

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA)
) DOCKET NO. 6:21mj28
-vs-)
) Tyler, Texas
) 4:57 - 6:24 p.m.
ALEX KIRK HARKRIDER) January 22, 2021

TRANSCRIPT OF PRELIMINARY HEARING AND DETENTION HEARING
BEFORE THE HONORABLE K. NICOLE MITCHELL,
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT:

MR. RYAN LOCKER
ASSISTANT U.S. ATTORNEY
110 North College, Suite 700
Tyler, Texas 75702

FOR THE DEFENDANT:

MR. GREGORY A. WALDRON
MR. DAVID MOORE
HOLMES & MOORE, PLLC
110 West Methvin
P.O. Drawer 3267
Longview, Texas 75606

COURT REPORTER: MS. SHEA SLOAN
FEDERAL OFFICIAL COURT REPORTER
211 W. Ferguson
Tyler, Texas 75702
shea_sloan@txed.uscourts.gov

Proceedings taken by Machine Stenotype; transcript was
produced by computer-aided transcription.

1	INDEX	
2	WITNESS	PAGE
3	GREGORY HARRY	
4		
5	DIRECT EXAMINATION: BY MR. LOCKER	6
6	VOIR DIRE EXAMINATION: BY MR. WALDRON	8
7	DIRECT EXAMINATION (CONT.): BY MR. LOCKER	10
8	CROSS-EXAMINATION: BY MR. WALDRON	25
9	REDIRECT EXAMINATION: BY MR. LOCKER	60
10	RECROSS-EXAMINATION: BY MR. FILES	62

12	PROFFER: BY MR. WALDRON	64
13	ARGUMENT BY MR. LOCKER	67
14	ARGUMENT BY MR. WALDRON	68
15	COURT'S FINDINGS	73
16	CERTIFICATE	75

18	EXHIBIT INDEX		
19	GOVERNMENT'S	DESCRIPTION	ADMITTED
20	9	Snapchat	8
21	10	Video Clip	11
22	11	Photo Image	14
23	12	Tomahawk (photo)	16
24	13	Photo Image	61

25 (GOVERNMENT'S 1-8 INCLUDED IN THIS HEARING FROM 6:21MJ29.)

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

2 THE COURT: Please be seated.

3 All right. Ms. Hardwick, if you will call the next
4 case, please.

5 THE CLERK: Yes, Your Honor.

6 Court calls Criminal Action 6:21mj28, United States
7 of America vs. Alex Kirk Harkrider.

8 THE COURT: Announcements?

9 MR. LOCKER: Good afternoon, Your Honor. Ryan
10 Locker for the Government, and ready to proceed.

11 MR. WALDRON: Your Honor, good afternoon. Greg
12 Waldron and David Moore for Mr. Harkrider. And we are ready
13 to proceed.

14 THE COURT: All right. We are here today,
15 Mr. Harkrider, for a preliminary hearing and a detention
16 hearing. We are going to determine whether there is probable
17 cause to believe that an offense has been committed and that
18 you have committed it, and also to determine whether you will
19 be released on bond or detained pending trial.

20 Mr. Locker, will the Government be calling any
21 witnesses?

22 MR. LOCKER: Yes, Your Honor. But before we do,
23 however, I would ask the Court to take judicial notice of the
24 entire proceedings of the last hearing.

25 THE COURT: Mr. Waldron, any objection to that?

1 MR. WALDRON: Judge, I do. Understanding that --
2 and I will step to the podium here and get this mask off.

3 THE COURT: Thank you.

4 Mr. Harkrider, you may have a seat. Thank you.

5 MR. WALDRON: Oh, it feels good to get that off.

6 Judge, I did have some objections. I understand
7 that the Rules of Evidence do not apply. The biggest concern
8 I have is a lot of the documents, evidence, exhibits that
9 were offered, videos that were offered, applied and were
10 Mr. Nichols. They were not Mr. Harkrider.

11 I know specifically the bullhorn statements were
12 Mr. Nichols. I understand the Court has the ability to parse
13 as to each individual. I would just object to the relevance
14 of any of those bullhorn statements, as they are not
15 applicable to Mr. Harkrider or not attributable to
16 Mr. Harkrider.

17 That was in some -- it was a text message document
18 and attached. I don't know that it was offered as an exhibit
19 number. That is what we were trying to figure out as the
20 Court walked in, what the exhibit numbers were. But I would
21 object to that as far as the hearing against my client in
22 regards to his detention.

23 THE COURT: Mr. Locker, let me get a response on
24 that.

25 Is your objection to the exhibit in its entirety

1 because it references the bullhorn statements?

2 MR. WALDRON: Yes. The -- I don't know if it is an
3 exhibit, the text messages now between my client and
4 Mr. Nichols. The bullhorn statements is the front page of
5 that document. I would object to that as being irrelevant to
6 the detention hearing of Mr. Harkrider.

7 MR. LOCKER: Your Honor, my response would be that
8 these are co-Defendants who are charged with aiding and
9 abetting each other. And while we agree that it is
10 Mr. Nichols who spoke those words into the bullhorn,
11 Mr. Harkrider is standing next to him at the time, enabled
12 him to maintain that high ground over the crowd, and,
13 therefore, is assisting him in presenting the -- his point to
14 the crowd in allowing him to continue to speak without
15 interference from other members of the crowd.

16 So I agree he did not state them, but they are not
17 the subject of elements of the offense, but they do indicate
18 his state of mind in his assistance of Mr. Nichols. And so,
19 while I agree they are less relevant, it does not make them
20 irrelevant.

21 MR. WALDRON: And, Judge, and my response to that
22 is we are not talking about elements of the offense. What we
23 are talking is flight risk and danger. Specifically, as to
24 danger I believe would be the concern by these statements.
25 And I would just ask that the Court not consider those in

1 regards to the detention of my client, who did not make those
2 statements.

3 THE COURT: The Court will take judicial notice of
4 the last hearing, but the Court understands and is fully
5 aware that those were not the statements of Mr. Harkrider.
6 Okay?

7 MR. WALDRON: And there are several like that,
8 Judge, and they would be the same objection.

9 THE COURT: Right. Okay. If you want to point
10 them out specifically, but I understand your objection.

11 MR. WALDRON: Okay. Thank you, Judge.

12 THE COURT: Thanks.

13 All right. Mr. Locker, you may call your first
14 witness.

15 MR. LOCKER: Thank you, Your Honor.

16 I call Detective Harry.

17 THE COURT: Detective Harry, I am just going to
18 remind you that you are still under oath.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right.

21 I am sorry it is warm in here. We are trying to
22 get it cool.

23 GREGORY HARRY, GOVERNMENT WITNESS, PREVIOUSLY SWORN,

24 DIRECT EXAMINATION

25 BY MR. LOCKER:

1 Q. For the benefit of the record, you are the same
2 Detective Harry that previously testified in this case -- or
3 in the co-Defendant's case?

4 A. Yes, sir, I am.

5 Q. In addition to all of the evidence that you have already
6 testified about regarding Mr. Harkrider's co-Defendant,
7 Ryan Nichols, was there other evidence in addition to that
8 that specifically and particularly implicates Mr. Harkrider's
9 conduct and state of mind surrounding these events?

10 A. Yes.

11 Q. Was there a Snapchat post that Mr. Harkrider posted from
12 inside the Capitol that is relevant to the Court's
13 consideration regarding the seriousness of the conduct,
14 detention, and also probable cause for the offenses for which
15 he is charged?

16 A. Yes, there is a Snapchat. However, I can't say for sure
17 that he posted it while he was in the Capitol, but the image
18 depicting him is from inside the Capitol. I just want to
19 make that distinction.

20 Q. Thank you for that clarification. By that you mean that
21 based on the location where a certain image was taken from
22 inside, it is possible that he did not post it until after he
23 left?

24 A. Correct.

25 Q. But the text of the post indicates that it probably was

1 from within; is that correct?

2 A. That's my inference, yes.

3 MR. LOCKER: Permission to publish Government's 9.
4 I suppose it is probably cleaner for us to -- a continuous
5 exhibit numbering between these two exhibits?

6 THE COURT: If we are going to incorporate all of
7 the prior exhibits through judicial notice, then, yes. But
8 are you offering Exhibit No. 9?

9 MR. LOCKER: I am, Your Honor. It is the Snapchat
10 post.

11 THE COURT: Is there any objection to that,
12 Mr. Waldron?

13 MR. WALDRON: Judge, may I take the witness on voir
14 dire?

15 THE COURT: You may, sure.

16 VOIR DIRE EXAMINATION

17 BY MR. WALDRON:

18 Q. Detective Harry, in regards to this Snapchat post, tell
19 the Court how you obtained that post.

20 A. Mr. Waldron, I'm not sure exactly which place we got
21 this from. All of the images -- well, excuse me. Most of
22 the images that we have and certainly most of the images that
23 we presented in addition to the Snapchat post here -- that we
24 are going to present here, I believe -- well, I know we
25 obtained through open source.

1 This one, if my memory serves me correctly, we
2 found on a Twitter page for some woman whose name escapes me
3 at the moment. I apologize. She shares the post, and I
4 believe she actually tags it at the FBI. She names him. We
5 came across it on her Twitter page.

6 Q. Okay. So some woman obviously has to take a screenshot
7 of a Snapchat post; is that correct?

8 A. That's correct. I don't know if she is the one who took
9 it. Somebody took -- captured the image that we are talking
10 about here. And we -- and the version that we have was
11 captured from her Twitter page. I don't know who actually
12 screenshotted it, though I do believe her reference is that
13 she did.

14 Q. Okay. There is typing on this picture, a statement made
15 on this picture; is that correct?

16 A. Yes, sir.

17 Q. Do we have any way to know that that woman that
18 screenshotted it, did not type in that statement on the
19 page?

20 A. I actually think we recovered this from another source,
21 as well, but I am not sure as I sit here. So, no, I have not
22 gotten the statement from her. So, no, I can't for sure 100
23 percent verify that your client typed the text.

24 Q. Okay. So we don't know if that is Alex Harkrider's
25 words on this Snapchat post?

1 A. I can't definitively say that.

2 MR. WALDRON: Okay. Your Honor, I would object to
3 relevance.

4 MR. LOCKER: Your Honor, my response is that, while
5 that may go to the weight of the exhibit, I don't think it
6 goes to its admissibility.

