Abrams, were these -- did this
22 format, was this the format that the messages looked like
23 when they were extracted from the phone?

24 A In terms of this --

25 Q Presentation.

1 A No. It was in -- it was on Cellebrite and then
2 into an Excel spreadsheet.

3 Q And is it in this format to allow for the messages
4 to be more easily read?

5 A Yes.

6 Q And is the time in Eastern Standard Time on these
7 messages?

8 A Yes.

9 Q So drawing your attention to the content of the
10 message, you mentioned that this was a message sent to a
11 chat group. Could you just explain again what this is, what
12 platform this message was sent on.

13 A This was sent on Signal to a group chat named "OK
14 FL hangout."

15 Q And this message was found on Mr. Rhodes' phone?

16 A Yes.

17 Q Who is sending this message?

18 A Hydro AL, or Joshua James.

19 Q What date did Mr. James send this message?

20 A November 17th, 2020.

21 Q Could you please read the message?

22 A "Alabama checking in."

23 Q If we could go to the next slide, Ms. Rohde.

24 What does Mr. James write on November 17th to the
25 same group?

1 A "Standing by, on call 24/7."

2 Q And the next slide, please.

3 What does he write on the same date?

4 A He provides his email address,

5 "OKAlabama@ProtonMail.com.

6 Q And what is ProtonMail?

7 A It's just a more secure email system.

8 Q If we could please put up for just the witness
9 Government's Exhibit 6803.2. And you can scroll through,
10 Ms. Rohde, please. Thank you.

11 Special Agent Abrams, where are these messages
12 from?

13 A These are also from a Signal group chat. This one
14 is "GA OK general chat."

15 Q Where was this chat group found, on what device?

16 A This is also found on Mr. Rhodes' device.

17 Q And have you had an opportunity to compare the
18 messages that are contained in Government's Exhibit 6803.2
19 with the messages that were extracted from Mr. Rhodes'
20 phone?

21 A Yes.

22 Q And are these a fair and accurate copy of those
23 messages?

24 A They are.

25 MS. HUGHES: Government seeks to admit and publish

1 Government's Exhibit 6803.2.

2 MS. HALLER: Same objection.

3 THE COURT: All right. It will be overruled.

4 6803.2 will be admitted.

5 (Government's Exhibit 6803.2
6 received into evidence.)

7 BY MS. HUGHES:

8 Q Okay. Special Agent Abrams, is this the same
9 group we were talking about?

10 A It is not.

11 Q What group is this?

12 A This is the GA OK General Chat, or chat with
13 members from Georgia.

14 Q And this says -- could you please read the date of
15 this message?

16 A December 3rd, 2020.

17 Q And is the message a notice that a group was
18 created?

19 A Yes.

20 Q Is this the first time that members from the
21 Georgia Oath Keepers contingent are communicating with each
22 other?

23 A No.

24 Q So what is your understanding about what this
25 means?

1 A This is just a new group that they had created on
2 Signal.

3 Q If we could go to the next message, please.

4 On December 5th, there's a message to this same
5 group. Who sent this message?

6 A Bilbo, or Brian Ulrich.

7 Q What does Mr. Ulrich write?

8 A "I seriously wonder what it would take just to get
9 ever patriot marching around the Capitol armed. Just to
10 show our government how powerless they are. That if they
11 continue to rape our Constitution, these are the folks who
12 they will be dealing with."

13 Q Could we please go to the next slide.

14 An individual "Truth Seeker" writes on December
15 9th to the same group, could you please -- well, first of
16 all, is Truth Seeker 69 someone that is a primary subject of
17 this investigation?

18 A No.

19 Q So not on the board, for example?

20 A No.

21 Q Could you please read the message that's True
22 Seeker 69 writes.

23 A "Request from national (Stewart Rhodes). We are
24 going to be in D.C. this weekend. The patriot pastors who
25 are organizing the Jericho march around the U.S. Capitol and

1 Supreme Court on Saturday have asked for our assistance with
2 security. General Flynn and his family will be there,
3 so it's important that we show up ready to help."

4 Q Next slide, please.

5 A "If any of you, or anyone else from your chapters
6 can make it, it would be a blessing. Oath Keepers will
7 cover your expenses. We also welcome allied groups.
8 Already have some Three Percenters from L.A. coming (from
9 AP3), who were with us in Lafayette. Please pass the word
10 to other squared away groups."

11 Q Are you familiar with who the Three Percenters
12 are?

13 A Yes, they were another group that was present on
14 January 6th.

15 Q Who are they more broadly? Who are the Three
16 Percenters?

17 A It's another similar group to the Oath Keepers.

18 Q And if we could go to the next slide, please.

19 What does Truth Seeker 69 write on the same date?

20 A "Be aware D.C. is a no gun permitted zone. Knife
21 blades have to be under 3 inches. Pepper spray is legal."

22 Q Next slide, please.

23 Who responds on the same date, on December 9th?

24 A Stewart Rhodes.

25 Q What does Mr. Rhodes write to the same chat group?

1 A "There is a seven man team coming from LA. Sure
2 would be awesome to have a team from GA as well."

3 Q So Special Agent Abrams, you mentioned that this
4 group was comprised primarily of members from Georgia, of
5 individuals from Georgia, but is Stewart Rhodes also a
6 member of this group?

7 A Yes.

8 Q If we could go to the next slide, please.

9 On December 14th, does Mr. Rhodes send another
10 message?

11 A He does.

12 Q What does Mr. Rhodes write on December 14th to
13 this same group?

14 A "Exactly. I spoke at the big Stop The
15 Steal/Jericho march on the National Mall on Saturday and
16 said just that. He must do it. We are already at war with
17 Communist China and its domestic enemy proxies. He must act
18 now so we can fight this war while he is commander in
19 chief."

20 Q Just to pause there, for the context of this
21 message, who is "he must act now"?

22 A We believe President Trump.

23 Q Could we go to the next slide, please.

24 Who responds to Mr. Rhodes?

25 A Brian Ulrich.

1 Q And just if we actually could go back one slide,
2 Ms. Rohde, just so we have the time.

3 So this message that Mr. Rhodes sent on December
4 14th, what is the time that he sent this message?

5 A 8:51 a.m.

6 Q And if we could go to the next slide, what is the
7 time of this second message?

8 A 8:52 a.m.

9 Q And what does Mr. Ulrich say?

10 A "Millions stand ready."

11 Q Next slide, please.

12 Is this the same date?

13 A It is.

14 Q What is this -- the time of this message?

15 A 8:52 a.m.

16 Q What does Mr. Rhodes write?

17 A "If he doesn't use the Insurrection Act to keep a
18 Chi-Com puppet out of the White House, then we will have to
19 fight a bloody revolution/Civil War to defeat the traitors."

20 Q Have you seen this term Chi-Com puppet before?

21 A Yes.

22 Q And what is your understanding of what Chi-Com is?

23 A Chinese communist.

24 Q It is a reference to a specific individual?

25 A President Biden.

1 Q If we could go to the next chat, please.

2 What does Mr. Ulrich write at 9:02 a.m.?

3 A "Agree, we need to start working with all
4 patriotic groups to unite and strengthen ourselves."

5 Q Next slide, please.

6 At 9:03, what does Mr. Rhodes respond.

7 A "Things are in the works. That's all I can say.
8 I am still in D.C. for a reason. Yes, take that as a big
9 hint," and then there's an emoji.

10 Q If we could go to the next chat, please.

11 What does Mr. Rhodes write to the same group on
12 the same day?

13 A "That's because they captured nearly every level
14 and branch of power. Without consequences. They think they
15 have it all figured out. But we armed Americans have one
16 good trick left up our sleeve. It's the same one Samuel
17 Whittemore used long ago, right along with all the other
18 farmers who fired their shots heard round the world."

19 Q Special Agent Abrams, do you know who Samuel
20 Whittemore is?

21 A A bit.

22 Q Who is Samuel Whittemore?

23 A He was a farmer and a soldier who, at the age of
24 78, killed multiple British soldiers during the American
25 Revolutionary War.

1 Q If we could go to the next slide, please.

2 What does Mr. Ulrich write at 9:24 a.m.?

3 A "And it would be over quick if we all did."

4 Q Next slide, please.

5 What does Mr. Rhodes respond?

6 A "Yes, indeed. All he has to do is issue the
7 orders and it shall be done ricky-ticky."

8 Q Next slide, please.

9 At 9:33, what does Mr. Rhodes go on to say?

10 A "Remember that two of General Washington's best
11 generals in the Revolutionary War were not prior military
12 and were self-taught on warfare and strategy from books.
13 Like up the bios of Henry Knox and Nathanael Greene."

14 Q Next slide, please. Does Mr. Rhodes go on?

15 A He does.

16 Q Please read this message?

17 A "Yes. And wisdom. Experience. And also the
18 'dangerous old man' aspect that Samuel Whittemore displayed
19 on April 19th, 1775".

20 Q Next slide, please.

21 A "There's a reason" -- sorry.

22 Q Sorry. I was just going to ask. Is this a
23 continuation -- is this also Mr. Rhodes' writing?

24 A Yes.

25 Q At 9:38. Please read this message?

1 A "There's a reason I told the story of Samuel
2 Whittemore when I spoke on Lexington Green on April 19th,
3 2009, when founding this org."

4 Q Next slide, please.

5 Does Mr. Rhodes continue to write?

6 A Yes.

7 Q Could you please read this message?

8 A "He was an example of a 'dangerous old man.'"

9 Q Next slide, please.

10 Is this another message from Mr. Rhodes?

11 A It is.

12 Q Same morning, December 14th?

13 A Yes.

14 Q Could you please read this message.

15 A "May we all have both the wisdom, cool head, and
16 courage to pick our ground well and make the enemy pay
17 clearly when our time comes."

18 Q Next slide, please.

19 Could you please read this message from Mr. Rhodes
20 the same morning?

21 A "There may be 10,000 Samuel Whittemores and a
22 thousand Bunker Hills, (where we also made the Red Coats pay
23 dearly.)"

24 Q Next slide, please.

25 Does Mr. Ulrich respond to Mr. Rhodes, the same

1 morning, on December 14th?

2 A Yes.

3 Q What does he write?

4 A "Well, in the words of *Braveheart*, we need to
5 unite the clans. Shit may go down any day and we need to
6 know what the plan is at that point."

7 Q Next slide, please.

8 What does Mr. Rhodes respond?

9 A "Agreed. I need to stop traveling so much and get
10 some critical writing done. But at the moment I have to try
11 to get Trump the message on the necessity of him waging war
12 on the enemy now while still President and Commander in
13 Chief. But once I finish that, I'm going to sit down and
14 write out my thoughts on what" --

15 Q Next slide, please.

16 A -- "we can and must do, across the country, to
17 organize effectively and to wage it and win it ourselves if
18 he doesn't. Many, many hard learned lessons from the
19 founders that modern Americans need to remember (or learn
20 for the first time). Nothing so foolish as refusing to
21 learn from the past."

22 Q Next slide, please.

23 What does Mr. Rhodes write at 9:54 on the same
24 morning?

25 A "Good topic for a phone call."

1 Q Next slide.

2 What does Mr. Ulrich write at 9:55 a.m. on the
3 same chat?

4 A "Yes, probably don't need to say more in a chat;
5 good luck with Trump."

6 Q Next slide, please.

7 What does Mr. Rhodes write at 8:54 a.m.?

8 A This is December 15th, 2020. He writes, "Defy.
9 Nullify. Interpose and defend others and each other.
10 Declare all his usurper hand touches, all that comes out of
11 his Chi-Com puppet mouth to be null and void from inception
12 and not law."

13 Q Next slide, please.

14 What does Mr. Rhodes write?

15 A "I passed that message on through one contact.
16 Working on others."

17 Q Next slide, please.

18 What does Mr. Ulrich write?

19 A "Awesome. I hope you get through."

20 Q Next slide.

21 What does Mr. Rhodes write?

22 A "Me too."

23 Q Next slide, please.

24 This is a message sent from individual Roc, it
25 appears. Special Agent Abrams, is Roc someone who's a

1 significant subject of this investigation?

2 A No, sir.

3 Q So not someone on the board?

4 A No.

5 Q What does Roc write on December 17th, the next
6 day?

7 A "I am sure with all the firepower in our group we
8 have enough overthrow a small third-world country."

9 Q Next message, what does Mr. Ulrich, Bilbo, write
10 at 9:39 a.m. on the same day on December 15th?

11 A "What is this firepower in which you speak?
12 No hablo ingles."

13 Q Could we please put up now for the witness
14 Government's Exhibit 6803.3.

15 Special Agent Abrams, what are you looking at?
16 What are these messages from?

17 And, Ms. Rohde, if you could just go through them,
18 that would be appreciated.

19 A This is another Signal group chat, it's called the
20 "Old Leadership" chat.

21 Q Where was this chat found?

22 A This was also on Mr. Rhodes' phone.

23 MS. HALLER: Again, objection to the form. Not
24 original source. Thank you.

25 MS. HUGHES: We would seek to admit and publish.

1 I mean, there are a few more questions I was going to ask
2 the Special Agent.

3 THE COURT: Okay. Why don't you lay the
4 foundation?

5 BY MS. HUGHES:

6 Q Special Agent Abrams, did you have a chance to
7 compare these messages with the messages that were extracted
8 from Mr. Rhodes' phone?

9 A Yes.

10 Q And are these message a fair and accurate copy of
11 those messages?

12 A They are.

13 MS. HUGHES: We would seek to admit and publish
14 these messages.

15 MS. HALLER: Same objection; the best source
16 available is the original source.

17 THE COURT: 6802.3 will be admitted.

18 (Government's Exhibit 6802.3
19 received into evidence.)

20 BY MS. HUGHES:

21 Q And if we could go to the top of these messages,
22 please, Ms. Rohde. Thank you.

23 Okay. Is this a different chat group?

24 A It is.

25 Q What is this chat group?

1 A This is the "Old Leadership" chat.

2 Q And, again, where was this chat group found?

3 A Mr. Rhodes' phone.

4 Q And Hydro-AL, you've said this is Josh James,
5 correct?

6 A Yeah, Joshua James.

7 Q What does Josh James write on December 20th?

8 A He writes, "SE region is creating a national call
9 to action for D.C. Jan. 6th. 4 states are mobilizing."

10 Q Next chat, please?

11 A "Right now."

12 Q This is, again, a message from Mr. James?

13 A It is.

14 Q Next chat, please.

15 On December 20th, what does Mr. James write to the
16 "Old Leadership" chat?

17 A "We're going to D.C. Jan. 6th."

18 Q Next message, please.

19 Is this another message from Mr. James?

20 A Yes.

21 Q To the same chat group?

22 A Yes.

23 Q What does he write on December 20th?

24 A "SE states are in on Jan. 6th. In D.C. Capitol.
25 If anyone wants to pass on info, I'll post. Standby."

1 Q Next chat, please.

2 What does Mr. James write the same date to the
3 same chat?

4 A "My boys will know what to do."

5 Q And if we could put up, just for the witness,
6 Government's Exhibit 6803.4.

7 Special Agent Abrams, what are these messages?

8 A These are more messages from the GA OK general
9 chat.

10 Q And where was this chat found again?

11 A Mr. Rhodes' phone.

12 Q And did you have an opportunity to compare these
13 messages to the extraction from Mr. Rhodes' phone?

14 A I did.

15 Q And are these a fair and accurate copy of that
16 information that was extracted from Mr. Rhodes' phone?

17 A Yes.

18 MS. HUGHES: Government seeks to admit and publish
19 Government's Exhibit 6803.4.

20 THE COURT: 6802.4, correct?

21 MS. HUGHES: 6803.4.

22 THE COURT: I'm sorry, 6803.4. My apologies.
23 That will be admitted.

24 (Government's Exhibit 6803.4
25 received into evidence.)

1 MS. HUGHES: If we could put up this message,
2 please.

3 BY MS. HUGHES:

4 Q And is this the first line, Ms. Rohde? Thank you.
5 Special Agent Abrams, so this is the Georgia OK
6 general chat. Is this the chat we were talking about
7 previously?

