

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY THIRTY-EIGHT

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, March 24, 2015
9:10 a.m.

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Official Court Reporters
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One Courthouse Way, Room 3510
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1

P R O C E E D I N G S

2

THE CLERK: All rise for the Court and the jury.

3

(The Court and jury enter the courtroom at 9:10 a.m.)

4

THE CLERK: Be seated.

5

THE COURT: Good morning, everyone.

6

THE JURORS: Good morning, your Honor.

7

MR. CHAKRAVARTY: May I proceed?

8

THE COURT: Mr. Chakravarty.

9

MR. CHAKRAVARTY: Thank you, your Honor.

00:03 10

MATTHEW LEVITT, Ph.D., resumed

11

DIRECT EXAMINATION CONTINUED

12

BY MR. CHAKRAVARTY:

13

Q. Good morning, Dr. Levitt. This is not Berlin but I hope this did not disrupt your plans too much. Thank you very much for being with us.

16

A. Berlin has nothing on Boston.

17

Q. We were talking yesterday about some of the writing and some of the documents that you had reviewed that comported to some of the writing. I'd like to call up before we get back to that an additional exhibit which is in evidence, 1143-97.

00:04 20

21

Do you recognize this screen? It's a paused screen of a video?

22

23

A. Yes.

24

Q. And what is that?

25

A. "25 Promises of Allah to the Believers."

1 Q. And was that another Awlaki lecture?

2 A. Yes.

3 Q. Was that one of the popular ones that he had?

4 A. Yes.

5 MR. CHAKRAVARTY: Now, if we could go back to the
6 split screen, Mr. Bruemmer, 830 on the one side, page 3.

7 Q. I think, Dr. Levitt, we were down to -- we had just done
8 "we were promised victory and we will surely get it."

9 Can you read the next line, please?

00:05 10 A. "Now, I don't like killing innocent people. It is
11 forbidden in Islam. But due to said..." bullet hole "...it is
12 allowed."

13 Q. Is this a concept that you're familiar with?

14 A. It is.

15 Q. And what's the significance of it?

16 A. The significance is that as I believe we discussed
17 yesterday, this idea that normally killing innocent people
18 would be forbidden but under certain circumstances it becomes
19 permissible, even praiseworthy, even a personal obligation
00:05 20 because of certain events, because of taking revenge, for
21 example, for the acts of the West or the United States against
22 Muslims around the world as we discussed yesterday.

23 Q. Now, in this sentence it says that "it is allowed." What
24 is "it" in this sentence?

25 A. Well, "it," in general, is -- referring back to the

1 beginning of the sentence -- killing innocent people.

2 MR. BRUCK: If it please the Court, I am going to
3 object to the witness explaining plainly written statements in
4 which he has no more expertise than anybody else to
5 understand plain English.

6 THE COURT: I think you're right as to this question
7 and answer.

8 MR. CHAKRAVARTY: If we could call up on the other
9 screen 1142-88, page 3, please.

00:06 10 BY MR. CHAKRAVARTY:

11 Q. This is another *Inspire* magazine?

12 A. Yes.

13 Q. Can you read starting from "however," the first full
14 sentence?

15 A. "However, to bring down America, we do not need to strike
16 big. In such an environment of security phobia that is
17 sweeping America, it is more feasible to stage smaller attacks
18 that involve less players and less time to launch, and thus we
19 may circumvent the security barriers America worked so hard to
00:08 20 erect. This strategy of attacking the enemy with smaller, but
21 more frequent operations is what some may refer to as the
22 strategy of a thousand cuts. The aim is to bleed the enemy to
23 death."

24 Q. This notion of innocent people, does that have a special
25 connotation in the global jihad movement?

1 A. Well, within Islam it is forbidden to kill innocent
2 people. In the global jihad movement there is a redefinition
3 of who is and who is not innocent based on circumstances other
4 than whether or not they are actually involved in some other
5 action against you. You can no longer be an innocent if you're
6 just walking down the street and are a citizen of, say, the
7 United States.

8 Q. And why are those people not innocent anymore?

9 A. Because by virtue of being a citizen of the United States,
00:09 10 by participating in the elections for American leaders who then
11 go on to approve actions which are perceived to be against
12 Islam, against the Islamic -- the Muslim ummah, the Muslim
13 nation, that Americans have some guilt for these actions.

14 MR. CHAKRAVARTY: Now, on the left side of the screen,
15 Mr. Bruemmer, can we call up Exhibit 1451.

16 Q. Now, this was also found in the boat. Have you seen this
17 before?

18 A. I have.

19 Q. And can you read it?

00:09 20 A. No. Sorry.

21 Q. Does it say "Stop killing our..." and then an arrow
22 "...innocent people and we will..." arrow "...stop"?

23 A. Yes.

24 Q. Now, was this proposal for a deal something that you're
25 familiar with?

1 A. It is.

2 Q. What is it?

3 A. This is common within this literature that if only the
4 West would stop killing innocent Muslims, then there would no
5 longer be a need to carry out these reprisal attacks, to stand
6 up in the defense of the defenseless Muslims who can't defend
7 themselves against Western strikes, and that then these attacks
8 would stop.

9 Q. And is this also something that you saw in the literature
00:10 10 that was relevant to this case?

11 A. Yes.

12 MR. CHAKRAVARTY: Could we call up Exhibit 11 on the
13 right side, 1142-91, page 15.

14 Q. This is the first issue of *Inspire* magazine. If you would
15 read Question 5 here, and then I'll ask you to read the answer.

16 A. So this is from *Inspire* magazine. If memory serves, this
17 is the question and answer that we referenced at one point
18 yesterday. Someone is interviewing one of the leaders of
19 al-Qaeda in the Arabian Peninsula.

00:11 20 This is Question 5. "What does al-Qaeda want from the
21 West for it to stop targeting it?

22 "Answer: What we want from the West is one thing: To
23 stop aggression and oppression against the Muslim nation and to
24 withdraw out of its land. This solution was given by all of
25 our leaders and on more than one occasion. The truce was

1 offered by the one who has real authority to take such a
2 decision on behalf of the Muslims, Sheikh Osama Bin Laden, may
3 Allah preserve him. His offer was refused. Whenever we offer
4 a sound plan, they escalate in their stubbornness so we are
5 left with no option but to defend ourselves and fight the
6 transgressors."

7 Q. It concludes?

8 A. "If the West refrains from attacking us and oppressing our
9 nation, we will refrain from them. Otherwise, we will have
00:12 10 them drink from the same cup that they have the innocent from
11 our nation drink from."

12 Q. And is this this concept of stop killing our innocent
13 people and we will stop?

14 A. Yes.

15 MR. CHAKRAVARTY: That's all I have. Your Honor.

16 THE COURT: Mr. Bruck?

17 CROSS-EXAMINATION

18 BY MR. BRUCK:

19 Q. Good morning, Dr. Levitt.

00:13 20 A. Good morning, sir.

21 Q. I'm David Bruck, representing Jahar Tsarnaev, and I've got
22 a few things I would like to go over with you, if I could.

23 A. Absolutely.

24 Q. Thank you. You mentioned that you were a Deputy Assistant
25 Secretary of the Treasury but you didn't tell us when. That

1 was during the Bush administration. Is that correct?

2 A. Yes, sir.

3 Q. 2005-2007?

4 A. Yes, sir.

5 Q. Okay. And much of your academic and your government work
6 has -- and your work as a witness in criminal cases has
7 concerned the financing of terrorist activity. Is that
8 correct?

9 A. A lot of it has. Not all of it by any stretch of the
00:14 10 imagination. I do a lot of work on illicit finance including
11 terror finance; a tremendous amount of work now on counter
12 violent extremism or counter-radicalization, it's the same
13 thing, the flow of foreign fighters and a host of other issues.

14 Q. Okay. And the main focus of your work has been on the
15 Middle East --

16 A. Yes.

17 Q. -- throughout your career?

18 A. Yes.

19 Q. And the main language in the Middle East is Arabic?

00:14 20 A. Correct.

21 Q. Which is a language that you don't speak?

22 A. Correct.

23 Q. You mentioned another language that you didn't speak that
24 was relevant to this case but you didn't tell us which language
25 that was.

1 A. There was at least one document that was provided to me
2 that was written in Cyrillic script, Russian, perhaps, but I
3 don't read it so I couldn't tell you.

4 Q. Okay. So at least one document that was written in what
5 you think was Russian?

6 A. Correct.

7 Q. Okay. But you couldn't read that either?

8 A. Correct.

9 Q. And I take it you're not an expert in the history of
00:15 10 Russia or Chechnya or Dagestan, the North Caucasus, correct?

11 A. I've done a lot of work on the Chechen conflict as it
12 relates to international jihad, but I'm not an expert in Russia
13 or its history, no.

14 Q. Or in the culture and history of the North Caucasus except
15 to the extent that it relates to your field of terrorism,
16 correct?

17 A. Correct.

18 Q. And you've already told us that you're not an expert on
19 Islam?

00:15 20 A. Correct. I have studied Islam and I have studied a lot
21 about it, it's necessary for the work that I do, but I
22 certainly don't consider myself an expert on religion, or Islam
23 in particular.

24 Q. All right. You said that -- in talking about the process
25 by which someone becomes radicalized, in your term, and then

1 moves to violence, and I think I'm quoting you, that someone
2 has to kind of hold your hand and pull you across that dividing
3 line. And then you said, "There is a radicalizer in every case
4 that we see," right?

5 A. Yes. And as we continue, that can be an individual --

6 Q. Yes?

7 A. -- an actual person; it can be virtual. And increasingly
8 today it is virtual. It's increasingly rare to have an actual
9 person face-to-face, two eyes into two eyes, radicalize an
00:17 10 individual, but it does still happen.

11 Q. You weren't asked to find out to determine, or were you,
12 who the radicalizer in this case was?

13 A. No; I was asked to review the materials that were provided
14 to me, and that's what I did.

15 Q. Okay. And those materials were entirely from Jahar's
16 computer, correct?

17 A. His computer and I believe some MP3 players.

18 Q. And some MP3 files?

19 A. Correct.

00:17 20 Q. Okay.

21 A. In other words, I don't know if all of those were
22 necessarily from his computer or from a -- I believe some of
23 them were downloaded to an actual MP3 player, an iPod or
24 something like that.

25 Q. Okay. About how many files in all did you look at?

1 A. A few dozen.

2 Q. I'm sorry. Two dozen?

3 A. A few dozen.

4 Q. A few dozen?

5 A. Yeah, two or three dozen, maybe four dozen, something like
6 that.

7 Q. Somewhere between 24 and 48 files total?

8 A. Yeah.

9 Q. Okay. And I think you said that it was not your job to
00:18 10 vet the information that you were given, correct?

11 A. In other words, not to -- in some cases, you know, to be
12 able to vet whether this did, in fact, come from a person's
13 computer, I'm in no position to do that. So in a case like
14 this, whether called by prosecution or defense, I have to rely
15 on what they've provided me, and it's up to the process, the
16 proceedings in court, to determine, in fact, where those
17 materials came from.

18 Q. Okay. And in the process of not vetting the materials,
19 you also didn't ask the prosecution for anything more than you
00:18 20 were given?

21 A. I don't remember if I did or did not in this case. I do
22 sometimes, if there's a need for it, if there's something that
23 stands out, you know, a specific *Inspire* magazine as opposed to
24 others. I don't recall if I asked for more information in this
25 case.

1 Q. Okay. Do you think if you had asked for something more,
2 you might recall it?

3 A. Honestly, no. I do a lot of different work at a lot of
4 different times and I don't recall every conversation.

5 Q. Okay. You told us yesterday that your job is to provide
6 context to materials that you're given, whatever those are?

7 A. Well, that was a job that was given to me, and my job now
8 is to -- whoever's asking me questions, to answer them as
9 truthfully and honestly to the best of my ability, to be able
00:19 10 to provide context. That's what the expert is for. I'm not a
11 fact witness.

12 Q. And by "context," you meant the background in context to
13 the 24, 36, 48 files that you were given?

14 A. That was part of the job that I was given. I was also
15 given the task of explaining the context, the geopolitical
16 context, of what was going on at the time; what was going on at
17 earlier times, to be able to explain the context of some of
18 those documents; and then, yes, to provide context and
19 explanation of those documents of some of the individuals who
00:20 20 are either mentioned in or the authors of these documents or
21 lectures.

22 Q. Okay. Were you given any files from Tamerlan Tsarnaev's
23 computer?

24 A. No.

25 Q. Were you given any recordings from Tamerlan Tsarnaev's

1 computer, audio recordings about his discussions with --
2 concerning jihad in Russia that he conducted?

3 A. No.

4 Q. Did the government tell you anything about when the
5 materials that you've testified about appeared on each of the
6 various devices that were found by law enforcement in this
7 case?

8 A. Not to that extent. Not in -- not in each case to each
9 device. There were -- I recall that there were certain
00:21 10 documents, and I can't remember which, that I remember being
11 told were accessed months, maybe a year, even, before the
12 events at the marathon, but in general, no.

13 Q. Okay. So if it were, in fact, the case that the vast
14 majority of the materials on Jahar's computer had actually been
15 dumped there by a thumb drive that originated with Tamerlan,
16 that's not your department?

17 A. I could certainly comment on it if you're asking me to.
18 It wasn't what was asked of me by the prosecution. Are you
19 asking me now?

00:21 20 Q. No. And the prosecution didn't give you any information
21 about that?

22 A. That's not what I was asked to comment on.

23 Q. My question is: The prosecution didn't give you any
24 information about where all these files originated from in
25 terms of the various devices that were found?

1 A. Again, there might have been one or two cases where that
2 came up, but that was not a focus and I don't remember getting
3 that for each and every instance. The material that I was
4 given was presented to me as this is material that was on the
5 defendant's media.

6 Q. Were you given any information about Tamerlan's overseas
7 travel to the Caucasus, to Dagestan and Chechnya in 2012 in
8 connection with your work in this case?

9 A. Not by the prosecution. Obviously, I had heard about it
00:22 10 beforehand, just as someone who follows these things
11 professionally.

12 Q. But that was not something that you were asked to factor
13 into your analysis in this case by the prosecution?

14 A. Correct. And my understanding is that it was because I
15 was focused on the defendant and not the deceased.

16 Q. Your understanding was that you were to focus on the
17 defendant and not on anyone else, correct?

18 A. The defendant's the person on trial, yes.

19 Q. Right. Is it fair to say that to understand -- to draw
00:23 20 inferences from material that you find on someone's computer,
21 it would be helpful to know where those materials came from and
22 who provided them?

23 A. Not necessarily. The issue here is did the defendant
24 access and was the defendant affected by, radicalized by these
25 materials. I think as we discussed earlier you can show direct

1 parallels between materials that were on those devices and the
2 defendant's own writings.

3 You can get these things directly off the Internet, you
4 can be handed them from somebody else. At a certain point it
5 almost doesn't make a difference where you got them from if you
6 got them and then internalized them and were motivated and
7 operationalized by them.

8 Q. Let me ask you this: If someone else got these materials
9 first and internalized them and provided them to the defendant
00:24 10 and also talked to the defendant, and harangued him and
11 instructed him, would there be any way to tell whether the
12 defendant's views and feelings had come from being talked to or
13 had come from the materials on his computer?

14 A. We are all products of our -- the totality of our
15 experience, so I can't get into the defendant's head. All I
16 can tell you is that there are direct parallels between his
17 statement and the statements of the materials that were on his
18 devices. Could other people have hit these points too, maybe
19 in that same verbatim language? Possibly. Could that have
00:25 20 contributed to the radicalization? It could have.

21 How much -- you know, as we discussed yesterday, how much
22 can you parse out how much was a person affected by one
23 particular issue or input than another is really difficult to
24 say. At the end of the day, if a person is radicalized but --
25 by whatever inputs to the point -- to the extreme of carrying

1 out violence against civilians, you've checked that box of
2 radicalization no matter how it happened.

3 Q. Okay. So of course in weighing that and analyzing that,
4 it's pretty much a given that if you only look at the materials
5 in isolation on one person's computer, you're not going to be
6 able to make any assessment of what the history of this process
7 was; you can only describe the end product, correct?

8 A. Well, in part the end product describes what happened.
9 The end product is the defining moment of it all that makes it
00:26 10 something beyond radical ideas which are protected and violence
11 against civilians which is not.

12 I don't know if there were other materials that if they
13 had been provided to me could have given me more insight into
14 the history of his radicalization, but I also could not have
15 been a fly on the wall in the brothers' personal conversations.
16 At the end of the day, what we do know for a given is what
17 actually happened, the attack that took place, the defendant's
18 statement, and the direct parallels between that statement and
19 these materials.

00:26 20 Q. Okay. Some of these 24, 48, 36 files were very long,
21 weren't they?

22 A. They were.

23 Q. He had a book called the *Book of the End*. Do you know
24 what that is?

25 A. Not offhand, no. There was lots of material. And when it

1 came to books, I did not read every book that was -- the copies
2 of which, or the covers -- copies of covers of which were
3 provided to me.

4 Q. Okay. The *Book of the End*, you are not aware that is a
5 classic work of Islamic scholarship written in 17th-18th
6 century, which is the edition he had in English on his
7 computer, 748 pages long?

8 A. I'm familiar with the book. I may even have it on my
9 shelf. But I did not review it for purpose of this case.

00:27 10 Q. Okay. Even though it was one of the files -- was it one
11 of the files you were provided, or do you know?

12 A. I was not provided this file, to the best of my
13 recollection. There were -- I believe there were pictures of
14 the covers of certain books, and this may or may not have been
15 one of them.

16 Q. Now, when I say "book," I mean a PDF, a computer file. It
17 doesn't ring a bell?

18 A. As I said, the name rings a bell. I don't think I was
19 given this file. I'm quite certain I was not given this file.

00:28 20 Q. Okay. Were you shown "The Slicing Sword"?

21 A. Possibly.

22 Q. You don't remember?

23 A. No.

24 Q. Do you have a list with you of the 24 or 36 or 48 files
25 you were given?

1 A. I don't. I don't.

2 Q. Okay. Do you remember that you -- that they included
3 various issues of *Inspire* magazine?

4 A. They did.

5 Q. And other than that, your memory is hazy?

6 A. I believe you have a copy of my report which gets through
7 some of them, and I'm sure the prosecution could provide you
8 with a list of things I was provided. But, A, over the course
9 of the time of my preparation I reviewed many, many things,
00:29 10 including many things that did not make it into the report,
11 which I was not commenting on or not asked to comment on, and
12 because I cover these types of issues professionally outside of
13 this case and the vast majority of my time is not on this case,
14 it's very difficult sometimes to remember did you see this
15 particular document in this context or in another context.

16 Q. Now, a lot of the materials on this computer concerns
17 concepts of the end times, correct?

18 A. Correct, from the materials that I saw.

19 Q. And this is the idea that Quranic prophecy predicts signs,
00:29 20 in fact, Awlaki has devoted many lectures that were on the
21 computer to interpreting historical events and recent events as
22 showing that the end times are near?

23 A. Correct.

24 Q. And this will lead up to huge conflagration and really the
25 end of the world and leading up to the day of judgment,

1 correct?

2 A. Right.

3 Q. And people who internalize this, these theological
4 concepts, really think that we've come very close to the end of
5 the world?

6 A. I'm not in a position to comment on what they or you or
7 the defendant really truly do believe or not. There is a delta
8 between how these things are interpreted by, for lack of a good
9 term, kind of mainstream Muslim thought and the radicals. That
00:30 10 I can tell you. But I can't tell you what any particular
11 individual actually is thinking.

12 Q. You talked about the "Hereafter Series" which you said on
13 its face, at least, is not jihadi; it is Awlaki's discussion of
14 what happens after death, essentially, in his view of Islam?