7 THE COURT: Well, I am going to overrule the
8 objection. I am going to admit it. And you may proceed.
9 That is Government's No. 9.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. LOCKER:

12 Q. Detective Harry, can you read the text at the bottom of
13 this image?

14 THE COURT: I don't see this image.

15 MR. LOCKER: Oh, I'm sorry.

16 THE COURT: That is what I was trying to figure
17 out. Thank you. No.

18 MR. LOCKER: The source from my computer -- I'm
19 sorry. I think it is the ELMO. There we go.

20 THE COURT: I'm sorry.

21 A. I'm sorry?

22 BY MR. LOCKER:

23 Q. Could you read the text at the bottom of the image?

24 A. The text says: We are in. Two people killed already.
25 We need all of the patriots of this country to rally the fuck

1 up and fight for our freedom before it is gone forever. Give
2 us liberty or give us death. We won't stand for it.

3 Q. Detective Harry, we saw a video earlier that depicted
4 approximately an hour and a half of the conduct outside the
5 Capitol. There is a shorter video that specifically shows
6 Mr. Harkrider emerging from the window; is that correct?

7 A. Yes, there is actually a couple of videos.

8 MR. LOCKER: I'd like to display that and admit it
9 as Government's Exhibit 10 now.

10 THE COURT: Mr. Waldron, any objection?

11 MR. WALDRON: Judge, I don't know which one he is
12 presenting.

13 THE COURT: Why don't y'all confer at Mr. Locker's
14 laptop about which video this is before we show it?

15 Ms. Hardwick, will you take it down briefly?

16 Thanks. I just want them to confer.

17 THE CLERK: Okay.

18 MR. WALDRON: I know what video now, Judge. No
19 objection.

20 THE COURT: Mr. Locker, you may show it.

21 MR. LOCKER: Thank you, Your Honor. Let me turn up
22 the volume. I had it muted earlier.

23 (Video played.)

24 (Video stopped.)

25 BY MR. LOCKER:

1 Q. We see Mr. Harkrider emerge from the window and make a
2 throat-slashing gesture, along with some other gestures. Do
3 you interpret that to be a call to violent action to the
4 remainder of the crowd?

5 A. Yes.

6 Q. Is there a text message threat that you discovered on
7 Mr. Harkrider's phone the day after, indicative of his views
8 on whether or not he had done the right thing or whether or
9 not he was proud of his actions?

10 A. Yes, sir.

11 Q. And this is a group text with some other men, including
12 a person named Pauly Bartel?

13 A. Yes, sir, that's correct.

14 Q. And does he have a back-and-forth with Mr. Bartel?

15 A. He does.

16 Q. Can you describe that for the Court?

17 A. The first message in that exchange from Pauly: Alex,
18 you all good, Bud?

19 Harkrider response: Yeah.

20 Pauly: Glad to hear it.

21 Mr. Harkrider responds: Who is y'all's favorite
22 domestic terrorists? And then he inserts a laughing face
23 emoji.

24 Q. When you executed the search warrant for Mr. Harkrider's
25 phone, did you find a souvenir that had been pilfered from

1 the Capitol?

2 A. We did.

3 Q. What was that item?

4 A. It is a -- actually, I haven't seen it, but to the best
5 of my understanding, it is a little -- it's a piece of a
6 wooden leg or maybe a table from -- well, the testimony ended
7 up being that it was taken from the Capitol, but I'm not sure
8 exactly where it came from. But it is a little piece of
9 wood.

10 Q. To be clear, that is an inference that we are making
11 based on where Mr. Harkrider was located, its location in his
12 home, and then also viewing the video that we have seen that
13 Mr. Harkrider was present in a window where individuals were
14 pilfering furniture and we see table legs or chair legs, some
15 type of furniture legs being passed out the same window that
16 Mr. Harkrider exits from?

17 A. That's correct. He also admitted that it came from the
18 Capitol.

19 Q. So he made a statement to that effect to agents?

20 A. Correct, pursuant to his arrest.

21 Q. Let's talk about the weapon that Mr. Harkrider took into
22 the Capitol. Do you have that with you in the courtroom
23 today?

24 A. I do, sir.

25 Q. Can you hold that up for the Court?

1 A. So it is currently in its sheathe. Can I take it out?

2 Q. Please unsheathe it?

3 A. This is a sheath we believe was affixed to the vest, and
4 this is a tomahawk.

5 MR. LOCKER: I'd like to admit that as Government's
6 Exhibit 11. And I will go ahead and request leave of the
7 Court that at the conclusion of the hearing to substitute an
8 image of that for the physical exhibit.

9 THE COURT: Any objection?

10 MR. WALDRON: No objection, Your Honor.

11 THE COURT: All right. It will be admitted. And,
12 yes, you may swap it for an image upon the conclusion of this
13 hearing.

14 BY MR. LOCKER:

15 Q. And does that same tomahawk appear in multiple images
16 with the Defendant attached to his plate carrier or molle
17 vest or tactical vest?

18 A. It does. The image we are more familiar with is
19 probably when it is in its sheath, but you can't see the part
20 at the bottom. But you can see the end here with this
21 lanyard and the camo handle is the image that you most
22 commonly see in all of the footage and images of
23 Mr. Harkrider.

24 Q. It appears upon the right side of his chest, is that
25 correct, sort of with the handle facing up towards his

1 face?

2 A. Correct.

3 Q. When he was arrested, did Mr. Harkrider surrender any
4 weapons to you that were recovered during the execution of
5 the search warrant?

6 A. There were several weapons that were located. None were
7 taken, but there were several other weapons, firearms,
8 located in the residence and his vehicle.

9 Q. When interviewed, did Mr. Harkrider make statements
10 about whether or not he took firearms with him to D.C.?

11 A. Yes, sir. My understanding of the interview is that his
12 statement to agents at the time of his arrest was that he
13 took a -- I believe it was a CZ pistol and a .30-30 rifle --
14 or .30-06 -- I think it was a .30-30 rifle, a bolt -- a
15 lever-action rifle.

16 Q. And just to be clear, we don't see him in any images at
17 the Capitol carrying either of those. We don't know that he
18 took those. We just know from his own admissions that he
19 took them on his trip to D.C.

20 A. That's correct.

21 MR. LOCKER: At this time I would like to show --
22 display an image and offer as Government's Exhibit 11 -- 12,
23 an image. And this is the image of Mr. Harkrider holding the
24 OC canister over his head.

25 That you and I discussed, Mr. Waldron.

1 THE COURT: Any objection, Mr. Waldron?

2 MR. WALDRON: I'm sorry, Judge. I was --

3 THE COURT: I'll have him repeat that.

4 Can you describe that image one more time,
5 Mr. Locker?

6 MR. LOCKER: It is the image of Mr. Harkrider
7 holding the OC can in his right hand that we talked about --
8 I believe you have it.

9 MR. WALDRON: No objection.

10 THE COURT: All right. It will be admitted.

11 BY MR. LOCKER:

12 Q. Detective Harry, the image that we see here on the
13 screen in the middle, is that Mr. Harkrider holding over his
14 head an OC canister?

15 A. Yes. And the blue -- the cap with the blue back and the
16 white -- or gray bill.

17 Q. And that is consistent with the video that we have
18 already seen; is that correct?

19 A. Yes, that actually -- yes.

20 Q. And we don't know for certain it is the same OC
21 canister. It just appears to be the same type and model as
22 the one that Mr. Nichols used?

23 A. I don't know for sure that it is the same canister. I
24 also am not for sure that this is the same instance as we
25 watched earlier. I haven't had time to marry those videos up

1 to verify that.

2 Q. There is a lot of footage of the -- at the Capitol at
3 this point in time; is that right?

4 A. From a lot of different angles, yes.

5 Q. Now, you had already testified about the text message
6 conversation that he had with Mr. Nichols prior to their trip
7 to Washington, D.C.; but related to weapons, Mr. Harkrider,
8 although he is the recipient of most of those text messages,
9 he responded with a very specific one to Mr. Nichols
10 regarding bringing firearms with him, did he not?

11 A. Yes.

12 Q. What did he tell Mr. Nichols in response?

13 A. Just when they were talking about legally transporting
14 guns to D.C., Mr. Harkrider's response to: I will bring
15 every freedom blaster I own then.

16 Q. Do you know freedom blaster to be a colloquial term,
17 slang term for a firearm?

18 A. That's my understanding.

19 Q. In addition to the firearms that were -- that
20 Mr. Harkrider admitted to taking on his trip to Washington,
21 were there other firearms located in his home at the time
22 that the search warrant was executed?

23 A. The combination between in his home and in his vehicle,
24 I am not sure which were where, as I sit here.

25 Q. At the searched premises?

1 A. That's correct.

2 Q. Did that include a Winchester rifle and a .22 revolver,
3 and then there are also four firearms including that .30-30
4 rifle that had been discussed, in his truck?

5 A. Six total?

6 Q. Yes.

7 A. That's my understanding as I sit here. I was not at
8 that search team and have not seen those search reports
9 yet.

10 Q. Because of the simultaneous execution of the search
11 warrants, you were actually at Mr. Nichols' house when a
12 separate team was at Mr. Harkrider's house; is that
13 correct?

14 A. That's correct.

15 Q. Do you believe that Mr. Harkrider may present a danger
16 to himself or others on account of mental health issues?

17 A. I do.

18 Q. Are you aware of his admission of being a 100 percent
19 disabled veteran on account of PTSD?

20 A. Yes, sir, I am.

21 Q. Did Mr. Harkrider make statements to law enforcement
22 regarding suicidal ideation?

23 A. Yes, sir, he did. That is the information that I
24 have.

25 Q. In fact, did he make a specific statement to FBI agents

1 when he was arrested about what he wished had happened in
2 Washington?

3 A. So he made a statement where he referenced that he
4 wished he had been shot at the door. There is some debate
5 between the two investigators that were there as to whether
6 that statement, because it was pursuant to his arrest, was
7 referencing his time at the Capitol or whether it was
8 actually upon his arrest by the SWAT team. So they are not
9 sure which two of those things he meant.