8 A Yes.

9 Q What is the date of this message?

10 A December 20th, 2020.

11 Q And who is writing this message?

12 A Brian Ulrich.

13 Q And what is Brian Ulrich, Bilbo here, write?

14 A "Trump acts now, maybe a few hundred radicals die
15 trying to burn down cities. Trump sits on his hands, Biden
16 wins, millions die resisting the death of the 1st and 2nd
17 Amendment."

18 Q And does this message come after Mr. James had
19 written those previous messages we reviewed, discussing
20 plans to mobilize for January 6th?

21 A I believe so but I would have to look.

22 Q We can -- that's fine. We can go to the next
23 slide, thank you, Ms. Rohde.

24 What does Mr. Ulrich continue to write on December
25 20th?

1 A "Well, you just said I was dreaming about people
2 fighting back so guns are always a last resort and rest
3 assured of there is a conflict after Trump anyone who stands
4 against the left will be labeled a terrorist. This gets
5 harder not easier from here."

6 Q Next message, please.

7 What does Mr. Ulrich write on December 22nd?

8 A "\$600 in ammo coming."

9 Q If we could please show for just the witness
10 Government's Exhibit 6803.5.

11 Special Agent Abrams, where is this message from?

12 A This is from the OK Rocket.Chat forum.

13 Q What is the OK Rocket.Chat forum?

14 A It was one of the communication platforms
15 available on the Oath Keepers' website.

16 Q And is the server that hosted this chat forum
17 Liquid Web?

18 A Yes.

19 Q Was there a search warrant executed on Liquid Web
20 in connection with this kind of information?

21 A Yes.

22 Q And did you have an opportunity to compare this
23 message with the information that was provided pursuant to a
24 search warrant from Liquid Web?

25 A I did.

1 Q And is this a fair and accurate copy of the
2 communications that were in that search warrant return?

3 A Yes.

4 MS. HUGHES: Then pursuant to a 902(11)
5 certificate of authenticity and the testimony just provided,
6 the government would seek to admit and publish Government's
7 Exhibit 6803.5?

8 MR. WOODWARD: No objection.

9 THE COURT: All right. 6803.5 is admitted.
10 (Government's Exhibit 6803.5
11 received into evidence.)

12 MS. HUGHES: If we could please publish.
13 Thank you.

14 BY MS. HUGHES:

15 Q Special Agent Abrams, so you mentioned that this
16 was OK -- a message posted in the OK Rocket.Chat forum.
17 What, again, is OK Rocket.Chat? Where does this forum
18 exist?

19 A This existed on the Oath Keepers' website. This
20 particular forum was a forum that required members to have a
21 user name and a password.

22 Q So this is not a Signal message?

23 A This is not, no.

24 Q Who is the author of this message?

25 A This is from Roberto Minuta.

1 Q And is he one of the individuals you identified on
2 1530, the board that we put up at the beginning?

3 A Yes.

4 Q And what does Mr. Minuta write on December 27th?

5 A "Brothers, I have been in attendance for all D.C.
6 events thus far. January 6th, we must be present. Not for
7 our President, but for our liberty. Please get there."

8 Q If we could put up for the witness now
9 Government's Exhibit 6803.6. And you can scroll through
10 these please, Ms. Rohde.

11 Special Agent Abrams, what are these messages?

12 A These are another Signal group chat called
13 "D.C. Op Jan. 6, '21".

14 Q And where did these messages -- where were these
15 messages found? What device were they found on?

16 A Mr. Rhodes'.

17 Q Mr. Rhodes' phone?

18 A Yes.

19 Q And did you have an opportunity to compare these
20 messages with the information that was extracted from
21 Mr. Rhodes' phone?

22 A Yes.

23 Q And are these a fair and accurate copy of the
24 messages that were extracted from Mr. Rhodes' phone in
25 connection with this group?

1 A Yes.

2 MS. HUGHES: Government seeks to admit and publish
3 Government's Exhibit 6803.6.

4 MR. WOODWARD: No objection.

5 THE COURT: 6803.6 will be admitted.

6 (Government's Exhibit 6803.6
7 received into evidence.)

8 BY MS. HUGHES:

9 Q Special Agent Abrams, we haven't talked about this
10 group, today, correct, the "D.C. Op Jan. 6, '21" group?

11 A Correct.

12 Q Again, where was this group found?

13 A On Mr. Rhodes' cell phone.

14 Q And this message in particular, who is the author
15 of this message?

16 A This is "OK Gator 1," which is Kelly Meggs.

17 Q And what is the date of this message from
18 Mr. Meggs?

19 A December 29, 2020.

20 Q What does Mr. Meggs write?

21 A "We are coming and if we ain't on D.C. then even
22 better D.C. gun laws don't apply."

23 Q Next message, please.

24 What does Mr. Meggs go on to write?

25 A "This isn't a rah-rah Trump crowd coming. That

1 may be their biggest miscalculation."

2 Q What is the date of this message?

3 A Also December 29th, 2020.

4 Q Next message, please.

5 What does Mr. Ulrich write the next day on
6 December 30th to this same group?

7 A "Which one of you was going from Macon? I'm in
8 Guyton and need to carpool with someone going to Atlanta."

9 Q Next message, please.

10 On December 30th, what is this message?

11 A This is from Rick, and he says, "I'm going through
12 Macon and can pick you up. Just need to know when and
13 where."

14 Q And have you seen this name Rick before?

15 A Yes.

16 Q Is Rick someone who is a subject of this
17 investigation?

18 A He is on the board, yes.

19 Q And who is Rick?

20 A Rick Jackson.

21 Q And was he was someone that was listed on the
22 board, on Government's Exhibit 1530?

23 A Yes.

24 Q Could we please go to next slide.

25 The next day, Mr. Ulrich writes another message of

1 the jury to the same group, "D.C. Op Jan. 6th, '21." Could
2 you please read this message?

3 A "Someone can tell me if I'm crazy, but I'm
4 planning on having a backpack for regular use and then a
5 separate backpack with my ammo load out with some basics
6 that I can just switch too is shit truly hits the fan
7 blades."

8 Q Next message.

9 Does Mr. Ulrich write a clarifying message?

10 A Yes, "if shit."

11 Q Thank you.

12 Next slide, please.

13 What does Mr. Ulrich write to the same group on
14 December 31st, the same date?

15 A "I will be the guy running around with the budget
16 AR," and then emoji.

17 Q If it we could go to next slide, please.

18 What is this message?

19 A This is a message on December 31st from
20 Joshua James.

21 Q And what does Mr. James write?

22 A There is some unknown emoji that didn't transfer,
23 but "Alabama will have a team in D.C. Tuesday morning as
24 well."

25 Q And you mentioned there's some emoji. Does it

1 look like an "OBJ" on this exhibit?

2 A Yes.

3 Q What is your understanding about what this symbol
4 looks like?

5 A It usually shows up when the transfer of the
6 extraction didn't recognize the emoji.

7 Q And what is the date of Mr. James' message?

8 A 12/31/2020.

9 Q If we could please put up for just the witness
10 Government's Exhibit 6803.7.

11 And you can scroll through.

12 Special Agent Abrams, what are these messages?

13 A These are direct messages on Signal.

14 Q And where were these messages found?

15 A Joshua James' phone.

16 Q And did you have an opportunity to compare the
17 messages that you see on your screen now with the extraction
18 from Mr. James' phone?

19 A Yes.

20 Q And are these a fair and accurate -- a fair and
21 accurate copy of the information that was extracted from
22 Mr. James' phone?

23 A Yes.

24 MS. HUGHES: Pursuant to a stipulation of the
25 authenticity of the information extracted from Mr. James'

1 phone and the testimony just provided, the government would
2 seek to admit and publish Government's Exhibit 6803.7.

3 MR. WOODWARD: No objection.

4 THE COURT: 6803.7 will be admitted.

5 (Government's Exhibit 6803.7
6 received into evidence.)

7 BY MS. HUGHES:

8 Q And if we could, Ms. Rohde, please, if you could
9 just zoom in on the message itself.

10 So this section, please.

11 Thank you.

12 So what is the date of this message?

13 A December 31st.

14 Q And who is this message between?

15 A This is between Joshua James and Mark Grods.

16 Q And this message looks a little different from the
17 messages we've been previously discussing. What is your
18 understanding of why this looks different than the messages
19 we've discussed today so far?

20 A This is a direct message, but also due to some
21 extraction issues with Mr. James' phone, we were able to
22 collect screenshots of his Signal.

23 Q So these are screenshots from the actual messages
24 on Mr. James' phone?

25 A Yes.

1 Q So who's sending this message? Who's sending
2 messages in this screenshot?

3 A This is being sent from Mr. James?

4 Q To whom?

5 A Mr. Grods.

6 Q And is Mr. Grods on the board? Was he someone we
7 identified at the beginning of your testimony?

8 A Yes.

9 Q What is his full name?

10 A Mark Grods.

11 Q What does Mr. James write Mr. Grods?

12 A He includes a picture of an address, a Google Maps
13 picture, and then says "Rally point for ATL. 12:00 p.m. EST
14 Monday."

15 Q And when would the date of this Monday have been?
16 This message was sent on December 31st. Do you know what
17 date Monday would be?

18 A January 4th, 2021.

19 Q If we could go to next message, please.

20 This is another message from Mr. James to
21 Mr. Grods.

22 Could you please read the date of this message and
23 the content of the message, Special Agent Abrams?

24 A Yes, it's January 1st. And Mr. James asks
25 Mr. Grods, "Are you on the CC?"

1 Q Have you seen CC before? Is this an abbreviation
2 that you've seen previously?

3 A Yes, I believe it's conference call.

4 Q If you could go to the next message, please.
5 Who's writing this message?

6 A This is from Mr. Grods to Mr. James.

7 Q And, Ms. Rohde, if we could just zoom in the
8 messages themselves. Thank you.

9 What is Mr. Grods writing to Mr. James?

10 A "Yes, I have been in. Bad commo on your end.
11 I think we need to find out how to get up with Ranger Doug
12 for supply drop."

13 Q So this message from Mr. Grods, is it sent the
14 same day as Mr. James asking him, "Are you on the CC,"
15 conference call?

16 A Yes, January 1st.

17 Q And is this in response to that question, "Yes.
18 I have been in"?

19 A Yes.

20 Q Mr. Grods writes a reference to Ranger Doug for
21 the supply drop. What is your understanding of who
22 Ranger Doug is?

23 A Doug Smith.

24 Q And where is Mr. Smith from?

25 A North Carolina.

1 Q And based on the investigation, are you aware of
2 other individuals who traveled through Ranger Doug's
3 residence on the way to D.C.?

4 A Yes, Kelly Meggs and Kenneth Harrelson.

5 Q Could you say that, Kelly Meggs and Kenneth
6 Harrelson?

7 A Yes.

8 Q Could we please go to next slide, please.

9 Is this a message from the same date, January 1?

10 A Yes.

11 Q If we could zoom in on the messages themselves,
12 Ms. Rohde. Thank you.

13 What does Mr. James write to Mr. Grods?

14 A "Negative. Too far away. 2 hours outside of
15 route." He then includes a screenshot of the address for
16 the property and says, "Over 6 hours away."

17 Q And the property address is a bit hard to read
18 here. Do you know generally where this property is located,
19 what state?

20 A North Carolina.

21 Q I'm sorry, what was that?

22 A North Carolina.

23 Q And so when he says, when James is writing to
24 Mr. Grods, "Negative, too far away."

25 If we could go back to the previous slide briefly,

1 Ms. Rohde.

2 In context, isn't that a response then to the "I
3 need to find a way how to get up -- who had to get up with
4 Ranger Doug"?

5 A Yes.

6 Q If we could go to next slide, Ms. Rohde.

7 And the next slide, please.

8 And what does Mr. Grods write to Mr. James on
9 January 4th?

10 A "Morning sunshine. I'm in your driveway," or "I'm
11 in driveway."

12 Q Sorry. And the date of this message again was
13 January 4th, correct?

14 A Yes.

15 Q If we could put on the screen just for the witness
16 Government's Exhibit 6803.8.

17 What is this a message from?

18 A This is another Signal group chat message to the
19 Jan. 5/6 D.C. OK security/VIP chat.

20 Q And where was this message found? What device was
21 if found on?

22 A Mr. Grods' device.

23 Q Have you had a chance to compare this information
24 with the information that was extracted from Mr. Grods'
25 device?

1 A Yes.

2 Q Is this a fair and accurate copy of the messages
3 that were found on Mr. Grods' phone?

4 A Yes.

5 MS. HUGHES: Government seeks to admit and publish
6 Government's Exhibit 6803.8.

7 MR. WOODWARD: No objection.

8 THE COURT: 6803.8 will be admitted.

9 (Government's Exhibit 6803.8
10 received into evidence.)

11 BY MS. HUGHES:

12 Q So what is the date of this message?

13 A January 1st, 2021.

14 Q Is that the same date of the messages we were just
15 reviewing between Mr. Grods and Mr. James?

16 A Yes.

17 Q Who is this author?

18 A This is Joshua James.

19 Q What is Josh James write to the Jan. 5/6, D.C. OK
20 security/VIP chat?

21 A He says, "Our teams plans on doing heavy recon
22 when we arrive on the late on the 4th. Early boots on the
23 ground."

24 Q If we could take that down, please, Ms. Rohde.

25 Based on your investigation, Special Agent Abrams,

1 did individuals in the southeast region, in fact, travel to
2 Washington, D.C.?

3 A Yes.

4 Q Did you review hotel records in connection with
5 their stay in D.C.?

6 A Yes.

7 Q Could we just put up for the witness Government's
8 Exhibit 2607.

9 Special Agent Abrams, did you have an opportunity
10 to review returns provided by various hotels?

11 A I did.

12 Q And was one of those hotels the Mayflower Hotel?

13 A It was.

14 Q Did this return comprise of multiple rows of
15 information over multiple pages?

16 A Yes.

17 Q Was a summary chart created summarizing that
18 information?

19 A Yes.

20 Q Did you have an opportunity to compare the
21 information summarized in Government's Exhibit 2607 with the
22 information provided by the Mayflower Hotel?

23 A I did.

24 Q Is this a fair and accurate summary of that
25 information?

1 A Yes.

2 MS. HUGHES: Pursuant to this testimony and a
3 902.11 certificate of authenticity, the government would
4 seek to admit and publish Government's summary Exhibit 2607?

5 MR. WOODWARD: No objection.

6 THE COURT: 2607 be admitted.

7 (Government's Exhibit 2607
8 received into evidence.)

9 THE COURT: I'm sorry, are you also seeking to
10 admit the underlying records of 2603?

11 MS. HUGHES: We are not, Your Honor. Just the
12 summary exhibit.

13 THE COURT: Okay.

14 MS. HUGHES: The underlying information, though,
15 has been provided to defense.

16 BY MS. HUGHES:

17 Q Special Agent Abrams, first of all, are you
18 familiar with the Mayflower Hotel?

19 A Briefly, a little bit.

20 Q Do you know where it is generally?

21 A Yes.

22 Q Where is the Mayflower Hotel?

23 A It is in D.C. near the White House.

24 Q Near the White House?

25 A Uh-huh.

1 Q And these returns, what is the reservation date
2 that is listed on this summary exhibit?

3 A The reservation create date is January 1st, 2021.

4 Q And is it for three rooms, the three entries?

5 A Yes.

6 Q And who is the name -- what is the name listed
7 on -- if you see here, it's row 4, what is the name listed
8 for these three rooms?

9 A There is Joshua James, Roberto Minuta and Ricky
10 Jackson.

11 Q What is the night of stay date?

12 A January 5th, 2021.

13 Q And are three different email points of contact?

14 A No, just one.

15 Q Who is that point of contact for these three
16 rooms?

17 A Roberto Minuta.

18 Q And what is your understanding of where Mr. Minuta
19 was from around this time?

20 A He traveled from New Jersey.

21 Q You can take that down. Thank you.

22 Could we please put up now Government's Exhibit
23 6804.

24 Special Agent Abrams, did you also obtain call
25 detail records for individual comprising the southeast

1 region?