15 A. In the context of there are Awlaki lectures that are about
16 Islam, there are Awlaki lectures that are about -- explicitly
17 about jihad. And this is one that I put in the former
18 category.

19 Q. Okay. Okay. And there were -- the "Hereafter Series"
00:31 20 includes about 24 or 22 audio files. They're each somewhere
21 around an hour long?

22 A. That sounds right.

23 Q. Okay. And those were found on the defendant's computer?

24 A. As I understand it.

25 Q. All right. And those are essentially religious lectures?

1 A. Again, they are religious lectures but there is a real
2 consensus among practitioners, both within government and
3 within -- among Islamic leaders about concern that these
4 earlier series that don't explicitly call for violence do
5 contribute to putting some on the path of violence. It was one
6 of his former co-imams at a mosque here in the United States
7 who explained this specifically.

8 Q. Sort of a gateway drug?

9 A. Yes, a gateway or a conveyor belt, that someone, you know,
00:32 10 listens to these early lectures, as we discussed yesterday by
11 someone who is not shrill, he's professorial, and becomes
12 someone who's following this person's lecture series, then
13 continues to follow that person's lectures as they get more
14 explicitly violent.

15 Q. And the "Hereafter Series" goes into tremendous detail
16 about the nature of paradise --

17 A. Yes.

18 Q. -- correct, and the nature of hell?

19 A. Yes.

00:33 20 Q. And the physical torments that await people in hell?

21 A. Yes.

22 Q. The -- and makes the point over and over again that if
23 someone understood what was awaiting them in hell, everyone
24 would be a good Muslim and do what they should do?

25 A. I think that's the general theme.

1 Q. You described Awlaki as a very effective propagandist --

2 A. Yes.

3 Q. -- whose lectures had great allure for many, many
4 listeners?

5 A. Correct.

6 Q. For many vulnerable listeners. Let me rephrase that.

7 For someone who did not have a strong background or
8 education in Islam and was searching for Islamic ideas, to
9 learn more about their faith online, Awlaki would be a very,
00:34 10 very seductive source of information, would he not?

11 A. Well, of course it's important to note it's not like
12 Awlaki owns the Internet. He's not the only voice out there.
13 But, yes, Awlaki proved to be a seductive voice for all kinds
14 of individuals, at risk and otherwise.

15 Q. And on the Internet when you find somebody like that, you
16 can get a very distorted picture of how representative that
17 person is?

18 A. You could, but I'd argue much more in the early years
19 about Awlaki's sermonizing. By the time in question that we're
00:34 20 discussing here today, news of who Awlaki was was commonplace.

21 So a person who was just then choosing to listen to the Awlaki
22 series almost certainly was not stumbling innocently into an
23 exploration of Islam and happened to fall into an Awlaki
24 lecture series, this is someone who's all over the news, the
25 focus of U.S. government action. Quite popular in the popular

1 media, that is.

2 Q. Okay. Hundreds of thousands, millions of people have
3 downloaded his material?

4 A. Many people. I don't know the number.

5 Q. Now, you said yesterday that -- you were describing the
6 many different types of categories of people who are -- have
7 shown -- proving to be vulnerable to the radical jihadi
8 message. And you listed one group as young Muslims responding
9 to a -- who feel excluded from their own societies, trapped in
00:36 10 poverty or hopelessness and authoritarian regimes. That's one
11 group, right?

12 A. I think that's from my report. Maybe not from yesterday,
13 but yes.

14 Q. Right. But there were words to that effect yesterday.
15 Maybe not -- as one example. Well, I'll go on.

16 Another -- you mentioned another group, well off and well
17 educated who live in Western democracies but struggle with
18 issues of belonging and identity and feel -- find that the
19 extremist message resonates?

00:36 20 A. Correct.

21 Q. And then you didn't mention this yesterday but it is in
22 your report, you wrote "Some either immigrants themselves or
23 descendants of immigrants from countries suffering from war,
24 natural disasters, political and/or economic oppression, war,
25 et cetera, are drawn to this radical and violent narrative

1 based on national and/or religious affinity for their ancestral
2 lands and empathy for the suffering of family, friends or
3 fellow nationals still suffering there"?

4 A. That's right.

5 Q. You went through the boat writing yesterday line by line
6 with Mr. Chakravarty. Before I get to that, you looked
7 at -- with him at Exhibit 1280, a tweet from 2012. "They will
8 spend their money and they will regret it and they will be
9 defeated." That was a line that was in Mr. Tsarnaev's Twitter
00:37 10 feed, correct?

11 A. Correct.

12 Q. And you compared that to a somewhat similar statement by
13 Awlaki?

14 A. I think it was a very similar statement, yes.

15 Q. Where does that line come from originally? I don't mean
16 word for word, but do you know?

17 A. It has scriptural sources. I don't remember where.

18 Q. You don't remember where it's from. Is that right?

19 A. Correct, beyond the radical literature of the type we went
00:38 20 through yesterday and the way -- the issue is not so much
21 whether it has other antecedents but how within the radical
22 ideological moue, how it is used.

23 Q. Would it surprise you to know that is a quote from the
24 Qur'an?

25 A. No, I think I just told you it's from scripture.

1 Q. Scripture? Okay.

2 Looking at the boat writing, can you tell us which
3 passages are passages from the Qur'an or from the Hadith, from
4 Islamic scripture?

5 A. Certainly not without it up here, but probably only one or
6 two. As I said, and as you asked and answered, I don't
7 consider myself a scholar in Islam or in the Qur'an.

8 Q. Well, "There is no God but Allah and Mohammed is his
9 prophet." Is that something that Mr. Tsarnaev got from *Inspire*
00:39 10 magazine?

11 A. No. Of course, as we said yesterday, this is the
12 Shahadah. This is the statement of faith. It is common to
13 restate it in times of stress, especially when one thinks one
14 is about to die. But this is -- as I think I said explicitly
15 yesterday, there is nothing inherently extremist about the core
16 statement of belief of the world's Muslims.

17 Q. When one is about to die, the profession of faith, the
18 Shahadah, is something that a Muslim is likely to say or write,
19 correct? Is that what you just told us?

00:40 20 A. Yes. I can say it again if you want.

21 Q. No. I just wanted to be sure.

22 You told us about the term "innocent" -- there was a
23 discussion a moment ago with Mr. Chakravarty about innocent
24 civilians -- or innocent people -- excuse me -- and you
25 explained some of the doctrine about why Americans would not be

1 viewed as innocent. The writing in the boat actually used the
2 phrase "innocent people," correct? "I don't like killing
3 innocent people"?

4 A. I believe that's right. I haven't memorized it and it's
5 not up on the screen, so I'll take your word for it.

6 Q. Okay. Have you -- you read all the *Inspire* magazines?

7 A. Unfortunately.

8 Q. Can you think of a single place in *Inspire* magazine where
9 Americans were described as innocent people?

00:41 10 A. Well, I said I've read them all; I haven't said I've
11 memorized them all. And they are long and so I can't -- I
12 can't answer that question.

13 Q. Have you ever in any al-Qaeda propoganda seen Americans
14 referred to as "innocent people"?

15 A. I can't recall. And it's not impossible, as we saw in the
16 literature that we were looking at just a few minutes ago,
17 where there is this idea quite common --

18 Q. Let me interrupt you. I'm not asking about the idea; I'm
19 asking about the phrase "innocent people."

00:41 20 A. Then asked and answered.

21 Q. I'm sorry?

22 A. Then asked and answered.

23 Q. You don't remember?

24 A. I don't.

25 Q. Okay. You said yesterday that you thought the writing in

1 the boat was addressed to the American public?

2 A. I'm sorry. Could you restate?

3 Q. I'm sorry.

4 A. That's okay.

5 Q. You said yesterday you thought the writing in the boat was
6 addressed to the American public?

7 A. Correct.

8 Q. When someone recites the Shahadah, do you think that was
9 addressed to the American public?

00:42 10 A. Well, in this context I think yes. I think this was a
11 restatement of a self-identity. And again, putting in context,
12 and I think as you said in an objection at one point, you don't
13 actually need a whole lot of expertise if you understand some
14 basic English grammar to be able to see what the note is trying
15 to accomplish.

16 Q. As a matter of fact, these -- how long would it
17 take -- I'm not asking for your opinion about the person who
18 wrote this, I just have a simple question, which is: The
19 statements -- the religious statements on the boat writing and
00:43 20 the political statements, if you will, how long would it take
21 someone to learn those slogans and those religious statements?

22 A. One could learn them quite quickly.

23 Q. Right.

24 A. I think as we showed yesterday and this morning, it would
25 take some time to be able to go through all the literature that

1 you can draw parallels from. But even that, you're talking
2 potentially, you know, hours and days, not necessarily months
3 and years, which gets to the issue we discussed yesterday: The
4 radicalization has no one model and can happen very, very
5 quickly.

6 Q. So the slogans and the religious statements that were
7 found on the boat, one would not have to have read an enormous
8 amount of material, let alone the 24, 36 or 48 files that you
9 reviewed, in order to be able to write that on the boat?

00:44 10 A. I don't know how much or how little scientifically we
11 could say you would have needed to have internalized. I don't
12 know that this statement in the boat could have been written by
13 someone who was not exposed to any of these ideas. There are
14 clear parallels to these ideas. But having read through some
15 of these materials, having listened -- or watched some of these
16 materials, one could have then written this statement, yes.

17 Q. If -- and you've said before that a lot of this material
18 could have come from being -- from conversation, from being
19 talked to as well as from reading materials on the computer.

00:45 20 A. Well, it's impossible to say, of course. It would
21 have -- I think it would have been remarkable, if at all
22 possible, for it to have only come from conversations given the
23 very strong direct parallel to the text. It's uncommon for
24 people in colloquial conversation to speak in the way that
25 we've seen this text, whether it's *Inspire* magazine or some of

1 these audio or video files. So you might have gotten some of
2 the general ideas, but what was in part telling to me was how
3 strong the parallels were to these specific texts.

4 Q. But they were parallels; they weren't quotes for the most
5 part, correct?

6 A. That's what happens when you paraphrase.

7 Q. Right. You can paraphrase something you've read,
8 something you've been told, either one?

9 A. Therefore, when the paraphrase is particularly close to
00:46 10 the text, that is a statement in and of itself.

11 Q. And you found these paraphrases to be particularly close
12 to the text?

13 A. I do.

14 Q. Okay. Bear with me just a moment.

15 A. Of course.

16 Q. You described yourself yesterday as a hired expert?

17 A. I don't know if I did but I have been hired, yes.

18 Q. Okay. And at what rate?

19 A. \$450 an hour.

00:47 20 Q. Okay. Do you know how many hours you've put in?

21 A. Total, no, but -- and I bill in stages, so. But I imagine
22 that, you know, yesterday and today will end up being probably
23 about somewhere around 20 hours. Traveling here Sunday,
24 yesterday, today traveling.

25 Q. Okay. But the 450 hours [sic] was for all of the work you

1 did on the case, not only the two days that you've been in
2 court?

3 A. Correct. It will be several thousand dollars.

4 Q. Okay. And now, have you talked about your testimony with
5 anybody after you -- court was finished yesterday?

6 A. No, other than to kind of tell my wife that I testified
7 and I'm not going to Berlin and will be coming home early. No.

8 Q. But you listed your publications with Mr. Chakravarty.
9 You didn't include that you were a rather prolific user of
00:48 10 Twitter?

11 A. I am.

12 Q. And, in fact, you tweeted -- re-tweeted *Boston Globe* news
13 accounts of your own testimony within an hour or two after
14 getting off the witness stand yesterday?

15 A. I did. I re-tweeted three or four things, then thought
16 better of it. I testify a lot. It's not often in the press.
17 I obviously have not tweeted any of my own thoughts or even my
18 own commentary, but I don't have a problem in tweeting media.

19 My Twitter feed is all about the news in the world of
00:48 20 terrorism. It's very common for me to tweet about cases. I've
21 been very, very careful not to tweet about this one. And then
22 after, whatever it was, two or three or four tweets, I thought
23 better of it and stopped.

24 Q. You actually had been tweeting about this case, or
25 re-tweeting some of the news coverage before yesterday,

1 correct?

2 A. It's possible one off here or there, but normally in a
3 case like this I would be tweeting a lot and would also be
4 providing opinion, and that I have not been doing.

5 Q. Okay. You've just been re-tweeting to your 7,000 Twitter
6 followers news articles about your own testimony here today?

7 A. Two or three articles yesterday, then thought better of
8 it. And probably, you know, I don't know, a very small handful
9 of articles in the whole period that this trial has been going
00:49 10 on, whereas I would normally have been doing much more.

11 Q. Okay. One last thing. I wanted to ask you about one of
12 the intellectual figures in the world jihadi movement as you
13 described it. And before I get to that, you said to begin with
14 that when you used the term "world jihadi movement" you're not
15 actually referring to a movement that issues commands to
16 followers, correct? Or at least in a case like this that's not
17 what you meant?

18 A. Well, I'll tell you what I meant. I think the way I put
19 it is there's no office, there's no address.

00:50 20 Q. Right.

21 A. I think the way I put it yesterday is there's no command
22 in control. But it certainly is the case that commands or
23 instruction are put out there. That's the nature of the
24 impersonal communication, including some that we went through
25 yesterday.

1 Q. And then whoever responds to it, responds?

2 A. I'm sorry. I couldn't hear you.

3 Q. That's okay. I think you've answered my question.

4 And you mentioned that one of the perhaps -- I don't know
5 if you used the phrase the sort of intellectual grandfather of
6 jihadi radicalism is a man named Sayyid Qutb?

7 A. I think I used that phrase more to describe Sheikh
8 Abdullah Azzam. Sayyid Qutb we discussed yesterday as well,
9 one of the founders of the Muslim brotherhood and one of the
00:51 10 original proponents of the idea of near-term jihad, that is to
11 say, the need to carry out jihad now as opposed to doing
12 things, proselytizing, trying to bring Muslims back to good or
13 traditional religious practice first and only then engaging in
14 jihad. Sayyid Qutb's innovation was the idea that jihad should
15 come in parallel, at the same time, and it would have a
16 self-fueling cycle, whereby virtue of engaging in jihad, that
17 would help to bring people back to proper observance.

18 Q. By the way, before I get back to Qutb, Azzam wrote "Join
19 the Caravan" in the late 1980s. Isn't that correct?

00:51 20 A. That's right.

21 Q. And at that time you might say that he was with the Afghan
22 mujahidin, or with the mujahidin in Afghanistan?

23 A. He was.

24 Q. Fighting against the Russians?

25 A. Correct.

1 Q. And in that sense, he was allied with us?

2 A. I would not say that. I think that's a very common
3 misperception.

4 Q. Let me put it differently. The United States was
5 supporting the Afghan mujahidin, and so was he. Would that be
6 a fairer way to put it?

7 A. Yes.

8 Q. Okay. Qutb: He was an Egyptian?

9 A. He was.

00:52 10 Q. Who wrote several books?

11 A. Yes.

12 Q. And had the ideas that you've described about jihad -- his
13 ideas had great impact upon subsequent thinking of radical
14 Islam. Is that a fair statement?

15 A. Within the radical community, yes.

16 Q. And he continues to this day to be a very influential and
17 revered figure?

18 A. He's influential within this, frankly, let's be honest,
19 very, very small subset of the world, small subset of the
00:53 20 Muslim community, this radical element within it, and far less
21 so with the vast majority of Muslims around the world.

22 Q. Sure. When I say "revered" I mean within the group of
23 jihadists about whom you've been testifying?

24 A. Correct.

25 Q. And who have, as in your description, posed this grave

1 challenge to peace and security, correct --

2 A. Correct.

3 Q. -- in other countries?

4 A. And here.

5 Q. Qutb died in 1966. Is that correct?

6 A. Yes.

7 Q. Was he more famous before he died or after?

8 A. I think it's hard to say. He was famous when he lived and
9 was imprisoned, and then he was killed by the regime and was
00:53 10 famous then too, and maybe some might argue more so. I think
11 it's safe to say that after he died he became more famous not
12 necessarily because of his life or death but because his
13 material book *Milestones*, in particular, was quoted and cited
14 over and over and over and given much more prominence by being
15 cited and referenced over and over.

16 Q. And Qutb's name and his work have lived on through the
17 1970s, the 1980s, the 1990s, 2000 and to today?

18 A. Books have staying power.

19 Q. And when you say he was killed by the regime, he was
00:54 20 sentenced to death and hanged by the government of Egypt,
21 correct?

22 A. That's right.

23 Q. In 1966?

24 A. In 1966, I believe, yes.

25 MR. BRUCK: Thank you, your Honor.

1 MR. CHAKRAVARTY: Briefly, your Honor.

2 REDIRECT EXAMINATION

3 MR. CHAKRAVARTY:

4 Q. Dr. Levitt, Mr. Bruck asked you several questions about
5 people who are introduced to Anwar Awlaki. Is everyone who is
6 introduced to Anwar Awlaki's material -- does everyone become
7 radicalized?

8 A. Absolutely not.

9 Q. And does everyone who becomes radicalized by Anwar
00:55 10 Awlaki's material actually engage in an act of violence?

11 A. No. As counsel noted many, many people have accessed
12 Mr. Awlaki's sermons, both the earlier ones about the history
13 of Islam and the later ones particular to jihad, and thankfully
14 the vast majority of them have not, or have not yet, carried
15 out acts of violence.

16 Q. Is there a continuum between the thought, the radical
17 thought, versus the action that is actually violent?

18 A. There's not a necessary continuum, that is to say, it is
19 not an if-then statement, that if you are exposed to radical
00:55 20 ideas, you will then necessarily, because of that motivation,
21 be operationalized. I do believe that there is a necessity
22 that it's -- I don't see how someone gets to the point of
23 carrying out an act without having had gone through some point
24 of the motivation. But many, many people are exposed to these
25 ideas and do not carry out acts of violence for a whole host of

1 different reasons.

2 Q. Mr. Bruck asked you several questions about some tweets
3 that the media had put out that you simply re-tweeted?

4 A. That's right.

5 Q. Did that happen last night?

6 Is there something secret about your testimony here today?

7 A. I hope not.

8 Q. In fact, the whole world is watching the Twitter feed
9 about your testimony. Is that fair to say?

00:56 10 A. Yes. And this was my -- this is my line of thought:
11 Normally I would be providing commentary. I was wise enough
12 not to do that; apparently not wise enough to say wait another
13 couple of days before tweeting anything. I guess it's part of
14 the live and learn that we all go through with news social
15 media.

16 Q. Fair enough. Now, Mr. Bruck asked you some questions
17 about could someone learn the material that was written in the
18 boat very quickly.

19 MR. CHAKRAVARTY: Speaking of tweets, can I ask
00:56 20 Mr. Bruemmer to call up Exhibit 1280, please?

21 Q. Now, this tweet that we talked about a little yesterday,
22 this was a paraphrase from an Awlaki note. Is that right?

23 A. That's right.

24 Q. And is the date of this tweet April 16th, 2012?

25 A. It is.

1 Q. It's about a year before the Boston Marathon bombing?

2 A. Yes.

3 MR. CHAKRAVARTY: Thank you.

4 THE COURT: Mr. Bruck, anything else?

5 MR. BRUCK: No, sir.

6 THE COURT: All right. Dr. Levitt, thank you. You
7 may step down.

8 THE WITNESS: Thank you, sir.

9 (The witness is excused.)

00:57 10 MR. WEINREB: Good morning, your Honor. The United
11 States calls Colleen Tanguay.

12 COLLEEN M. TANGUAY, duly sworn

13 THE CLERK: Have a seat. State your name, spell your
14 last name for the record, keep your voice up and speak into the
15 mic so everyone can hear you.