10 Q. In either of those two options --

11 A. Correct.

12 Q. -- he is still expressing potentially a suicide-by-cop
13 desire?

14 A. That's correct.

15 Q. Which, just to be clear, that kind of endeavor doesn't
16 only endanger the individual but also the law enforcement
17 officers involved?

18 A. Correct.

19 Q. When he was booked into jail, did he also make
20 additional statements as to whether or not he had been
21 contemplating suicide?

22 A. My understanding from the investigators that were there
23 that it was asked, posed: Are you feeling suicidal? And his
24 answer was in the affirmative, but he tried to kind of play
25 it off as a joke.

1 Still, having said that, the investigators that
2 were there booking him in did not take that statement as a
3 joke and actually marked on the paperwork that they submitted
4 that he did express that he was feeling suicidal.

5 Q. In addition to his statements that he was feeling
6 suicidal, during an interview did he also state that he had
7 suicidal ideation in the past?

8 A. That's my understanding, yes.

9 Q. Regarding drug usage, Mr. Harkrider reciprocated in that
10 conversation with Mr. Nichols about the use of psychedelic
11 drugs on their trip to Washington, D.C.; is that correct? He
12 responded -- participated by sending a GIF that was
13 psychedelic in nature talking about taking LSD; is that
14 correct?

15 A. Yes.

16 Q. To take acid to see reality GIF?

17 A. I'm sorry. Yes, I was looking for it.

18 Q. Just to be clear, that is mostly a one-way conversation;
19 that is mostly Mr. Nichols telling Mr. Harkrider what he
20 plans to do. But when he says, "I'm going to bring some
21 goodies, some goodies you haven't had before," the context
22 indicates that he is expecting Mr. Harkrider to be a
23 participant because he has been a participant in similar
24 activities in the past?

25 A. Correct. Mr. Harkrider -- he is the one who brings up

1 the drugs there.

2 Q. Does Mr. Harkrider have any connection to the District
3 of Columbia other than his criminal conduct on this time
4 frame?

5 A. Not to my knowledge.

6 Q. Did Mr. Harkrider make -- have a text message
7 conversation with someone else indicating that he was going
8 to avoid being an -- avoid being home, specifically related
9 to him being a suspect in these events?

10 A. He did, yes.

11 Q. And what was that conversation, and when did it take
12 place?

13 A. That exchange, as we saw it, was with a subject by the
14 name of Randy Smith -- or at least it was in his phone as
15 Randy Smith.

16 Randy sends a message: You make it back home?

17 Mr. Harkrider responds: Yeah, I'm back. I've been
18 in Shreveport with my mom hiding out. Ha. Ha.

19 Q. So we don't know the full context of that, but at least
20 he is telling his buddy that he is out of town intentionally
21 for the purpose of not -- of being scarce?

22 A. Correct.

23 Q. Are you aware of Mr. Nichols' -- Mr. Harkrider's
24 employment situation?

25 A. I don't believe he has an employment situation.

1 Q. He is unemployed?

2 A. That is my understanding -- it is my understanding. He
3 collects disability, is my understanding.

4 Q. Did agents interview Mr. Harkrider's roommate?

5 A. Yes, they did.

6 Q. And are you aware that that roommate appears to be
7 moving out?

8 A. I was not aware of that.

9 Q. Let's talk about the charges that Mr. Harkrider is
10 facing. They are largely the same as Mr. Nichols, with two
11 notable absences.

12 Mr. Harkrider is charged in Count 1 with violation
13 of Title 18, United States Code, Section 1752(a) and
14 1752(b)(1)(A), that being conspiracy and unlawful entry with
15 a dangerous weapon.

16 Is a tomahawk a dangerous weapon?

17 A. Yes, sir.

18 Q. And do we know from the video footage that Mr. Harkrider
19 entered the Capitol carrying a dangerous weapon?

20 A. Yes, we do.

21 Q. And, in fact, more than dangerous weapon, we would
22 classify that as a deadly weapon; is that fair?

23 A. I would feel absolutely comfortable calling it that.

24 Q. Count 2 charges the Defendant with violation of 40,
25 United States Code, Section 5104(e)(2), 5104(e)(2)(D) and

1 (G), that being violent entry and disorderly conduct on
2 Capitol Grounds.

3 It is a violation for an individual or group of
4 individuals to willfully and knowingly utter loud,
5 threatening, or abusive language, or engage in disorderly or
6 disruptive conduct, at any place in the Grounds or any area
7 of the Capitol Buildings with the intention to impede,
8 disrupt, or disturb the orderly conduct of a session of
9 Congress.

10 As we have discussed before, Mr. Harkrider's
11 conduct squarely fits those elements; is that correct?

12 A. Yes, I believe it does.

13 Q. You believe there is probable cause to support each and
14 every element of those offenses?

15 A. I do.

16 Q. And then Count 5 charge -- I'm sorry. As to this
17 Defendant, Count 3 charges the Defendant with 18, United
18 States Code, Section 8 -- Section 2, that being aiding and
19 abetting, which charges that anyone whoever aids, abets,
20 counsels, commands, induces, or procures the commission of a
21 federal offense is punishable as a principal.

22 Having viewed this footage with Mr. Harkrider
23 repeatedly, does it appear that he and Mr. Nichols cast their
24 lots together, in that their endeavor in Washington was a
25 joint endeavor?

1 A. Yes. In almost every instance of evidence that we have,
2 they are two peas in a pod; they are right next to each
3 other.

4 Q. They are battle buddies, as they would say in the
5 military?

6 A. Absolutely.

7 Q. They are looking out for each other?

8 A. Yes.

9 Q. It is a dangerous situation there, is that correct, even
10 for them?

11 A. Yes.

12 Q. And they are looking out for each other by ensuring that
13 one can get through an entryway and one is doing okay. They
14 know each other's location at all times. Does it appear that
15 way in the footage?

16 A. I certainly believe they are there watching out for each
17 other and have each other's back, yes.

18 Q. Based on the evidence that you have seen, does it appear
19 that Mr. Harkrider regularly not only engaged in his own
20 criminal conduct, but encourages and aids and abets that of
21 Mr. Nichols?

22 A. Yes.

23 Q. So do you believe that there is probable cause to
24 support each and every element of all three of these charges
25 against Mr. Harkrider in this case?

1 A. I do.

2 MR. LOCKER: Pass the witness.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. WALDRON:

6 Q. Thank you, Your Honor.

7 We've been here a while today. You've gotten to
8 testify quite awhile. I have probably a lengthy --

9 A. That's okay.

10 Q. -- amount of questions, so just have patience with me
11 here.

12 A. No problem.

13 Q. Let's start with just going over what you testified here
14 in the hearing against my client, Mr. Harkrider.

15 Specifically, on the Snapchat we talked about it
16 briefly and I, on cross-examination previously, I asked you
17 did you know who typed that message on the picture that was
18 shown. And you said you did not.

19 A. That's correct.

20 Q. Okay. Clearly, it appears to be a picture of
21 Mr. Harkrider.

22 A. It is a picture of Mr. Harkrider.

23 Q. Okay. Do you think you can tell he is inside the
24 Capitol -- there is no doubt. We can see on the video, at
25 some point he is in a room in the Capitol; is that right?

1 A. That's right.

2 Q. What room is that?

3 A. I couldn't tell you.

4 Q. Inside that room you have no idea what the ingress or
5 egress is to the rest of that building, do you?

6 A. That is totally fair, I do not know.

7 Q. You do not know if he is in the middle of the building
8 hundreds of yards away from the Senate or the House, do
9 you?

10 A. I do not know. That's correct.

11 Q. Okay. You don't -- how long would you say he was in the
12 building?

13 A. As I discussed with Mr. Files, I am really not
14 comfortable -- best guess, I am thinking a couple of minutes.
15 I don't have any -- I don't have any good, hard data for you
16 on that, but that's my guesstimate is -- you know, somewhere
17 between probably two and 10 minutes at the very most, but
18 probably less.

19 Q. Okay.

20 A. We just have not had a chance to sit -- I presume that
21 there is going to be footage from the Capitol building that
22 should hopefully show that room that would probably give us
23 an answer to that, but I don't have it as we sit here. I'm
24 just guessing.

25 Q. And we don't have that?

1 A. That's correct.

2 Q. So we don't know if he went anywhere besides that one
3 room?

4 A. I do not know that, that's correct.

5 Q. In fact, the photos that you have seen -- I don't know
6 who posted those -- the photos that you have seen of him in
7 that room looks like he is standing still in that room; is
8 that correct?

9 A. Yes, sir, whatever room that is, yes.

10 Q. All right. Likewise, from the standpoint of
11 Mr. Harkrider, do you ever see him, in that room or outside,
12 tear up, destroy any property of the Federal Government there
13 on the grounds?

14 A. I would say no -- other than they are rocking with the
15 group; but, no, certainly nothing of him breaking a chair or
16 smashing a window, I have not seen any footage of anything
17 like that.

18 Q. In fact, you can see the guy smashing the window out,
19 the top window out of that room that they go into?

20 A. Yes. That's a much longer video, and a lot of people
21 took part in that in breaking that -- the one we just watched
22 was that guy who succeeded at the top. But, no, I have
23 nothing to indicate that Mr. Harkrider bashed any of those
24 windows at all.

25 Q. Okay. And, likewise, you have no information, either

1 video or witness statements or any other information, that
2 Mr. Harkrider used a weapon against anyone, including
3 officers, do you?

4 A. The only thing that comes to mind when we say "weapon"
5 is just passing the OC canister. I have nothing, as I sit
6 here, to indicate that he physically used that, as I sit
7 here.

8 Q. Okay. Well, let's talk about that. That is on the
9 video. You recall that, right?

10 A. Yes, sir, it is captured a couple of times.

11 Q. And you see someone tap him on his shoulder and hand him
12 that over the shoulder, do you not?

13 A. In one of the -- yes, in one of the videos, yes, that is
14 what happens.

15 Q. He never drops it down. In fact, within a matter of
16 seconds, he is giving it to somebody else; and that is the
17 extent of him touching that OC canister?