2 A Yes.

3 Q And did this information likewise contain multiple
4 pages and multiple rows of information?

5 A Yes.

6 Q Did you create a summary of that information?

7 A Yes.

8 Q And did you have a chance to compare the
9 information contained in those returns with Government's
10 Exhibit 6804?

11 A I did.

12 Q Is this summary exhibit a fair and accurate copy
13 of the information that was provided in those returns?

14 A Yes.

15 MS. HUGHES: Pursuant to a certificate of
16 authenticity and the testimony just provided, the government
17 would seek to admit and publish Government's Exhibit 6804.

18 MR. WOODWARD: The Court's indulgence.

19 No objections.

20 THE COURT: 6804 will be admitted.

21 (Government's Exhibit 6804
22 received into evidence.)

22 BY MS. HUGHES:

23 Q If we could please put this on the screen.

24 So, Special Agent Abrams, what are call detail
25 records?

1 A This essentially shows the calls between two
2 individuals.

3 Q Between and to individuals did you say?

4 A Between two individuals.

5 Q And who -- this summary exhibit focuses on
6 individuals from the southeast region, correct?

7 A Yes, this is Joshua James' call records.

8 Q And just so we're clear, would this -- would call
9 detail record information include things like Signal calls?

10 A No.

11 Q Or other types of voice communication that isn't
12 through your phone?

13 A Just phone calls.

14 Q So could you just orient the jury. How is this
15 summary --

16 Go down to the next slide, Ms. Rohde.

17 How is this summary organized?

18 We can go back to the first page.

19 A This is broken up in November, December, and
20 January calls.

21 Q So in November, what does this information suggest
22 about who Mr. James was communicating with?

23 A Predominantly Roberta Minuta, but he did have a
24 call with Stewart Rhodes as well.

25 Q What is the date of the call with Stewart Rhodes?

1 A November 21st of 2020.

2 Q And from December 1st, 2020, to December 31st,
3 2020, the second group, and we can scroll down, and perhaps,
4 Ms. Rohde, if we can put a split screen with this and the
5 second page, that might be easier. Thank you.

6 In December -- from December 1st, 2020, to
7 December 31st, 2020, what is your -- what is this chart
8 suggest about the volumes of calls and who Mr. James was in
9 touch with?

10 A The volume has increased and he's speaking to more
11 people within the Oath Keepers.

12 Q Did Mr. James have calls with Mr. Rhodes?

13 A He did.

14 Q Approximately -- or specifically, rather, how many
15 calls did Mr. James have with Mr. Rhodes in the month of
16 December?

17 A Three.

18 Q Could you just highlight the dates of those calls?

19 A (Witness complied.)

20 Q December 8th? December 9th -- no.

21 A Yeah, December 8th, December 9th, and December
22 26th. That's a little high.

23 Q No. That's perfect.

24 So the witness marked on the exhibit December 8th,
25 December 9th, and December 26th.

1 Approximately how many calls did Mr. James have?
2 We see the second name here is Michael Greene. First of
3 all, who is Michael Greene?

4 A Michael Greene is also known as Whip and he is on
5 the board.

6 Q And do you know what Mr. Greene's role was on
7 January 6th?

8 A He was the operations leader.

9 Q And how many calls did Mr. James have with
10 Mr. Greene in the month of December?

11 A It looks like two.

12 Q And moving on, you see another name here,
13 Kelly Meggs.

14 Now, first of all, is Kelly Meggs an individual
15 who's from the Georgia region?

16 A No.

17 Q Where is Mr. Meggs from?

18 A Florida.

19 Q Approximately how many calls -- or specifically,
20 how many calls does Mr. James have with Mr. Meggs in the
21 month of December?

22 A Five.

23 Q Could you please identify the dates of those
24 calls.

25 A Yes.

1 December 26th.

2 And --

3 Q Is December 30th one of the dates?

4 A December 30th.

5 Q And looks like he was two calls on December 30th,
6 correct?

7 A Yes.

8 And then am I missing them?

9 Here they are. Two on December 26th.

10 Q And so did he have two calls on December 26th, one
11 call -- two calls on December 30th, and then one call --
12 another call on December 30th?

13 A Three calls on the 30th, it looks like, yes.

14 Q And so those are the four calls with Mr. Meggs.

15 Is there also a call with someone named Donald
16 Siekerman? This is on --

17 We can zoom on this section, Ms. Rohde, since this
18 text is so small. Thank you.

19 Is there also a call with someone named Donald
20 Siekerman?

21 A Yes, two calls.

22 Q And who's your understanding of who -- what is
23 your understanding of who Donald Siekerman is?

24 A He was scheduled to be the operations leader for
25 January 6th.

1 Q And if we could zoom out and go to January, the
2 first three days of January, who was Mr. James in touch with
3 for those three days?

4 A Mr. Grods and Michael Greene.

5 MS. HUGHES: No further questions.

6 THE COURT: Okay. Cross-examination?

7 - - -

8 CROSS-EXAMINATION

9 BY MR. LINDER:

10 Q Good morning, Special Agent. How are you?

11 A I'm good. Thank you. How are you?

12 Q Good. Phillip, I represent Mr. Rhodes.

13 Just a few questions for you.

14 The text messages, the large amount of text
15 messages you just testified to that come in from November
16 late up through December and up to January 6th, there were
17 scores of them that you just testified about. Would you
18 agree with me that there's not a single one, and especially
19 from Mr. Rhodes, that indicates a specific plan to go into
20 the Capitol on January 6th?

21 A There were several that discussed violence.

22 Q But not a specific plan to go into the Capitol?

23 A Correct.

24 Q And would you agree with me that the violence that
25 was discussed was related to expectations of Antifa or other

1 people being there at these rallies and protests?

2 MS. HUGHES: Objection.

3 THE COURT: It's overruled.

4 THE WITNESS: I don't believe there was a specific
5 mention, but I can't speak to what he was referring to.

6 BY MR. LINDER:

7 Q Okay. And, again, there's no specific mention of
8 this violence being conducted at the Capitol or a takeover
9 of the Capitol?

10 A Not that I recall.

11 MR. LINDER: Thank you very much.

12 THE COURT: Okay. Mr. Woodward or Ms. Haller.

13 MS. HALLER: Yes, Your Honor.

14 - - -

15 CROSS-EXAMINATION

16 BY MS. HALLER:

17 Q Just briefly, Special Agent, Ms. Abrams.

18 When you spoke regarding the Georgia Oath Keepers
19 general chat, is it fair to say Mr. Meggs was not in that
20 chat?

21 A Not to my knowledge.

22 Q Is it fair to say that you didn't see Mr. Meggs in
23 that chat?

24 A Yes.

25 Q Is it fair to say that you didn't see

1 Mr. Harrelson in the Oath Keepers Georgia general chat?

2 A Yes.

3 Q And is it fair to say that you didn't see

4 Ms. Watkins in the Oath Keepers Georgia chat?

5 A Yes.

6 Q Okay.

7 That's all I have. Thank you for your time.

8 THE COURT: Okay. Thank you, Ms. Haller.

9 Mr. Geyer.

10 - - -

11 CROSS-EXAMINATION

12 BY MR. GEYER:

13 Q Good afternoon, Special Agent.

14 A Hello.

15 Q Good morning, I should say. My name is Brad Geyer
16 and I represent Ken Harrelson.

17 And I just wanted to confirm, if I understand your
18 testimony correctly, your testimony was a lot about the
19 Georgia OK chat; is that right?

20 A Yes.

21 Q And Ken Harrelson isn't on that?

22 A Correct.

23 Q And you also mentioned December 12th Jericho
24 march, he didn't go to the December 12th Jericho march;
25 isn't that correct?

1 A I do not know.

2 Q And you also mentioned again the "Old Leadership"
3 chat or the "Old Lead" chat. Mr. Harrelson wasn't on that
4 chat, correct?

5 A Not to my knowledge.

6 Q The D.C. Op chat Jan. '21, he was added to that
7 chat on the evening of January 3rd; isn't that correct?

8 A I don't know when he was added, but he was in it.

9 Q Could the government please pull up Exhibit 6804.
10 Is that possible?

11 Thank you.

12 I just want to go over. So if I understand this
13 correctly, looking at 6804, these are all the phone calls
14 that occurred to everybody you testified about this morning
15 from November 11th through January 3rd, 2021?

16 A November 3rd to January 3rd, yes.

17 Q Yes.

18 And, again, Mr. Harrelson doesn't show up anywhere
19 on here as far as I could tell; is that correct?

20 A Correct.

21 Q You're aware that Mr. Harrelson, prior to, let's
22 just say, January 7th, the day or -- the 8th of 2021, one or
23 two days after January 6th, Mr. Harrelson had never met
24 Mr. James?

25 MS. HUGHES: Objection.

1 THE COURT: Can you lay the foundation for that
2 question?

3 BY MR. GEYER:

4 Q Mr. James has been charged --

5 MS. HUGHES: Objection.

6 THE COURT: Can you rephrase the question?

7 BY MR. GEYER:

8 Q Are you aware that Mr. Harrelson has never met
9 Mr. James?

10 A I am not aware of that.

11 Q Are you aware that he's never -- let me preface
12 that by saying, prior to January 7th, he's never met
13 Joshua James?

14 A I'm not aware if he has or has not.

15 Q He's never met Mr. Minuta prior to January 7th?

16 A I'm not aware if he's met him or not.

17 Q Never met Mr. Walden, another Oath Keeper?

18 A Again, I don't know who he has met.

19 Q Never met Rick Jackson?

20 A I don't know if he has met him.

21 Q Never met Mr. Ulrich?

22 A I don't know if he has met him.

23 Q And never met Mr. Grods?

24 A I don't know if he has met him.

25 MR. GEYER: I thank you for your time.

1 THE COURT: Okay. Hang on. Mr. Crisp?

2 MR. CRISP: I'm sorry, I didn't hear you.

3 No, no questions. Thank you.

4 THE COURT: Okay.

5 - - -

6 CROSS-EXAMINATION

7 BY MR. FISCHER:

8 Q Good afternoon, Agent.

9 A Good morning.

10 Q Just a few questions for you.

11 First of all, your investigation obviously not
12 only included you but multiple FBI agents across the
13 country; is that correct?

14 A Correct.

15 Q So when you indicated you had been involved in 25
16 plus interviews of individuals potentially related to
17 January 6th, that's in addition to hundreds of other
18 interviews that has taken place across the country;
19 is that correct?

20 A I don't know the number but, yes, other agents did
21 conduct other interviews.

22 Q And there would have to be at least -- maybe you
23 can tell me. Approximately how many agents, Special Agents
24 from the FBI are working on the January 6th investigation
25 into the Oath Keepers?

1 A I don't actually know the exact number.

2 Q Is it more than ten?

3 A Again, I don't know specifically the number.

4 Q And obviously as part of your investigation,
5 you've reviewed thousands of messages. Would you agree with
6 that?

7 A I don't know the number, but sure, yes.

8 Q And you've certainly consulted with other agents
9 from across the country about messages you've reviewed and
10 messages they've reviewed; is that correct?

11 A Yes.

12 Q And, Agent, you've brought up the name Ranger Doug
13 as in Doug Smith, correct?

14 A Yes.

15 Q And, Agent, you were aware that Doug Smith has
16 been interviewed by the FBI; is that right?

17 MS. HUGHES: Objection, Your Honor.

18 THE COURT: She can answer if she knows.

19 THE WITNESS: I don't know for sure. I believe so
20 but I wasn't involved.

21 BY MR. FISCHER:

22 Q Well, certainly his name came up on your radar
23 because you were reviewing messages, right?

24 A Yes.

25 Q And, certainly, you would have wanted to have

1 verified that this person named Ranger Doug Smith at least
2 was known to your colleagues, correct?

3 A I did not participate in that.

4 Q Fair enough.

5 And, certainly, Agent, if Ranger Doug Smith had
6 any incriminating information to give regarding any of his
7 defendants, the FBI certainly is aware of it by now; is that
8 right?

9 A Again, I did not participate in that.

10 Q Agent, you mentioned --

11 MS. HUGHES: Objection, Your Honor. This line of
12 questioning.

13 THE COURT: Well, it's overruled.

14 MR. FISCHER: That's my last question on that
15 line.

16 THE COURT: I figured you were moving on.

17 Go ahead, Mr. Fischer.

18 BY MR. FISCHER:

19 Q Agent, you brought up a Signal chat called OK
20 Florida Hangout; is that correct?

21 A Yes.

22 Q In fact, my client, I represent Thomas Caldwell,
23 Mr. Caldwell is not on that chat; is that correct?

24 A Not to my knowledge.

25 Q Okay.

1 You also brought up the OK Rocket.Chat. You would
2 agree Mr. Caldwell was not on that chat as well;
3 is that correct?

4 A I do not know.

5 Q Okay. Well, you mentioned, I believe, that those
6 chats are members only and require a password; is that fair
7 to say?

8 A That's one specifically did. There was one that
9 was public facing.

10 Q So you'd agree, for example, there's a difference
11 between someone who's a member of the Oath Keepers and
12 someone who's not a member and that a member would have a
13 password and be able to get into these chats; is that fair
14 to say?

15 A I don't know if this particular chat required
16 membership into the Oath Keepers so far as just creating a
17 user name and password.

18 Q The call records that were presented by the
19 government, isn't it true Mr. Caldwell was not on those call
20 records?

21 A Not the ones we reviewed today.

22 MR. FISCHER: Thank you, Agent.

23 Nothing else, Your Honor.

24 THE COURT: All right. Thank you, Mr. Fischer.

25 Any redirect examination, Ms. Hughes?

1 MS. HUGHES: Very briefly, Your Honor.

2 - - -

3 REDIRECT EXAMINATION

4 BY MS. HUGHES:

5 Q Ms. Rohde, if we could please put up Government's
6 Exhibit 6803.2 which is in evidence.

7 And could we go to page 2.

8 Special Agent Abrams, you were asked if there was
9 no mention of the Capitol in these chats. Could you please,
10 directing your attention to the message from Bilbo,
11 Mr. Ulrich, on December 5th. Could you please read this
12 message again?

13 A "I seriously wonder what it would take just to get
14 ever patriot marching around the Capitol armed. Just to
15 show our government how powerless they are. That if they
16 continue to rape our Constitution, these are the folks who
17 they will be dealing with."

18 Q And if we could go to page 24 of this same
19 exhibit.

20 Now, on December 14th, Mr. Rhodes writes, "Good
21 topic for a phone call."

22 Special Agent Abrams, have you reviewed multiple
23 messages from Mr. Rhodes?

24 A Yes.

25 Q Is it fair to say this is not an individual who is

1 shy from writing voluminous amounts of information in texts
2 and in Signal messages and on his website?

3 A Correct.

4 Q But at this point, does he ask for a phone call?

5 A Yes.

6 MS. HUGHES: No further questions.

7 THE COURT: Okay. Special Agent Abrams, thank you
8 for your time and your testimony. You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Okay. Is the government ready with
11 its next witness?

12 MR. MANZO: We are, Your Honor. Would it be
13 possible to take our morning break before our next witness?
14 If not, we can proceed.

15 THE COURT: Let's keep moving. We'll take our
16 break in about a half hour or so, I mean, 20, 25 minutes.

17 MR. MANZO: We call Terry Cummings to the stand.

18 COURTROOM DEPUTY: Please raise your right hand.

19 (Witness is placed under oath.)

20 COURTROOM DEPUTY: Thank you.

21 THE COURT: Mr. Cummings, welcome.

22 If you're comfortable with your mask off, you can
23 take it off.

24 THE WITNESS: Off would be better.

25 THE COURT: Off, yeah, please feel free to take it

1 off. Welcome.