16 THE WITNESS: Yes, sir. Colleen M. Tanguay,
17 T-A-N-G-U-A-Y.

18 DIRECT EXAMINATION

19 BY MR. WEINREB:

00:59 20 Q. Good morning.

21 A. Good morning.

22 Q. Where do you work?

23 A. I'm a trooper at the Massachusetts State Police, Crime
24 Scene Services.

25 Q. How long have you worked there?

1 A. Crime scene for 13 years. I've been with the state police
2 for over 14, and I have 18 and a half years' law enforcement
3 total.

4 Q. What's your official title?

5 A. I'm a trooper with crime scene.

6 Q. And what are your job responsibilities at the crime scene
7 services section of the Massachusetts State Police?

8 A. To work in conjunction with federal, state and local
9 agencies to assist them with their investigations. These can
00:59 10 pertain to homicides, suicides, motor-vehicle accidents, fatal
11 motor vehicles, arsons, breaking and entering. We assist them
12 with the processing of their scene including documentation
13 which can be photography, videography or diagrams. We also
14 help them process the scenes. That includes fingerprint, tire
15 track and footwear impressions.

16 Q. What kind of training have you had?

17 A. I have a bachelor's of science in criminal justice, I have
18 a masters in criminal justice administration. I've been
19 through two police academies: a local police academy and the
01:00 20 Massachusetts State Police Academy.

21 For crime scene services, started with 16 weeks of
22 in-house training under the tutelage of senior troopers. Plus
23 in addition to that, I've had multiple external classes in
24 photography, videography, crime scene investigations,
25 processing scenes for evidence, latent print classes, palm

1 print classes, footwear and tire track examinations.

2 Q. How many crime scenes have you processed in your career?

3 A. Thousands, sir.

4 Q. What's a case officer?

5 A. A case officer tends to wear many hats, but the primary
6 goal is the collection -- organization, collection and
7 maintaining the records, documentations pertaining to the case
8 file.

9 Q. So in connection with a particular crime scene, will there
01:01 10 always be a case officer?

11 A. Yes, sir.

12 Q. How does that person's duties differ from the duties of
13 the other crime scene people processing the scene?

14 A. Everything eventually comes back to the case officer who,
15 as I said, maintains the files, the documentation, photographs,
16 videos, any records that pertain to that case file.

17 Q. And how many crime scenes have you been a case officer?

18 A. Hundreds, upwards to thousands. Thousands.

19 Q. Did you process the Laurel Street crime scene up in
01:01 20 Watertown on April 19th --

21 A. Yes, sir. I am the case officer for Watertown.

22 Q. Okay. And that's 2013?

23 A. Yes, sir.

24 Q. When did you arrive at Laurel Street on the 19th?

25 A. Approximately 2:15 a.m.

1 Q. Did you begin processing the scene right away?

2 A. No, sir.

3 Q. Why not?

4 A. It was still what we considered a hot scene. There
5 were -- one, they were looking for a suspect who was still at
6 large, so they were going from house to house making sure that
7 he wasn't in the garage or anything of that nature, plus there
8 were bomb parts and devices that they were still trying to
9 clear to make sure that it was safe for us to enter the scene.

01:02 10 Also, we were contacting other -- because of the large area of
11 the scene and the amount of evidence within that scene, we were
12 contacting members of crime scene from all over the state to
13 come help and process the scene.

14 Q. So when did you actually get started processing it?

15 A. Shortly after six. About 6:15 a.m.

16 Q. And what did you do to process the scene?

17 A. Because of the size of the scene, like I originally
18 stated, the scene was divided up into four areas. Each one
19 contained a photographer, a videographer and a scribe. That
01:02 20 scribe was the person who wrote down whatever pieces of
21 evidence were documented within that scene. As the case
22 officer, I made sure I went through all the areas and were
23 familiar with everything that was happening, who my
24 photographers were, who my videographers were and who my
25 scribes were.

1 We helped document the scene and every piece of evidence.
2 As you'll see in some of the photos, there are placards. Each
3 piece -- each item that we considered to be a piece of evidence
4 was given a placard. Some of them you'll see were 1 through
5 100, some were paper, some were A through Z. And then you'll
6 notice in some photographs they -- a line with chalk with the
7 corresponding placard number was around that item. So that's
8 essentially what we ended up doing, is documenting the entire
9 scene for Laurel Street.

01:03 10 Q. Were steps taken to record the precise locations of the
11 ballistics evidence, the shells, and in some cases slugs that
12 were found?

13 A. Yes. We started with paper logs indicating what the item
14 was. If it was Placard No. 1, what the item was and its
15 approximate location. After the entire scene was
16 photo/videoed, we had Sergeant Timothy Dowd from our accident
17 reconstruction unit come in. And he has what's called a Leica
18 GPS, and it gave exact GPS coordinates of each and every piece
19 of evidence within that scene.

01:04 20 Q. So if I understand you correctly, the -- after the scene's
21 cleared and you do your sort of your look over it, the steps
22 are put down the placards, photograph them in place, take the
23 GPS readings?

24 A. Yes. The GPS reading he started at some of the other
25 scenes. But essentially yes, sir, that's the order.

1 Q. And at some point is the ballistics evidence actually
2 collected by someone?

3 A. Yes.

4 Q. And who collected the evidence?

5 A. Lieutenant Cahill from our ballistics unit came in after
6 everything was documented and marked and picked up every piece
7 of ballistics evidence.

8 Q. The other evening did I review a series of photos with you
9 that were taken at the crime scene?

01:05 10 A. Yes, sir.

11 Q. And those photos which were given to defense counsel, were
12 they all fair and accurate representations of what was on the
13 crime scene on that date?

14 A. Yes.

15 MR. WEINREB: Okay. Your Honor, those photos were
16 Exhibit 948-433, -212, -230, -231, -268, -270, -271, -259,
17 -277, -293, -244, -264, -261 and -265. I would offer those
18 into evidence at this time.

19 MR. WATKINS: No objection.

01:06 20 THE COURT: Okay. All of those may be admitted.

21 (Government Exhibit Nos. 948-433, 948-212, 948-230,
22 948-231, 948-268, 948-270, 948-271, 948-259, 948-277, 948-293,
23 948-244, 948-264, 948-261 and 948-265 received into evidence.)

24 MR. WEINREB: Mr. Bruemmer, can we please have up on
25 the screen 948-433.

1 BY MR. WEINREB:

2 Q. What's that a photo of?

3 A. That is a photo of Laurel Street. Dexter Street would be
4 behind me looking at this. And this house here is 53, this
5 over here is 55 and 57. Do you see that green Honda is over
6 there? And right in this area -- sorry -- would be -- the
7 Ruger would be behind one of the vehicles parked in the
8 driveway of 55 Laurel Street.

9 Q. Okay. The houses with addresses are easily identified,
01:07 10 but just for the record, you've circled a car that's near the
11 very top of the frame and more or less in the middle going down
12 the street?

13 A. The center right, sir.

14 Q. The center right. That's the Honda? No, I'm talking
15 about the Honda now.

16 A. No, the Honda is the center left.

17 Q. Okay. And the location of the Ruger was the car that we
18 can just see the back of, center right?

19 A. Yes, sir.

01:07 20 Q. Okay.

21 MR. WEINREB: And 948-212, please.

22 Q. And what is that a picture of?

23 A. That is a picture of the driveway at 55 Laurel Street.
24 You see in the top left is the Ruger, and those are the two
25 vehicles parked at 55 Laurel Street, sir.

1 MR. WEINREB: 948-230, please.

2 A. It's another angle, close-up of Item No. 59, or Placard
3 No. 59, the Ruger, sir.

4 MR. WEINREB: And 948-231, please.

5 A. And again, a close-up of Placard 59 with the Ruger, sir.

6 MR. WEINREB: 948-268, please.

7 A. Those are two items that were located down by the green
8 Honda, two backpacks.

9 Q. And there's a --

01:08 10 A. Or a backpack.

11 Q. -- box that I'm circling that's more or less in between
12 the two backpacks. Do you know what that is?

13 A. That's a box of ammunition, sir.

14 MR. WEINREB: Can we have -270, please.

15 A. It's a closer image of the box.

16 MR. WEINREB: -271.

17 A. And again, another angle of the box with ammunition.

18 Q. Now, when items like this, a box, are collected at the
19 scene, are they collected in such a way to preserve any
01:09 20 fingerprint evidence that might be on them?

21 A. Yes, sir. They are collected individually, put into its
22 own bag. We take -- we use gloves when we handle any item so
23 that we don't transfer our fingerprints onto those items.

24 MR. WEINREB: Exhibit -259, please.

25 A. That's another angle. That's just past 55 and 57 Laurel.

1 This is the green Honda in the top left, and this is the
2 backpacks with the box of ammunition.

3 Q. Okay. And what are the white placards that we see here?
4 What are they marking?

5 A. Those are all items of evidence. That could be ballistics
6 evidence or bomb evidence, sir.

7 Q. When -- is a Ruger -- is that a semiautomatic pistol?

8 A. I'm not sure.

9 Q. Do you know whether a Ruger ejects shells after it fires a
01:10 10 bullet?

11 A. Yes, it does. Yes.

12 Q. Do you know, are they ejected, they just shoot off --

13 A. They tend to shoot off to the right.

14 Q. Okay.

15 MR. WEINREB: Exhibit -277, please. Actually, no.

16 I'm sorry. Can we stay -- go back to -259? Okay.

17 Q. So let me -- so that's Placard 124. And do you see the
18 object right in front of it?

19 A. That's a shell casing, sir.

01:10 20 MR. WEINREB: Let's go back. No, 259 still. -259.

21 We'll blow up another one.

22 Q. -120, there's an object that I'm pointing to here by the
23 back of the placard?

24 A. It appears to be another shell casing.

25 MR. WEINREB: Can we go back to the regular size?

1 Q. Again, here?

2 A. It appears to be another shell casing, possible.

3 MR. WEINREB: Now let's try -277.

4 Q. What's that a photo of?

5 A. That is another angle of Laurel Street. The Honda would
6 be behind me to my right, and those are additional items of
7 evidence.

8 MR. WEINREB: Perhaps we could zoom in on some of
9 them.

01:11 10 A. Those are additional empty shell casings.

11 Q. Do you know what this police vehicle is that's pictured in
12 the front?

13 A. Yes, sir. It's a Watertown police cruiser. Just behind
14 that is the vehicle where the pressure cooker was embedded in
15 the side of the vehicle.

16 Q. And this is Placard 84. Do we see another item behind it?

17 A. Yes, sir. It looks like another shell casing.

18 MR. WEINREB: -293, please.

19 Q. Is that that -- in the upper left-hand corner of this
01:12 20 photo, is that that same cruiser?

21 A. Yes, sir.

22 Q. And again, all these placards, 76, 77, 78, what's
23 surrounding them all?

24 A. All shell casings, sir.

25 MR. WEINREB: Can I have -244, please.

1 Q. What's pictured in the upper right-hand corner of this
2 photo?

3 A. That's the Watertown police cruiser that we were just
4 looking at. You can see right here is the pressure cooker.
5 This is now on the other side of the street, the left side of
6 the street, these are additional rounds, and some of them are
7 pieces of the bomb or bombs.

8 MR. WEINREB: Can we have -264, please.

9 Q. And is that that same house, now looking straight at it?

01:13 10 A. It is, sir.

11 Q. And all of these placards that we see, are these all, for
12 the most part, shell casings?

13 A. Yes, sir.

14 MR. WEINREB: Exhibit -261, please.

15 Q. What's this a photo of?

16 A. It's another angle of Laurel Street. As you could see,
17 the green Honda, the backpacks with the ammunition. These are
18 all -- these spots all over here are rounds, empty shell
19 casings, Watertown cruiser. And behind that is the vehicle
01:14 20 with the pressure cooker embedded in the side.

21 MR. WEINREB: -265, please.

22 A. Again, another angle.

23 Q. Now, without going through more pictures, just based on
24 your memory of your observations of the scene that night -- or
25 that day, were there bullets in people's houses?

1 A. Yes, there were.

2 Q. Were there bullets in people's cars?

3 A. Yes.

4 Q. Approximately how many items of ballistics evidence were
5 marked at the crime scene that day?

6 A. Ballistics evidence I believe was upward of 250. I know
7 total evidence based on my logs for all four scenes was
8 approximately 450 and up.

9 MR. WEINREB: Thank you. No further questions.

01:14 10 MR. WATKINS: Just a couple of quick things. May I
11 have the monitor, please?

12 CROSS-EXAMINATION

13 BY MR. WATKINS:

14 Q. Showing you 948-264, which is in evidence.

15 A. Yes, sir.

16 Q. I want to draw your attention to this item here. As a
17 case agent, you were responsible -- or oversaw the logging in
18 of various items?

19 A. Yes, sir.

01:15 20 Q. And Mr. Weinreb pointed you to a Ruger that was found in
21 the driveway. That's not this one?

22 A. That is not, sir. That is a pellet gun that was found
23 behind the area of the Honda.

24 Q. And when you say "pellet gun," it's not designed to expel
25 a bullet, projectile?

1 A. I'll be honest with you, sir. I've never fired a pellet
2 gun so I...

3 Q. And you said it was behind the Honda?

4 A. Yes, sir.

5 Q. So I want to show you Exhibit 261. I should say 248 and
6 261. And we see that pellet gun back here?

7 A. Yes, sir.

8 MR. WATKINS: That's all I have, your Honor.

9 THE COURT: Anything else?

01:16 10 MR. WEINREB: Nothing further.

11 THE COURT: All right, Trooper Tanguay. You may step
12 down.

13 THE WITNESS: Thank you, sir.

14 (The witness is excused.)

15 MR. MELLIN: The United States calls Lieutenant
16 Cahill.

17 MR. WATKINS: Your Honor, can we be seen briefly at
18 sidebar before --

19 THE COURT: Yes. I was going to invite you.

01:17 20 (Discussion at sidebar and out of the hearing of the
21 jury:)

22 MR. WATKINS: This is Trooper Cahill where I filed a
23 motion to --

24 THE COURT: Right.

25 MR. WATKINS: -- exclude.

1 The Court indicated -- kind of intended a ruling, but
2 did allow us to go through voir dire. After considering it
3 further, I would ask that we rely on the papers. I made two
4 arguments: One is on a scientific basis, none of it should
5 come in. I would still rely on that. I do not believe that
6 there's a reason to have a protractive voir dire of this
7 particular witness and will not object on that basis.

8 THE COURT: Okay. Based solely on the event mentioned
9 in the papers then, the motion is denied. I think he's
01:18 10 qualified to testify.

11 MR. MELLIN: Your Honor, based on the comment you made
12 the other day about experts, do you not want me to ask --

13 THE COURT: I prefer not.

14 MR. MELLIN: Okay. That's fine.

15 THE COURT: I think it's limited because -- well, I
16 think I expressed -- it depends on the question you ask. If it
17 falls within their expertise, it's okay. If you think it goes
18 beyond their expertise, your objection -- I don't like the
19 blanket ruling.

01:19 20 (In open court:)

21 DAVID CAHILL, duly sworn

22 THE CLERK: State your name, spell your last name for
23 the record and speak into the mic.

24 THE WITNESS: David Cahill, C-A-H-I-L-L.

25 DIRECT EXAMINATION

1 BY MR. MELLIN:

2 Q. Good morning, sir. I'm over here. It's a trick. Good
3 morning.

4 A. Good morning.

5 Q. Sir, where are you employed?

6 A. I'm a lieutenant with the Massachusetts State Police.

7 Q. And how long have you been with the Massachusetts State
8 Police?

9 A. Twenty-eight years.

01:20 10 Q. How do you become a lieutenant? What various ranks do you
11 go through?

12 A. You start off as a trooper, take an exam for sergeant and
13 take another exam for lieutenant.

14 Q. During your 28 years, can you briefly describe what you've
15 been involved in?

16 A. The first 16 years I was a trooper assigned to patrol. In
17 my 16th year I was then transferred to the Firearms
18 Identification Section at the crime lab. At that time it was
19 in Sudbury -- all of the crime lab in Sudbury. I was promoted
01:20 20 to sergeant, and then subsequently, two years ago, I was
21 promoted to lieutenant.

22 Q. At some point -- did you go to college?

23 A. Yes, I did.

24 Q. Where did you go to college?

25 A. I have a bachelor's degree in science, in criminal

1 justice, from Western New England University, and a master's
2 degree in criminal justice from the University of Massachusetts
3 at Lowell.

4 Q. Now, you mentioned firearms identifications. What is
5 that?

6 A. It's a section at the lab -- at the crime lab. What we
7 deal with is firearms relating to crimes.

8 Q. And how do you go about determining if a firearm was
9 involved in some shooting?

01:21 10 A. Most of the time -- well, there's two ways: One, we can
11 be called to the scene of the crime, we recover all -- I would
12 recover all evidence regarding firearms. The second one is if
13 an agency, be it local, state or federal, recovers a firearm
14 and they want it examined by our section, they will bring it to
15 us and submit it to us at the lab in Maynard.

16 Q. Did you receive certain training related to firearm
17 identification?

18 A. Yes, I did.

19 Q. Can you describe for us what training you have?

01:21 20 A. Yes. Over the first two years assigned to the section
21 it's an apprenticeship program. You're working with
22 qualified -- under qualified examiners. And during that two
23 years, you're sent out to numerous training opportunities.
24 Myself, I've been sent down to the ATF school for the NIBIN
25 system in Largo, to the FBI Academy in Quantico, Virginia, for

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1 advanced technician firearms identification. I've also been to
2 several in-house trainings that we've hired people to come in
3 and train us in toolmarks and firearms. And I've also been to
4 several weapons manufacturers: Colt, Berettas, Glock,
5 Smith & Wesson. And during those armorers' courses, usually
6 you learn how they make and maintain their firearms. I mean, a
7 couple of them, like Beretta -- not Beretta -- on Colt,
8 Smith & Wesson and Ruger, we actually observed the
9 manufacturing processes of how these weapons are manufactured.

01:22 10 Q. You mentioned Ruger. Do you know where Rugers are
11 manufactured?

12 A. They have plants in Freeport, New Hampshire, and also
13 Prescott, Arizona.

14 Q. Do they have a plant in Massachusetts?

15 A. No, they do not.

16 Q. Is the field of firearms identification generally
17 accepted?

18 A. Yes; it has been for close to 85 years.

19 Q. Are there treatises that apply to firearms identification?

01:23 20 A. Yes, there are.

21 Q. And are those subject to peer review?

22 A. Yes, they are.

23 Q. And are those generally accepted in the field?

24 A. Yes.

25 Q. Are there also generally accepted procedures that you

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1 follow to do an identification?

2 A. Yes; we have certain protocols and procedures at the lab
3 itself.

4 Q. You mentioned protocols. What type of protocols do you
5 follow?

6 A. Well, we have a firearms identification protocol, and it
7 explains step by step of how we recover evidence, how we're to
8 examine it, how we're supposed to generate our reports
9 afterwards.

01:23 10 Q. Approximately how many firearms identifications have you
11 done?

12 A. In excess of 3,000.

13 Q. And of those thousands, are those subject to peer review?
14 Does someone oversee your work?

15 A. Yes, they do.

16 Q. And at times do you oversee the work of others?

17 A. Yes, I do.

18 Q. And how does that process go?

19 A. In regards to making identifications under the microscope,
01:24 20 if we were to identify a cartridge case, either to itself or to
21 a firearm, we'd have them put it on the microscope, we'd do the
22 ID, then we would ask another examiner to come and verify our
23 identification.