18 A. In that frame, yes, that's correct.

19 Q. And you have no other evidence of him touching an OC
20 canister?

21 A. As I said -- I want to be careful how I say this because
22 there is the -- the long -- the hour-long,
23 hour-and-a-half-long video when Mr. Locker actually paused
24 it, that was, to be honest with the Court, that was the first
25 time I even noticed that particular set of footage actually

1 caught it in his hand.

2 I am not comfortable saying that that is the same
3 footage -- that that action is the same action that is caught
4 in the other video with the still shot that we watched,
5 because that is from a video as well. It probably is. But
6 there is a lot of stuff moving through the crowd.

7 Q. Okay. So you can't say there were two separate times?

8 A. Not as I sit here, that's correct.

9 Q. All right. I know there was some testimony in the
10 previous hearing about Mr. Harkrider exiting his body out the
11 window, and I think the statement was he makes a slashing
12 symbol or something like that?

13 A. Correct.

14 Q. I know Mr. Files cross-examined you about did the crowd
15 increase their chanting or whatever. We can see now, we
16 watched it a second time, that didn't happen, did it?

17 A. I'm not comfortable saying that he directly is the one
18 who enticed or -- again, I'm not comfortable saying that.

19 Q. In fact, they were singing the National Anthem when he
20 comes out; is that right?

21 A. I actually think the crowd behind him was, though I
22 think his intention was to rile them up. But I can't say for
23 sure that that worked.

24 Q. Okay. All right. Nobody was paying attention to
25 that -- I mean, nobody saw what he was doing --

1 A. Well, certainly the camera man was fixated on that
2 window.

3 Q. Yes.

4 MR. WALDRON: All right. Judge -- and I am going
5 to get into some about statements. I would point out at this
6 stage I have not received a copy of my client's recorded
7 interview. I have not received a copy of the roommate's
8 recorded interview or the results of search warrant, any of
9 those reports.

10 I know that some are available now just prior to
11 the hearing. Others are not available yet. I want to say I
12 reserve the right to reopen this hearing if new evidence is
13 learned once I am available to review those.

14 THE COURT: You have that right. Thank you.

15 BY MR. WALDRON:

16 Q. Let's talk about the tomahawk. What -- all right.
17 Let's talk about that. When did you first discover or first
18 learn that he, in fact, was in possession of a tomahawk at
19 the Capitol?

20 A. To when we knew it was a tomahawk?

21 Q. Yeah.

22 A. When we recovered it during the search warrant.

23 Q. In fact, the affidavit says he had a baton in his
24 jacket, right?

25 A. We weren't sure what it was, that's correct.

1 Q. Okay.

2 A. Because all you could see was just the handle.

3 Q. So the only way you learned he even has a tomahawk is
4 through his cooperation during that interview with your guys
5 when he was first arrested?

6 A. No. I think we would have made that conclusion when we
7 found it during the search warrant. It is very unique.

8 Q. Did you have a search warrant for the house?

9 A. We did.

10 Q. Okay.

11 A. It was executed at that time.

12 Q. I thought that was a voluntary consent. Am I wrong on
13 that? I have not seen a search warrant for the house.

14 A. We were there on a search warrant.

15 MR. WALDRON: Okay. Judge, I'd also request a copy
16 of that, obviously at some point so I can review for a later
17 date and see if I need to reopen.

18 MR. LOCKER: Your Honor, no objection. The
19 discovery is an ongoing process. I don't think I have
20 misrepresented how we were in Mr. Harkrider's home to
21 Mr. Waldron. I've been doing my best to keep up with
22 discovery obligations. Given our constrained time table, it
23 has been a challenge, but I don't think at any point I
24 misrepresented the way by which we located these items or
25 were in Mr. Harkrider's home.

1 MR. WALDRON: I don't think he did. That's my
2 client representing that he consented. They came to the
3 door, and he let them in, is what he has told me. I may be
4 wrong about that.

5 BY MR. WALDRON:

6 Q. How was the approach to his house; do you know?

7 A. A SWAT team was used to take him into custody.

8 Q. Did they knock the door in?

9 A. I don't have any answers. I'm not sure. I was not at
10 that site. I don't know, as I sit here. I'm sorry.

11 Q. Okay. Where was he interviewed?

12 A. My understanding is that he was interviewed at I believe
13 the Panola County Sheriff's Office or Carthage PD. It was a
14 law enforcement facility. I think it was the sheriff's
15 office. I could be wrong on that.

16 Q. He was taken from site to Panola County; is that
17 right?

18 A. I believe so.

19 Q. Okay. And --

20 A. I haven't seen the report either.

21 Q. Have you listened to the interview?

22 A. I have not, sir, no.

23 Q. You don't know how long it is?

24 A. No, sir, I do not.

25 Q. But you are aware that he told law enforcement that is

1 what he had in his jacket?

2 A. That was what was represented to me from the
3 investigators that I spoke with. He did acknowledge it was a
4 tomahawk.

5 Q. Did he also advise law enforcement he took no other
6 weapon to the Capitol?

7 A. Into -- yes, to the Capitol, yes, that's correct.

8 Q. And did he advise law enforcement that he, in fact, took
9 Uber to the Capitol from his hotel?

10 A. I do feel like I remember hearing that. I believe that
11 is correct. To my understanding, that sounds right.

12 Q. Okay.

13 A. I am sorry I am not more familiar with the interview.

14 Q. So a vehicle with potential weapons would have been left
15 at the hotel, and then an Uber is taken; is that correct?

16 A. I believe that is correct from another source as well,
17 from Mr. Nichols' dad mentioned the same thing, that they had
18 parked maybe 10 miles away, 10 minutes away, something like
19 that.

20 Q. Okay. And isn't it true he told law enforcement that
21 the reason he had the tomahawk was the concern that Antifa or
22 other Black Lives Matter and other groups may be there to
23 oppose them or attack them?

24 A. My recollection from what the investigators told me was
25 that it was a personal protection device, not meant to be an

1 offensive weapon. I don't remember -- I don't remember being
2 told specifically that it was for the purposes of Antifa or
3 Black Lives Matter.

4 Q. Isn't it true that he told investigators that when he
5 went to Washington, he had no intent of storming or going
6 into the Capitol?

7 A. I don't recall having that -- or asking that specific
8 question, Mr. Waldron, to the detectives who interviewed him.
9 I am really not comfortable speculating on that. I just
10 don't know the answer to that question, as I sit here. I'm
11 sorry.

12 Q. Isn't it true he told investigators he started his day
13 wherever the speeches were being given by the President and
14 Rudy Giuliani and whoever else stirred this crowd up?

15 A. I do believe that's correct. Yes, that's my
16 understanding.

17 Q. And you watched this hour-and-a-half video, correct?

18 A. In pieces, yes, sir.

19 Q. The very first 30 seconds, which were cut off, what is
20 on that first 30 seconds?

21 A. It is President Trump speaking to that crowd.

22 Q. And what does he tell them to do?

23 A. I did not watch his speech live. I'm not sure exactly
24 what he told the crowd to do.

25 Q. Well, it's on that video where he says -- tells them to

1 go down to the Capitol, and I will be there with you. Is
2 that right?

3 A. I have heard that, but I have not watched that. I
4 didn't watch it in real time. I actually haven't watched a
5 recording of his speech since. I can't speak to what he
6 said.

7 Q. Are you aware this is some mile, mile and a half away
8 from where the Capitol is?

9 A. I am not. If you say it is, I believe it.

10 Q. Are you aware of the crowds that were there for those
11 speeches and the protests that day?

12 A. I have heard the estimates were as many as 114,000
13 people.

14 Q. Okay. So we have 114,000 people that started out down
15 the street, maybe a mile, listening to speeches of the
16 President and Rudy Giuliani and the Trump kids. Is that
17 correct?

18 A. Again, I am not sure of who spoke. But that sounds
19 right.

20 Q. The videos that you have watched online, you see the
21 crowd then walking, marching, whatever it may be --

22 A. Correct.

23 Q. -- to the Capitol?

24 A. Yes, sir.

25 Q. After being told to do so?

1 A. I concede the crowd started somewhere else and moved to
2 the Capitol. We are in agreement there.

3 Q. And outside the perimeter of the Capitol, they are met
4 with limited resistance by law enforcement; is that
5 correct?

6 A. I am not sure.

7 Q. Okay. And I say outside the perimeter. I am not
8 talking right at the building. There is law enforcement out
9 there saying, hey, look, let's not get crazy. And the people
10 approached the plaza area of the Capitol; is that right?

11 A. Again, I'm not sure what -- about the Capitol, sorry.

12 Q. Do you know if people entered the Capitol from all
13 sides?

14 A. I don't have an answer to that. I don't know.

15 Q. Okay. The people that were involved that we see -- in
16 these videos we see, we don't see the guy with the Viking
17 helmet, do we?

18 A. Correct, no, we do not.

19 Q. We don't see any evidence where we can point to of the
20 female that got shot that got in, correct?

21 A. No, sir, not in anything --

22 Q. Okay. So those people had to have come in from some
23 other location; would you agree?

24 A. That's what I believe to have happened, yes.

25 Q. Okay. Right now we are just focused on this one

1 entrance.

2 Does anybody get past law enforcement in that
3 entrance there?

4 A. I don't have -- as far as the doors?

5 Q. The doors.

6 A. I don't know.

7 Q. Okay. And you don't know what happens inside -- if
8 anyone got outside that room, do you?

9 A. Where the picture was taken?

10 Q. Yes. Where the picture was taken?

11 A. I don't, no, sir.

12 Q. So the people that are going in that window, not just
13 Mr. Harkrider and not just Mr. Nichols, but the other people
14 that go in, we also see most of them coming back out that
15 window also, correct?

16 A. I would say there is as steady of a flow in as there is
17 a steady of a flow out.

18 Q. But you see a lot of the same faces going in and coming
19 out?

20 A. Uh-huh.

21 Q. Pretty good indication that there is some barrier or
22 something that prevents them from coming too deep in there
23 because they are coming right back out the window; would you
24 agree with that?

25 A. It could be a series of rooms that they had access to

1 and just like you -- no doubt they ran into some sort of
2 blockade or something somewhere that they couldn't pass go,
3 so they had to come back out. I think that is fair.