2 Mr. Manzo.

3 - - -

4 TERRY CUMMINGS, WITNESS FOR THE GOVERNMENT, SWORN

5 DIRECT EXAMINATION

6 BY MR. MANZO:

7 Q Good morning, Mr. Cummings. Could you please
8 introduce yourself to the jury by stating and spelling your
9 name.

10 A My name is Terry, T-e-r-r-y, Cummings,
11 C-u-m-m-i-n-g-s.

12 Q What state were you born in, sir?

13 A I was born in the state of Oregon.

14 Q And did you go to college?

15 A Yes, I did.

16 Q Where did you go?

17 A I graduated from Warner Pacific College.

18 Q After college, did you decide to serve your
19 country in the military?

20 A It was actually before college, but, yes, I did.

21 Q Why was that?

22 A Well, my father served in the Army Air Corps
23 during World War II. I had friends who were serving in the
24 military during Vietnam.

25 Q So what branch did you enlist in?

1 A I enlisted in the Air National Guard.

2 Q And why the Air National Guard in particular?

3 A I wanted to attend school. I wanted the money for
4 it, and I knew I could participate with the GI bill by
5 joining the Air National Guard.

6 Q When was your first deployment abroad?

7 A My first deployment abroad was in 1978.

8 Q Where did you go?

9 A Germany.

10 Q Did something bring you back from Germany?

11 A Yes, my mother was diagnosed with cancer and the
12 doctors, when they finally made that diagnosis, did not know
13 how long she would have to live, so I had an emergency
14 return home.

15 Q And after you returned home, subsequently, how
16 long did you serve in the guard?

17 A I served for 21 years.

18 Q What continents were you deployed to?

19 A Every continent except Australia and the
20 Antarctic.

21 Q Did you serve in classified locations?

22 A Yes, I did.

23 Q In addition to serving with the guard, did you
24 have a full-time job in the United States?

25 A Yes, I did.

1 Q What was that?

2 A I worked for the Transit District in Portland,
3 Oregon.

4 Q Can you go briefly through your career, what you
5 did with them?

6 A I started out as a bus driver. Then I went into
7 maintenance, working on the -- maintaining the light rail
8 vehicles in Portland.

9 Then eventually ended up being the supervisor of
10 communications systems, which was -- I worked in
11 communications in the Air National Guard also so it was a
12 natural fit for me. And at one point in time, I was also
13 the manager of the maintenance weigh department.

14 Q How many years were you with the transportation
15 department?

16 A 35 years.

17 Q Did something cause you to have an early
18 retirement?

19 A Yes. In 2015, I came down with a vestibular
20 disorder.

21 Q And briefly, what is that?

22 A I didn't pass the ears of a vestibular system, the
23 balance system.

24 Q And do you have episodic relapses from time to
25 time?

1 A I do.

2 Q When was the last time you had an episodic
3 relapse?

4 A The last time that included a vertigo component
5 was in April, and recently I've had that continuation of an
6 episode over the last several weeks.

7 Q Does this affect your ability remember or have
8 brain fog?

9 A Yes, it does, it definitely impacts my memory
10 recall and my cognitive abilities.

11 Q But sitting here in court, you can tell everything
12 that's going on and perceive things normally today?

13 A Today, yes.

14 Q Okay. Let's go forward to 2020. In what state
15 were you residing in in 2020?

16 A Florida.

17 Q At some point in 2020, did you become associated
18 with the Oath Keepers in some way?

19 A Yes, I did.

20 Q Why did you do that?

21 A There were a lot of things going on in the country
22 at the time, and I believed in what I felt the Oath Keepers
23 stood for, keeping the oath. When you enlist in the
24 military, you take an oath to defend the Constitution
25 against all enemies foreign and domestic.

1 Q When you say a lot of things, could you be a
2 little more specific?

3 A I'm sorry --

4 Q Well, let me back up. Just a second ago, you said
5 there were a lot of things going on in 2020?

6 A Okay. Thank you.

7 The rioting that was going on, the attacks by
8 Antifa. Now, residing in Oregon, it would be hard for
9 people even here not to know about the riots and the damage
10 that was caused in Portland, Oregon, by Antifa at the time.

11 Q And how did you become involved in the
12 Oath Keepers?

13 A I just went to their website and filled out the
14 form.

15 Q After you filled out the form, did you end up
16 participating in any virtual GoToMeetings?

17 A Yes, I did.

18 Q And what about Signal, did you join any Signal
19 chats?

20 A Yes.

21 Q Did you participate in these Signal chats
22 regularly?

23 A I read them. I often did not participate.

24 Q Did you read every message that came through?

25 A No, I did not.

1 Q Why not?

2 A Some of the people in the chats were extremely
3 prolific and it would be like if you had one or 2,000
4 friends on Facebook and they posted every day. You're not
5 going to read everything.

6 Q Prior to early January, had you met any
7 Oath Keepers in person? When I say early January, of 2021?

8 A Yes, I had met one member of Florida Oath Keepers
9 prior to that time.

10 Q Who was that?

11 A Kenneth Harrelson.

12 Q Could you describe what interaction, if any, you
13 had with him?

14 A At first it was just casual conversations, getting
15 to know each other. And then I think there was one other
16 time we got together just to talk over gear and what Florida
17 Oath Keepers was trying to accomplish.

18 Q Did you go to a restaurant or where were these
19 meetings taking place?

20 A The first time I believe was at a Dunkin' Donuts.
21 Second time was -- I met Ken at his house.

22 Q Fast-forwarding now to the late December period of
23 2020, did you come to understand that members of the Florida
24 Oath Keepers would be participating in an event in
25 Washington, D.C. on January 6th?

1 A There were conversations about traveling to
2 Washington, D.C. to be there for the rally on January 6th,
3 yes.

4 Q Did you decide to go?

5 A Yes, I did.

6 Q Why did you decide to go?

7 A It was an opportunity to express my
8 First Amendment rights.

9 There was a lot of conversations about whether the
10 election had been stolen or not. There was a big rally
11 supporting the President, and an opportunity to see a
12 sitting President, which I'd not done up to that point in
13 time.

14 Q Did you understand that the Oath Keepers would be
15 participating in some kind of security detail?

16 A Yes. From what I understood at that time, they'd
17 been asked to provide an escort for some VIPs from the
18 rally, which occurred at the Ellipse, to the Capitol.

19 Q Was it your intent to help out with that security
20 detail?

21 A Yes.

22 Q Now, just to be clear, do you have any training in
23 security?

24 A No.

25 Q Do you have any licenses?

1 A No.

2 Q Insurance?

3 A No.

4 Q Did you review any D.C. laws on securing -- on
5 security regulations?

6 A No.

7 Q So when you decided to travel up to Washington,
8 D.C., who did you travel with?

9 A I traveled with Kenneth Harrelson and Jason Dolan.

10 Q How did you go about meeting them prior to your
11 travels up to D.C.?

12 A Well, as I had mentioned earlier, I had already
13 met Ken prior to that. And Jason contacted me and let me
14 know that he could provide a ride for me up to D.C.

15 Q Where did you go when you first left your --
16 Florida, what state did you go to next?

17 A We stopped to spend the night in North Carolina.

18 Q Where did you stay in North Carolina, to the best
19 of your knowledge?

20 A We exited I-95 and went someplace towards the
21 east. We stayed at -- the best I can describe is would be a
22 rustic camp, like an old, you know, summer camp kind of
23 location.

24 Q Did you meet any other Oath Keepers at that
25 location?

1 A Yes, I did.

2 Q Who did you meet there?

3 A I know that Kelly Meggs and his wife Connie were
4 there.

5 And there were quite a few people there, but I
6 really didn't catch names.

7 Q And was this the night of January 4th?

8 A Correct.

9 Q After you left January -- the North Carolina camp
10 location on January 4th, what happened the next day?

11 A The next day, we were up early, returned to I-95
12 and continued driving up into Virginia.

13 Q When you got to Virginia, where did you go?

14 A We went to a hotel there and left the firearms
15 that we had brought in a hotel room.

16 Q I'm going to show you now what's been previously
17 marked for --as an exhibit, as Government's Exhibit 140 and
18 143.

19 Sir, do you recognize Government's Exhibit 140 and
20 143?

21 Your Honor, may I approach the witness?

22 A Yes, I do.

23 Q What is Government's Exhibit 140 and -- 140, 141,
24 142, and 143?

25 A 141, 2 and 3, is this orange ammo can here.

1 Q Whose ammo can is that?

2 A That's mine.

3 Q And can you just open that can up.

4 A (Witness complied.)

5 Q Can you stand up and present the can to the jury
6 so they can see the contents.

7 A (Witness complied.)

8 Q Thank you.

9 THE COURT: Sir, Mr. Cummings, could I ask you
10 also to show the defense team over there.

11 THE WITNESS: (Witness complied.)

12 Q Sir, if you could also open up the large black
13 case you have with you.

14 Your Honor, this has already been cleared by the
15 Marshals. The items inside are inoperable.

16 Can you take out the contents of that.

17 A (Witness complied.)

18 Q And, sir, what is that in your hand?

19 A This is an AR-15.

20 Q Is that your AR-15?

21 A Yes, it is.

22 Q And is that the weapon that you brought to the
23 hotel in Northern Virginia?

24 A Correct.

25 Q Thank you. You can put that down.

1 MR. MANZO: Your Honor, at this point I seek to
2 move in Government's Exhibit 140 to 143, which are orange
3 box with its contents, and the black case with the weapon.

4 THE COURT: Sorry, Mr. Manzo, did you say 140
5 through 1 43 or just 140 and 143?

6 MR. MANZO: 140 through 143. The weapon's case is
7 143 and the contents of the black -- the orange box and its
8 contents, which is ammunition that Mr. Cummings just showed
9 the jury, are 141, 142, and 140, I think.

10 THE COURT: Okay. Any objection?

11 MR. WOODWARD: No, Your Honor.

12 MR. BRIGHT: No, Your Honor.

13 THE COURT: 140 through 143 will be admitted.

14 (Government's Exhibit 140 through 143
received into evidence.)

15 BY MR. MANZO:

16 Q On your way to Washington, D.C., did you hear or
17 understand that there would be a QRF at the hotel that you
18 were going to?

19 A Yes.

20 Q Was it your intent -- what was your intention by
21 bringing your weapon to Washington, D.C. or to the Northern
22 Virginia area?

23 A My intention was that it would potentially be used
24 not as an offensive situation but to be used more as a show
25 of force, because there had been ongoing riots throughout

1 the country, and it was to be used with the other
2 Oath Keeper members to be just a presence.

3 Q Did you intend for your weapon to be used by any
4 other person?

5 A No.

6 Q Can you describe when you got to the hotel in
7 Northern Virginia -- do you know what type of hotel it was?

8 A Prior to that? No.

9 Q When you got there, do you remember the name of
10 the hotel?

11 A I don't.

12 Q When you got to the hotel, what did you do?

13 A When we arrived at the hotel, Kelly verified what
14 room would be ours and then we took the weapons from Jason's
15 vehicle and we took them up to a room and left them.

16 Q When you took them to the room, was somebody
17 waiting there?

18 A Yes.

19 Q Who was waiting there?

20 A I don't know his name.

21 Q Did you know that person?

22 A No.

23 Q Did other people appear to know that person?

24 A They did.

25 Q What gave you that impression?

1 A Just conversations with him.

2 Q When you saw inside the hotel room, what did you
3 think?

4 A There were a lot of firearms cases.

5 Q Could you compare it to any other experience that
6 you've had?

7 A Well, I had not seen that many weapons in one
8 location since I was in the military.

9 Q Let me ask you a couple more questions about your
10 trip up to Washington, D.C.

11 When you were about leave Florida, did you have an
12 issue with your personal phone?

13 A I did.

14 Q Can you describe what happened with your personal
15 phone to the jury.

16 A Yes.

17 Typically in the evening, I will plug my phone in
18 so it will be charged in the morning. When I got up the
19 next morning, sat down with my cup of coffee just to check
20 on news, the phone was dead.

21 Q And so what did you do as a result of having a
22 dead phone before you departed to Washington, D.C.?

23 A Well, wanting to be able to stay in contact with
24 my wife, I quickly drove to Walmart since they were open
25 early and purchased a prepaid phone.

1 Q How did you -- what means did you use to purchase
2 the phone?

3 A I used cash.

4 Q So let's go back now to the hotel that the guns
5 were dropped off at.

6 After you drop your gun off, what did you do?

7 A Well, after the cases were dropped off, we drove
8 into D.C. to the Hilton Garden hotel.

9 Q When you say we, who do you mean?

10 A Jason Dolan and Ken Harrelson and myself.

11 Q When you got to the Hilton Garden, what did you
12 do?

13 A Well, we went to check-in and when I was
14 attempting to check-in, I found out that somehow I had ended
15 up making a reservation at the Hilton Garden in Georgetown.
16 So Jason was kind enough to allow me to share the room with
17 him.

18 Q And so did you sleep in Mr. Dolan's room that
19 night?

20 A Yes.

21 Q What did you do the next morning? What happened
22 when you woke up?

23 A Well, the next morning it had been arranged for us
24 to meet first thing in the morning in the lobby and
25 transportation had been arranged for us to travel to near

1 the Washington Monument.

2 Q Who arranged the transportation?

3 A I believe it was Kelly Meggs.

4 Q And we're now talking about January 6th;
5 is that correct?

6 A Correct.

7 Q What were you dressed like on the morning of
8 January 6th?

9 A I was wearing a green cap, a black jacket, and
10 I believe it was khaki slacks.

11 Q And what was Mr. Meggs or the other people you
12 were with wearing to the best of your memory?

13 A Quite a few of them were wearing, like, tactical
14 vests or plate carriers without the plates and bump hats or
15 helmets.

16 Q Did you end up traveling toward the Ellipse area?

17 A Yes.

18 Q How did you get there?

19 A It was a minivan, if I remember correctly. It
20 might have been an Uber or some kind of service like that.
21 I don't know.

22 Q When you got to the Ellipse, what did you do?

23 A Well, when we arrived at the Ellipse, if I
24 remember correctly, Kelly had contact with the organizers,
25 and we ended up being given passes to go into the seating in

1 the VIP area.

2 Q Who were you with when you were in the VIP area?

3 A Other Florida Oath Keepers members and some other
4 Oath Keepers from other states.

5 Q To your knowledge, can you name any people that
6 you were with?

7 A The only people whose names I can really remember
8 are Kelly Meggs' wife Connie. They weren't sitting in the
9 same area I was. But then Ken and Jason.

10 Q Were you with Mr. Brown as well?

11 A He was with us at that time. I don't know where
12 he was in the VIP area.

13 Q Did you stay and listen to the whole, complete
14 part of President Trump's speech?

15 A No. Before the speech ended, Kelly came along and
16 told us that it was time for us to leave.

17 Q Do you know why at that point that Kelly said it
18 was time to leave?

19 A I wasn't really sure at the time, but, you know,
20 we had been asked to escort a VIP from the rally to the
21 Capitol.

22 Q Did you subsequently soon thereafter meet the VIP?

23 A Yes.

24 Q Do you know who the VIP was?

25 A No, I don't.

1 Q Could you describe what the person looked like?

2 A Best I could say would be she looked like a
3 Hispanic female.

4 Q But you had no idea of what her identity was?

5 A No.

6 Q When you left the Ellipse area with the VIP before
7 the President's speech ended, where did you start to move
8 toward?

9 A We started -- would you repeat the question,
10 please.

11 Q When you left the Ellipse area, where did you
12 start to go toward?

13 A We started walking to the Capitol.

14 Q At some point, did you receive some news?

15 A Yes, I remember Kelly saying that they had
16 breached the Capitol.

17 Q What did the word "breach" mean to you?

18 A To me it has kind of a negative connotation, like
19 breaking in.

20 Q And what did you understand was going on at the
21 Capitol that day?

22 A Well, at that point in time, I wasn't sure.
23 I wasn't sure who it was that breached the Capitol.

24 Q Well, let me back up for a second.

25 Generally, what was going on inside the Capitol on

1 January 6th?

2 A Okay. Inside the Capitol --

3 MS. HALLER: Objection to form.

4 THE WITNESS: -- as Congress was meeting to --

5 THE COURT: I'm sorry?

6 MS. HALLER: Just restate the question.

7 THE COURT: I'm sorry, what was the objection?

8 MS. HALLER: I'm sorry, the form of the objection,
9 related to the lack of knowledge to what's going on in the
10 Capitol. If he's at the Ellipse, so there's a lack of
11 foundation.