24 After that's all said and done, after the verification
25 process, we generate our reports. Once the reports are done,

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1 they're submitted for technical and administrative review by
2 another -- a supervisor, usually of a higher rank than the
3 person who was issuing the report.

4 Q. You talked about the Massachusetts state lab. Is that an
5 accredited lab?

6 A. Yes, it is. It's ASCLD accredited.

7 Q. It is what?

8 A. ASCLD. Association of Crime Lab Directors. It's an
9 organization that certifies labs.

01:24 10 Q. You mentioned you've done over a thousand examinations.
11 Of those over a thousand, are you aware of anyone ever claiming
12 that your work was unreliable?

13 A. No.

14 Q. Has anyone ever claimed after the fact that any
15 conclusions you rendered or reached was unreliable?

16 A. No.

17 Q. Have you testified previously as an expert in firearms
18 identification?

19 A. Yes, I have.

01:25 20 Q. Approximately how many times?

21 A. Over a hundred times.

22 Q. Lieutenant Cahill, if you could just generally describe
23 for us how does someone go about identifying a firearm and
24 whether or not it was used in a shooting?

25 A. When we would recover the firearm, we would examine the

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1 firearm first to make sure -- you know, check its operability;
2 check the condition of the firearm; make, model, serial number;
3 note the condition as it's submitted. Once we determine the
4 weapon is safe to fire, we would then test-fire the weapon. We
5 have a facility at the lab to test-fire firearms. We would
6 take those tests that we generated and then go into our
7 microscope room where we have a comparison microscope, and then
8 we would compare the tests from the firearm to the recovered
9 evidence.

01:26 10 Q. Okay. You mentioned a test-fire. If you could just tell
11 us what is that?

12 A. It is we take either -- we could take ammunition that was
13 recovered with the weapon at the scene, or we have a large
14 reference section in our lab of ammunition. What we do is we
15 check the weapon to see what the caliber is, we get the same
16 caliber ammunition, we take it into our test-fire room, we load
17 the weapon and we test-fire it. We fire the weapon.

18 Q. If you're dealing with a semiautomatic weapon that has
19 shell casings, how do you go about making an identification of
01:26 20 shell casings?

21 A. Again, we have -- if the shell casings are recovered by
22 themselves with no weapon, we'd take the shell casings -- first
23 we'd make -- we take them into our workroom, we make note of
24 the make, manufacturer and caliber of the shell casings, record
25 those. Then we bring the shell casings into our microscope

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1 room. We then place the microscope -- there's a comparison
2 microscope. There's a stage on the right and the left, and it
3 has one eyepiece so you could look at both stages at the same
4 time. And then we're looking for specific markings left behind
5 on those shell casings generated through the firing process to
6 make our identification.

7 Q. If you have a number of shell casings but don't have a
8 firearm recovered, are you still able to determine whether or
9 not those shell casings were all fired from a single weapon?

01:27 10 A. Yes, we can.

11 Q. If you have the firearm recovered, are you then able to
12 make a comparison to determine if that firearm fired those
13 shell casings?

14 A. Yes, we can.

15 Q. And how do you make that comparison?

16 A. Again, we test fire the firearm, we look at the test under
17 the microscope to make sure there's enough microscopic marks
18 left behind on the test to make the identification. Then we
19 take the evidence -- we look at all the evidence first together
01:28 20 to make sure that they're all fired -- or they all possess the
21 same microscopic markings. Then we take a sample from the
22 recovered evidence and the test-fires, and we compare those
23 against each other under the microscope and make the
24 identification through the individual microscopic marks left
25 behind.

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1 Q. Are you, as well, able to determine whether or not a
2 recovered projectile or a bullet was fired by a particular
3 weapon?

4 A. Yes, we can.

5 Q. And how do you go about doing that?

6 A. Again, we test fire the weapon, we recover the projectile,
7 we look for the individual markings left behind on the
8 projectile from the test against the individual markings on the
9 submitted evidence. Again, we bring them to the microscope
01:28 10 room, we put the test-fire on one side of the microscope and
11 the recovered evidence on the other side, and we're looking for
12 those striated individual markings left behind during the
13 firing process to make our identification.

14 Q. And generally, when you're talking about a round of
15 ammunition or a bullet or a projectile, as sometimes you like
16 to refer to it as, what are you looking for on that projectile
17 to make a comparison?

18 A. Okay. Well, what most people call a bullet, we would call
19 it a live round of ammunition. It has four different
01:29 20 components to a live round of ammunition. One would be what
21 people would normally refer to as the bullet, we would call it
22 a projectile. That's the casing that contains the projectile.
23 Inside the casing is the powdered charge, and on the base of
24 that casing is the primer.

25 MR. MELLIN: And if I may have just brought up for the

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1 witness right now, your Honor, Exhibit 940.

2 Q. Do you see Exhibit 940 in front of you?

3 A. I do now, yes.

4 Q. Very good. Do you recognize what that is?

5 A. Yes, I do.

6 Q. Is that a photograph of a -- well, you tell me. What is
7 that a photograph of?

8 A. It appears to be a photograph of one live round of
9 ammunition.

01:30 10 MR. MELLIN: Your Honor, if the witness may use this
11 just as a chalk?

12 THE COURT: All right.

13 BY MR. MELLIN:

14 Q. Lieutenant Cahill, looking at Exhibit 940, as you look at
15 that, what do you see on the right side of that photograph?

16 A. That's a ruler or a scale.

17 Q. That's on the left side.

18 A. That's the projectile -- or the live cartridge, I should
19 say.

01:30 20 Q. Okay. And as you look at that, if you could -- this is a
21 screen that's interactive so you could touch it. As you look
22 at it, what are the component parts that we're looking at?

23 A. Okay. Right here would be the nose or the projectile or
24 the bullet. On here, the brass-colored item is the cartridge
25 case. Inside this cartridge case would be the powder or the

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1 propellant for the cartridge. And on the base underneath is
2 the primer. Usually it's silver in color. In order to operate
3 this, you load it into a weapon, the firing pin would then
4 strike the primer, setting off an explosive charge that would
5 ignite the powder inside the cartridge, creating pressure for
6 one to force a projectile down the barrel of the weapon.

7 Q. All right. And for the record, you indicated that the
8 copper-colored portion of this photograph is what?

9 A. A bullet, or projectile.

01:31 10 Q. Okay. So now the bullet, when there is -- the firing pin
11 hits the bottom of this casing and there causes some type of
12 internal explosion, what happens to the bullet?

13 A. The bullet is forced down the barrel of the weapon.

14 Q. And as the bullet is being forced out the barrel, what's
15 happening to the bullet?

16 A. On weapons that are rifled, what happens is the projectile
17 is grabbed by the rifling as it's being forced down the barrel.
18 Rifling is designed to impart a spin on the projectile, making
19 it a much more accurate weapon.

01:32 20 Q. Hold on right there. You keep talking about rifling.
21 What do you mean by "rifling"?

22 A. Rifling in weapons is grooves, lands and grooves, that are
23 cut down the length of the inside of the barrel. These are
24 done by, you know, hardened cutters. And they cut actually
25 grooves into the projectile -- excuse me, into the barrel. And

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1 during that process, it could be towards the right or to the
2 left.

3 Q. And what is the purpose of this internal rifling in the
4 barrel of a weapon?

5 A. Again, it imparts a spin on the projectile as it's
6 traveling down the barrel, making it much more accurate.

7 Q. Just like throwing a football, if you have a tight spiral
8 it's much more accurate than if it flutters?

9 A. Yes.

01:32 10 Q. Okay. So what are you able, as a firearms identifier or
11 examiner, able to do with those rifling marks?

12 A. So what happens, after the projectile travels down, it
13 picks up what we call microscopic individual markings left
14 behind during the -- by the rifling. As the rifling is cut,
15 hardened-steel tools are dragged down the barrel and they cut
16 into the hardened steel of the barrel leaving microscopic
17 imperfections in the barrel. The projectile --

18 Q. You mean on the bullet or on the barrel?

19 A. On the barrel. When the projectile travels down the
01:33 20 barrel, it picks up those microscopic markings and leaves
21 behind marks on the projectile itself.

22 Q. So the bullet is shot out the barrel. Is that right?

23 A. Yes.

24 Q. What happens to that casing?

25 A. Depending on what kind of weapon is used, a revolver, the

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1 casing would stay inside the weapon itself. A semiautomatic
2 weapon, it would actually be thrown outside the weapon.

3 Q. When you said a revolver, is that the gun that has the
4 cylinder on it?

5 A. Yeah. It's like what the cowboys used to have. It has a
6 cylinder, it has a number of live rounds. And every time you
7 fire it, the cylinder rotates to the next live cartridge.

8 Q. And when you say the casing is kicked out, where does it
9 go after it's kicked out?

01:34 10 A. Depending on the weapon -- the ejection point is on the
11 right or the left, it's usually -- both weapons have an
12 ejection point on the right side of the weapon. You eject it
13 to the right and somewhere to the rear of the weapon.

14 Q. And if someone is standing on a street or on a sidewalk or
15 some hard surface and these casings are ejected out, what
16 happens when that casing hits that hard surface?

17 A. Most of the time it will bounce and roll. They won't
18 actually stay where they first hit, they have a possibility of
19 bouncing and rolling.

01:34 20 Q. Now in this case did you do a firearms identification?

21 A. Yes, I did.

22 Q. And generally what did you do?

23 A. I responded to the scene and recovered all the
24 firearms-related evidence, brought it back to the lab, examined
25 it, generated my report.

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1 Q. As you're going through your testimony, would it help to
2 have a copy of your report in front of you?

3 A. Yes.

4 MR. MELLIN: Your Honor, if I may approach with
5 Government's Exhibit 1567. I'm not going to introduce it into
6 evidence, but I think it would be helpful if the Lieutenant had
7 it.

8 THE COURT: Okay.

9 MR. WATKINS: No objection, your Honor.

01:35 10 THE COURT: Okay.

11 BY MR. MELLIN:

12 Q. Lieutenant, just for the record, Exhibit 1567, is that
13 your report?

14 A. Yes, it is.

15 Q. Okay. And it's a relatively voluminous report. Is that
16 fair to say?

17 A. Yes.

18 Q. How many pages?

19 A. Thirty-two.

01:35 20 Q. Okay. And what is the date on your report?

21 A. The date it was generated was August 22, 2013.

22 Q. Generally, when you got to the scene at Watertown, what
23 did you do?

24 A. I checked in with the crime scene services and the
25 detectives from the Middlesex County District Attorney's Office

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1 just to let them know I was at the location.

2 Q. Okay. Prior to arriving at Watertown, what did you do?

3 A. I was at the scene of a shooting in the city of Cambridge
4 on Vassar Street.

5 Q. How did you end up there?

6 A. I was called to that scene from my home.

7 Q. And so that was at MIT?

8 A. Yes, it was.

9 Q. And did you recover the ballistics evidence at MIT as
01:36 10 well?

11 A. Yes, I did.

12 Q. Now, the findings and conclusions that you've reached in
13 this case either regarding the MIT shooting or the Watertown
14 ballistics evidence, were those subject to peer review?

15 A. Yes, they were.

16 Q. Who reviewed your work?

17 A. My immediate supervisor, Detective Lieutenant Michael
18 Coleman.

19 Q. Let me talk first about the MIT evidence. What did you
01:36 20 recover at MIT?

21 A. At MIT we recovered five 9 mm Luger caliber discharge
22 cartridge casings and two projectiles.

23 MR. MELLIN: If I could have the witness look at
24 Exhibit 698, please.

25 Q. Do you recognize Exhibit 698?

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1 A. Yes, I do.

2 Q. What is that?

3 A. That is a 9 mm caliber discharged cartridge case with the
4 Placard No. 1 from the scene at MIT.

5 MR. MELLIN: I move into evidence and ask to publish
6 698.

7 MR. WATKINS: No objection.

8 THE COURT: I'm told it's already in.

9 THE CLERK: It's already in.

01:37 10 THE COURT: If it isn't, it is now.

11 MR. MELLIN: Thank you. Redundancy.

12 BY MR. MELLIN:

13 Q. Lieutenant Cahill, do you see Exhibit 698?

14 A. Yes, I do.

15 Q. Okay. And that casing that you see there, that is one of
16 the three that you recovered outside the car. Is that right?

17 A. Yes, it is.

18 Q. Okay. If I could have you look at Exhibit 699.

19 MR. MELLIN: Not knowing whether or not that's in,
01:38 20 your Honor --

21 Q. Well, first, do you recognize that?

22 A. Yes, I do.

23 Q. What is that?

24 A. That is a second shell, 9 mm Luger caliber discharged
25 shell casing from the scene at MIT with Placard No. 2.

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1 MR. MELLIN: I'm told that's already in as well, your
2 Honor. If I can please have that published?

3 Q. And again, just for the record, what do you see in that
4 photo?

5 A. A 9 mm Luger caliber discharged cartridge case.

6 Q. And then if I could have you look at 701?

7 THE COURT: Is that in? Okay.

8 Q. Do you recognize 701?

9 A. Yes, I do.

01:38 10 Q. What is that?

11 A. That is a third 9 mm Luger caliber discharged cartridge
12 case with the Placard No. 3 next to it.

13 Q. And all three of these casings were found outside of
14 Officer Collier's vehicle. Is that right?

15 A. Yes, to the rear of the cruiser.

16 Q. If I could have you look at Exhibit 702, please. Do you
17 recognize Exhibit 702?

18 A. Yes, I do.

19 Q. What is that?

01:39 20 A. That is the front seat of Officer Collier's cruiser.

21 Q. Is that a fair and accurate photograph of how the cruiser
22 looked?

23 A. Yes.

24 MR. MELLIN: I'd move into evidence Exhibit 702 if
25 it's not already in.

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1 MR. WATKINS: No objection.

2 THE COURT: Okay.

3 (Government Exhibit No. 702 received into evidence.)

4 MR. MELLIN: Ask to publish it, your Honor.

5 BY MR. MELLIN:

6 Q. Lieutenant Cahill, as you look at Exhibit 702, what do you
7 see there?

8 A. In the center of the seat, in the pool of blood is the 9
9 mm Luger caliber discharged cartridge case.

01:40 10 MR. MELLIN: And if we could pull up Exhibit 704,
11 please.

12 Q. Do you recognize Exhibit 704?

13 A. Yes. That's a close-up of the seat with the discharged
14 cartridge casing.

15 MR. MELLIN: Your Honor, I'd move into evidence and
16 ask to publish Exhibit 704.

17 MR. WATKINS: No objection.

18 (Government Exhibit No. 704 received into evidence.)

19 BY MR. MELLIN:

01:40 20 Q. Lieutenant Cahill, as you look at Exhibit 704, there's a
21 casing in the middle of that photo. Is that right?

22 A. Yes; right on the scale where it says "130."

23 Q. I was just going to ask you to circle that, if you don't
24 mind.

25 A. (Witness complies.)

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1 Q. All right. And for the record, it's right in the middle
2 of the photograph?

3 A. Yes, it is.

4 Q. Okay. And this is a -- 704 is a closer photograph than
5 702, the one we just saw. Is that right?

6 A. Yes.

7 Q. And again for the record, this is the front driver's seat?

8 A. Yes, it is.

9 Q. All right. If I could have you look at Exhibit 708,
01:41 10 please.

11 MR. MELLIN: I believe that's in, your Honor.

12 Q. Do you see what 708 is?

13 A. Yes, I do.

14 Q. What is that a photograph of?

15 A. A 9 mm Luger caliber discharged cartridge casing that was
16 located on the passenger-side seat on top of Officer Collier's
17 hat or cover.

18 Q. So as we look at 708, this is a close-up and his hat is to
19 the right?

01:41 20 A. Yes.

21 Q. And are those now the five casings that you recovered from
22 the scene, three outside and these two in the car?

23 A. Yes.

24 Q. All right. And if I could have you look at 710, please.

25 MR. MELLIN: I believe 710 is already in as well.

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1 Q. Do you see Exhibit 710?

2 A. Yes, I do.

3 Q. What is that?

4 A. That is the passenger front seat of Officer Collier's
5 cruiser.

6 Q. And what do you see, as a firearms examiner, that's of
7 note to you?

8 A. In the center of the picture is a copper-colored -- it's a
9 copper jacket or lead-spent projectile.

01:42 10 Q. Is that the top of one of these rounds that we were
11 talking about?

12 A. Yes, it is.

13 Q. In addition to this projectile that was recovered in the
14 car, at some point did you recover additional projectiles?

15 A. Yes, I did.

16 Q. How did you go about recovering additional projectiles?

17 A. The next day Officer Collier's autopsy was performed and
18 three additional copper jacket lead-spent projectiles were
19 received from the chief medical examiner. The day after that
01:42 20 we returned to the Cambridge PD and examined Officer Collier's
21 cruiser a second time, and a fifth copper jacket or lead-spent
22 projectile was recovered from underneath the carpeting on the
23 driver's side front seat.

24 Q. How did you go about recovering that?

25 A. We had to remove the seat, and we removed the carpeting

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1 from the cruiser.

2 Q. And how is it that it would have been able to fall under
3 the carpeting?

4 A. It looks like when it was fired, they hit the center
5 console inside the cruiser and it ricocheted down and under the
6 carpeting.

7 Q. If I could have you look at Exhibit 726 for just a moment.

8 MR. MELLIN: If I may approach, your Honor?

9 THE COURT: Yes.

01:44 10 BY MR. MELLIN:

11 Q. Do you recognize what Exhibit 726 is?

12 A. Yes, I do.

13 Q. What is that?

14 A. This is a 9 mm Luger caliber discharged cartridge case
15 with Number 13-08091. This is from the scene in Cambridge,
16 Officer Collier's shooting.

17 Q. And how are you able to recognize that as one of the
18 casings from that shooting?

19 A. One, it's my handwriting on it.

01:44 20 Q. And if you could, just open that up.

21 A. (Witness complies.)

22 Q. Is that one of the casings recovered?

23 A. Yes, it is.

24 Q. Now, as you look at that, what do you see on the -- kind
25 of the headstamp of that casing?

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1 A. On the base of the cartridge case is the manufacturer
2 headstamp. It says "Win," and underneath that, "9 mm Luger."

3 Q. What does "Win" mean, do you know?

4 A. "Win" is an abbreviation for the manufacturer, which is
5 Winchester.

6 Q. And it says "9 mm Luger"?

7 A. Yes. That's the caliber designation for this cartridge
8 case.

9 Q. Now, when we're talking about caliber, like 9 mm, can you
01:45 10 describe briefly kind of what are the various types of
11 calibers?

12 A. Caliber has to do with the diameter of a projectile that
13 travels down the barrel. So in this case, "9 mm" would mean it
14 was 9 mm in diameter, or roughly .355 inches in diameter.

15 Q. What are some other calibers that are used?

16 A. There's .40 caliber, there's .45 caliber. There's
17 hundreds of different calibers.

18 Q. Okay. What about like a 380 or a 38?

19 A. Yes, .380, .38, 9 mm, those are all in the same .38
01:46 20 caliber class, which mostly means the diameter is pretty much
21 the same but the weight of the projectile is different. Like a
22 .380, a normal weight for that would be 95 grams, a 9 mm is
23 around 115 grams, and .38s can get up to like 140 grams.

24 Q. And what about a .40 caliber?

25 A. A .40 caliber about 180 grams, but again, that's not in

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1 the same caliber class because a .40 caliber is .40 inches in
2 diameter. So it's a different caliber class than 9 mm.

3 Q. And again, a .45?

4 A. A .45, again, is .45 inches in diameter, and they can
5 range from 230 grams, a little lighter, a little heavier
6 depending on the manufacturer.