4 Q. Okay. All right. Mental health. Have you read the
5 bond report? Have you seen the Pretrial Services Report?

6 A. We discussed it briefly this morning with Mr. Locker. I
7 have not reviewed it. That is not typically something that
8 is given to us.

9 Q. All right. You are aware he is retired military --
10 I guess we would say retired. He was forced retirement based
11 on PTSD, mental disability. Is that right?

12 A. I was not aware he was force retired. I was aware he
13 was a former Marine and has 100 percent disability for
14 PTSD.

15 Q. Have you heard or are you aware that he did tours in
16 both Afghanistan and Iraq?

17 A. Yes, sir, I have heard that.

18 Q. You are aware he was an infantryman?

19 A. Yes, sir.

20 Q. So he was involved in firefights?

21 A. I'm sure he was.

22 Q. Okay. So he is not the only one that is involved in
23 firefights and an infantryman that served tours of duty that
24 had PTSD; is that correct?

25 A. Certainly not.

1 Q. In fact, there were many veterans that were there at
2 Washington that day; is that correct?

3 A. That's my understanding, yes, sir.

4 Q. So, as we sit here today, he has been in jail since
5 Monday, have you received any information of him attempting
6 suicide or attempting to harm himself since he has been in
7 jail or in custody since Monday?

8 A. I don't have any information to that, no, sir.

9 Q. Okay. I want to talk about the cell phone and the text
10 messages.

11 A. Okay.

12 Q. You and I had a conversation earlier about this printout
13 on these text messages, and I asked you prior to being on the
14 record, do we have this in a time sequence as to how these
15 text messages went down? And your response was, you don't
16 right now; you just took messages off his phone.

17 A. Correct. As I sit here, I'm not sure of the cadence or
18 the sequence or timestamps or anything like that.

19 Q. Have you dumped his phone yet?

20 A. No, sir.

21 Q. All right. So I don't have copies of his phone either,
22 right?

23 A. Neither of us.

24 Q. Okay. So when we are looking at those text messages,
25 which you and I said -- we both agreed cadence is important

1 to know and understand the context of these messages?

2 A. Absolutely.

3 Q. 12:31, the text messages before the Court, there is only
4 a text message from Mr. Nichols, is that correct, where he
5 sends a picture to Harkrider?

6 A. That's the only one that we are presenting. I don't
7 want to misrepresent that there are other text messages
8 possibly on December 31st.

9 Q. If Harkrider had responded, would you have put that in
10 here?

11 A. I did not prepare this document. If I believed it was
12 exculpatory or in any way helped or hurt him, if it had
13 evidentiary value, I certainly would have put it in here.

14 Q. Okay. So looking at this document that you didn't
15 prepare, you have no evidence that Harkrider responded to him
16 on 12/31?

17 A. As I sit here, I do not know if he responded, that's
18 correct.

19 Q. So based on the fact that we have responses on other
20 dates, we can assume that he did not; would that be a fair
21 assumption?

22 A. I'm not prepared to say that. Only that I didn't think
23 that it either helped or -- helped our cause or was
24 beneficial to the Defense. Obviously, we would have provided
25 it if it was exculpatory in some sort of manner. I'm not

1 prepared to say that.

2 Q. And I am not going to argue with you about that as far
3 as who gets to determine what is exculpatory.

4 A. Sure.

5 Q. But right now we have nothing in here where
6 Mr. Harkrider responded?

7 A. Correct. In this document, that's correct.

8 Q. And on January 1st where Nichols sends three text
9 messages to Mr. Harkrider, which you have read to the Court
10 about needing first aid kits and we need to speak in person,
11 Harkrider never responds to any of those messages, according
12 to this document, does he?

13 A. Again, not that we are presenting. I am not comfortable
14 saying that he didn't. I also have not looked at the
15 phone.

16 Q. Okay. And --

17 A. With respect to these particular messages. I'm sorry.

18 Q. Okay. The first evidence that we see in the documents
19 presented of text messaging between -- where Mr. Harkrider
20 responds is when they are talking about a movie called Soul,
21 which is a cartoon movie, correct?

22 A. I haven't seen it, but I presume that is what it is,
23 yes, sir.

24 Q. Well, I've seen it. I can represent to you it is a
25 cartoon movie.

1 A. My kids aren't there yet.

2 Q. So that's the first time he responds is when he is
3 talking about a movie, not talking about going to D.C. Is
4 that right?

5 A. For this document yes, sir, that's correct.

6 Q. Okay. You talk about drug usage, and you base that on
7 this "I have got goodies for the trip, goodies you have
8 requested."

9 Do you have any evidence from any of the
10 photographs or any other information that they, in fact, took
11 anything with them?

12 A. No, sir, not as I sit here.

13 Q. Do you have any information that Mr. Harkrider took any
14 drugs while in Washington, D.C.?

15 A. No, sir, not as I sit here.

16 Q. Okay. You have talked a little bit about the group
17 messages. And both comments you say attribute to
18 Mr. Harkrider that you gave said: Who is y'all's favorite
19 domestic terrorists? With an S, and he has a laughing face
20 emoji?

21 A. Yes, sir.

22 Q. And this is the day after they were up in D.C.?

23 A. Correct.

24 Q. How did every news media portray anybody that was
25 there?

1 A. Domestic terrorist.

2 Q. So, basically, it was an admission he was there, and
3 look at the news media, look how they have labeled us?

4 A. Correct.

5 Q. Likewise, you say -- you make it back home. Yeah, I am
6 back. Been in Shreveport with my mom hiding out. Ha. Ha.

7 Are you aware he has a sister that lives in
8 Shreveport?

9 A. I am aware he has a sister. I'm not sure where she
10 lives.

11 Q. If the bond report reflects that, you don't have any
12 reason to dispute that?

13 A. No, not as I sit here, no, sir.

14 Q. All right. And, likewise, finally, the text message,
15 this family support text message -- and it says family
16 support, violent conduct. I learned today that would be
17 Mr. Nichols' dad; is that right?

18 A. Yes, sir.

19 Q. That text message, there is no evidence in this document
20 that Mr. Harkrider responded to that?

21 A. Correct, in this document, that is correct.

22 Q. Getting back to the tomahawk and I said, before he
23 advised you it was a tomahawk, you guys did not know it, that
24 it was a tomahawk?

25 A. That's correct.

1 Q. And the reason you didn't know it is he never pulled
2 that tomahawk out of his jacket the entire time that you see
3 him on video, did he?

4 A. Not that I have seen, no, sir.

5 Q. There was no evidence that you have seen up to this
6 point two weeks into this investigation that would indicate
7 he ever brandished that weapon?

8 A. I have no evidence of that. And, in fact, I believe he
9 told the investigators during his custodial interview that he
10 did not -- never took it out of his sheath.

11 Q. Okay. So it was in the sheath actually in his jacket?

12 A. I don't know -- but I believe the sheath was how he
13 affixed it to either his jacket or his vest, yes, sir.

14 Q. Okay. Do you know if any were met with resistance by
15 any outside groups, whether it is Black Lives Matter or
16 Antifa or whoever had opposition to them; are you aware of
17 any of that?

18 A. As to Mr. Nichols and Mr. --

19 Q. Any of this protest? Was any of that a part of this
20 protest?

21 A. Other than hearing rumors, nothing that I can certainly
22 say concrete or there is -- I can refer to this defendant
23 somewhere. I would imagine that happened, but I have nothing
24 specific about it. I'm sorry.

25 Q. The reason I ask that question, he advised you that that

1 was his concern that that would be the clash -- or he advised
2 the investigators of that?

3 A. Right.

4 Q. He didn't take it to break into the Capitol; he took it
5 in case he was assaulted to defend himself. Right?

6 A. That is the information that I believe he gave to
7 investigators.

8 Q. And that would go hand in hand with him telling, I never
9 brandished this; I never pulled it out?

10 A. With respect to the tomahawk, sure, I agree.

11 Q. Besides about five years of living in Judson, Texas,
12 after military, are you aware that he is a life-long resident
13 of Carthage, Texas?

14 A. I was not -- I am not aware of that.

15 Q. Okay. Are you aware that his mother, who is sitting
16 right here, Donna Cox, is also a long-time resident of
17 Carthage, Texas?

18 A. I was not aware of that.

19 Q. Are you aware she lives a half of a mile from his
20 house?

21 A. I am not.

22 Q. Okay. You are aware now that he is 100 percent
23 disabled, and he totally survives on his disability check
24 through the military?

25 A. That's my understanding, yes, sir.

1 Q. You are aware that obviously with disability comes
2 constant contact with the VA to reassess and reevaluate any
3 disabilities through the military?

4 A. I would imagine that it is, but I am not familiar with
5 VA's practices.

6 Q. Okay. The cases that are involved here, one is a 0 to
7 10 year case and the other is a misdemeanor; you are aware of
8 that, right?

9 A. Yes, sir.

10 Q. Okay. Have you even looked at the Sentencing Guidelines
11 to see where they fall for this offense?

12 A. I sure haven't.

13 Q. Okay. So you are not aware that they would potentially
14 be 0 to 6 months in this case?

15 A. I am not aware of that.

16 Q. Other than Washington, the interaction with law
17 enforcement prior to that, are you aware it is only DWI
18 related?

19 A. I want to say -- I know about the DWIs. I want to say
20 there was maybe a criminal mischief sometime in his past, as
21 well. But certainly nothing more significant than those that
22 I am aware of.

23 Q. Misdemeanor?

24 A. Yes.

25 Q. And his only DWI conviction would have been 2010 or '11;

1 is that right?

2 A. If you say -- I have -- I am not -- I am sorry. I am
3 not intimately familiar with his criminal history at this
4 moment, as I sit here.

5 Q. Okay. I am looking at the affidavit for arrest warrant,
6 and I realize that there is a lot going on with this. Okay?
7 I'm not trying to put you in the box here. But you learned
8 of Mr. Harkrider and Mr. Nichols on January 7th, is that
9 correct, FBI did?

10 A. So I do believe that was the first reporting of that by
11 the witness Aryeh Ohayon. I am messing his name up. I'm
12 sorry. Ohayon. As far as -- and that was made to the FBI on
13 January 7th. As far as when that tip trickled down to us
14 took some time. And I want to say the first time I really
15 dug into them was that Monday, that following Monday,
16 whatever day that is. I'm sorry.