12 BY MR. MANZO:

13 Q What was happening in Washington, D.C. in the
14 United States Capitol on January 6th, if you know?

15 A Congress was meeting to certify the 2020 election.

16 Q And so when you heard the word breach, what did
17 that mean to you again?

18 A To me it means, you know, breaking into or
19 entering an area that people shouldn't be in.

20 Q What did you do next after you received that news
21 from Mr. Meggs?

22 A We continued to walk towards the Capitol.

23 Q At some point, did you end up reaching close to
24 the Capitol area?

25 A Yes, we did.

1 Q And when you got to the Capitol, what could you
2 see?

3 A I believe by that time, the large American flag
4 was hung on the Capitol, there were people on the upper
5 level on the outside, and there were a lot of people milling
6 around on the Capitol Grounds.

7 Q Was it like anything you had seen before?

8 A No, it wasn't.

9 Q Did you see anyone scaling walls?

10 A I do believe I saw people climbing up the outside
11 walls.

12 Q I'm going to pull up, just for the witness,
13 Government's Exhibit 5202.

14 THE COURT: Mr. Manzo, why don't we take a pause
15 since it's about 11:15. Why don't we take our morning
16 break.

17 All right. Ladies and gentlemen, we'll take our
18 morning break now. It's 11:15 or a little bit after 11:15.
19 We'll get started little bit after 11:30. Thank you very
20 much and we'll see you all shortly.

21 COURTROOM DEPUTY: All rise.

22 (Jury exited the courtroom.)

23 THE COURT: All right. Mr. Cummings, you can step
24 down, sir. I'll just ask you to return to the courtroom by
25 11:30 so we can get started shortly after.

1 And ask you not to discuss your testimony with
2 anybody during the break.

3 THE WITNESS: Yes.

4 THE COURT: All right. Thank you, sir.

5 MR. WOODWARD: Your Honor, so 104(a), of course,
6 does provide that the Court need not -- is not bound by the
7 Rules of Evidence. Actually, I think that I've opened up a
8 bit of a Pandora's box here because 104(b) is going to
9 provide that the jury ultimately has to make the
10 determination as to authenticity.

11 So let me discuss with defense counsel over the
12 break and see if we aren't going to revisit our position on
13 this. Thanks.

14 THE COURT: All right. Thank you. See everybody
15 shortly.

16 COURTROOM DEPUTY: This Court stands in recess.

17 (Recess from 11:18 a.m. to 11:34 a.m.)

18 THE COURT: Please be seated, everyone.

19 MR. FISCHER: Your Honor, may I address the Court
20 briefly?

21 Your Honor, with Mr. Cummings, I do intend on
22 asking Mr. Cummings whether he --

23 THE COURT: Mr. Cummings is in the courtroom so
24 I want to be mindful of his presence here so I'm going to
25 ask him to step outside the courtroom.

1 MR. FISCHER: Your Honor, I intend on -- my intent
2 is to ask Mr. Cummings whether he's been charged in this
3 case, because I do not believe the Court's order covers
4 witnesses who are actually on the witness stand because that
5 would go to their -- any bias they have. I just wanted to
6 bring that up.

7 MR. MANZO: I think that's a proper line of
8 impeachment.

9 MR. NESTLER: This is a topic that I didn't want
10 to address, but I feel obligated to, which is that, it's
11 come to our attention over the break that Mr. Moseley
12 released a copy of an FBI 302 that he should no longer be in
13 possession of to the press.

14 We can get a copy for the Court and deal with this
15 at a break but I wanted to flag it, it just came to our
16 attention.

17 Mr. Woodward, at the Court's request, as he said,
18 instructed Mr. Moseley via email last week what Your Honor
19 has said, which is that he shouldn't be in possession of
20 discovery materials and shouldn't be releasing anything.
21 I appreciate Mr. Woodward doing that. I'm not sure it had
22 the desired effect, but I appreciate the effort.

23 MR. WOODWARD: I have not received the case file
24 from Mr. Moseley. I've asked for it multiple times. There
25 is material in there that Mr. Meggs created. So it's

1 actually a disservice to us that we don't have it. I don't
2 prefer to speak to Mr. Moseley again, however.

3 THE COURT: Okay.

4 We'll take that up in due course.

5 (Pause)

6 COURTROOM DEPUTY: Jury panel.

7 (Jury entered the courtroom.)

8 THE COURT: All right. Please be seated,
9 everybody.

10 Ladies and gentlemen, welcome back.

11 Mr. Cummings, why don't you re-take the stand,
12 please.

13 MR. MANZO: Thank you, Your Honor. Mr. Cummings.

14 Ms. Rohde, can we pull up 5202.

15 BY MR. MANZO:

16 Q Mr. Cummings, can you see the picture on your
17 screen?

18 A Yes.

19 Q Do you recognize anyone in this picture?

20 A I recognize myself.

21 Q You recognize yourself.

22 And could you circle yourself on the screen here.

23 A (Witness complied.)

24 Q And do you recognize when this picture was taken?

25 A Yes.

1 Q When was this taken?

2 A January 6th.

3 MR. MANZO: Your Honor, at this point, I'd seek to
4 move this photo into evidence, 5202.

5 MS. HALLER: No objection, Your Honor.

6 THE COURT: 5202 will be admitted.

7 (Government's Exhibit 5202
8 received into evidence.)

9 BY MR. MANZO:

10 Q Just for the record, sir, you've circled the
11 person in the back left with a gaiter and what appears to be
12 a green baseball hat on?

13 A Yes.

14 Q And who are you with in this photo?

15 A I'm not 100 percent positive, but it looks like
16 Kelly Meggs and some people that I knew that were there with
17 us, but I don't know their names.

18 Q And just to be clear, were you in any kind of
19 leadership role in the Oath Keepers?

20 A No.

21 Q And did you participate in any meetings with any
22 other Oath Keepers except for having a cup of coffee with
23 Kenny Harrelson one day?

24 A Face to face? No.

25 Q Did you ever meet Stewart Rhodes?

1 A No.

2 Q And prior to January 4th, when you were in
3 North Carolina, had you ever met Kelly Meggs in person?

4 A No.

5 And I should back up. I did not meet
6 Stewart Rhodes prior to January 6th.

7 Q After January 6th, you met Stewart Rhodes?

8 A I did on January 6th.

9 Q Got it.

10 And did you hold any positions in the Oath Keepers
11 whatsoever?

12 A No.

13 Q So looking at this picture, that's you you've
14 circled in the back left.

15 Is this on approximately the north side of the
16 Capitol?

17 A It looks like it.

18 Q And this is after what you testified before, just
19 to reorient the jury before the break. You'd already seen
20 the people scaling the walls and now you're walking around
21 the Capitol; is that fair to say?

22 A Yes.

23 Q Okay.

24 What happened next? Where did you go?

25 A We continued on around to the east side of the

1 Capitol.

2 Q Well, before you got there, what happened to the
3 person that you were escorting?

4 A They stayed around over on the northwest side of
5 the Capitol.

6 Q So the VIP that you were escorting to the Capitol
7 with the other members of the Oath Keepers after you saw the
8 scaling of the walls and whatnot, that person was left
9 behind?

10 MS. HALLER: Objection to form.

11 THE COURT: Sustained.

12 Just rephrase the question, please.

13 BY MR. MANZO:

14 Q What happened -- when did you decide the VIP
15 escort was over?

16 A At some point after we arrived at the Capitol,
17 I don't know whether they reached the point where they
18 wanted to be or exactly what decision was made, but she
19 stayed behind and Jeremy Brown volunteered to stay with her.

20 Q And the rest of the crew, what did they do?

21 A The rest of us continued around to the east side
22 of the Capitol.

23 Q When you got to the east side, what did you do
24 when you got there?

25 A We were observing what was happening, and I recall

1 Kelly saying that -- well, he was wondering about whether we
2 should enter the Capitol.

3 Q Do you remember specifically what he said?

4 A Not specifically, but he was wanting to find
5 someone to talk to them.

6 Q Were you aware of specifically who Kelly Meggs was
7 trying to talk to?

8 A No, I don't recall that.

9 Q Did you get the sense that this was -- Kelly Meggs
10 was trying to talk to somebody in person or on the phone?

11 A I didn't get an impression one way or the other.
12 I don't know.

13 Q In the Oath Keepers organization, do you know
14 who's above Kelly Meggs in the hierarchy?

15 A I know there are positions above Kelly. But the
16 only person that I know for sure by name is Stewart Rhodes.

17 Q At any point as you're standing there and
18 Kelly Meggs is waiting for direction, was there a
19 conversation about trying to help the police?

20 MS. HALLER: Objection to form.

21 THE COURT: It's overruled.

22 THE WITNESS: I don't recall there being a
23 conversation like that.

24 BY MR. MANZO:

25 Q Was there a conversation about helping anyone?

1 A There was a general attitude that if someone was
2 in need of help, that we would probably assist them.

3 Q Well, let's just be specific.

4 Was there a specific conversation that anyone
5 said, let's go help somebody?

6 A I don't recall a conversation like that.

7 Q As Kelly Meggs is there waiting to talk to
8 somebody, what are you thinking?

9 A Well, since he was talking about entering the
10 Capitol, my understanding was that Congress was in session
11 and I knew that the Vice President was going to be there for
12 the certification of the election, and I personally didn't
13 think it was a good idea to enter.

14 Q Why?

15 A Well, for the reason I just mentioned.

16 Q So what did you do?

17 A Well, about that time, I had an overwhelming need
18 to relieve myself, so I spotted some porta potties and I
19 left.

20 Q And where were the porta potties approximately?

21 A They were off to the northeast of the Capitol.

22 Q After you're done relieving yourself, what
23 happened next?

24 A Well, when I returned, the group was no longer
25 where I left them.

1 Q At some point, did you see the group reemerge?

2 A I did.

3 Q Who was in the group when they reemerged?

4 A Well, Kelly, his wife, Connie, Kenneth Harrelson,
5 and Jason Dolan, and there were some others but I don't know
6 their names.

7 Q At any point, do you remember seeing
8 Stewart Rhodes?

9 A Later on he did arrive, yes.

10 Q Did Stewart Rhodes say anything?

11 A Well, the only comment I remember Stewart making
12 was once they started using flash bangs and CS gas, he made
13 a comment about, "Just suck it up, just CS gas."

14 Q When you say they started using flash bangs or CS
15 gas, who do you mean was deploying that?

16 A By "they" I mean the police.

17 Q When you say Stewart Rhodes said, "Suck it up,"
18 what did you understand that to mean?

19 A Like a little tear gas in the eyes isn't any big
20 deal.

21 Q At some point, did you decide to leave the general
22 Capitol area?

23 A The group in general made a decision, because the
24 mayor had invoked a 6:00 p.m. curfew time and we wanted to
25 make sure we were back in the hotel prior to that.

1 Q So where did you go? Which hotel?

2 A The Hilton Garden hotel.

3 Q And when you got there, what did you do?

4 A Well, on the way to the hotel, I separated and
5 I went into a small market close to the hotel to try to find
6 something to pick up for dinner. Then I returned to the
7 room.

8 Q And you slept that night?

9 A Excuse me?

10 Q Did you sleep that night?

11 A Yes.

12 Q What happened the next morning?

13 A The next morning, we got up, we were under the
14 impression we were going to be meeting some of the other
15 members, but it turned out that everyone had already left.

16 Q And who were you planning on meeting that morning?

17 A Kelly and the other Florida contingent.

18 Q So what did you do?

19 A We left. We drove to the hotel in Virginia where
20 we had left the firearms.

21 Q And when you got there, what did you do?

22 A Well, it turns out we were the last ones to pick
23 up our equipment. So we retrieved it, loaded it, and headed
24 back to Florida.

25 Q Did you retrieve it from the same individual that

1 you had left the gun with?

2 A Yes.

3 Q Were you involved in any conversations about the
4 QRF specifically?

5 A I wasn't involved. I heard conversations.

6 Q Were you in any leadership role in the QRF?

7 A No.

8 Q And did you understand that the QRF -- what was
9 your understanding of how the QRF would be used?

10 A My understanding was that if there was a need for
11 weapons determined by leadership, that the people in -- at
12 the Virginia hotel would load the firearms and transport
13 them into D.C.

14 Q And were you involved in leadership in any way?

15 A No.

16 Q Were you on any Signal chats involving the highest
17 levels of leadership?

18 A No.

19 Q After you picked up the guns at the hotel, where
20 did you go?

21 A We returned to Florida.

22 Q When you say "we," who do you mean?

23 A Jason Dolan, Kenneth Harrelson and myself.

24 Q What was the mood like on the return home?

25 A It was more subdued than the trip to D.C.

1 Q I'm going to show you Government's Exhibit 5200.

2 At some point in November of 2001 [sic],

3 do you remember meeting with the FBI?

4 A Yes.

5 Q And when you met with him, did they show you the
6 photo that's in Government's Exhibit 5200 on your screen?

7 A I do remember seeing this at some point. I don't
8 remember exactly when.

9 Q Okay. But it was when you met with the FBI?

10 A Yes.

11 Q And, Ms. Rohde, can you just scroll up and down
12 here.

13 I'm showing you page 2, page 3, page 4, page 5.

14 Do you remember being shown this, these photos?

15 A I don't remember seeing all of them, no.

16 Q Okay.

17 But you remember seeing some of them?

18 A Yes.

19 Q And do you recognize where these photos were taken
20 from?

21 A Yes.

22 Q Where were they taken from?

23 A From the hotel in Virginia.

24 Q And is that the hotel in Virginia where you had
25 dropped off your firearm?

1 A Yes.

2 Q And, Ms. Rohde, if you can back up to the second
3 page.

4 On this page, do you recognize anyone?

5 A Looking at it and trying to identify a particular
6 person, no, I don't.

7 Q Okay.

8 If we go to the first page.

9 In this page, do you recognize anyone, including
10 yourself?

11 A Well, yes, I recognize myself.

12 Q Okay. And can you circle yourself on this photo.

13 A (Witness complied.)

14 Q Okay.

15 MR. MANZO: And at this point, Your Honor, I'd
16 seek to move 5200 into evidence.

17 MR. WOODWARD: Objection to foundation for all of
18 the photos. This one, no objection.

19 MR. MANZO: Okay. Can we go to the second slide?

20 BY MR. MANZO:

21 Q And can you circle yourself in this photo if you
22 see yourself?

23 A (Witness complied.)

24 Q We'll go to the third slide.

25 If you see yourself in this slide, can you circle

1 yourself.

2 A (Witness complied.)

3 Q And we'll go to the fourth slide.

4 If you see yourself in this photo, can you circle
5 yourself.

6 A (Witness complied.)

7 Q And we'll go to the fifth slide.

8 If you see yourself in this photo, can you circle
9 yourself.

10 A (Witness complied.)

11 MR. WOODWARD: No objection.

12 MR. MANZO: Thank you. I seek to --

13 THE COURT: Get on the phone quickly, please.

14 (Bench conference)

15 THE COURT: There's some handwriting on these
16 photos. Did this gentleman identify people when he was
17 shown these photos by the FBI? Is this coming in as a prior
18 ID?

19 MR. MANZO: Exactly, Your Honor. He identified
20 the people and the gun cases and the FBI marked them with
21 that blue marker as he was identifying them.

22 But I'm not sure if he'll be able to make the same
23 IDs in court today, but since it's a prior statement of
24 identification, it's admissible, we believe.

25 THE COURT: It is -- well, it is. I think the

1 question is whether he will recall having written on those
2 photographs and identified the people. Looks to me like
3 he's circled them and identified people with initials. Will
4 he recall having done that?

5 MR. MANZO: To be clear, he dictated to the FBI
6 how he was identifying and what he was identifying so it's
7 both initials and objects.