7 Q. Okay. Is a .45 caliber weapon able to fire a 9 mm round?

8 A. It's not designed to, no.

9 Q. And vice versa, if you have a .45 caliber round, are you
01:46 10 able to put that into a 9 mm?

11 A. It's physically impossible to do that.

12 Q. Now, when you recovered all those five casings, what were
13 you able to determine about them?

14 A. I brought them back to the lab, I made a microscopic
15 comparison. I made a determination that they were all fired by
16 the same unknown weapon.

17 Q. And at that point unknown?

18 A. Yes.

19 Q. Okay. And again, just to briefly describe it, how can you
01:47 20 compare a casing and determine that it's fired by the same
21 weapon?

22 A. Again, we're looking for the individual markings left
23 behind during the firing process. When the weapon's fired,
24 again, the firing pin strikes the primer, sets off the charge.
25 And the primer, which ignites the powder, develops between 15-

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1 and 20,000 pounds of pressure inside the chamber of that
2 weapon. The pressure does two things: In a semiautomatic
3 pistol, one, it forces the projectile down the barrel, outside
4 the barrel. In a semiautomatic pistol, what happens is that
5 casing is then slammed up against what's called the breech face
6 of the weapon, and it's where the firing pin comes through, and
7 it stamps those individual microscopic markings left behind
8 during the manufacturing process onto the base of that
9 cartridge. Again, the firing pin also striking it leaves an
01:48 10 indentation in the primer, leaving some individual markings
11 behind.

12 Q. And all of those markings were consistent for all five of
13 those casings?

14 A. Yes, they were.

15 Q. Now, if we can just briefly turn to the Watertown -- not
16 so briefly, but Watertown --

17 THE COURT: No, if you're going to do that, why don't
18 we pause and take the midmorning recess.

19 MR. MELLIN: All right.

01:48 20 THE CLERK: All rise for the Court and the jury. The
21 Court will take the morning recess.

22 (The Court and jury exit the courtroom and there is a
23 recess in the proceedings at 10:56 a.m.)

24 THE CLERK: All rise for the Court and the jury.

25 (The Court and jury enter the courtroom at 11:26 a.m.)

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1 THE CLERK: Be seated.

2 THE COURT: Proceed.

3 MR. MELLIN: Thank you, your Honor. Your Honor, I'd
4 also move into evidence Exhibit 726, which was the shell casing
5 recovered from the scene at MIT.

6 MR. WATKINS: I have no objection.

7 THE COURT: All right. Do you want it shown?

8 MR. MELLIN: No, that's fine. He's already talked
9 about it.

02:19 10 THE COURT: Oh, the actual object?

11 MR. MELLIN: Yes.

12 (Government Exhibit No. 726 received into evidence.)

13 BY MR. MELLIN:

14 Q. Lieutenant Cahill, when you responded to Watertown, did
15 you locate weapons at that scene?

16 A. Yes, I did.

17 Q. Did you locate a pellet gun as well as a 9 mm?

18 A. Yes, I did.

19 MR. MELLIN: If I may approach, your Honor, with
02:20 20 Exhibit 934.

21 Q. Do you recognize Exhibit 934?

22 A. Yes, I do.

23 Q. And what is that?

24 A. That's a pellet gun I retrieved from Laurel Street in
25 Watertown.

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1 MR. MELLIN: Your Honor, the government would move
2 that into evidence and ask if it may be published.

3 MR. WATKINS: No objection.

4 THE COURT: All right.

5 (Government Exhibit No. 934 received into evidence.)

6 BY MR. MELLIN:

7 Q. If I may just have you hold it up and show it to the
8 ladies and gentlemen of the jury.

9 A. (Witness complies.)

02:21 10 Q. And Lieutenant Cahill, when you look at that pellet gun,
11 how would you describe it?

12 A. It's an Airsoft pellet gun. The caliber's .177. It's a
13 copy of a Smith & Wesson M&P 40 real gun.

14 Q. What do you mean by "it's a copy"?

15 A. It's not manufactured by Smith & Wesson; it's just a
16 knockoff of one of their firearms.

17 Q. Okay. You also recovered a 9 mm?

18 MR. MELLIN: If I may approach with Exhibit 928, your
19 Honor, and take back that other exhibit.

02:21 20 THE COURT: All right.

21 BY MR. MELLIN:

22 Q. Do you recognize Exhibit 928?

23 A. Yes, I do.

24 Q. What is that?

25 A. It's the Ruger 9 mm caliber Model P95 semiautomatic pistol

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1 I recovered from the scene at Laurel Street.

2 MR. MELLIN: If I may pull up 948-213, which is in
3 evidence.

4 Q. Do you see the photograph in front of you?

5 A. Yes, I do.

6 Q. What is that?

7 A. That's a picture of the weapon that I recovered from
8 Laurel Street.

9 Q. Is that the 9 mm?

02:22 10 A. Yes, it is.

11 Q. You mentioned something about a serial number?

12 A. Yes. The serial number has been defaced, or obliterated,
13 on the weapon.

14 Q. As you look at 948-231, can you circle where that serial
15 number was located?

16 A. (Witness complies.)

17 Q. For the record, it's the silver plate on the handle of the
18 weapon?

19 A. Yes, it is.

02:22 20 Q. In addition to the gun being in that box, Exhibit 928, is
21 there another item in there?

22 A. Yes, there is.

23 Q. What is that?

24 A. It's the magazine for that weapon.

25 MR. MELLIN: Your Honor, I would move in 928 and --

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1 which includes both the magazine and the weapon.

2 THE COURT: I'm told it's in already, but if not it
3 will be.

4 MR. WATKINS: Yeah.

5 MR. MELLIN: Thank you.

6 If I could have Lieutenant Cahill hold that up as
7 well, your Honor, and not point it at anyone?

8 THE WITNESS: The weapon?

9 BY MR. MELLIN:

02:23 10 Q. Yes. And just for the record, is it rendered safe?

11 A. Yes.

12 Q. How is it rendered safe?

13 A. It has a cable lock going through the slide of the weapon
14 down the barrel.

15 Q. Okay. Is there any ammunition in it?

16 A. No, there is not.

17 Q. All right.

18 A. This is a Ruger Model P95 semiautomatic pistol.

19 Q. And what caliber?

02:23 20 A. 9 mm.

21 Q. And if I could have you hold up the magazine?

22 A. This is the magazine that was recovered with the weapon on
23 Laurel Street.

24 Q. All right. And as you hold that up, do you -- there's a
25 bottom portion of that that is larger than the top portion. Is

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1 that right?

2 A. Yes, it is.

3 Q. And what is that?

4 A. This is an extended magazine, so when you insert it inside
5 the weapon, the magazine sits below the grip of the weapon.
6 It's just like a plastic cover on the magazine.

7 Q. And as we look at 948-231, do you see that magazine
8 actually in that weapon?

9 A. Yes, it is.

02:24 10 Q. Now, for the record, what is a magazine?

11 A. A magazine in a semiautomatic pistol is what holds the
12 ammunition for that weapon. In order to fire this weapon, you
13 load the right caliber ammunition inside the magazine, you
14 place the magazine inside the grip, or the bottom of the
15 weapon, in order to load the weapon. Then on the top of the
16 weapon where the barrel is, where I showed where the cable lock
17 was coming out is called the slide. You pull onto the slide,
18 pull it to the rear. It's under spring tension. As you pull
19 it to the rear and release it, it strips off the live
02:24 20 ammunition on the top of that magazine.

21 In order to operate this weapon, you then pull the
22 trigger, the trigger releases the firing pin, the firing pin
23 strikes the primer, again, develops pressure inside the
24 cartridge case. The pressure forces the projectile down the
25 barrel, and the remaining pressure operates the slide of the

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1 weapon, or the top. It pushes that slide to the rear. So it
2 pulls it all the way to the rear, and the spring tension of the
3 weapon pulls it forward, strips off the next live cartridge,
4 and the weapon is ready to fire again up until you've fired all
5 the ammunition that is inside the magazine.

6 Q. Now, when you've fired all of the ammunition, at that
7 point this magazine is empty, right?

8 A. Yes, it is.

9 Q. Is there a way to eject that magazine and put either a new
02:25 10 one in or to reload the one that you had?

11 A. Yes. On the side of the weapon right by the trigger guard
12 is called a magazine release. You press that button, it
13 releases the catch that's on the magazine, the magazine can
14 then be removed from the weapon.

15 Q. And the magazine that we're talking about that's Exhibit
16 928, is that an extended magazine?

17 A. Yes, it is.

18 Q. What does that mean?

19 A. The original magazine for this weapon, went to the bottom
02:26 20 of the weapon, usually holds ten live cartridges. This
21 magazine holds 18. So in order to fit the 18 cartridges, the
22 magazine has to sit below the bottom of the grip of the weapon.

23 MR. WATKINS: Your Honor, may I interrupt and have a
24 moment with Mr. Mellin?

25 (Counsel confer off the record.)

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1 MR. MELLIN: Your Honor, we had previously listed the
2 magazine as 931. We'll just do that for the record.

3 THE COURT: So you'll take it out of 928 and make it
4 931?

5 MR. MELLIN: Correct.

6 (Government Exhibit No. 928 is replaced by Exhibit No.
7 931.)

8 BY MR. MELLIN:

9 Q. In addition to this magazine that you see inside of the
02:27 10 handgun that is recovered, did you recover other magazines as
11 well?

12 A. Yes, I did.

13 Q. What did you recover those from?

14 A. One magazine for this weapon was recovered at the scene by
15 the Honda on Laurel Street, the second magazine was recovered
16 from the SUV at the Watertown PD.

17 MR. MELLIN: If I may approach, your Honor?

18 THE COURT: All right.

19 BY MR. MELLIN:

02:27 20 Q. Lieutenant Cahill, I just handed you two items, Exhibit
21 894 and Exhibit 893. Do you recognize Exhibit 894?

22 A. Yes, I do.

23 Q. What is that?

24 A. It's the magazine that I recovered from the street -- on
25 Laurel Street in Watertown.

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1 Q. Wait. Which one are we talking about?

2 A. This.

3 Q. All right. What's the exhibit number on that one?

4 A. 933.

5 Q. All right. You're trying to trick me. All right. I had
6 said 894 but let's talk about 933. That's the magazine
7 recovered on Laurel Street?

8 A. Yes, it is.

9 Q. Okay. And then 894, do you see that?

02:28 10 A. Yes, I do.

11 Q. What is that?

12 A. This is the magazine that was recovered out of the
13 Mercedes SUV by my unit at the Watertown Police Department.

14 Q. And did that magazine actually have live rounds in it?

15 A. Yes, it did.

16 Q. How many live rounds did it have in it?

17 A. It had seven live cartridges in the magazine.

18 Q. If I could have you --

19 MR. MELLIN: Just the witness, please.

02:29 20 Q. -- look at Exhibit 931. I'm sorry. 931 is -- I take that
21 back. It's 895. If I could have you look at Exhibit 895.

22 Do you recognize that?

23 A. Yes, I do. It's the magazine that was inside the Mercedes
24 SUV.

25 MR. MELLIN: I'd move into evidence Exhibit 895.

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1 MR. WATKINS: No objection.

2 THE COURT: Okay.

3 (Government Exhibit No. 895 received into evidence.)

4 MR. MELLIN: If I may have that published, please.

5 BY MR. MELLIN:

6 Q. Lieutenant Cahill, as you look at that photograph, you
7 mentioned there was -- how many rounds were in that?

8 A. Seven.

9 Q. Okay. And how many does that magazine actually hold?

02:30 10 A. Ten.

11 Q. Thank you. When you went to the --

12 MR. MELLIN: You can pull that down, Mr. Bruemmer.

13 Q. When you went to the scene on Laurel Street, did you
14 recover the casings that were on that scene?

15 A. Yes, I did.

16 Q. And in total, how many casings did you recover?

17 A. In total, 266.

18 Q. And of those 266, how many were 9 mm?

19 A. Fifty-six.

02:30 20 Q. Did you also recover projectiles, or these bullets?

21 A. Yes, I did.

22 Q. How many bullets or projectiles did you recover?

23 A. Ninety-five.

24 Q. And could you -- of the projectiles, do you remember how
25 many were a Ruger type of a projectile?

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1 A. There were eight 9 mm caliber projectiles.

2 Q. That you were able to find?

3 A. Out of those 95, yes.

4 Q. Okay. So of the 56 casings of 9 mm, you were only able to
5 find six to eight of those projectiles?

6 A. Yes.

7 Q. At some point did you analyze those 56 casings?

8 A. Yes, I did.

9 Q. What were you able to determine about your analysis of
02:31 10 those casings?

11 A. Upon examining the 56 recovered, I made the determination
12 they were all fired by the same unknown weapon.

13 Q. And when you say "the same unknown weapon," what type of a
14 weapon would that have been?

15 A. A 9 mm caliber weapon.

16 Q. Now, in addition to saying there was an unknown weapon,
17 did you at some point attempt to determine whether or not those
18 56 casings were related to Exhibit 928, the 9 mm you recovered
19 on the scene?

02:32 20 A. Yes, I did.

21 Q. And what did you determine?

22 A. I test-fired the 9 mm, I compared the test from the 9 mm
23 to the 56 cartridges recovered from the scene, and it was my
24 opinion the 56 live -- the 56 discharged cartridge casings were
25 fired by the 9 mm Ruger Model P95 semiautomatic pistol.

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1 Q. You mentioned the other casings that were on the scene.
2 There were 56 9 mm. Were there other rounds as well that were
3 fired?

4 A. Yes, there were -- approximately 210 other rounds that
5 were -- casings that were recovered.

6 Q. And were you able to determine that those -- well, did you
7 receive the firearms of Watertown police and other police that
8 responded to the scene?

9 A. Yes, I did.

02:32 10 Q. And were you able to determine that none of the police
11 weapons fired any of the 56 9 mm weapon -- rounds that were
12 recovered?

13 A. Yes, I was.

14 Q. How were you able to determine that?

15 A. One, there was a different caliber class; two, I
16 test-fired all of the submitted weapons of the police agencies,
17 and I identified all of the cartridges of those 210 back to
18 those police weapons.

19 Q. And in addition, you excluded, then, the 9 mm from those
02:33 20 rounds?

21 A. From those weapons, yes.

22 Q. Okay. And on the flip side of that, these .40 caliber --
23 or what other caliber were the police firing?

24 A. There was .40 and .45 caliber.

25 Q. And so were you able to exclude those .40 and .45s as

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1 firing the 9 mm casings?

2 A. Yes, I was.

3 Q. When you did your comparison testing, did you actually
4 take photographs of the analyses you were doing?

5 A. Yes, I did.

6 Q. If I could have you look just at Exhibit 943, please. Do
7 you recognize what Exhibit 943-01 is?

8 A. Yes, I do.

9 Q. What is that?

02:34 10 A. It's a microscopic comparison -- a picture of a
11 microscopic comparison I did at the lab.

12 Q. And is that from the MIT shooting?

13 A. Yes, it is.

14 Q. Okay.

15 MR. MELLIN: Your Honor, if I may use 943-01 just as a
16 chalk for the witness to explain.

17 THE COURT: Okay.

18 MR. MELLIN: If I may have that published?

19 BY MR. MELLIN:

02:34 20 Q. Lieutenant Cahill, as we look at Exhibit 943-01, what are
21 we looking at?

22 A. It's a side-by-side image from a picture of what I was
23 looking at on the comparison microscope back at the lab. If
24 you look on the left side of that image, there's Item -714,
25 which was one of the rounds or projectiles that was recovered

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1 from the MIT shooting. On the right-hand side of the picture
2 is the test-fire from the Ruger that I compared it to.

3 Q. Okay. So this is actually a comparison of the
4 projectiles?

5 A. Yes, it is.

6 Q. Okay. Now, the projectiles are the two that are in the
7 police cruiser. Is that right?

8 A. Yes.

9 Q. In addition to the three from the autopsy. Is that right?

02:35 10 A. Yes.

11 Q. All right. As you look at 943-01, can you circle on the
12 screen kind of the area that you're talking about that you were
13 able to analyze, show the comparison?

14 A. Yes. This red box is the area I was looking at that
15 I -- one of the areas I was looking at that I made my
16 identification on.

17 Q. And as a trained examiner, what do you see in that
18 photograph and in that red box?

19 A. I see the striated -- you know, microscopic -- individual
02:35 20 markings left behind from the barrel of the Ruger imparted on
21 the projectiles. So I used them to make my identifications.

22 Q. So as you look at this under a microscope, how are you
23 able to make a finding or come to a conclusion that that's the
24 same weapon that fired the bullet?

25 A. If you see inside the circle or the red box, those lines

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1 that match up -- those are what we call striated toolmarks, and
2 they match up from the test-fire on the right to the evidence
3 on the left. And this is just one area that we're using as an
4 identification. If you were to then roll that projectile,
5 there would be several other areas that we would use to make
6 that identification.

7 Q. And we're actually just looking at one of the areas of --
8 or one of the photographs of the areas of comparison. Is that
9 right?

02:36 10 A. Yes, it is.

11 Q. There are several others in addition?

12 A. Yes, there are.

13 MR. MELLIN: If I could please have Exhibit 733 pulled
14 up, which is already in evidence.

15 Q. What is Exhibit 733?

16 A. That would be one of the projectiles from the autopsy of
17 the chief medical examiner.

18 Q. Now, when you are able to make a comparison -- when you
19 were making the comparison of this projectile to a test-fire
02:37 20 projectile, as we look at Exhibit 733, how were you making that
21 comparison?

22 A. Well, it's tough to see from this picture but it's
23 probably sitting on its base. So if you look at the base of
24 the projectile, we're looking for the rifling on that
25 projectile. If you look at those inner marks inside the

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1 rifling, those individual marks that we're comparing against
2 from the test-fires.

3 Q. And so even on something that is deformed like this
4 projectile that has gone through a skull, you're still able to
5 make those determinations?

6 A. Not every time but in this case I was able to.

7 Q. If I could have you please look at Exhibit 733 -- excuse
8 me -- 735.

9 Again, is this one of the projectiles that was recovered
02:38 10 from inside the skull of Sean Collier?

11 A. Yes, it was.

12 Q. All right. And even though it is deformed, you're still
13 able to make your conclusions?

14 A. Yes, I am.

15 Q. Okay. And then finally, 737: Is that another one of the
16 projectiles recovered from inside the skull of Officer Sean
17 Collier?

18 A. Yes, it is.

19 Q. And even though that one looks even more deformed than the
02:38 20 other, you're still able to make a determination?

21 A. Yes, I was.

22 Q. At times are you unable to make determinations?

23 A. Not on the projectiles from the MIT scene. All five were
24 identified back to the weapon that was recovered from
25 Watertown.

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1 Q. I'm sorry. I asked a really poor question. I was asking
2 in general, at times are you unable to make an identification
3 because there are not enough markings on a projectile?

4 A. Yes.

5 Q. But in this case you were able to identify all three of
6 these casings -- or projectiles?

7 A. Yes, I was.

8 Q. In addition to the weapon, the two weapons and the
9 casings, did you also recover live rounds at the scene?

02:39 10 A. Yes, I did.

11 Q. Okay. If I may take back most of that.

12 MR. MELLIN: And, your Honor, if I may approach with
13 Exhibit 935.

14 Q. Do you recognize Exhibit 935?

15 A. Yes, I do.

16 Q. What is that?

17 A. It's a box of Winchester 9 mm Luger caliber ammunition
18 that was recovered from the Laurel Street scene.

19 MR. MELLIN: I'd move into evidence Exhibit 935.

02:40 20 MR. WATKINS: No objection.

21 THE COURT: Okay.

22 (Government Exhibit No. 935 received into evidence.)

23 BY MR. MELLIN:

24 Q. Are there still live rounds in that box?

25 A. Yes, there are.

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1 Q. How many live rounds are still in the box?