17 Q. Okay. I don't have my calendar in front of me. But he
18 is arrested on the 18th, so I think it would be the 11th?

19 A. That sounds right. It was roughly a week from when I
20 first was familiar with -- or looked into either of them,
21 yes.

22 Q. Okay. First tip, January 7th, from witness number one.
23 Second tip, January the 9th, witness number two?

24 A. Uh-huh.

25 Q. Both identifying Harkrider and Nichols, and that is

1 Paragraphs 13 and 15 of the affidavit.

2 A. That sounds right, yes, sir.

3 Q. This affidavit for arrest warrant, it is signed by an
4 agent I guess out of D.C.; is that right?

5 A. That's correct, the Washington Field Office.

6 Q. Okay. So you didn't prepare this?

7 A. No, sir. Other than that we discussed with Mr. Files,
8 obviously this is built in large part off the search warrants
9 for the Defendants' residences. Obviously, it has been
10 reworded and rephrased and things like that --

11 Q. Okay.

12 A. -- by the attorneys, of course, and that agent as
13 well.

14 Q. All right. So when you get the case on the 11th, what
15 do you immediately start doing?

16 A. Well, we wanted to take sure -- this is going to sound
17 bad. My first goal is to make sure that these guys are
18 actually in my territory. If I can kick the work off to
19 somebody else, because we have got a whole bunch of these,
20 I'm going to do that. So that was our first step was to --
21 you know, we got this tip about these two guys, are they in
22 our territory? Yes, they were. We were able to verify that.

23 Then we started to take steps to see -- I think I
24 described this earlier, because the tips called us to their
25 Facebook pages, that was the first place we went. And I

1 think, as I discussed earlier, the pages had been kind of
2 sanitized though.

3 I think with respect to your client, there really
4 was not much of an allegation that his Facebook page was
5 littered with videos or pictures anyway. A lot of the images
6 that we have now -- I am sorry. I am rambling here -- are
7 Mr. Nichols' images, which depict Mr. Harkrider, but he is
8 tagged. Yeah. Ryan Nichols is angry with Alex Harkrider,
9 and his Facebook page is tagged.

10 Q. Okay.

11 A. I'm sorry, I kept going there.

12 Q. I get it. But that is Ryan Nichols posting; that is not
13 Alex Harkrider?

14 A. That's correct.

15 Q. Just tagging Mr. Harkrider?

16 A. Correct.

17 Q. Okay. To get back to -- this is an important part, too,
18 as far as cooperation. I know you guys made a big deal about
19 how Mr. Nichols sanitizes his Facebook. He gets rid of his
20 clothes. His AR is nowhere to be found. He wasn't
21 completely truthful about a lot of stuff. Okay? He didn't
22 sit down and give you an hour-long interview, or whatever it
23 was, like Mr. Harkrider did?

24 A. That's correct.

25 Q. Mr. Harkrider tells you where everything is, tells you

1 exactly what happened, tells you what he has, still had the
2 text messages, which are the basis for these text messages
3 that we have. Right?

4 A. I think that is fair. The only thing I would add to
5 that is that the investigators, when they initially asked him
6 about his conduct, he initially denied all of those things.
7 And it was kind of one of those things, okay, you weren't in
8 the Capitol? Okay. Well, what about this picture? Okay.
9 You got me. That kind of thing.

10 Now, he does end up admitting the conduct that we
11 allege. The pictures that we showed him, he does acknowledge
12 his involvement, but --

13 Q. Okay.

14 A. -- I want to make that notation there.

15 Q. And it is a comparative basis, obviously?

16 A. Totally fair, yes.

17 Q. You know, you have got one guy that is not cooperative;
18 you have one guy that is very cooperative -- or cooperative.
19 He gives you that (indicating), that tomahawk that is sitting
20 right there on the desk?

21 A. Well, he confesses to that. We had that anyway. We
22 certainly would have had it with the search warrant.

23 Q. He didn't dispose of it?

24 A. No, no, that is totally fair, you're right.

25 Q. Still in his house?

1 A. Yes. As well as his clothing that he wore, and he
2 didn't delete messages in his phone.

3 Q. Yeah. So we have two different pictures of cooperation
4 here, correct? One a total lack of and one cooperation. And
5 one that didn't try to destroy evidence.

6 A. As far as I know. I think that is fair.

7 Q. Okay. So getting back to the timeline. You started
8 work on the 11th. He is not arrested until the 18th.

9 A. Yes, sir.

10 Q. Okay. When was it during that time frame that you
11 believe that Mr. Harkrider now is a complete danger to the
12 community, himself, and others; and he needs to be taken off
13 the streets?

14 A. I don't know that there was any one moment. Just kind
15 of something that you kind of come up with as you learn all
16 things throughout it.

17 Q. By the 12th did you have that opinion?

18 A. I can't answer that. I don't remember specifically
19 having those thoughts. My focus at the time and fixation was
20 on developing evidence, if there was any, preparing the
21 complaints and search warrants in coordination with the case.
22 My mind was not on detention. It was not on -- I know what
23 you are asking, but that is not where my head was.

24 Q. Well, and I guess what I am asking is this: There have
25 been many people identified in this riot that committed acts

1 of violence?

2 A. Yes, sir.

3 Q. Whether it is clubbing an officer with a stick?

4 A. Sure, uh-huh.

5 Q. Whether it is throwing a fire extinguisher at an officer
6 and hitting an officer -- one I think even passed away; is
7 that correct?

8 A. Yes, sir.

9 Q. They have been identified; is that right?

10 A. A lot of them have, yes, sir.

11 Q. Okay. And those people, without hesitation, once it was
12 identified and learned that they committed those acts of
13 violence, they were taken off the streets immediately, were
14 they not?

15 A. As soon as the appropriate complaint could be worked up,
16 search warrants, yes. I mean, all of that is taken into
17 consideration with what are we going to get -- how do we need
18 to proceed?

19 And as you know and you have seen the complaint,
20 this was filed in District of Columbia. There was -- they
21 were not quite as expeditious in their preparing of the -- or
22 getting the complaint signed as I think we would be here in
23 the Eastern District. They are a little bit overwhelmed
24 right now.

25 Q. That's fair enough.

1 A. To be fair.

2 Q. That's fair enough.

3 A. We could not proceed -- if your question is, would I
4 have liked to have arrested Mr. Harkrider on the 12th, the
5 answer is yes. We did not have a complaint in hand at that
6 time.

7 Q. Okay.

8 A. And the guidance we got was that the complaint needed to
9 be signed in the District of Columbia.

10 Q. Okay. But you had provided your information by then?

11 A. My search warrant wasn't done until pretty much Friday
12 morning, whatever that -- maybe the 15th or 16th -- whatever
13 day we got the search warrant signed. I'm sorry. I am a
14 little tired.

15 Q. So between the 6th and 18th when he is arrested, are you
16 aware of any acts of violence that Mr. Harkrider committed?

17 A. No, sir, not as I sit here.

18 Q. Between the 6th and the 18th, are you aware, from going
19 through his phone, of any plans of Mr. Harkrider to flee?

20 A. I am not aware of any of that. However, again, for the
21 purposes of -- I want to be transparent with the Court -- we
22 have not totally gone through anybody's phones, obviously.
23 The Snapchats that we have are very finite. We were looking
24 for the -- pretty much the time frame to, again, build
25 evidence for the purposes of detention and for probable

1 cause, quite frankly, to make sure we were right on the
2 money, which I think we are.

3 Q. Okay. He is arrested at home?

4 A. Uh-huh.

5 Q. Carthage, Texas, where he has been living for the last
6 eight to 10 years, I believe?

7 A. Yes, sir. I think he bought that home in June is my
8 recollection.

9 Q. Well, Carthage is longer --

10 A. Carthage is his hometown, sure.

11 Q. Obviously, you know the issues before the Court; flight
12 risk, danger, there are a lot of factors that go into that,
13 nature of the offense being one of them?

14 A. Sure.

15 Q. So in that assessment, that is the reason why -- and I
16 guess the question becomes -- or is your opinion that he is
17 both a flight risk and a danger; is that what your testimony
18 is?

19 A. I have some concerns that he has no ties to D.C. I am
20 concerned that the reference, in whatever context it may be
21 that he was, quote, unquote, hiding out, and my -- most
22 probably my paramount concern is his danger to himself, the
23 reference that he wished he had been killed or shot by
24 police.

25 Whether it is during when he was arrested or at the

1 Capitol, either way, that is very concerning. And if he is
2 driving his car and, you know, he gets pulled over for a
3 speeding ticket, he might not know that that is all it is.

4 You know, hopefully, he reacts -- you know,
5 responds to that in kind. But that is a pretty bold
6 statement to make, that I wish they would have killed me.

7 Q. Distraught over being arrested for a federal offense?

8 A. I'm sorry?

9 Q. Distraught over being arrested for a federal offense?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. Distraught over being arrested for being involved in
14 something at the behest of the President of the United
15 States?

16 A. I don't know if that is why he is distraught. I do know
17 that one of the information that was related to me that he
18 specifically asked if, as a result of what we are doing here,
19 if he would lose his disability payments and stuff, which if
20 that is his sole income, I can see how that would be
21 distressing as well.

22 Q. Yeah.

23 A. Got to be able to put food on the table.

24 Q. Yeah.

25 A. And I believe he has a child. I could be wrong about

1 that.

2 Q. You are correct. I believe he has got a 15-year-old;
3 15, 16-year-old daughter.

4 A. Somebody that he, I mean, probably needs to provide for,
5 as well as himself.

6 Q. There has been something made about this heave-ho deal
7 where we can spot different people in the crowd, including
8 Mr. Harkrider?

9 A. Uh-huh.

10 Q. Do you recall watching that video?

11 A. Yes, sir.

12 Q. Do you recall Mr. Harkrider in the crowd?

13 A. Yes, sir.

14 Q. There is obviously some steps up to where those officers
15 are, by the appearance of the angle people's heads are; would
16 that be safe to say?