8 THE COURT: Oh, before.

9 MR. MANZO: And then the FBI circled and initialed
10 based on his identification.

11 THE COURT: Okay.

12 MR. MANZO: So we have one of the agents who is
13 present at that identification available to testify.

14 THE COURT: Okay. All right.

15 Okay. Any objections based on that understanding?

16 MR. WOODWARD: Yes, I apologize. We did not
17 understand this to be an FBI's handwriting. I wrongly
18 assumed that it was Mr. Cummings' handwriting. If the FBI
19 wrote it, then we think the proper course is to admit the
20 photographs unaltered.

21 THE COURT: Does the government intend to call the
22 FBI agent?

23 MR. MANZO: Yes.

24 THE COURT: Okay. So with the proviso that the
25 FBI agent will be called, I'll admit them now and they can

1 be -- the exhibits can be tied up by the FBI agent when he's
2 called. Is he being called next?

3 MR. MANZO: Yes. It's Agent Kelsey Harris, who
4 was present during the interview with Mr. Cummings.

5 THE COURT: All right.

6 All right. Subject to that condition, they'll be
7 admitted.

8 (Open court)

9 THE COURT: Exhibit 5200 will be admitted.

10 (Government's Exhibit 5200
received into evidence.)

11 BY MR. MANZO:

12 Q Ms. Rohde, are we on the first slide?

13 So, Mr. Cummings, now, again, just for the jury
14 now, can you circle yourself in this photo?

15 A (Witness complied.)

16 Q And at the hotel when you were picking up your
17 weapon, who were you with?

18 A I was with Ken Harrelson and Jason Dolan.

19 Q Looking at this photo, can you tell who's who?

20 A I can only make a guess based upon who I was with.
21 The resolution obviously is not very good on this photo.

22 Q Did you previously tell FBI agents on November
23 15th of 2021 that the person on the right was
24 Kenneth Harrelson and the person in back was Terry Cummings,
25 or TC?

1 MS. HALLER: Objection to form. Leading.

2 THE COURT: It's overruled.

3 THE WITNESS: I don't recall doing that.

4 BY MR. MANZO:

5 Q Fair enough.

6 Can we go to the second slide.

7 And, Mr. Cummings, can you circle yourself in the
8 second slide of 5200.

9 A (Witness complied.)

10 Q And just for the record, you circled the
11 individual to the right.

12 And do you recognize the other two individuals in
13 this photo?

14 A Again, I would be making an assumption.

15 Q Do you remember telling the FBI on November 15th,
16 2021, that the person on the left was Jason Dolan?

17 MS. HALLER: Objection; form.

18 THE COURT: It's overruled. It's impeachment.

19 It's a question for purposes of impeachment.

20 So go ahead.

21 THE WITNESS: Again, I'm just seeing the backs of
22 low resolution images. Again, based on the scenario, I
23 probably could. I don't recall telling the FBI that this is
24 definitely this person or that person. I don't remember
25 doing that.

1 BY MR. MANZO:

2 Q Fair enough.

3 Going to Slide 3, and then showing you Slide 3.

4 Do you recognize yourself in this photo?

5 A Yes.

6 Q And can you circle yourself.

7 A (Witness complied.)

8 Q Just for the record, that's the person in the
9 middle of the photo that you've circled.

10 And then do you remember telling the FBI that the
11 front case belonged to Kenneth Harrelson?

12 A I don't remember that.

13 Q Okay. And then going to the final photo.

14 Do you recognize yourself in this photo?

15 A Yes.

16 Q And then can you circle yourself.

17 A (Witness complied.)

18 Q And that's, for the record, the individual between
19 the two elevator doors.

20 And do you remember telling the FBI that the
21 middle case on the left belonged to you?

22 A Actually, yes, that I do remember.

23 Q Okay.

24 And then do you remember telling --

25 THE COURT: Mr. Manzo, I think the appropriate way

1 to begin is to ask him whether he actually can identify them
2 in this photo, and then if he can, then you can ask the
3 question you're asking.

4 MR. MANZO: Fair enough, Your Honor.

5 BY MR. MANZO:

6 Q Do you recognize any of the items on the luggage
7 cart in the left of the photo?

8 A Well, I would make an assumption that the orange
9 case is my ammo can.

10 Q And were you able to identify any other items in
11 this photo?

12 A I believe the case on the right is Ken
13 Harrelson's, and the one on the left of mine is Jason's.

14 Q Thank you.

15 When you got home to Florida after leaving the
16 hotel on January 7th, what did you learn about your original
17 cell phone that you use in everyday communication?

18 A I plugged it in using a different charger and cord
19 and the phone took a charge and it worked again.

20 Q So the original phone that you used previous to
21 your trip to the Washington, D.C., area now worked again,
22 correct?

23 A Correct.

24 Q And what did you do with the phone that you
25 purchased in cash at Walmart?

1 A Eventually, probably in June as we were packing to
2 move to Oregon, I ended up disposing it.

3 Q And that was a phone that you used while in the
4 Washington, D.C., area?

5 A Yes.

6 Q And that phone you disposed of before the FBI ever
7 contacted you; is that correct?

8 A Correct.

9 Q And is that the phone that would have had any text
10 messages or communications while you were traveling up to
11 D.C. and then back down to Florida?

12 A Yes.

13 Q Subsequently, did you review the Signal -- let me
14 step back for a second.

15 Your normal everyday phone that you used prior to
16 traveling to D.C., did you use Signal on that phone?

17 A Yes.

18 Q And then when you got back from D.C. and you
19 started -- and your normal everyday phone was working again,
20 did you still have Signal on that phone?

21 A Yes.

22 Q At some point, did you notice something about the
23 conversations that you were in on that phone?

24 A Well, I ended up being removed from various
25 groups.

1 Q And did you remove yourself or were you removed?

2 A I was removed.

3 Q I want to ask you a couple questions about money
4 that you've given.

5 Have you given money to support Mr. Harrelson's
6 legal defense fund?

7 A I made donations to their Gifts & Go account.

8 Q Did you make any donations to Mr. Meggs' Gifts &
9 Go account?

10 A Yes.

11 Q Did you help Mr. Harrelson retain an attorney?

12 A I helped his wife, yes.

13 Q After January 6th, did you participate in any
14 other Oath Keepers events or operations or anything like
15 that?

16 A No.

17 Q Did you take any type of leadership role after
18 January 6th?

19 A No.

20 Q Did you have any type of leadership role before
21 January 6th?

22 A No.

23 Q Have you been promised anything with your
24 testimony today?

25 A No.

1 Q Have you been threatened in any way?

2 A No.

3 Q Why are you testifying here today?

4 A Because I was given a subpoena and was informed I
5 had to be here.

6 MR. MANZO: Thank you. No further questions.

7 THE COURT: All right.

8 - - -

9 CROSS-EXAMINATION

10 BY MR. BRIGHT:

11 Q Good morning, Mr. Cummings. How are you this
12 morning?

13 A Good morning.

14 Q First off, thank you so much for your years of
15 service, we really appreciate it.

16 I don't have an enormous number of questions for
17 you.

18 Part of what you had stated regarding your
19 interest in joining Oath Keepers, I believe you stated it
20 had to do with what was going on in the country, correct?

21 A Yes.

22 Q Could you do me a favor and help us understand a
23 little bit more of that and why that was a motivation for
24 you in joining the Oath Keepers? What is it that you were
25 seeing that led you to the decision that you needed to join?

1 A Well, I can use the City of Portland as an
2 example, having spent my entire working career in the
3 Portland area.

4 Q Please.

5 A It used to be a beautiful city. You could go
6 downtown Portland anytime, it was safe, they had festivals.
7 But then, you know, you ended up with the riots caused by
8 Antifa and you had the government leadership that really
9 didn't challenge them, and in some cases, almost encouraged
10 them.

11 Q Outside of -- I'm sorry, go ahead, please.

12 A And that just -- at some point, people need to
13 stand up.

14 Q Would you agree with me that, as -- you used
15 Portland there. Their federal courthouse, from your
16 perspective and what you watched on TV was fundamentally
17 under siege for three months on a nightly basis, correct?

18 A Yes.

19 Q Would be fair to say that you as a concerned
20 citizen, as someone who watched that, you were troubled by
21 the fact that the authorities weren't doing anything to stop
22 it?

23 A It did bother me, yes.

24 Q Would you agree with me that for many people like
25 you, watching that, they saw a common theme happening in

1 most of the major urban cities in the United States? Not to
2 that extent but riots, things of that nature?

3 A There were riots that --

4 THE COURT: I'm sorry to interrupt.

5 Mr. Bright, I don't know that he can talk about
6 others but you can ask him about his own thoughts.

7 MR. BRIGHT: Yes.

8 BY MR. BRIGHT:

9 Q But that was the driving force for you to become
10 interested in joining the Oath Keepers, correct?

11 A Yes.

12 Q And that was common theme of discussions that were
13 part of the chats that you were in and in the GoToMeetings,
14 correct?

15 A Lot of the riots and damage and assaults caused by
16 Antifa, BLM, groups like that, yes.

17 Q And I'm just asking, that was a common discussion
18 point amongst the Oath Keepers that you can recall?

19 A Yes.

20 Q When you got to Washington, D.C. after driving up
21 here, during the drive -- excuse me, let me back up.

22 I apologize.

23 During the drive, you haven't referenced any
24 discussions that you or anyone else that you were around
25 that had to do with any plans to storm the Capitol on

1 January 6th; is that correct?

2 A There were no conversations concerning storming
3 the Capitol.

4 Q Would it be reasonable to suggest, based on what
5 you've articulated as your concern of the Capitol being
6 breached, that had you been aware of or known of any of
7 those types of plans, you would have turned back, you would
8 not have continued to D.C. with this group?

9 A That is correct.

10 Q Okay.

11 Probably willing to say that based on your years
12 of service and abiding by the law, you probably would have
13 reported that type of plan had you heard about it or been
14 aware of it, correct?

15 A Correct.

16 Q So when you got to D.C., and I'm going to go ahead
17 and skip, if I may, sir, to the morning of January 6th. Can
18 you restate who it was that you rode with to the monument?

19 A I know that Kelly was there, and more than likely,
20 his wife Connie was. And I don't recall if Ken and Jason
21 rode in the same vehicle. There were several vehicles, so I
22 didn't know if they were in the same one I was in or not.

23 Q You had stated that you believed that Meggs,
24 Kelly Meggs the one that had set up the transportation from
25 the hotel?

1 A He was the one that was coordinating it so I made
2 the assumption that he was the one that arranged it, yes.

3 Q Vans?

4 A Right.

5 Q How many Oath Keepers in total would you estimate
6 that when you got to the event, that you saw there, that you
7 could actually identify as an Oath Keepers? Maybe plain
8 clothes you wouldn't know, but you could identify.

9 A Difficult to estimate. Several dozen maybe.

10 Q So 25 or less?

11 A That would be my guess.

12 Q When you left a little bit early from
13 then-President Trump's rally, his speech, and you started
14 escorting the Latin female to the Capitol, how many
15 individuals that you could identify as Oath Keepers were in
16 that detail, whether you knew them by name or not?

17 A Approximately ten. Of course, this is just a
18 guess because I wasn't standing there counting people, but
19 I'd guess maybe ten.

20 Q Okay.

21 And did that entire group travel the entire way
22 together?

23 A That I don't recall.

24 Q Okay.

25 Do you recall, and I know it's been about 18

1 months, but do you recall by chance where along the path
2 from the Ellipse to the Capitol Building you all were when
3 you first started getting word of the fact that the Rotunda
4 had been breached?

5 A It was within the first few blocks after leaving
6 the Ellipse that we heard that the Capitol had been
7 breached.

8 Q So five minutes or so afterwards?

9 A Five, ten minutes.

10 Q So really fundamentally at the beginning of your
11 walk from the Ellipse to the Capitol?

12 A Correct.

13 Q Did y'all start running?

14 A No.

15 Q Did y'all start walking really fast in order to
16 get there really fast?

17 A We were already walking at a pretty good speed.

18 Q Okay. But nothing changed?

19 A No.

20 Q At that point, did you become aware of any
21 discussions regarding plans to lay siege to the Capitol,
22 stop the electors, any of that?

23 A No.

24 Q So in the midst of ten Oath Keepers traveling from
25 the Ellipse to the Capitol, all of these Oath Keepers were

1 with you when you all learned that the siege of the Capitol
2 had already happened, had already started, correct?

3 A Correct.

4 Q And you had already heard that if there was a plan
5 for these Oath Keepers to do that, they didn't do it, it had
6 already started based on your knowledge of when you heard
7 the breach occurred, correct?

8 A Yes.

9 MR. BRIGHT: May I approach, Your Honor?

10 THE COURT: Sure.

11 BY MR. BRIGHT:

12 Q Mr. Cummings, I'm going to show you what's been
13 marked as 1653, it's a 3D model of the Capitol. Could you
14 step down, please, sir?

15 Do you recognize what is shown here on this
16 placard as the Capitol of the United States?

17 A The east side, yes.

18 Q Can you point to on that placard, the direction
19 from which you all were approaching, please, sir?

20 A We approached from this direction.

21 Q From the south side?

22 A Yes.

23 Q Okay. And then you wrapped your way around the
24 south side?

25 A No, we ended up coming around the north side.

1 Q Okay.

2 So you started out at the south side and then
3 where we can see those roads articulated, you came across
4 and then that's why you referenced taking the Latin female,
5 and that's where they stopped, on the northwest side. Could
6 you point out where that was, please, sir?

7 A Right. It was somewhere approximately in this
8 area.

9 Q Okay. Thank you. You can please have a seat.

10 MR. BRIGHT: Your Honor, if I could, for the
11 record point out that it was, based on the details of the
12 map, somewhere a short distance off the northwest point of
13 the Capitol itself.

14 BY MR. BRIGHT:

15 Q Mr. Cummings, so of the ten Oath Keepers that,
16 approximately, that you walked from the Ellipse with, how
17 long would you estimate that it took you all to go that
18 distance from the Ellipse to the northwest point of the
19 Capitol building?

20 A Oh, gosh, I have absolutely no idea. In that
21 situation, time was very, almost non-existent.

22 Q Things kind of slowed down?

23 A Or sped up. I was amazed at how quickly time
24 passed.

25 Q So kind of reasonable to say you didn't have any

1 sense of actual time, it could have been an hour, it could
2 have been 20 minutes, you just don't recall?

3 A Correct.

4 Q Fair enough.

5 So when you came across from what would have been
6 the southeast and then rotated going north to the northwest
7 point, you had a full visual view of the mess that was
8 happening on the west side of the Capitol; is that correct?

9 A Yes.

10 Q How many people at that point would you estimate
11 that you could see just in the sea of people, the humanity
12 that was there?

13 A Extremely rough guess, several thousand.

14 Q Okay.

15 And as you went around to the northwest point and
16 then came to the east side, would it be fair to say that the
17 crowd thinned down a good bit?

18 A Yes.

19 Q So the main activity from your perspective was on
20 the west side of the Capitol, what you were viewing?

21 A Yes.

22 Q Did you see any of -- on the west side, of the
23 rioters or the people that were protesting, did you see any
24 Oath Keepers in that group that you could identify?

25 A No.

1 Q Did you see, at that point, as you were coming
2 from the southwest to the northwest and then across the
3 north top of the Capitol, at any point did you see any
4 Oath Keepers going into the Capitol, scaling the walls,
5 I believe you had said you saw, any of that type of activity
6 at all?

7 A No.

8 Q When you all stopped and allowed the Latina female
9 to be guarded at the point, you can't recall whose choice
10 that was, correct?

11 A Correct. I don't know what prompted that action.

12 Q Did any Oath Keepers stay behind with her?

13 A Yes.

14 Q Okay.

15 Why did they stay behind with her, to your
16 recollection?

17 A To make sure she was safe to get where she wanted
18 to go.

19 Q So they were providing on that date a personal
20 security detail, a PSD, correct?

21 A Yes.

22 Q Okay.

23 Is that also something that you saw the teams of
24 Oath Keepers at the Ellipse doing?

25 A Not specifically, no.

1 Q Did you see other Oath Keepers performing on that
2 day any other security details?

3 A There were other groups of Oath Keepers around,
4 but I wasn't aware of what they were doing, I was primarily
5 aware of what the Florida contingent was doing.