2 A. There are four.

3 MR. MELLIN: If I could have the witness please look
4 at Exhibit 941. Actually, if I could have him look at Exhibit
5 866. I believe it's in evidence.

6 Q. Do you recognize Exhibit 866?

7 A. Yes, I do.

8 Q. And as you look -- is that a photograph of Watertown, on
9 Laurel Street?

02:41 10 A. Yes, it is.

11 Q. Okay. Is that from the crime scene search?

12 A. Yes, it is.

13 Q. And the box of ammunition that you have in front of you,
14 do you see that in this photograph?

15 A. No, I do not.

16 Q. All right. Do you remember seeing backpacks out there?

17 A. Yes, I do.

18 Q. If I blow that up, do you see the box that we're talking
19 about?

02:41 20 A. Yes, I do.

21 Q. Where do you see it?

22 A. The lower left-hand corner right by where Placard 109...

23 Q. Lieutenant Cahill, I'm not sure if I asked you, but the
24 projectiles that were recovered on the scene on Laurel Street,
25 were you able to tie those back to the 9 mm as well?

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1 A. Yes, I was.

2 Q. And those are the six to eight we were talking about?

3 A. Yes.

4 Q. And did you do a comparison of those as well?

5 A. Yes, I did.

6 MR. MELLIN: If I can have just the witness, please,
7 look at Exhibit 944.

8 Q. Do you recognize Exhibit 944-01?

9 A. Yes, I do.

02:42 10 Q. What are we looking at there?

11 A. It's a picture of one of my comparisons under the
12 microscope. On the left-hand side of the screen is the
13 test-fire from the recovered weapon, and on the right-hand side
14 of the screen, it's my Item 4-89, both 9 mm Luger caliber
15 discharged cartridge casings.

16 MR. MELLIN: Again, your Honor, I would ask to publish
17 it just as a chalk.

18 THE COURT: Okay.

19 BY MR. MELLIN:

02:43 20 Q. As 944-01 comes up, is this just one of a series of
21 microscopic photos that you took?

22 A. Yes, it is.

23 Q. Okay. Now, if you can please describe for the ladies and
24 gentlemen what it is you see in that.

25 A. On the screen you see a microscopic picture of what I was

1

1 looking through under the microscope. Again, on the left-hand
2 side it's a split screen, so if you see the line going straight
3 down the middle of the picture, on the left-hand side is the
4 test-fire I conducted from the 9 mm Ruger P95 I recovered from
5 the scene, and on the right-hand side is one of the discharged
6 cartridge casings, my Item No. 4-89, that was recovered from
7 the scene at Watertown.

8 Q. And similar to Exhibit 943, there's an area of agreement
9 that you have in a red box?

02:44 10 A. Yes. If you like, I can circle it or --

11 Q. Please.

12 A. (Witness complies.)

13 If you look inside the circle, there's a red box in there
14 which we call the "area of agreement." It's the individual
15 microscopic markings on that cartridge casing that we compared
16 one to the other that I was able to determine that that was
17 fired by the Ruger.

18 Q. And again, are there other areas of agreement in addition
19 just something like this?

02:44 20 A. Yes, there are.

21 Q. All right.

22 MR. MELLIN: With the Court's indulgence.

23 (Counsel confer off the record.)

24 Q. At one point you mentioned that the weapon recovered is a
25 Ruger 9 mm. Is that right?

1

1 A. Yes, it is.

2 Q. And then at another point you mentioned something called
3 "Luger." Do you know what that was about?

4 A. Yes.

5 Q. What was that?

6 A. Ruger is the manufacturer of the firearm; Luger is the
7 caliber designation of the weapon. So a Luger -- a 9 mm Luger
8 is the caliber designation developed by Ruger before World War
9 I as a certain weapon for the German Army.

02:45 10 Q. I may have failed to ask you this, but based on your
11 analysis of the scene at MIT as well as the recovery of the
12 projectiles from Officer Sean Collier, were you able to make a
13 determination that all five of those projectiles were fired by
14 that 9 mm Ruger?

15 A. Yes, I was.

16 Q. And based on your analyses of the evidence found at the
17 scene, were all 56 of the 9 mm shell casings tied to that exact
18 same 9 mm Ruger?

19 A. Yes, they were.

02:46 20 MR. MELLIN: Your Honor, I'd move into evidence
21 Exhibit 933.

22 MR. WATKINS: No objection.

23 THE COURT: Okay.

24 (Government Exhibit No. 933 received into evidence.)

25 MR. MELLIN: Thank you. Nothing further.

1

1

CROSS-EXAMINATION

2

BY MR. WATKINS:

3

Q. It's still good morning, Lieutenant.

4

A. Good morning, sir.

5

Q. I'm putting before you Exhibits 928, which is the Ruger,

6

931, which is the extended magazine, and then 934 is the pellet

7

gun?

8

A. Yes.

9

Q. Would you take out Item 931, which is the extended

02:47 10

magazine from the Ruger.

11

A. (Witness complies.)

12

Q. And just hold it up.

13

A. (Witness complies.)

14

Q. So you work in the Firearms Identification Section of the

15

Massachusetts State Police lab. Is that correct?

16

A. Yes.

17

Q. And there are other divisions and other laboratories

18

within the Massachusetts State Police?

19

A. Yes.

02:48 20

Q. Forensic Services Group, Firearms Identification Section,

21

a whole host of laboratories?

22

A. Yes.

23

Q. And when you collect evidence at the scene, for example,

24

the Ruger, the extended magazine and the pellet gun, you're not

25

the first one that analyzes something necessarily. Is that

1

1 correct?

2 A. That's correct.

3 Q. So in this case before you did any kind of analysis, those
4 items went to the fingerprint identification section?

5 A. Yes, it did.

6 Q. And all three of them were analyzed for fingerprints,
7 correct?

8 A. Correct.

9 Q. And reports came with those fingerprint results, right?

02:48 10 A. They generated reports but I never received them.

11 Q. But those reports follow along with the weapon as it goes
12 through the Massachusetts State Police system?

13 A. Yes, they generated it.

14 Q. And did you -- well, do you know whether the items were
15 compared to the fingerprints of Jahar Tsarnaev and Tamerlan
16 Tsarnaev?

17 A. I do not.

18 Q. But a report would have been generated in the ordinary
19 course?

02:49 20 A. Yes, they would have.

21 Q. Now, I want to put up in front of you what's been
22 previously admitted as Exhibit 775. Have you seen that map
23 before?

24 A. I'm not exactly sure of this one but I've seen diagrams of
25 the scene.

1

1 Q. And you recognize that to be a diagram of the Laurel and
2 Dexter area?

3 A. Yes.

4 Q. And this is the area from which you collected items on the
5 morning of April 19th?

6 A. Yes.

7 Q. And that was something done by you personally after other
8 folks had done other collection or other identification of
9 items there?

02:50 10 A. Yes, myself and other members of my unit.

11 Q. So we heard from -- for example, Trooper Tanguay was there
12 first, and then Trooper Dowd came in and did the GPS, and then
13 you came in. Is that --

14 A. When they were all done, yes, I recovered everything.

15 Q. And there was videotaping done and photographs being done,
16 right?

17 A. Yes.

18 Q. And there were several teams all around this area doing
19 similar work, right?

02:50 20 A. Yes.

21 Q. So just to be clear, the 9 mm cartridges you collected
22 were all from around this general area, right?

23 A. Yes. The majority, yes.

24 Q. Trooper Dowd will tell us precisely where they are, but as
25 a general matter they were up in this area of the Watertown

1

1 cruiser and the Civic, right?

2 A. Yes.

3 Q. And none were collected down in this area, which is the
4 actual intersection of Laurel and Dexter, right?

5 A. Correct.

6 Q. So you told us a total of 266 identifiable rounds shot
7 around that area?

8 A. Casings, yes.

9 Q. I'm sorry?

02:51 10 A. Discharged cartridge casings, yes.

11 Q. Discharged cartridge casings. There were projectiles --
12 some projectiles you were able to find also, correct?

13 A. Yes.

14 Q. And these would be both 9 mm projectiles and also law
15 enforcement projectiles, .40 caliber and .45 caliber, right?

16 A. Yes.

17 Q. And subtracting the 56 cartridges from the Ruger, that
18 leaves 210 cartridges unaccounted for outside of the Ruger, not
19 unaccounted for -- because you did account for all of them. Is
02:52 20 that correct?

21 A. Yes.

22 Q. You had access to every law enforcement weapon that was
23 fired at that scene on that morning, correct?

24 A. I believe so, yes.

25 Q. Obviously, if somebody fired and didn't report it --

1

1 A. I never found -- I never not had a cartridge casing match
2 back to a gun.

3 Q. Right. You matched every single one of them found down
4 there to one of those, right?

5 A. Yes.

6 Q. And every one of them, except for the 9 mm casings, were
7 to law enforcement weapons, right?

8 A. Yes.

9 Q. And Mr. Mellin was asking you about the different
02:53 10 calibers. The vast majority of the casings -- cartridge
11 casings you recovered were .40 caliber?

12 A. Yes.

13 Q. And that's understandable. That's kind of standard issue
14 for police departments. Many police departments use .40
15 caliber, right?

16 A. Yes.

17 Q. Some upgrade to .45 caliber?

18 A. Yes.

19 Q. But in this case, 176 of these cartridges were .40
02:53 20 caliber; only 18 were .45 caliber, right?

21 A. Yes.

22 Q. And again, these were all cartridges that you matched up
23 to law enforcement weapons, right?

24 A. Yes.

25 Q. There were also 16 rifle cartridges, right?

1

1 A. Yes.

2 Q. 5.56 mm, right?

3 A. Yes.

4 Q. So there was -- somebody down there actually was able to
5 get their rifle out and fire?

6 A. No, that scene was several blocks away. Those weren't
7 recovered at the Dexter and Laurel scene.

8 Q. That was four blocks away, on a kind of separate incident
9 of law enforcement, right?

02:54 10 A. Yes.

11 Q. So from the Dexter and Laurel scene, those .40 and .45
12 caliber, those were all collected, all law enforcement and all
13 at the scene, right?

14 A. Yes.

15 Q. And more specifically, looking at Exhibit 775, those
16 cartridges were found in this area, right?

17 A. A good number of them were, yes.

18 Q. I'm sorry?

19 A. A good number of them were. Not all of them.

02:54 20 Q. A good number. Well, some of them were found maybe a
21 little further over here to the right, which is where the
22 Watertown officers were shooting, right?

23 A. Correct.

24 Q. But there were quite a number found in these areas. Is
25 that right?

1

1 A. Yes.

2 Q. And because you had access to the law enforcement weapons
3 and you had access to who submitted those weapons, you got a
4 pretty good idea of who was shooting from where based on the
5 cartridges, right?

6 A. Yes.

7 Q. We don't know, because as a cartridge we don't know which
8 direction they're shooting, but you know generally where they
9 were standing when they were shooting, correct?

02:55 10 A. Yes.

11 Q. So, for example, taking this northeast corner here, you're
12 able to identify five different weapons that were firing from
13 that northeast corner. Is that correct?

14 A. Yes.

15 Q. A Watertown Police Department officer was firing from
16 there?

17 A. Yes.

18 Q. Four Boston Police Department officers were firing from
19 that northeast corner, right?

02:55 20 A. Yes.

21 Q. And over on this side we have three Boston Police
22 Department officers firing from that side, right?

23 A. Yes.

24 Q. And one Massachusetts state trooper firing, right?

25 A. Yeah, he was a little farther down the street but in that

1

1 general area.

2 Q. I'm sorry?

3 A. He was a little farther down the street, but, yes.

4 Q. Again, generally -- I mean, you can point to it if you --

5 A. He was farther down.

6 Q. Oh, I see. To the left there.

7 A. Yes.

8 Q. But he was in that general area there, right?

9 A. Yes.

02:56 10 Q. And down here also officers firing. There would be Dic
11 Donohue, from whom we heard from.

12 A. He was -- I don't believe Officer Donohue fired his
13 weapon.

14 Q. Officer -- a Cambridge Police Department officer and two
15 Watertown Police Department officers firing from that
16 direction?

17 A. Yes, sir.

18 Q. Now, you also were -- you were able to collect projectiles
19 from a Mercedes SUV?

02:57 20 A. Yes, we were.

21 Q. I'm putting before you what's been admitted as Exhibit
22 339. Is that the Mercedes SUV that you collected spent
23 projectiles from?

24 A. Yes.

25 Q. And showing it from another angle, which is Exhibit 3044,

1

1 that is the left side of it, correct?

2 A. Yes.

3 Q. And from inside of the Mercedes -- or embedded in the
4 Mercedes itself were 32 spent projectiles. Is that correct?

5 A. Yes.

6 Q. Let me go back again to -- oh, and again, were you able to
7 match these to law enforcement weapons?

8 A. No, I was not.

9 Q. Going back again, then, to Exhibit 775, when you were
02:58 10 collecting evidence you were aware that a vehicle had been
11 reported fleeing in that direction through this intersection,
12 correct?

13 A. Yes.

14 Q. And what you found embedded in the Mercedes was consistent
15 with that and consistent with where you knew officers to be,
16 right?

17 A. Yes.

18 Q. So to state the obvious, I guess, the officers were
19 shooting at the Mercedes as it was going by?

02:59 20 A. Correct.

21 Q. There were also bullets through the windshield that you
22 saw in that Mercedes, but there were holes in the side --
23 either side, correct?

24 A. Yes.

25 Q. So we've heard evidence about Officer Donohue being

1

1 injured in this -- or this vicinity.

2 A. Uh-huh. That vicinity.

3 MR. MELLIN: Your Honor, objection to this line of
4 questioning at this point. This is speculation. This is a
5 firearms' examiner who's talking about the casings that were
6 recovered and making identifications of the weapons.

7 THE COURT: Overruled. I'll allow it.

8 BY MR. WATKINS:

9 Q. So again, you've testified about officers having shot from
03:00 10 this direction, and we've heard about Dic Donohue being in this
11 area on this driveway, and the Mercedes fleeing in this
12 direction.

13 MR. MELLIN: Your Honor, objection as to where counsel
14 just says there's been testimony as to where Mr. Donohue was --
15 Officer Donohue was at the time. He has two different arrows,
16 there's two different locations.

17 THE COURT: No, I think...

18 MR. WATKINS: I've taken it off, your Honor.

19 THE COURT: All right.

03:00 20 BY MR. WATKINS:

21 Q. Four officers in that area -- sorry -- five officers in
22 that area shooting at a fleeing vehicle. Certainly if one of
23 them missed, you would expect to find a projectile in this area
24 here.

25 A. Is that a question?

1

1 Q. It is.

2 MR. MELLIN: Objection, your Honor. It's complete
3 speculation.

4 THE COURT: Yeah, I think it is. Sustained.

5 MR. WATKINS: I have nothing further.

6 REDIRECT EXAMINATION

7 BY MR. MELLIN:

8 Q. Lieutenant Cahill, are you always able to find the casings
9 at a crime scene?

03:01 10 A. No.

11 Q. Why is that?

12 A. They could be lost; a vehicle could drive through the
13 scene, get caught in the tire and leave the scene; people pick
14 them up as souvenirs sometimes.

15 Q. Right. So if a car is driving down Laurel Street, they
16 could run over one of these casings, and these casings become
17 embedded in the tire, correct?

18 A. Correct.

19 Q. All right. Now, we talked a little bit about bullets in a
03:01 20 windshield. Did you also look at bullets in another car and
21 into a windshield?

22 A. There were two Watertown cruisers that we --

23 Q. What did you determine about that?

24 A. That one of the 9 mm rounds from the weapon was recovered
25 from the Watertown cruiser.

1

1 Q. And when we're saying "one of the 9 mm rounds," we're
2 talking about the weapon that you recovered on the scene. Is
3 that right?

4 A. Yes.

5 Q. And you recovered the spent projectile inside that
6 Watertown police car, correct?

7 A. Yes.

8 Q. And it was shot through the windshield?

9 A. Yes.

03:02 10 Q. And it was tied back to that gun?

11 A. Yes, it was.

12 MR. MELLIN: Thank you. Nothing further.

13 MR. WATKINS: Nothing.

14 THE COURT: All right, Lieutenant. Thank you. You
15 may step down.

16 THE WITNESS: Thank you, your Honor.

17 (The witness is excused.)

18 MR. WEINREB: The United States calls Agent Matthew
19 Riportella.

03:03 20 MATTHEW RIPORTELLA, duly sworn

21 THE CLERK: Have a seat. State your name, spell your
22 last name for the record, keep your voice up and speak into the
23 mic.

24 THE WITNESS: Matthew Riportella, R-I-P-O-R-T-E-L-L-A.

25 DIRECT EXAMINATION

1

1 BY MR. WEINREB:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Where do you work?

5 A. At the FBI in Boston.

6 Q. How long have you worked there?

7 A. Approximately two and a half years.

8 Q. What's your current assignment there?

9 A. I'm on the FBI Boston Organized Crime Task Force.

03:04 10 Q. What kind of training have you received as an FBI agent?

11 A. I had 21 weeks of training at the FBI Academy in Quantico.

12 Q. Despite being assigned to the organized crime unit at the
13 FBI, did you participate in the Boston Marathon bombing
14 investigation in the weeks after it occurred?

15 A. I did.

16 Q. And in the course of that investigation, on April 24th of
17 2013, did you go to the Manchester firing range in New
18 Hampshire to obtain some records?

19 A. I did, but on a different date. April 23rd.

03:04 20 Q. I'm sorry. April 23rd.

21 And what is the Manchester firing range?

22 A. It is a gun supply store as well as a firing range that's
23 open to the public that they can practice their firearm skills.

24 Q. What does that mean? What's a firing range?

25 A. A range where you can go and have a target, and you can

1

1 shoot a gun at a target.

2 Q. Do you have to bring your own gun?

3 A. No, you do not; you can rent guns.

4 Q. Do they have a variety of guns that you can rent?

5 A. Yes, I believe they do.

6 Q. Do you have to bring your own ammo?

7 A. No.

8 Q. How do you shoot if you don't have ammo?

9 A. You can buy ammo from the place as well.

03:05 10 Q. And do they have the ammo necessary for the variety of
11 guns that they rent out?

12 A. Yes.

13 Q. When you got to the Manchester firing range, did you talk
14 to the owner?

15 A. I did.

16 Q. What was his name?

17 A. Jim McCloud.

18 Q. What, if anything, did you ask him to do?

19 A. I asked him if we could have permission to look through
03:05 20 video and paperwork that he had related to Dzhokhar and/or
21 Tamerlan Tsarnaev.

22 Q. And in response to that, did he give you some records?

23 A. He did.

24 MR. WEINREB: Mr. Bruemmer --

25 Q. Did you review those records in my office the other day?

1

1 A. Yes, I did.

2 Q. Did you also ask Mr. McCloud if there was surveillance
3 video?

4 A. I did.

5 Q. For that date and time?

6 A. Yes.

7 Q. And as a result of that request, did you obtain some
8 video?

9 A. Yes, I did.

03:06 10 Q. Did you also review that video in my office the other day?

11 A. Yes, I did.

12 Q. So the records are Exhibit 1164 and the video is Exhibit
13 1165. Were the records that you obtained, fair and accurate
14 copy -- the ones you viewed, were they fair and accurate copies
15 of the records that you obtained that day?

16 A. Yes, they were.

17 Q. And the video that you viewed, is that a fair and accurate
18 excerpt of the surveillance camera video that you obtained that
19 day?

03:06 20 A. Yes, it was.

21 MR. WEINREB: The government offers 1164 and 1165.

22 MR. WATKINS: No objection.

23 THE COURT: Okay.

24 (Government Exhibit Nos. 1164 and 1165 received into
25 evidence.)