17 A. Yes, sir. There is definitely an elevation of some
18 kind.

19 Q. And he is definitely not up at the front fighting with
20 the officers?

21 A. No, sir.

22 Q. He is in the crowd?

23 A. Correct.

24 Q. At one point you can actually see him with his head down
25 and his arm stuck up in the air like this (indicating)?

1 A. Uh-huh.

2 Q. Is that fair to say?

3 A. Yes, sir, I know exactly what you are talking about.

4 Q. He is not pushing the crowd one way or another; that
5 crowd is moving him at that stage. Would you agree with
6 me?

7 A. I don't know that I am comfortable saying that. I
8 certainly think it is fair to say he couldn't get his arms
9 down. He is obviously significantly taller than the rest of
10 that crowd, unfortunate to him in this instance because it
11 made him stick out very easily to us.

12 Q. And we have got no evidence of him saying heave-ho, do
13 we?

14 A. No, not as I sit here today.

15 Q. Not everyone in that crowd participated in the heave-ho,
16 did they?

17 A. Certainly not everybody who was present in that frame of
18 footage, no. I would agree with that.

19 Q. That mash of bodies, not everyone participated in it;
20 you would agree with that?

21 A. I'm sorry, I don't.

22 Q. So you think everyone in that body, that mass, even the
23 ones that later get out of that mass, they were participating
24 in it?

25 A. I think Mr. Harkrider and Mr. Nichols participated in

1 that swaying motion, and I think they knew what they were a
2 part of.

3 Q. And you base that on their other conduct or what you
4 view in that video?

5 A. All of it. I mean, what is in that video and the
6 totality of their conduct and what I know.

7 Q. I believe in that same frame about the time we are
8 talking about, you see an individual specifically in a brown
9 cowboy hat and camouflage. You remember seeing that? And
10 the guy saying: Stop and pray, stop and pray?

11 A. Yes. That is later than when they are rocking, but,
12 yes, sir.

13 Q. Yes. Shortly thereafter?

14 A. Uh-huh.

15 Q. Okay. And he was in that crowd, right?

16 A. In the swaying crowd, I'm not sure, as I sit here. If
17 you say it. I haven't been fixated on him.

18 Q. Just to clarify, the bullhorn comments were all made by
19 Mr. Nichols?

20 A. That's correct.

21 Q. Not a single time do you have Mr. Harkrider holding a
22 bullhorn?

23 A. I have no evidence that Mr. Harkrider held a bullhorn or
24 made a statement through the bullhorn.

25 Q. And, likewise, there is a video that was introduced in

1 Mr. Nichols' hearing of him spraying OC spray. No evidence
2 of us ever spraying any OC spray? Nor were we charged with
3 that, were we?

4 A. The Defendant was not charged with that, and I don't
5 have any evidence of him spraying the OC spray, that's
6 correct.

7 Q. Okay. Just to be clear, too, you have no evidence that
8 my client has any knowledge of Mr. Nichols shooting at an
9 airplane flying over his head -- over his house, do you?

10 A. I don't have any evidence of that right now, but I would
11 love to talk to him about it.

12 Q. Didn't find an AR or any 10-round magazines in my
13 client's house either, did you?

14 A. Not that I am aware of, no, sir.

15 Q. We talked about that piece of furniture that was found.
16 Have you seen it?

17 A. I haven't.

18 Q. Can you describe it, how big, how small?

19 A. My understanding is that it is pretty little, and they
20 believe it is a leg. What I kind of envisioned, how it was
21 described to me was from a very low -- like a low chair.
22 Well, kind of sort of like just an old antique chair leg, in
23 my mind is what I am picturing, but I haven't seen it. I'm
24 sorry.

25 Q. Okay.

1 A. But there probably is a picture of it, though, in the
2 search photos from his residence. I haven't looked at those
3 either, but I would imagine there was one in there since we
4 took it.

5 MR. WALDRON: Judge, I will pass the witness.

6 THE COURT: All right. Redirect?

7 MR. LOCKER: Yes, Your Honor, and I will keep it
8 brief.

9 REDIRECT EXAMINATION

10 BY MR. LOCKER:

11 Q. Regarding the heave-ho discussion --

12 A. Yes, sir.

13 Q. -- in your viewing of the video, does it appear that
14 Mr. Harkrider throws his weight into that crowd as they are
15 heaving and hoeing?

16 A. That is what it appears to me, yes.

17 Q. Wherever his hand is, it appears he is leaning his
18 shoulder into it and participating with the sway?

19 A. Yes.

20 Q. Regarding Mr. Harkrider's PTSD, are you aware that he
21 has been prescribed medication for that?

22 A. That is the information that I have, yes.

23 Q. And you also have information that he is non-compliant
24 with taking of that medication?

25 A. My understanding is that is the statement that he made

1 to investigators was that he was not complying with his
2 medication, that is correct.

3 MR. LOCKER: Your Honor, I would like to offer for
4 admission Government's Exhibit 12 or 13 at this point.

5 THE CLERK: It's 13.

6 THE COURT: 13.

7 MR. LOCKER: 13. And it is an image that shows
8 Mr. Nichols and Mr. Harkrider outside the window, and then
9 attached to it is a second image that shows them inside the
10 same room which they appeared outside of at first.

11 Mr. Waldron, I have it up on my screen if you would
12 like to see it.

13 MR. WALDRON: I have seen those pictures. I have
14 no objection for the purposes of this hearing.

15 THE COURT: All right. It will be admitted.

16 BY MR. LOCKER:

17 Q. So, Detective Harry, this shows that we have Mr. Nichols
18 in the foreground and Mr. Harkrider in the background. I'm
19 going to zoom in somewhat.

20 And, although you can tell from this image that
21 Mr. Nichols -- you can't tell if Mr. Nichols or Mr. Harkrider
22 are in some other room besides the arched-window room that
23 they entered within, it is clear from this image that they
24 didn't merely remain in the two- or three-foot proximity of
25 the window; they are fully in that room. Is that fair?

1 A. Correct, yes.

2 MR. LOCKER: I will pass the witness.

3 THE COURT: Any recross?

4 RECROSS-EXAMINATION

5 BY MR. WALDRON:

6 Q. Agent, do you believe that is the window they entered
7 right there?

8 A. I do.

9 Q. Okay. So, obviously, we are talking a still photo.
10 Depth-perception-wise, it's really hard to say exactly how
11 far that window is away, isn't it?

12 A. Yes.

13 Q. We don't know if it is eight feet, 10 feet, five feet;
14 we don't know how far away it is?

15 A. I don't know a distance, but I can certainly -- you can
16 look at points of reference in the image. The can lights on
17 the ceiling is a pretty good indicator to me of kind of how
18 far they are.

19 I certainly think they are at least four lights
20 back. I mean, we can only see three. But they look further
21 back than that to me. But just even if you look at the can
22 lights rights above the Judge's Chambers, I mean, those are
23 probably at least four feet apart.

24 Q. Sure. So it looks my guy is further down the table,
25 Mr. Harkrider is further down the table under that second

1 light.

2 What does it look like he is doing there?

3 A. My assumption is that he is actually playing on his
4 phone. He is texting or taking a picture or doing something.

5 Q. He is not tearing anything up, is he?

6 A. Not in that image.

7 Q. Not yielding a weapon of any type?

8 A. No, sir.

9 Q. Do we know if this is a police officer standing beside
10 him with his patch on his arm?

11 A. The gentleman to the right?

12 Q. Yeah.

13 A. I have no idea.

14 Q. That could be a Capitol Police Officer. We don't even
15 know, do we?

16 A. Could be another Marine.

17 Q. Could be.

18 MR. WALDRON: I will pass the witness.

19 THE COURT: Anything further?

20 MR. LOCKER: Nothing further, Your Honor -- no,
21 Your Honor.

22 THE COURT: All right. You may step down.

23 THE WITNESS: Thank you, Your Honor.

24 MR. LOCKER: The Government rests.

25 THE COURT: Okay. Mr. Waldron, who will be your

1 first witness?

2 MR. WALDRON: Judge, I just have a proffer.

3 THE COURT: Proceed.

4 MR. WALDRON: That would be it.

5 THE COURT: All right.

6 MR. WALDRON: Judge, I have family members here
7 present. I have got Mr. Harkrider's mother, Donna Cox.

8 Would you stand up, Ms. Cox?

9 And then I have got his aunt and uncle here.

10 And, I'm sorry, you wrote your names down, and I
11 can't remember.

12 But his aunt and uncle are here also from Carthage.

13 Judge, the proffer would be, this family lives in
14 close proximity, less than a mile from Mr. Harkrider. His
15 mother is here today to offer to be third-party custodian.
16 And if she was called to testify, she would say exactly that.

17 Her house, and I have looked it up, is .7 miles
18 from Mr. Harkrider's house in downtown Carthage.

19 If she was called to testify, she would say that
20 her son, who she helps out a lot anyway with various errands,
21 she would allow him to live with her, if this Court would
22 allow that.

23 She has a job with CIGNA; that she works in the
24 area; she would be home in the evenings; and would be able to
25 take care of him; take care of his needs; make sure he gets

1 to his VA appointments; make sure he gets all of his grocery
2 shopping; and his bills paid; and whatever it may be.

3 She is not opposed, obviously, to the electronic
4 monitor being in the house. In fact, she welcomes that.
5 That would be fine with her.

6 She -- you know, if called to testify, she would
7 talk about right now what he does for his PTSD is he raises
8 peppers. He gardens, and he is trying to do it with the
9 non-medication way in addressing his PTSD.

10 She would testify she does not believe he is
11 suicidal. He is distraught over being arrested.

12 But she would abide by the restrictions of this
13 Court. She would, obviously, call his Probation Officer if
14 he did, in fact, violate any condition of his -- of his bond
15 requirements.

16 So I am offering her as a third-party custodian,
17 someone that is very close to him, someone that sees him on a
18 regular basis.

19 As Mr. Files previously said, obviously a mother
20 loves her child. It doesn't mean she agrees with everything
21 that her child does. At the same time recognizing he has to
22 be in D.C. at some point to answer to this potentially, she
23 is willing to make sure he makes all those court appearances.

24 She is able. She is capable. She is in good
25 health. She can take care of this. So I would offer her as

1 third-party custodian.