6 Q Fair enough.

7 How many Oath Keepers stayed behind with the
8 Latina female, if you recall?

9 A As I recall, it was primarily just one, there
10 might have been another one, but I remember.

11 Q Okay.

12 I'll just ask you this one time to step down real
13 quickly, please, sir, and this will be the final time,
14 I apologize, I should have had you do it a minute ago.

15 Could you, to the best of your recollection, for
16 the jury and Court, point out what you recall the location
17 or the direction of the porta potty being that you had left
18 the east side to go to?

19 A It was down in this area.

20 Q And let the record reflect that Mr. Cummings has
21 identified somewhere off of this map the northeast direction
22 from the Capitol itself.

23 When you left, could you point out, and this will
24 be my final question, could you point out where your group
25 of individuals that you had left behind were standing.

1 A They were in approximately this area.

2 MR. BRIGHT: Your Honor, let the record reflect
3 Mr. Cummings has identified the east side of the Capitol
4 towards the north entrance doors.

5 Thank you, sir.

6 BY MR. BRIGHT:

7 Q At any point from dropping off the Latina female
8 and then moving to that location, were you aware of or did
9 you hear any conversation about a plan to storm the Capitol?

10 A No.

11 Q At any point during the entire day, the ride from
12 Florida the two days before, camping out in North Carolina
13 on the night of the 4th, the drive from North Carolina on
14 the 5th to Virginia and then to D.C., did you ever hear of
15 any human being that's associated with the Oath Keepers
16 discuss a plan of any sort for the activities that you
17 witnessed on January 6th?

18 A No.

19 Q When you left the group --

20 A Excuse me, could we back up to that question?

21 Q Of course.

22 A You ended up with the activities I saw.

23 Q I'm talking about what would be the storming of
24 the Capitol, the breach of the Rotunda?

25 A Okay. Thanks for that clarification.

1 Q Of course.

2 A No. I did not hear of any plans.

3 Q Thank you for bringing that back around, I really
4 appreciate it.

5 You didn't hear any communications from anybody
6 ordering the individuals that did to go into the Rotunda,
7 did you?

8 A No.

9 Q You didn't witness any discussion from them about
10 having any plan or any orders pre-existing to do that on
11 this date, correct?

12 A Correct.

13 Q How long would you estimate, and I know you've
14 phrased that it's difficult to estimate time on this date,
15 but after you got to the east side, how long would you
16 estimate that you as a group were standing there before you
17 left?

18 A It did not seem to be very long, 10, 15 minutes at
19 the most.

20 Q And at that point, you left, went to the porta
21 potties, came back and the group was gone, correct?

22 A Correct.

23 Q They didn't detail for you why they were gone,
24 they didn't give you any information of when they'd be back,
25 correct?

1 A That is correct.

2 Q Could you estimate, to the extent you can
3 remember, the length of time that you were separated from
4 them until you re-engaged Meggs and that group again?

5 A I would really hesitate to even hazard a guess.
6 It was seemed to be a lengthy period, but, again, the whole
7 time situation in a situation like that. During the time
8 that they were away, I walked back around over to the
9 northwest side. I sat and watched the activities happening,
10 and then I happen to see them come out. I have no idea. It
11 could have been a half hour, 45 minutes, longer.

12 Q Okay.

13 And so when you re-approached them, what was the
14 nature of the discussions being had? Do you recall? Not
15 the specific comment, but the nature of the discussions.

16 A Right.

17 They were having conversations about having --

18 MR. MANZO: Objection, Your Honor.

19 THE COURT: I'll overrule it. You can answer the
20 question.

21 BY MR. BRIGHT:

22 Q Please.

23 A Okay. Would you repeat it again, please.

24 Q Can you just describe to me the nature of the
25 conversations that you were witnessing.

1 A They were having conversations about having
2 encountered a Capitol Police officer inside the Capitol. He
3 happened to be standing on stairs and he was being
4 confronted by people inside the Capitol. They talked
5 about --

6 MR. MANZO: Objection again, Your Honor.

7 THE COURT: I'll sustain it.

8 BY MR. BRIGHT:

9 Q Not the specifics. Let me just ask this?

10 MR. MANZO: Objection, Your Honor.

11 THE COURT: Hang on. Let him ask the question
12 before you object.

13 BY MR. BRIGHT:

14 Q The tenor of that, was it a heightened nature that
15 they were acting in? What was your impression of their
16 behavior at the time?

17 A The impression I got was they were glad they were
18 there to put -- to intervene in a potential bad situation.

19 Q Okay. That's fair enough.

20 How long would you -- you said on direct
21 examination, and I only have a few more questions, thank
22 you -- that I believe your exact comment regarding when you
23 finally for the first time met Stewart Rhodes in person or
24 saw him in person, you said, "Later on, he did arrive."

25 Can you recall what direction Mr. Rhodes came

1 from? When did you first see him?

2 A I saw him after the Florida group had emerged from
3 the Capitol and I really didn't notice what direction he
4 came from.

5 Q What time frame -- do you recall how long it was
6 by chance?

7 A No, I don't.

8 Q He wasn't, to your knowledge, on the grounds of
9 the Capitol?

10 A I didn't see him until that later time. That was
11 the only time I saw him.

12 Q And you saw him walking up to this group?

13 A Correct.

14 Q And did he have anybody with him at the time?

15 A No, not that I'm aware of.

16 Q How long would you estimate then, because I know
17 you referenced there was a 6:00 p.m. curfew that everybody
18 had to be out of the District. What -- off the Hill, excuse
19 me. What time frame do you recall that they would have been
20 talking or milling around together before everybody broke
21 and left off?

22 A Again, when you're talking about times, I have no
23 idea.

24 Q Okay.

25 Did you at any point during the day of January 6th

1 witness any Oath Keepers with firearms?

2 A No.

3 Q Were you aware or had you been made aware in
4 advance of coming to D.C. regarding the legality or
5 illegality of firearms in the District?

6 A Yes.

7 Q Had you all had discussions about the fact that it
8 would have been illegal to bring firearms, as a general
9 rule, into the District?

10 A Yes.

11 Q Was that part of the reason, to your knowledge,
12 that discussions had been had to leave the firearms in bulk
13 outside of the District?

14 A Yes.

15 Q To your knowledge, and we'll get -- we're not
16 going to get too far into the QRF, because really what's
17 more important, I think, is the question, to your knowledge,
18 did anybody on that day attempt to access the QRF and bring
19 weapons into the District?

20 A Not that I'm aware of.

21 MR. BRIGHT: Thank you, sir.

22 Pass the witness, Your Honor.

23 THE COURT: All right. Thank you, Mr. Bright.

24 Mr. Woodward.

25

— — —

CROSS-EXAMINATION

BY MR. WOODWARD:

Q Good afternoon, Mr. Cummings.

I'm Stanley Woodward. I'm counsel, along with Ms. Haller, for Kelly Meggs.

You know Mr. Meggs, do you not?

A Yes.

Q You don't know him well?

A No.

Q But you came to know him through your membership in the Oath Keepers?

A Correct.

Q Do you recall exactly when you first joined the Oath Keepers?

A Do I recall what?

Q Exactly when you first joined the Oath Keepers?

A I don't recall exactly when, no.

Q It wasn't in 2020?

A It was. I mean, generally, yes, it was probably
early fall maybe.

Q That was the first time you joined the Oath Keepers?

A Correct.

Q Didn't you -- and you joined earlier and came to

1 learn that it wasn't very active when you first joined?

2 A The first time I was a member of the Oath Keepers,
3 that's correct.

4 Q But by the fall of 2020, the Oath Keepers or the
5 Florida chapter had become more active?

6 A Yes.

7 Q Why do you think that was?

8 A Well, for my situation, the first time I became a
9 member was when I was living in Oregon, and Oregon is not a
10 state that's very conducive to groups like Oath Keepers.

11 Q Sorry, Oregon is not a state that is not
12 conducive --

13 A To groups like Oath Keepers. In other words, it's
14 an extremely liberal state.

15 Q And Florida is different?

16 A It is.

17 Q So when you joined the Oath Keepers again in
18 Florida, you found a very different group?

19 A Yes.

20 Q What did you understand the purpose of the
21 Oath Keepers to be?

22 A The group in Florida was very active in helping
23 people. Hurricanes would come through and they would send
24 people to go help out, whether it was to help protect
25 businesses, deliver foods, they were out there to help

1 people.

2 Q That interested you, correct?

3 A Yes.

4 Q Did you understand that the -- well, let me back
5 up.

6 You're aware that the Oath Keepers chapter in
7 Florida had regular conference calls?

8 A Yes.

9 Q And routinely met, telephonically, but met to talk
10 about how the Oath Keepers could be helpful?

11 A Yes.

12 Q And on several of those calls, the group discussed
13 specific events where the Oath Keepers could be helpful?

14 A Correct.

15 Q And you're aware that, for example, a group of
16 Oath Keepers traveled to Louisville, Kentucky?

17 A Yes.

18 Q They did that to provide assistance?

19 A Yes.

20 Q You're aware that a group of Oath Keepers provided
21 security details around Florida?

22 A Yes.

23 Q And they were doing that to be helpful?

24 A Correct.

25 Q Were you not also aware that a group of

1 Oath Keepers had previously traveled to Washington, D.C.?

2 A I believe that that happened towards the end of
3 2020 after the election, yes.

4 Q And that they had traveled to Washington, D.C.
5 because they believed they could be helpful?

6 A Correct.

7 MR. MANZO: Objection, Your Honor.

8 THE COURT: Overruled. He can answer to the
9 extent he has an understanding.

10 BY MR. WOODWARD:

11 Q So when you were invited to travel to Washington,
12 D.C. in January of 2021, you believed that you could be
13 helpful?

14 A Correct.

15 Q And those that you traveled with believed they
16 could be helpful?

17 MR. MANZO: Objection, Your Honor.

18 THE COURT: That is sustained.

19 BY MR. WOODWARD:

20 Q Did you have -- you are a participant in the
21 Signal chats surrounding the events of January 6th, 2021?

22 A The general Signal chat that was developed for
23 people wanting to attend, yes.

24 Q You couldn't read all of the messages in those
25 chats?

1 A Like I mentioned earlier, some people were
2 extremely prolific.

3 Q But you had a general situational awareness of
4 what was being discussed in the chats?

5 A Yes.

6 Q And your understanding of the reason for traveling
7 to Washington, D.C. again was to provide assistance?

8 A Correct.

9 Q You testified that the Oath Keepers were going to
10 provide a security detail?

11 A Yes.

12 Q You didn't know who?

13 A Correct.

14 Q You also testified that the Oath Keepers were
15 going to establish a QRF?

16 A Yes.

17 Q And that you yourself traveled with a firearm to
18 Virginia, correct?

19 A Yes.

20 Q And left that firearm in Virginia at that QRF?

21 A At the hotel, yes.

22 Q At the hotel.

23 Now, you didn't inspect any other firearms that
24 may or may not have been in the hotel?

25 A I did not.

1 Q You didn't look in, for example, any gun cases
2 that Mr. Harrelson may or may not have brought?

3 A Correct.

4 Q You don't know, as we sit here today, who else may
5 have contributed to the QRF, correct?

6 A To the stockpile of firearms at the hotel,
7 correct.

8 Q And so you don't know what was in the boxes in the
9 hotel room that you testified about?

10 A No, I do not.

11 Q But you didn't bring any weapons into Washington,
12 D.C.; is that right?

13 A That is correct.

14 Q Why was that?

15 A It's illegal to do so.

16 Q And so you were mindful that bringing firearms
17 into the District was prohibited?

18 A Yes.

19 Q You then traveled into the District, where you
20 stayed, correct?

21 A Yes.

22 Q And on the morning of January 6th, you got up and
23 proceeded to assist with the security detail; correct?

24 A Yes.

25 Q You were given, in fact, a pass or a badge; isn't

1 that right?

2 A No.

3 Q If I could just show the witness.

4 A Okay. Oh. Yes.

5 Q Do you see and do you recognize this image?

6 A Yes, I do recognize it.

7 Q And is this a fair and accurate picture of a
8 badge -- an item that you received on January 6th, 2021?

9 A Yes.

10 MR. WOODWARD: We would move to admit this,
11 I think as KM 07 -- 8. Thank you, JC.

12 THE COURT: Any objection?

13 MR. MANZO: No, Your Honor.

14 THE COURT: All right.

15 MR. WOODWARD: If we could publish this for the
16 jury, please.

17 THE COURT: KM 08 will be admitted.

18 (Defendant's Exhibit KM 08
19 received into evidence.)

20 BY MR. WOODWARD:

21 Q Could you tell the jury what we see here?

22 A That is a pass we were given to allow us access to
23 the VIP area of where the President was going to be
24 speaking.

25 Q And you testified that you'd never before seen a

1 sitting President speak?

2 A That is correct.

3 Q Part of your desire to attend the event on January
4 6th was, in fact, to see President Trump speak?

5 A Yes.

6 Q Did you see President Trump speak?

7 A Yes.

8 Q Roughly how far away was he from you when he was
9 speaking?

10 A 20 yards.

11 Q He was close?

12 A He was very close.

13 Q That must have been a real privilege?

14 A It was.

15 Q To get to this VIP area, did you have to go
16 through security?

17 A Yes.

18 Q How would you describe the security at the VIP
19 area?

20 A It was similar to attending a lot of events, but
21 the -- by that I mean going to professional sports venues
22 and so forth. But the Secret Service there did not allow
23 the Oath Keepers to wear their helmets, their vests, or take
24 any other gear with them. That was all left outside.

25 Q So the Secret Service was there?

1 A That's correct.

2 Q And they were providing security at this event?

3 A Yes.

4 Q And you had to be screened by the Secret Service
5 to get to this VIP area?

6 A Yes.

7 Q Now, if you know, who does the Secret Service
8 protect?

9 A The President.

10 Q And does the Secret Service protect those that --
11 if you know, does the Secret Service protect those that
12 attend a rally where the President might be speaking?

13 A Yes.

14 Q How do they do that?

15 A We have metal detectors to go through.

16 Q If I could take this down, JC, please. And just
17 for the witness, you see the photograph there in front of
18 you?

19 A Yes.

20 Q Do you recognize the scene that is depicted there
21 in the photograph?

22 A Yes.

23 Q Is that a fair and accurate depiction of the
24 security that you went through on the morning of
25 January 6th.

1 A Yes.

2 MR. WOODWARD: We would seek to admit this as
3 KM 09.

4 THE COURT: Any objection?

5 MR. MANZO: No, Your Honor.

6 (Defendant's Exhibit KM 09
7 received into evidence.)

8 MR. WOODWARD: If we could publish this for the
9 jury.

10 BY MR. WOODWARD:

11 Q And if I could just zoom in here, that's a metal
12 detector you see in that picture?

13 A I'm assuming it is, yes.

14 Q And so you went through security in order to get
15 to the VIP area?

16 A Correct.

17 Q So that you could stand a matter of yards from the
18 President of the United States?

19 A Yes.

20 Q Did you have to provide any contact information
21 before the events on January 6?

22 A I don't recall doing that.

23 Q Okay.

24 Do you recall whether you were asked -- other than
25 providing security detail, do you recall whether you were

1 asked to do anything else in that VIP area?

2 A No, I don't recall.

3 Q Distribute signs or anything of that nature?

4 A No.

5 Q After you left the security area, you testified
6 that you escorted somebody over to the -- toward the Capitol
7 Building?

8 A Yes.

9 Q Did you have an understanding of where ultimately
10 you were heading with that individual?

11 A Yes.

12 Q Where was it?

13 A Well, I mean, generally, the Capitol. Beyond
14 that, no.

15 Q Okay.

16 But you didn't believe that you were headed into
17 the Capitol when you left the security at the Ellipse?

18 A No.

19 Q You weren't taking this person into the Capitol?

20 A Not that I was aware of, no.

21 Q In fact, before leaving to go to the porta
22 potties, had you ever heard or seen any messages about going
23 into the Capitol Building?