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1 MR. WEINREB: Can we have 1164 on the screen, please.

2 BY MR. WEINREB:

3 Q. Do you see that?

4 A. Yes.

5 Q. I'm just going to wait for it to come up on the big
6 screen.

7 So is this one of the records you received?

8 A. Yes, it is.

9 Q. I'm going to enlarge the top portion of it. Actually,
03:07 10 this is a record, and stapled to the front there appears to be
11 a receipt?

12 A. Yes.

13 Q. All right.

14 MR. WEINREB: Can we have the next page of that
15 exhibit, please?

16 Q. So is this the same record but without the receipt on top?

17 A. Yes, that's correct.

18 Q. Let me -- so what does it say up here at the very top?
19 What kind of document is this?

03:07 20 A. This is the check-in card.

21 Q. And who's the customer?

22 A. Dzhokhar Tsarnaev.

23 Q. Does it give an address for him?

24 A. 410 Norfolk Street, Number 3, Cambridge, Massachusetts.

25 Q. And does it give a date of birth?

1

1 A. Dated 7/22/93.

2 Q. Phone number?

3 A. (857) 247-5112.

4 Q. So over here next to "firearm," what's the description
5 that's given here?

6 A. A Glock 17.

7 Q. And what's the next one?

8 A. The second one I originally thought said Glock 39, but now
9 I actually believe it's a Glock 34. That's a four, not a nine.

03:08 10 Q. Are you familiar with what is the caliber of those two
11 weapons?

12 A. I am.

13 Q. What are they?

14 A. 9 mm.

15 Q. Does this indicate the rental of two 9 mm weapons?

16 A. Yes.

17 Q. And what's next to the word "ammunition"? What's
18 indicated here?

19 A. 9 mm.

03:09 20 Q. And what do these marks mean?

21 A. Four dashes, which I was told meant four boxes of 9 mm
22 ammo.

23 Q. Do you see the boxes that say "in" and "out"?

24 A. Yes.

25 Q. What do they indicate?

1

1 A. The time in the range and then the time out of the range.

2 Q. So roughly an hour?

3 A. Roughly an hour, yes.

4 Q. The grand total cost for renting these two weapons and
5 buying the four boxes of ammunition?

6 A. \$170.75.

7 MR. WEINREB: Can we have the next page?

8 Q. So this actually --

9 MR. WEINREB: I'm sorry, can you go back to the...

03:10 10 Q. So this says "firearms experience," "range safety" and
11 "release"?

12 A. Yes.

13 Q. And here, the person is asked to check certain boxes?

14 A. That's correct.

15 Q. Okay. What did Dzhokhar Tsarnaev say his experience was
16 with a handgun?

17 A. Intermediate.

18 Q. And in response to the question of whether he had a
19 history of mental illness, what did he say?

03:10 20 A. No.

21 Q. And when he was asked if he was a user or addicted to
22 marijuana or any other drug, what did he say?

23 A. No.

24 Q. And that's dated and then there's a signature?

25 A. That's correct.

1

1 MR. WEINREB: Can we have the next page.

2 Q. Is this the same kind of check-in card we saw before?

3 A. Yes.

4 Q. And it gives the name of Tamerlan Tsarnaev?

5 A. That's correct.

6 Q. And the same address?

7 A. That's correct.

8 Q. And what's the phone number given?

9 A. (857) 928-4634.

03:11 10 Q. But he didn't rent or buy anything or pay for anything?

11 A. Based off of that, no.

12 MR. WEINREB: Can we have the next page, please?

13 Q. So when it came to his experience with a handgun, what did
14 he say?

15 A. That he was an intermediate.

16 Q. The same as his brother?

17 A. Correct.

18 Q. And when asked whether he had any history of mental
19 illness, he also said no?

03:12 20 A. That's correct.

21 MR. WEINREB: Can we now have Exhibit 1165, please.

22 Q. Do you recognize what's in this frame that I've frozen
23 here?

24 A. I do.

25 Q. What is it?

1

1 A. It's part of the security video that we obtained from the
2 Manchester firing range.

3 Q. You actually went there?

4 A. I did.

5 Q. So is this what you see outside the door of the Manchester
6 firing range?

7 A. Yes.

8 (Video played.)

9 Q. Is that the door?

03:13 10 A. Yes.

11 Q. This indicates March 20th at -- it's clipped off the
12 right-hand side of the screen, but a time around two o'clock.
13 Is that during the -- is that at one end of the period when the
14 receipt indicated that Dzhokhar Tsarnaev and his brother had
15 been in the range practicing?

16 A. Yes, shortly after.

17 Q. All right. I'm going to finish running it at this size
18 and then I think we're going to make it smaller and I'll run it
19 again. There we go.

03:14 20 (Video played.)

21 Q. Have you seen those two individuals before, or images of
22 them before?

23 A. I've seen images of them before.

24 Q. Okay. And who's the one on the left?

25 A. Would be Dzhokhar Tsarnaev.

1

1 Q. And the one on the right?

2 A. I believe that to be Tamerlan Tsarnaev.

3 MR. WEINREB: I have no further questions.

4 MR. WATKINS: No questions.

5 THE COURT: No questions? All right, sir. Thank you.

6 You may step down.

7 THE WITNESS: Thank you.

8 (The witness is excused.)

9 MR. WEINREB: The United States calls Timothy Dowd.

03:16 10 TIMOTHY E. DOWD, duly sworn

11 THE CLERK: State your name, spell your last name for
12 the record, keep your voice up and speak into the mic.

13 THE WITNESS: Timothy E. Dowd, D-O-W-D.

14 DIRECT EXAMINATION

15 BY MR. WEINREB:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Where do you work?

19 A. I work for the Massachusetts State Police.

03:16 20 Q. How long have you worked there?

21 A. Twenty years.

22 Q. What is your official title?

23 A. Sergeant.

24 Q. What are your job responsibilities?

25 A. I'm currently assigned to the Collision Analysis and

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1 Reconstruction Section. I'm assigned to the northeastern part
2 of the state where I'm a supervisor of seven troopers. The
3 Collision Analysis and Reconstruction Section responds to fatal
4 and serious-injury motor vehicle collisions. In addition to
5 that, we respond to crime scenes where we use specialized
6 equipment to document the evidence at the crime scenes.

7 Q. Would you mind pulling that microphone a little closer to
8 your mouth so that both the court reporter and everyone else
9 can hear you.

03:17 10 What kind of special equipment do you use to document
11 crime scenes?

12 A. We use Total Station equipment, and we also use GPS
13 equipment which is essentially the Total Station that is run
14 off of GPS satellites.

15 Q. What does it mean to document a crime scene using those
16 kinds of devices?

17 A. When I respond to crime scenes, I am typically led around
18 by a member of the crime scene section and they identify
19 different pieces of evidence and they ask me to document it.

03:18 20 In this case, using the GPS equipment, the equipment consists
21 of a pole with a GPS receiver and also a data collector
22 attached to it. I essentially put the pole on the piece of
23 evidence and record each piece of evidence in the data
24 recorder.

25 Q. What does it mean to record a piece of evidence in a data

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1 recorder?

2 A. So using the GPS equipment, our GPS equipment -- like I
3 said, it runs off satellites, and it also attaches to something
4 called the CORS network, which is a network of 18 bay stations
5 throughout the state. When I go on a piece of evidence and I
6 hit the button, it essentially tells it to collect the data.
7 It takes a reading off of the satellites and it also, via
8 Internet, connects to one of the CORS network stations -- in
9 this case it was the Woburn station -- which gives me an
03:19 10 accurate reading to 3 centimeters on each piece of evidence.

11 Q. So the bottom line is that it records the GPS coordinates
12 of that item within 3 centimeters?

13 A. Yes.

14 Q. What kind of training have you had?

15 A. So as far as forensic mapping, which is another term for
16 recording that evidence, I've been in the Collision Analysis
17 Reconstruction Section for 12 years. I've been using the Total
18 Station equipment for the 12 years. I've been trained in the
19 Topcon Total Station, which is the Total Station instrument. I
03:19 20 received AutoCAD training back in 2002 when I entered the
21 section.

22 Since acquiring the GPS equipment, which was 2012, I was
23 trained by Leica, which is the company that makes the
24 equipment; I was trained by Massachusetts Department of
25 Transportation, which they are the ones who set up the entire

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1 CORS network. So I was trained in utilizing the CORS network
2 with the equipment. Additionally, I was trained by Main
3 Technical Source on two different occasions. They're the
4 company who sold that company to the state police.

5 Q. You used the term "AutoCAD" in there as part of your
6 training. What does "AutoCAD" refer to?

7 A. So AutoCAD is a designer program that we use to create the
8 diagram.

9 Q. So the GPS coordinates of various items, that information
03:20 10 is most useful if it's plotted on a diagram?

11 A. Yes.

12 Q. Of a location?

13 A. Yes.

14 Q. And the AutoCAD program is what enables you to draw the
15 diagram and plot the points on it?

16 A. That's correct.

17 Q. How many accident scenes have you processed, the fatal and
18 other serious accidents?

19 A. Approximately 400.

03:21 20 Q. How many crime scenes have you processed?

21 A. I'd say between 50 and 75.

22 Q. Did you help process the Laurel Street crime scene in
23 Watertown?

24 A. I did.

25 Q. When did you arrive on Laurel Street?

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1 A. At approximately 12 noon on April 19th.

2 Q. When did you begin processing the scene?

3 A. Shortly afterwards. I couldn't give an exact time. I
4 would say approximately an hour after arriving.

5 Q. At the time you arrived, what was going on there?

6 A. There were evidence technicians collecting evidence and
7 identifying evidence throughout the scene.

8 Q. Were they already picking it up off the street and putting
9 it in bags?

03:21 10 A. Some of it was picked up. I believe most of it that I
11 identified was picked up, and in its place were placards.

12 Q. What did you do when you got there?

13 A. So when I got there, we met with Detective Lieutenant
14 Robin Fabry, who's in charge of our crime scene section. She
15 assigned Trooper Colleen Tanguay to essentially walk through
16 the crime scene with me and identify which evidence they wanted
17 recorded.

18 Q. Did you take GPS readings of all the items of evidence
19 they wanted recorded?

03:22 20 A. Yes.

21 Q. Were there other items on the scene that you didn't take
22 GPS readings of?

23 A. Yes.

24 Q. All right. Do you know which ones you focused on for the
25 GPS readings?

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1 A. So I focused on the pieces of evidence that Trooper
2 Tanguay identified for me. Anything that she did not identify,
3 I didn't record.

4 Q. After you got all that evidence -- or when you say you
5 took the GPS readings, what did you do with that data after you
6 got it?

7 A. So once I collected the data, it's stored in what's called
8 a field book. The data collector is downloaded, so that field
9 book data comes out of that and into my computer.

03:23 10 Additionally, in order to create my diagram, we use
11 georeferenced orthophotos, which are essentially aerial
12 photographs with georeference data embedded within them.

13 MR. WEINREB: Mr. Bruemmer, may I have Exhibit 946 for
14 the witness, please.

15 Q. Do you recognize that diagram?

16 A. Yes.

17 Q. What is it?

18 A. That is a part of the diagram that I created utilizing the
19 GPS data of Laurel and Dexter.

03:24 20 Q. There are a bunch of purple-colored images and placards on
21 it. What are those? What do those represent?

22 A. All of the markers that were colored magenta represent
23 ballistics evidence from the Ruger weapon.

24 Q. Is that an accurate diagram?

25 A. Yes.

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1 MR. WEINREB: The government offers 946.

2 MR. WATKINS: No objection.

3 THE COURT: Okay.

4 (Government Exhibit No. 946 received into evidence.)

5 BY MR. WEINREB:

6 Q. I want to begin by asking you about the houses, the trees,
7 the street, the length of it, the shape of it, that's all
8 pictured on this diagram. How did you get that information?

9 A. So once we finish at the scene, the next step is to bring
03:25 10 in, as I mentioned a few seconds ago, an orthoimage.

11 Massachusetts Department of Transportation contracts with a
12 company that does flyovers. And doing the flyovers, they use
13 an instrument that records photographs and it also records
14 geodata.

15 So I go on to the Mass. Department of Transportation
16 website. They have a certain website called "Oliver." Within
17 that website I can locate the area that I want to focus on,
18 download that image. And the first thing I do is import that
19 image into AutoCAD.

03:25 20 Q. So that's basically an overhead photograph of the area in
21 question?

22 A. Yes.

23 Q. Please continue.

24 A. So that photo serves as basically a reference layer to my
25 diagram. I then import all the points that I took that were

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1 collected at that scene, and those points fall on the image
2 where they would be on the actual roadway. So using that
3 image, the houses were drawn onto this diagram, the edges of
4 the road, the sidewalks, the things that would basically act as
5 more or less a canvas for my diagram.

6 Q. So this is a diagram version of an overhead photograph of
7 the area?

8 A. Yes.

9 Q. What about the magenta placards that are pictured here;
03:27 10 what do they represent?

11 A. Those were collected with the GPS equipment at the scene.

12 Q. All right. You said earlier that they represent a Ruger
13 ballistic evidence?

14 A. Yes.

15 Q. So this is only shell casings and projectiles from the
16 Ruger that was recovered from Laurel Street?

17 A. In this diagram, yes.

18 Q. In this. In other words, the magenta ones are just the
19 Ruger?

03:27 20 A. Correct.

21 Q. And by the way, these magenta placards, do they actually
22 have numbers on them?

23 A. They do.

24 Q. Those are the actual numbers that were on the placards?

25 A. Yes.

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1 MR. WEINREB: Go back up.

2 Q. So looking all the way over here, for example, that's a
3 ballistics item associated with the Ruger?

4 A. Yes.

5 Q. Okay. Same thing over here and over here?

6 A. Yes.

7 MR. WEINREB: Can we have Exhibit 945 -- no,
8 actually --

9 So, your Honor, if we could move to the ELMO here.

03:28 10 THE COURT: Is this something that's in or --

11 MR. WEINREB: No. I'll show it to the witness.

12 BY MR. WEINREB:

13 Q. So this is Exhibit 945 for identification. Do you
14 recognize that?

15 A. Yes.

16 Q. What is that?

17 A. That's the diagram of the scene at Laurel and Dexter, and
18 it has the explosive evidence as well as the ballistics
19 evidence that was collected.

03:29 20 Q. Is this an accurate diagram to the best of your knowledge?

21 A. Yes.

22 MR. WEINREB: The government would offer 945.

23 MR. WATKINS: No objection.

24 THE COURT: Okay.

25 (Government Exhibit No. 945 received into evidence.)

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1 (Pause.)

2 THE COURT: It's not working, I guess is the technical
3 term.

4 MR. WEINREB: It's on the screen on the ELMO.

5 MR. CHAKRAVARTY: Your Honor, it's on the screen but
6 perhaps it's not on the right --

7 THE COURT: No.

8 MR. WEINREB: We're seeing it on the screen here.

9 THE COURT: You are, huh?

03:30 10 MR. CHAKRAVARTY: And the screen isn't moving.

11 THE COURT: You're getting the same thing I get,
12 right? Are you seeing the image on your monitors?

13 MR. WEINREB: We're not seeing it on the monitors but
14 we're seeing it on the screen on the ELMO, and the monitor is
15 not showing what the ELMO is showing.

16 THE COURT: Right. That accurately describes the
17 problem.

18 (Laughter.)

19 MR. WEINREB: Okay. Then I guess I'll just publish it
03:31 20 to the jury by passing it along to them, if that's acceptable.

21 THE COURT: Fine.

22 (Exhibit 945 is published to the jury.)

23 BY MR. WEINREB:

24 Q. So this diagram has both the -- actually, I have some more
25 copies of it --

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1 (Pause.)

2 Q. So this diagram, in addition to the magenta placards, has
3 placards of other colors as well, correct?

4 A. Yes, correct.

5 Q. And those, you said, represent items of explosives
6 evidence that were recovered on the scene?

7 A. Correct.

8 THE COURT: Is that a second copy of the same thing?

9 MR. WEINREB: They're all the same thing.

03:32 10 THE COURT: Maybe one could go to the back? Oh, there
11 are multiples? Never mind.

12 (Pause.)

13 MR. WEINREB: May I have Exhibit 1563 for the witness,
14 please?

15 BY MR. WEINREB:

16 Q. So I asked you about how the -- I asked you about how the
17 houses and the streets and so on, how you diagramed those, and
18 you gave us the answer to that, and I asked you about how the
19 ballistics evidence was marked, you testified about that,
03:33 20 through the GPS device.

21 Now I want to ask you about the cars that we see located
22 on the street. How did you -- are those the cars that were
23 actually there on that date when you were mapping the scene?

24 A. Are you asking about the diagram in front of me here?

25 Q. I am.

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1 A. Okay. Yes.

2 Q. How did you determine the location of those -- how did you
3 determine where to put them on your diagram?

4 A. So when we were mapping the evidence at the scene,
5 we -- it was sort of a team process. Trooper Michael George,
6 who's also assigned to the car section, was walking with me.
7 Some of the cars that weren't identified as actually pieces of
8 evidence were documented in a field sketch which is on the
9 monitor now. He documented the plates on each car and he
03:34 10 provided me with listings on each car so that I would know the
11 make and type of the car. And then they were placed sort of by
12 looking at the field sketch, not by actual points that were
13 recorded at the scene.

14 Q. So you just said that what's on the screen right here is
15 the field sketch that was made that day?

16 A. So the scene was much larger than this. There's several
17 pages of the field sketch, but this is one of the pages of the
18 field sketch, yes.

19 MR. WEINREB: The government offers 1563.

03:35 20 MR. WATKINS: No objection.

21 (Government Exhibit No. 1563 received into evidence.)

22 BY MR. WEINREB:

23 Q. So just so we get oriented, there's a -- when you were on
24 the scene, did you notice a Honda Civic that was in the middle
25 of the street?

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1 A. Yes.

2 Q. And is that the car I've circled right here?

3 A. Yes.

4 Q. In the very middle of the diagram?

5 A. Yes.

6 Q. And then there was a cruiser that had come to a stop by
7 essentially crashing into another car?

8 A. Correct.

9 Q. And that's this right here, correct?

03:35 10 A. Yes.

11 Q. And now I've circled the other horizontal vehicle at the
12 end of a driveway right above where the Honda is. And then
13 there are several cars parked in the driveway there?

14 A. That's correct.

15 Q. All right. And did you notice that one of them had
16 a -- the bottom of a pressure cooker embedded in its side?

17 A. Yes.

18 Q. All right. And is that this car right here, the one with
19 the number 1 on it?

03:36 20 A. Correct.

21 MR. WEINREB: Can we go back to Exhibit
22 946 -- actually, can you put 946 and this one side by side?
23 Okay.

24 Q. Okay. So looking at 946 on the right and the sketch on
25 the left, on the right, on 946, it appears as if in the

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1 driveway the two cars closest to the sidewalk are
2 roughly -- they're parked the same distance into the driveway;
3 in other words, the rears of those cars would more or less line
4 up in your diagram, correct?

5 A. Correct.

6 Q. All right. But on the sketch that's not the case. Is
7 that right?

8 A. Correct.

9 Q. Okay. On the sketch, the car on the left is further up.
03:37 10 Is that right?

11 A. Yes.

12 Q. Okay. When you created this diagram on the right, did you
13 believe it was important the precise placement of cars in a
14 driveway?

15 A. No; I was more concerned with just placing the cars so
16 that it would indicate that there were cars in that driveway.

17 Q. But based on your memory as well as on photographs of the
18 scene that you have reviewed, which is the more accurate
19 depiction of where the cars in the driveway were?

03:37 20 A. The field sketch.