2 The other thing is I wanted to talk a little bit
3 about the electronic monitoring because I know it is
4 recommended. And we are not opposed to that. That is fine.
5 He is 100 percent disabled. He stays at home. He doesn't go
6 and do. He did not drive to D.C. He rode with Mr. Nichols
7 to D.C. I think that is borne out by the messages.

8 I talked to Mr. Manley beforehand, and he said
9 right now currently that electronic monitoring doesn't have
10 the GPS technology, but they have ways of closely monitoring,
11 and they can make it where he is restricted to his residence
12 24/7 with the exceptions of doctors' appointments and certain
13 essential needs.

14 Well, with his mother here, she has already said, I
15 can take care of the essential needs. The only thing we
16 would need to go to is court and VA appointments. Outside of
17 that, he could be restricted to his home pending the outcome
18 of this case.

19 So, Judge, I would -- that is my proffer is that
20 she would be third-party custodian.

21 THE COURT: Thank you, Mr. Waldron. With that, do
22 you rest?

23 MR. WALDRON: I do, Your Honor.

24 MR. LOCKER: Government closes.

25 THE COURT: All right. And the Defendant will

1 close.

2 So, Mr. Locker, I will let you argue the motion at
3 this time.

4 MR. LOCKER: Thank you, Your Honor. May it please
5 the Court.

6 We are in. Two people killed already. We need all
7 of the patriots in this country to rally the F up and fight
8 for our freedom before it's gone forever. Give us liberty or
9 give us death. We won't stand for it.

10 The Defendant's own words. We believe that that is
11 a reasonable inference that those were his words.

12 Who is y'all's favorite domestic terrorists?

13 Made in jest or otherwise, it is still his words.

14 He makes a throat-slashing gesture to the crowd.

15 There is no other way to interpret this besides a call to
16 violent action.

17 Regarding weapons. He took a tomahawk into the
18 United States Capitol, and he can be seen holding an OC spray
19 canister over his head same, the same kind that Mr. Nichols
20 used to assault law enforcement officers.

21 His mental health raises legitimate questions about
22 his stability, and his suicidal comments indicate he is a
23 danger to himself, very sadly.

24 And while he may have been following his friend,
25 Mr. Nichols, his conduct was just as serious and his

1 intention as equally warranted and necessary to protect the
2 public and deter his and other's desire to continue their
3 attack on the rule of law.

4 Plenty of people, leaders and followers of all
5 walks of life and background, were in the crowd that day.
6 Yet, as you can see from the video, only a tiny fraction
7 committed the kinds of offenses that he and Mr. Nichols
8 committed.

9 I ask the Court to detain him.

10 THE COURT: Your response?

11 MR. WALDRON: Thank you, Your Honor.

12 Your Honor, I would note that there is no
13 presumption in this case based on 3142(f), and we are asking
14 the Court to take note of that.

15 And we are also asking the Court to take judicial
16 notice of the Pretrial Services Report where it documents
17 Mr. Harkrider's history, including both mental health
18 history, his medical history, his criminal history. It is
19 all documented in here; and it is confirmed by his mother,
20 who is present today. I had her review this prior to the
21 hearing. She said this is all accurate. I think some of the
22 information she, in fact, provided.

23 Judge, it gets back to those factors and what we
24 need to do here. It is not about sending a message, because
25 of the nature of this offense, to everybody that is involved.

1 Each individual is entitled to an assessment based on the
2 factors.

3 I get that there are crimes that were committed
4 that day. I get that people are outrageously upset about
5 what happened that day. But when it boils down to it, we
6 shouldn't be judged by the actions of the Ryan Nichols or any
7 other individual. Judge us on our actions. Judge us on
8 where we are in life and our past conduct.

9 We haven't shot at airplanes or been accused of
10 that. We have not assaulted construction workers. We live
11 at home. We fought for the country. We served two tours
12 where we were shot at and had to return fire and, as a
13 result, had PTSD.

14 This agent testified his biggest concern is the
15 suicidal thoughts that my client has had. I have a mother
16 right here that says she does not believe her son is
17 suicidal. Anybody is going to be distraught about being
18 arrested and drug into federal court on a felony charge when
19 you have never committed a felony in your life and the worst
20 thing you have done is driven intoxicated. That has been his
21 life for 33 years.

22 He has a daughter that he pays child support to
23 that he sees on a regular basis. He has a mother and aunts
24 and uncles that live in close proximity that he sees on a
25 regular basis.

1 His sister leaves in Shreveport. There was no
2 hiding out in Shreveport. There was a laugh face at the end
3 of that. He didn't try to conceal anything that he had done.

4 He didn't delete text messages, as he was
5 instructed to by Mr. Nichols. He didn't hide that tomahawk.
6 He could have gotten away, and they never knew he had a
7 tomahawk hidden in his jacket because it was never revealed.
8 The believed it was a baton.

9 He cooperated. Sure you can search my phone.
10 Sure. Even though they might have a warrant, he didn't
11 object to anything from the standpoint of the search of his
12 house and gave them all of his weapons.

13 I think that goes to the difference in nature that
14 you have seen this afternoon of two different, separate
15 Defendants, not basing it just on this charged conduct.

16 And even looking at the charged conduct, we have
17 got Mr. Nichols spraying pepper spray at whoever he was
18 spraying at. We didn't do that. We touch an OC can, and all
19 of a sudden we are on the same level as Nichols. That was
20 handed to us. It is clear on the video. And he gets rid of
21 it as clear as he can. He didn't participate in that.

22 That picture at the end was the best evidence of
23 what was going on in that room that we can't see. He is
24 standing there on his phone, probably taking the picture that
25 we saw.

1 The writing on there, they can't even say that what
2 was written was attributed to him. It is a screenshot.
3 Anybody could have typed that in. They have no evidence of
4 that. They got his phone. We haven't seen that phone yet.
5 But they got his phone.

6 I don't know how -- I know Snapchat has some
7 features where pictures and images and all is wiped clean
8 after a period of time. So I don't know if that even exists
9 on that phone anymore.

10 Judge, I have looked at this, studied it, spent a
11 lot of time with Mr. Harkrider and his mother. I have looked
12 at the factors set forth in (G), and it talks about the
13 nature and circumstances of the offense charged being one
14 factor. But it also talks about the history and
15 characteristics of the person, the person's character, talks
16 about his physical and mental condition. And there is some
17 concern about suicidal. He does have PTSD. But he has lived
18 with that now for a number of years, and he is on 100 percent
19 disability.

20 It talks about financial resources. He doesn't
21 have hardly anything in the bank. He represented that to
22 you.

23 Length of residence. In the community most of his
24 life. Community ties. Past conduct. History related to
25 drug or alcohol abuse. We know we have a DWI. But we don't

1 have anything else outside of that.

2 Criminal history. Record concerning appearance in
3 court proceedings. We have none of that.

4 And he was not on probation or parole at the time
5 that this offense was committed.

6 So, Judge, when you take into consideration these
7 factors that Congress has given us as guidelines in
8 determining, they weigh heavily in favor of releasing
9 Mr. Harkrider.

10 We have the Pretrial Services Report that makes a
11 recommendation to this Court. Release Mr. Harkrider. We
12 think he will abide by your conditions. Put him on that
13 electronic monitor and monitor him 24/7. Let his mom run his
14 errands for him. Let him be home pending the outcome of this
15 case.

16 And, Judge, one of the strongest arguments, I have
17 looked at the Guidelines, how they applied in this case. We
18 have had these conversations quite often. And, obviously,
19 there is wiggle room for somebody to make a motion for an
20 upward departure based on the nature and circumstance and
21 being involved. But the Guidelines in this case are 0 to 6
22 months. If he is detained, he could serve more time than he
23 would actually get under a Guideline sentence. I think that
24 is my biggest concern.

25 This is a probation-eligible case. Whether it ends

1 that way, I don't know. But right now his Guidelines are 0
2 to 6 months, and I think he ought to be given a chance to
3 prove himself.

4 Thank you.

5 THE COURT: Any final word?

6 MR. LOCKER: No, Your Honor.

7 THE COURT: All right.

8 Thank you all. In light of the testimony and
9 evidence, I do find that probable cause exists to believe
10 that an offense has been committed by Mr. Harkrider.

11 In addition, based on what I have heard here today,
12 even just specific to Mr. Harkrider, concerning the nature of
13 the charged offense and the additional evidence I have heard,
14 I do not believe that there are conditions that would
15 reasonably assure the safety of the community or
16 Mr. Harkrider's appearance.

17 Specifically, as to this Defendant, there are text
18 communications discussing bringing firearms to the Capitol.
19 Mr. Harkrider did, in fact, bring a weapon into the Capitol,
20 although not a firearm. There is video evidence showing him
21 trying to and successfully getting into the Capitol.

22 In addition to the instant offense, I am concerned
23 about his mental health history and his past issues with
24 alcohol consumption.

25 So I appreciate the attorneys' argument. I do.

1 But for all of these reasons, Mr. Harkrider is going to be
2 detained pending trial. I will enter an order detaining him.

3 Is there anything further from the Government?

4 MR. LOCKER: No, Your Honor.

5 THE COURT: Anything further from the Defendant?

6 MR. WALDRON: Judge, I know my appointment may be
7 limited, obviously, to this district in this case, but I
8 would ask -- and I know Mr. Locker will continue to provide
9 discovery, if there is something new learned from that, I
10 will let the Court know --

11 THE COURT: Yes, and you have absolutely retained
12 your right to revisit this issue upon receipt of new
13 evidence. Okay?

14 MR. WALDRON: Thank you, Judge.

15 THE COURT: All right.

16 All right. Mr. Harkrider, you are remanded to the
17 custody of the United States Marshals.

18 And we are adjourned.

19 COURT SECURITY OFFICER: All rise.

20 (Hearing adjourned.)

21

22

23

24

25

CERTIFICATION

1
2 I HEREBY CERTIFY that the foregoing is a true
3 and correct transcript from the stenographic notes of the
4 proceedings in the above-entitled matter to the best of my
5 ability.

6
7 /s/ Shea Sloan
8 SHEA SLOAN, CSR, RPR
Federal Official Court Reporter

February 5, 2021

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25