24 A Just the comment from Kelly as we were coming
25 around the east side of the building and he wanted to talk

1 to someone.

2 Q And before that, had you ever heard or seen any
3 messages about any plan --

4 A No.

5 Q -- to go into the Capitol building?

6 A No.

7 Q Any plan to stop the certification of the
8 Electoral College vote?

9 A No.

10 Q Any plan to forcefully stop President Biden from
11 taking office?

12 A No.

13 Q And so you and Mr. Meggs and others are walking
14 from the Ellipse to the Capitol Building, correct?

15 A Yes.

16 Q You stop at some point and you overhear this
17 conversation that Mr. Meggs is having, correct?

18 A Which conversation are you referring to?

19 Q About the Capitol building.

20 A About it being breached?

21 Q Yes.

22 A Yes.

23 Q And so you don't recall specifically who Mr. Meggs
24 said had breached the Capitol Building, correct?

25 A I did not hear a specific group, name or persons,

1 no, I did not.

2 Q Just your recollection is that he said that
3 somebody had breached the Capitol Building?

4 A Yes.

5 Q And that word stood out in your mind, breach?

6 A Yes.

7 Q And you eventually learned that, in fact, somebody
8 had been shot inside the Capitol Building?

9 A After I reconnected with them, after they returned
10 from being inside the building, yes that's when we heard
11 about Ashli Babbitt being shot.

12 Q You didn't know that when you left to go porta
13 potties, correct?

14 A Correct.

15 Q And you don't know what, if anything, Mr. Meggs
16 may have learned while you were at the porta potties,
17 correct?

18 A Correct.

19 Q Would you disagree that if -- new sentence.

20 Would you agree that Mr. Meggs may have been a
21 asked to assist someone?

22 MR. MANZO: Objection, Your Honor.

23 MR. WOODWARD: Let me finish the question.

24 MR. MANZO: He wasn't there.

25 THE COURT: Hang on. Let him finish and I'll

1 address the objection.

2 BY MR. WOODWARD:

3 Q Would you disagree that Mr. Meggs may have been
4 asked to assist someone inside the Capitol Building?

5 MR. MANZO: Objection, Your Honor.

6 THE COURT: The objection is sustained. It's
7 calling for speculation.

8 BY MR. WOODWARD:

9 Q Well, you testified that you learned after the
10 fact that -- without telling us what you were told --
11 did you come to learn that Mr. Meggs provided assistance
12 inside the Capitol Building?

13 MR. MANZO: Objection, Your Honor; hearsay.

14 THE COURT: It is hearsay. It's sustained.

15 BY MR. WOODWARD:

16 Q Whether --

17 MR. WOODWARD: Can we get on the phone?

18 THE COURT: Sure.

19 (Bench conference)

20 MR. WOODWARD: Whether he learned about -- can you
21 hear me?

22 THE COURT: Yes.

23 MR. WOODWARD: Whether he learned that Mr. Meggs
24 provided assistance in the building would not be his
25 testifying to an out-of-court statement.

1 THE COURT: Sure, it would be. Who did he learn
2 it from?

3 MR. WOODWARD: That rationale, everything we
4 learn, all of our knowledge would become inadmissible.

5 THE COURT: But he's conveying something somebody
6 told him clearly. Right?

7 MR. WOODWARD: Sure.

8 THE COURT: So whoever conveyed that information
9 had an out-of-court statement being offered for the truth
10 through him.

11 MR. WOODWARD: I wouldn't ask him about the
12 statement. I'm just asking if he ever came to be --

13 THE COURT: But, look, it's one thing to say, you
14 know, did you have an understanding of why you were coming
15 to Washington. It's quite another thing to say, did you
16 learn specifically what Mr. Meggs did inside the building.
17 And to say, you know, I learned it. Well, he wasn't inside
18 the building, he clear learned it from someone else. So,
19 I mean, it's clearly hearsay for him; however it's couched,
20 he's conveying hearsay.

21 MR. WOODWARD: Okay. Thank you for the
22 indulgence.

23 (Open court)

24 THE COURT: The objection is sustained.

25

1 BY MR. WOODWARD:

2 Q All right. So you've gathered with Kelly Meggs
3 and others near the Capitol Building.

4 You're not aware -- correct?

5 A Yes, at various times, yes.

6 Q You're not -- well, let's talk specifically about
7 before you go to the porta potties.

8 A Okay.

9 Q You've gathered with Kelly Meggs and other members
10 of the Oath Keepers, correct?

11 A Yes.

12 Q You're not then aware of any plan to go into the
13 building?

14 A Correct.

15 Q And after you left to go to the bathroom, you
16 learned that Mr. Meggs and others had, in fact, gone into
17 the Capitol Building?

18 A When I returned and they weren't there, I wasn't
19 sure where they went. It was later on when I saw them again
20 that I found out that they had gone -- entered the Capitol.

21 Q And following -- after you reunited with
22 Mr. Meggs, you returned the hotel that night, correct?

23 A Yes.

24 Q And then you went to Virginia the next morning,
25 correct?

1 A Yes.

2 Q And you obtained -- you retrieved your firearm?

3 A I retrieved my firearms and Ken and Jason
4 retrieved their cases, yes.

5 Q And you drove back to Florida?

6 A We drove directly back to Florida, yes.

7 Q And eventually you were contacted by the FBI?

8 A Correct.

9 Q And they wanted to know what you knew about the
10 events of January 6?

11 A Yes.

12 Q And you told them?

13 A Yes.

14 Q And they asked you for your firearm?

15 A Yes.

16 Q And you provided it, correct?

17 A Correct.

18 Q Do you have an expectation that at some point
19 they'll return this to you?

20 A I have been told that it would be returned, yes.

21 Q And you haven't been charged in this case,
22 correct?

23 A That is correct.

24 MR. WOODWARD: I think that's it.

25 THE COURT: All right. Thank you. I'll just ask

1 counsel to get on phone quickly.

2 (Bench conference)

3 THE COURT: Mr. Geyer, Mr. Crisp, Mr. Fischer, how
4 long do you think you'll be in cross?

5 MR. GEYER: This is Mr. Geyer. 15 minutes.

6 THE COURT: Okay. Mr. Crisp.

7 MR. CRISP: Five, 10.

8 THE COURT: Mr. Fischer.

9 MR. FISCHER: Three or four.

10 THE COURT: Three or four minutes?

11 Wow. Okay.

12 All right. Why don't we see if we can go to --
13 and then how much of a redirect to you expect?

14 MR. MANZO: Maybe 20 minutes, half hour.

15 THE COURT: All right. Well, let's go to lunch
16 then if that's how long it's going to be okay.

17 (Open court)

18 THE COURT: Ladies and gentlemen, the purpose of
19 that call was to figure out our scheduling and timing
20 so I think we're going to take our lunch break now. It is
21 now 12:40. We'll resume at 1:45. Enjoy your lunch break.
22 The same instructions as usual not to discuss the case, no
23 research, no communications, and avoid the media. Thank
24 you, all, very much. We will see you this afternoon.

25 COURTROOM DEPUTY: All rise.

1 (Jury exited the courtroom.)

2 THE COURT: All right. Mr. Cummings, we'll come
3 back and we'll resume with your testimony at 1:45, so I'll
4 just ask you to be outside no later than 1:45.

5 And during the lunch break, I'll ask you not to
6 discuss your testimony with anyone, all right?

7 THE WITNESS: Yes.

8 THE COURT: Thank you very much, sir.

9 THE WITNESS: You're welcome.

10 THE COURT: All right. Anything we need to take
11 up before we come back?

12 MR. CRISP: No, Your Honor.

13 THE COURT: I'll ask everyone to be back at 1:35
14 so we can resolve the issue that was left open this morning,
15 okay?

16 MR. CRISP: Do you have anything going on in the
17 courtroom in the meantime over the lunch? We don't have to
18 clear out, right.

19 THE COURT: No at least not that I think so.

20 Thank you, everyone.

21 (Recess from 12:43 p.m. to 1:35 p.m.)

22

23

24

25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: October 12, 2022



William P. Zaremba, RMR, CRR

<p>BY MR. BRIGHT: [8] 2756/10 2758/8 2762/11 2763/14 2767/6 2769/21 2770/8 2770/13 BY MR. FISCHER: [3] 2710/7 2711/21 2712/18 BY MR. GEYER: [3] 2707/12 2709/3 2709/7 BY MR. LINDER: [2] 2705/9 2706/6 BY MR. MANZO: [12] 2716/6 2726/15 2733/12 2737/15 2738/9 2740/13 2741/24 2747/20 2750/11 2751/4 2752/1 2753/5 BY MR. WOODWARD: [9] 2773/3 2776/10 2776/19 2779/20 2782/10 2786/2 2786/8 2786/15 2787/25 BY MS. HALLER: [1] 2706/16 BY MS. HUGHES: [14] 2660/22 2662/13 2666/20 2669/7 2680/5 2680/20 2683/3 2685/14 2687/8 2691/7 2696/11 2698/16 2700/22 2714/4 COURTROOM DEPUTY: [11] 2631/2 2631/5 2660/4 2662/3 2662/5 2715/18 2715/20 2734/21 2735/16 2737/6 2790/25 MR. BRIGHT: [6] 2726/12 2758/7 2762/9 2763/10 2767/2 2772/21 MR. CRISP: [4] 2710/2 2790/7 2791/12 2791/16 MR. FISCHER: [5] 2712/14 2713/22 2735/19 2736/1 2790/9 MR. GEYER: [2] 2709/25 2790/5 MR. LINDER: [1] 2706/11 MR. MANZO: [30] 2715/12 2715/17 2726/1 2726/6 2736/7 2737/13 2738/3 2747/15 2747/19 2748/12 2748/19 2749/5 2749/9 2749/12 2749/23 2750/3 2753/4 2756/6 2769/18 2770/6 2770/10 2776/7 2776/17 2779/13 2782/5 2785/22 2785/24 2786/5</p>	<p>MR. NESTLER: [34] 2634/16 2635/17 2635/21 2635/23 2635/25 2636/5 2636/9 2636/14 2636/17 2636/20 2637/12 2637/15 2638/8 2638/11 2638/21 2638/23 2642/16 2642/22 2642/24 2643/2 2643/18 2645/10 2645/15 2646/12 2647/1 2647/10 2647/23 2649/3 2652/10 2656/10 2656/16 2656/19 2660/3 2736/9 MR. 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HUGHES: [27] 2660/12 2662/1 2666/2 2666/18 2668/25 2679/25 2680/13 2682/18 2682/21 2683/1 2685/4 2685/12 2687/2 2690/24 2696/5 2698/2 2698/11 2698/14 2700/15 2705/5 2706/2 2708/25 2709/5 2711/17 2712/11 2714/1 2715/6</p>	<p>THE WITNESS: [14] 2661/24 2662/8 2706/4 2711/19 2715/9 2715/24 2725/11 2733/4 2735/3 2741/22 2751/3 2751/21 2791/7 2791/9 \$ \$600 [1] 2684/8 , '21 [4] 2686/13 2687/10 2689/1 2708/6 'dangerous [2] 2675/18 2676/8 0 07 [1] 2779/11 08 [2] 2779/17 2779/18 08077 [1] 2627/13 0826 [1] 2627/18 09 [2] 2782/3 2782/6 1 1.S.672298 [1] 2661/1 10 [3] 2631/11 2768/18 2790/7 10,000 [1] 2676/21 100 [1] 2738/15 104 [3] 2660/15 2735/5 2735/8 106 [3] 2640/2 2641/3 2666/10 11 [1] 2685/4 11:15 [3] 2734/15 2734/18 2734/18 11:18 [1] 2735/17 11:30 [2] 2734/19 2734/25 11:34 [1] 2735/17 11:58 [1] 2636/9 11:59 [4] 2636/5 2636/5 2636/6 2636/6 11th [1] 2708/15 12 [2] 2625/5 2792/7 12/23 [1] 2636/3 12/31/2020 [1] 2690/8 1241 [2] 2633/22 2644/9 12:00 [1] 2692/13 12:40 [1] 2790/21 12:43 [1] 2791/21 12:59 [1] 2636/4 12th [2] 2707/23 2707/24 1349 [2] 2633/24 2644/10 140 [11] 2724/17 2724/19 2724/23 2724/23 2726/2 2726/4 2726/5 2726/6 2726/9 2726/13 2726/14 141 [3] 2724/23 2724/25 2726/9 142 [2] 2724/24 2726/9 143 [9] 2724/18 2724/20 2724/24</p>	<p>2726/7 2726/13 2726/14 1460 [1] 2626/12 14th [6] 2672/9 2672/12 2673/4 2676/12 2677/1 2714/20 15 [6] 2625/4 2631/8 2725/19 2725/20 2768/18 2790/5 1530 [4] 2663/24 2664/4 2686/2 2688/22 15th [4] 2678/8 2679/10 2750/23 2751/15 1653 [1] 2762/13 16:58 [1] 2635/6 16:59:15 [1] 2635/9 17110 [1] 2626/15 1775 [1] 2675/19 17th [3] 2667/20 2667/24 2679/5 18 [1] 2760/25 1808 [1] 2627/3 1978 [1] 2717/7 19th [2] 2675/19 2676/2 1:35 [2] 2791/13 2791/21 1:45 [3] 2790/21 2791/3 2791/4 1st [7] 2683/16 2692/24 2693/16 2696/13 2699/3 2702/2 2702/6 2 2,000 [1] 2721/3 20 [4] 2715/16 2764/2 2780/10 2790/14 20001 [1] 2628/5 2001 [1] 2746/2 20010 [1] 2627/4 20036 [1] 2627/9 2006 [1] 2627/12 2009 [1] 2676/3 2015 [1] 2718/19 202 [4] 2625/18 2627/4 2627/9 2628/5 2020 [22] 2633/4 2667/20 2669/16 2678/8 2683/10 2687/19 2688/3 2690/8 2702/1 2702/2 2702/3 2702/6 2702/7 2719/14 2719/15 2719/17 2720/5 2721/23 2733/15 2773/19 2774/4 2776/3 2021 [13] 2663/8 2692/18 2696/13 2699/3 2699/12 2708/15 2708/22 2721/7 2750/23 2751/16 2776/12 2776/21 2779/8 2022 [2] 2625/5 2792/7</p>	<p>1979 [1] 2625/17 20th [5] 2681/7 2681/15 2681/23 2683/10 2683/25 21 [1] 2717/17 21061-3065 [1] 2627/18 214 [2] 2626/5 2626/9 21st [1] 2702/1 22-15 [2] 2625/4 2631/8 22nd [2] 2645/20 2684/7 23 [1] 2636/3 23rd [5] 2633/4 2634/23 2635/11 2645/20 2645/20 24 [1] 2714/18 24/7 [1] 2668/1 24th [1] 2645/20 25 [4] 2663/18 2710/15 2715/16 2760/10 252-7277 [1] 2625/18 252-9900 [1] 2626/5 2603 [1] 2698/10 2607 [5] 2697/8 2697/21 2698/4 2698/6 2698/7 2615 [1] 2627/9 26th [5] 2702/22 2702/25 2704/1 2704/9 2704/10 2703 [2] 2643/3 2643/8 27th [1] 2686/4 29 [1] 2687/19 29th [1] 2688/3 2nd [1] 2683/16 3 300 [1] 2627/17 302 [1] 2736/12 3065 [1] 2627/18 30th [8] 2688/6 2688/10 2704/3 2704/4 2704/5 2704/11 2704/12 2704/13 318 [1] 2626/12 31st [6] 2689/14 2689/19 2691/13 2692/16 2702/2 2702/7 3249 [1] 2628/5 3300 [2] 2626/3 2626/7 333 [1] 2628/4 35 [1] 2718/16 352-2615 [1] 2627/9 354-3249 [1] 2628/5 3D [1] 2762/13 3rd [5] 2669/16 2708/7 2708/15 2708/16 2708/16 4 4031 [1] 2626/15 410 [1] 2627/18 412-4676 [1] 2626/16 43 [1] 2726/5 45 [1] 2769/11 4676 [1] 2626/16</p>
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