21 MR. WEINREB: Can I have Exhibit 1559, please. And
22 this should just be for the witness for a moment.

23 Q. Is this a fair and accurate photo of the scene that was
24 taken that day?

25 A. Yes.

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1 MR. WEINREB: The government offers 1559.

2 MR. WATKINS: No objection.

3 (Government Exhibit No. 1559 received into evidence.)

4 BY MR. WEINREB:

5 Q. So this is looking down Laurel Street towards the
6 direction where the Honda and the Mercedes were?

7 A. Correct.

8 Q. In fact, you see the Honda?

9 A. Yes.

03:38 10 Q. Can you circle that?

11 A. Can I circle it?

12 Q. Yes. Just using the pad of your finger, you can just
13 press hard on the screen and you'll be able to draw a circle on
14 it.

15 A. (Witness complies.)

16 Q. Okay. So that's one Honda. Let me ask you about the
17 Honda that's in the middle of the street.

18 A. (Witness indicates.)

19 Q. All right. So you've circled the Honda that's sort of
03:39 20 near the right-hand side of the photo.

21 And then do you see the cruiser that essentially crashed?

22 A. Yes.

23 Q. Can you circle that?

24 A. (Witness complies.)

25 Q. All right. I'm going to erase those now.

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1 Do you see this mark right here in the middle of the
2 street?

3 A. I do.

4 Q. I've circled a black mark and -- essentially in the center
5 of the picture. Do you know what that is?

6 A. I do.

7 Q. What is it?

8 A. It was sort of a divot out of the road with some black
9 soot and -- well, that's essentially what it was.

03:39 10 Q. Okay. Is that the seat of an explosion?

11 A. Yes.

12 Q. And then can you circle the car that had the pressure
13 cooker embedded in its side?

14 A. (Witness complies.)

15 Q. Okay. That was also a Honda?

16 A. Yes.

17 Q. So based on this photo and on your own memories of the
18 scene, is there a direct line from the seat of the blast right
19 to that car in between the cruiser on the right and the car
03:40 20 parked on the left-hand side of the driveway?

21 A. Yes, there is.

22 Q. All right. Was there ample room for the --

23 MR. WATKINS: Objection. Leading here.

24 MR. WEINREB: Okay.

25 BY MR. WEINREB:

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1 Q. Was there or was there not in your -- based on your
2 observation, room for a pressure cooker to fit in between those
3 two cars and embed itself in the side of the Honda?

4 A. There was.

5 MR. WEINREB: No further questions.

6 CROSS-EXAMINATION

7 BY MR. WATKINS:

8 Q. Good afternoon.

9 A. Good afternoon.

03:41 10 Q. So you created not only the maps we saw, 945 and 946, but
11 a number of aerial diagrams for this case?

12 A. Yes.

13 Q. Showing you Exhibit 775, is that one of the maps that you
14 created for purposes of this case?

15 A. Yes, it is.

16 Q. And just to be clear, we are talking about this section
17 that's here, where the cars are inaccurately drawn on there?

18 A. Correct.

19 Q. And that's because you didn't take the GPS right at the
03:42 20 tires as you did for other vehicles?

21 A. Correct.

22 Q. But aside from that inaccuracy, this is your map that you
23 drew?

24 A. It is, yes.

25 Q. Not only did you go to the cars and the ballistic evidence

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1 that we saw on 945 and 946, you marked all kinds of ballistic
2 evidence all over that scene, correct?

3 A. Yes.

4 Q. Did you also mark ballistic evidence for a few blocks away
5 from another incident?

6 A. Where are you --

7 Q. Down on Adams Street in Watertown. Did you go down there
8 also?

9 A. I may have.

03:43 10 Q. All right. But in any case, you marked all kinds of
11 different evidence here at the scene, including around Laurel
12 and Dexter, right?

13 A. Yes.

14 Q. You created those maps, 945 and 946, about where the Ruger
15 cartridges were and the explosive materials were. Did you
16 create a map of where law enforcement ballistic evidence was
17 found?

18 A. No.

19 Q. And it's fair to say that the maps you did create were at
03:43 20 the request of the U.S. Attorney's Office in this case?

21 A. So I created a diagram initially that had all the
22 evidence. It was further broken down from that point.

23 Q. Oh, I see. So there was actually a diagram at one point
24 of all of the evidence there?

25 A. I believe there were 448 pieces of evidence collected --

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1 or not pieces of evidence, rather, points recorded in total.

2 Q. And you -- points -- so it wasn't just ballistic evidence,
3 it was cars, as you did other things that people thought were
4 important, correct?

5 A. Yes, sir.

6 Q. And there was a map that included all of these, one of
7 these diagrams that you created, of all of that. Is that
8 correct?

9 A. Yes.

03:44 10 Q. Did you provide that to the U.S. Attorney's Office also?

11 A. Yes.

12 Q. So that other map that you have would have documented
13 evidence in this intersection of Laurel and Dexter, right?

14 A. Yes.

15 Q. And there were many, many cartridge casings and other
16 items of interest in that intersection. Is that correct?

17 A. As I explained before, I pretty much document the
18 placards. I'm not sure what the placards are. You could tell
19 me Placard 452, that's what I record it as.

03:45 20 Q. So there were many, many placards down around this area
21 that you documented?

22 A. Well, throughout the entire scene. I can't say for that
23 corner how many were there.

24 Q. Turning to Laurel and Dexter specifically, there were
25 many, many placards in that area that you took measurements of?

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1 A. Yes.

2 Q. Did you also take measurements from here about where Dic
3 Donohue was injured?

4 MR. WEINREB: Objection, your Honor.

5 THE COURT: Sustained.

6 MR. WATKINS: I'm sorry?

7 THE COURT: Sustained.

8 MR. WATKINS: I'm not understanding the --

9 THE COURT: Relevance.

03:45 10 MR. WATKINS: -- basis.

11 THE COURT: Relevance.

12 MR. WEINREB: Relevance and stating facts that haven't
13 been elicited from this witness or that he hasn't testified to.

14 THE COURT: All right. I think relevance is enough.

15 BY MR. WATKINS:

16 Q. You have created -- well, let me go back. You talked
17 about the AutoCAD program and how it gets material from aerial
18 photos and georeferences, things of that nature?

19 A. Yes.

03:46 20 Q. Does the AutoCAD also create this green and orange and
21 gray map that we see before us?

22 A. No.

23 Q. That is something that you create?

24 A. Yes.

25 Q. Turning now to this specific location, I see you've

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1 written "144 Dexter Avenue" on this building here. Is that
2 correct?

3 A. Yes.

4 Q. And what appears to be two driveways going out into the
5 street on Dexter Avenue. Is that accurate?

6 A. I believe one of them was a walkway, but yes.

7 Q. Okay. So this was actually a driveway here, and that's
8 the way you created it?

9 A. Yes.

03:47 10 MR. WATKINS: Is Exhibit 771 in evidence yet? I
11 believe it is.

12 THE CLERK: Yes, it is.

13 BY MR. WATKINS:

14 Q. I'm going to show you Exhibit 771. That's the actual
15 aerial photograph of this area -- I'm sorry about that -- of
16 the Laurel and Dexter area, amongst other things, which I'm
17 showing here. Do you see that?

18 A. I do, yes.

19 Q. And do you see where it's marked "144"?

03:48 20 A. Yes.

21 Q. Based on that diagram you saw, what you see here, is that
22 144 Dexter Avenue?

23 A. (No verbal response.)

24 Q. And can you point out where that driveway is that you put
25 on your map?

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1 A. I can't see it with the shadows. It looks like it's
2 possibly above the "144," but it's hard to see.

3 Q. I'm sorry?

4 A. It's hard to see in this image that you're showing me.

5 Q. Let's try this, then. I'm going to put this over here for
6 now.

7 MR. WATKINS: And if I could have now the monitor just
8 go to the witness. Let me get that one bigger too.

9 Q. Is this a map also of that same scene?

03:49 10 A. Yes.

11 Q. Now, you're familiar with Google Earth?

12 A. I am.

13 Q. And Google Earth is indeed a program developed by Google
14 that relies on global positioning satellites, aerial photos and
15 georeferences quite like you rely on for the AutoCAD, right?

16 A. Similarly, yes.

17 Q. And so this picture, does that accurately diagram the same
18 scene that we saw in 771?

19 MR. WEINREB: I object to this on relevance grounds.

03:50 20 THE COURT: Sustained.

21 MR. WATKINS: Your Honor, perhaps we could be seen
22 quickly at sidebar?

23 THE COURT: Okay.

24 (Discussion at sidebar and out of the hearing of the
25 jury:)

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1 MR. WATKINS: Judge, the issue is the government has
2 opened -- promised the jury that a stray bullet was -- caused
3 the injury of Dic Donohue. One of the -- the placement of one
4 of the officers and particularly this driveway seems to suggest
5 that -- I believe to the jury -- that one of Tamerlan
6 Tsarnaev's bullets -- or one of the bullets from the end of the
7 street could have caused that. I do not believe that's
8 factually accurate.

9 While the government has put this into play and made
03:51 10 it unclear, I think there is a lot of relevance to where that
11 driveway actually is.

12 MR. WEINREB: Well, even if that were so, it's way
13 beyond the scope of the direct. This witness simply took GPS
14 readings of bullets and evidence on the street. If they want
15 to put on in their case evidence of who shot the officer, then
16 we can address the relevance, but it's not appropriate to start
17 putting in Google Earth and asking him to authenticate that
18 when he can't possibly do it. He has no personal knowledge of
19 what the scene looks like from the air.

03:51 20 MR. WATKINS: He identified just now --

21 THE COURT: Well, I guess the question is: Is this an
22 issue in the case, whether the shooting of Donohue was the
23 defendant or the deceased brother?

24 MR. WEINREB: The government has no information
25 definitely who or how -- who shot Dic Donohue.

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1 THE COURT: Right. So there's no -- any conclusion on
2 that would be speculation.

3 MR. WEINREB: I believe so, yes.

4 THE COURT: So it shouldn't be in the case on either
5 side.

6 MR. WEINREB: We're not going to argue that the
7 defendant or his brother shot Officer Donohue because we can't
8 say.

9 MR. WATKINS: It's already in because he said a stray
03:52 10 bullet right in the openings. If we stop now, the jury is
11 allowed to draw whatever speculation they do -- they want. It
12 needs to be made clear. The government should stipulate --

13 MR. WEINREB: I don't think the government in the
14 opening said a stray bullet hit Dic Donohue. Dic Donohue got
15 shot. Obviously, a bullet hit him. We did not say either one
16 of the brothers shot Dic Donohue. We didn't suggest it. All I
17 said in my opening statement was a stray bullet hit Dic
18 Donohue. That's the opposite of arguing the defendant or his
19 brother was the one who shot him.

03:53 20 MR. MELLIN: And, your Honor, one of the witnesses
21 testified they did not recover the bullet from Dic Donohue so
22 no one will be able to say this one or that one fired this
23 shot. So it's all speculation.

24 MR. WATKINS: I do not intend to say specific -- I
25 need to rule out Tamerlan Tsarnaev's gun. It's physically

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1 impossible, I believe. And if I were allowed to go through
2 this --

3 THE COURT: Well, you have evidence to that effect --
4 that the gun had been abandoned -- from one of the officers.
5 It hit him in the arm.

6 MR. WATKINS: I do. But on the basis of the evidence
7 so far, I do believe a juror could say as he was shooting down
8 there, one of those stray bullets hit Dic Donohue. And if the
9 juror -- if some juror could say that, I think we have the
03:53 10 ability to react to that.

11 THE COURT: No, I don't think it's a big-enough issue.
12 Don't worry about it. So...

13 MR. WATKINS: I'm sorry?

14 THE COURT: No, I don't think it's -- I don't think
15 it's relevant.

16 MR. WATKINS: Judge, the whole testimony will take
17 about five minutes. Perhaps we could do a voir dire of it now
18 that we've reached one o'clock. I can go through and show the
19 Court, because I think there's extreme relevance here. If the
03:54 20 government, as they say, has no evidence that Tamerlan
21 Tsarnaev -- it might have been Tamerlan Tsarnaev, it might have
22 been somebody else. They simply -- it's not true. I mean,
23 that's what they want to argue, that's what they want the jury
24 to believe.

25 THE COURT: Well, no, they haven't gotten to argument.

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1 I'm not going to -- they will be able to argue that.

2 MR. WATKINS: But, your Honor, what if they say a
3 stray bullet -- if they continue to say a stray bullet hit
4 Mr. Tsarnaev [sic], a juror sitting there could believe
5 wrongly, factually wrongly, that --

6 THE COURT: It's not related to any of the actual
7 offenses, is it?

8 MR. WATKINS: An actual defense?

9 THE COURT: Offense. Any of the charged offenses?

03:54 10 MR. WATKINS: Yes, it does. He is charged with Dic
11 Donohue being injured as a result of fleeing.

12 THE COURT: Okay.

13 MR. WATKINS: As you'll recall, the defense -- we do
14 have a defense on that, that there was no intentionality by
15 Mr. Tsarnaev to cause injury to Mr. Donohue.

16 MR. WEINREB: There's nothing in the indictment that
17 charges either --

18 THE COURT: So the injury is derivative of the general
19 actions?

03:55 20 MR. WEINREB: Right. That but for the actions of the
21 Tsarnaev brothers --

22 THE COURT: Which would include getting shot by a
23 police officer.

24 MR. WEINREB: That's correct.

25 MR. WATKINS: But they've made it an issue in this

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1 case.

2 THE COURT: Yeah. No, I don't see it. So that being
3 the case, do you have --

4 MR. WATKINS: Let me just take a look at my notes. I
5 don't think I have anything else.

6 THE COURT: All right.

7 (In open court:)

8 MR. WATKINS: Just a very quick question here. A
9 couple of questions.

03:56 10 THE COURT: Okay.

11 BY MR. WATKINS:

12 Q. I'm showing you 771 again, and I'm going to highlight this
13 block -- or this portion of the picture, Laurel and Dexter
14 Street. Can you point out where 144 Dexter Avenue is by
15 tapping next to it?

16 MR. WEINREB: Your Honor, I object again. There's no
17 relevance.

18 THE COURT: Well, go ahead. You could do that.

19 BY MR. WATKINS:

03:56 20 Q. Just tap on 144.

21 A. (Witness complies.)

22 Q. Can you tap on 61 Laurel Street, in front -- in the street
23 of 61 Laurel Street?

24 A. (Witness complies.)

25 MR. WATKINS: That's all I have, your Honor.

1

1 THE COURT: Anything else?

2 MR. WEINREB: No, your Honor.

3 THE COURT: All right.

4 All right, sir. You may step down. Thank you.

5 THE WITNESS: Thank you.

6 (The witness is excused.)

7 THE COURT: And we will take the lunch recess.

8 THE CLERK: All rise for the Court and the jury. The
9 Court will take the lunch recess.

03:57 10 (The Court and jury exit the courtroom and there is a
11 recess in the proceedings at 1:05 p.m.).

12 (The Court and jury entered the courtroom at 2:11 p.m.)

13 MR. WEINREB: Good afternoon, your Honor. The United
14 States calls Christopher Donahue.

15 CHRISTOPHER DONAHUE, Sworn

16 THE CLERK: Have a seat. State your name. Spell your
17 last name for the record. Keep your voice up and speak into
18 the mic so everybody can hear you.

19 THE WITNESS: My name is Chris Donahue, D-o-n-a-h-u-e.

05:04 20 DIRECT EXAMINATION BY MR. WEINREB:

21 Q. Good afternoon.

22 A. Good afternoon, sir.

23 Q. Where do you work?

24 A. I work with the Massachusetts State Police.

25 Q. In what section?

1

1 A. I work out of Crime Scene Services Section out of the
2 Maynard laboratory.

3 Q. How long have you worked there?

4 A. I worked with the state police approximately nine years
5 now and with the crime scene for approximately a little over
6 seven years.

7 Q. What are your job responsibilities in the Crime Scene
8 Services Unit?

9 A. My responsibilities are to document, to process, collect,
05:04 10 and analyze evidence.

11 Q. Does that include fingerprint evidence?

12 A. Yes.

13 Q. Where did you go to school, and what degrees have you
14 earned?

15 A. I'm currently in a Ph.D. program at UMass Lowell. It's in
16 criminal justice and criminology. I have a master's in
17 criminal justice. I have a graduate certificate in leadership
18 policy and development. I have a graduate certificate in
19 forensic psychology. I have a -- I earned a bachelor's from
05:05 20 UMass Boston.

21 Q. Have you received training in how to handle evidence?

22 A. Yes.

23 Q. Have you received specialized training in how to document
24 crime scenes?

25 A. Yes.

1

1 Q. Have you received training in fingerprint identification
2 and comparison?

3 A. I have.

4 Q. Both in-house and external training?

5 A. Yes, I have.

6 Q. What kind of in-house training have you received?

7 A. Initially, when I came into the unit, into Crime Scene
8 Services, there was approximately five months of in-house
9 training where at that time we had training from senior
05:06 10 troopers to train us in the examination and analysis of
11 evidence, the handling of evidence, the processing of evidence,
12 and the analyzation of fingerprints, footwear, and tire tread.

13 Q. What about external training?

14 A. External training, I received external training from
15 various law enforcement agencies such as the FBI, Boston
16 Police, other law enforcement agencies. Also, agencies,
17 civilian agency, such as Ron Smith and Associates.

18 Q. Did that training specifically include fingerprint
19 analysis and identification training?

05:06 20 A. Yes.

21 Q. After getting trained, did you have to take some kind of
22 exam to be qualified to do fingerprint analysis?

23 A. Yes.

24 Q. What was that?

25 A. After this initial training, I take a competency exam, and

1

1 I passed that back in 2008.

2 Q. Following that, was there a kind of apprenticeship where
3 you do your work under the supervision of a more senior
4 analyst?

5 A. Yes.

6 Q. How long did that last?

7 A. That lasted approximately a year. It was called
8 supervised casework. So all the casework I worked on for that
9 year was mentored by a senior trooper.

05:07 10 Q. Have you had additional testing over the years to make
11 sure your skills are up to snuff?

12 A. Yes.

13 Q. Tell us about that.

14 A. Each year I'm required to take proficiency exams and --
15 internal and external proficiency exams. And those are
16 evaluated through a process through our quality assurance.

17 Q. In the course of your work, how many fingerprints have you
18 identified at crime scenes and documented and preserved for
19 later analysis?

05:08 20 A. Well, process and collected, thousands.

21 Q. And how many of those have you actually analyzed by doing
22 comparisons between them and known prints?

23 A. Thousands. Everything that I process and collect at
24 scenes, I also analyze.

25 Q. Are there occasions when you have identified a person by

1

1 comparing the person's fingerprints to fingerprints found at a
2 crime scene?

3 A. Yes.

4 Q. Are there occasions when you've excluded a person by
5 comparing their known prints to fingerprints found at a crime
6 scene?

7 A. Yes.

8 Q. As part of your job, are you expected to testify in court
9 about your examinations and the results of those examinations?

05:08 10 A. Yes.

11 Q. How many times have you testified in court about
12 fingerprint evidence?

13 A. Close to 50 times.

14 Q. Did you help document the Laurel Street crime scene on
15 April 19, 2013?

16 A. Yes.

17 Q. Among other things, did you photograph a bullet from a
18 Ruger that had penetrated the wall of the home located at 40
19 Laurel Street?

05:09 20 A. I did photograph a discharged bullet. However, I did not
21 -- I wasn't able to analyze it, so I'm not quite sure what the
22 caliber was.

23 Q. Fair enough. But you're the one whose job it was to
24 photograph what that bullet had done to that house?

25 A. Yes.

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1 MR. WEINREB: Exhibit 772, please.

2 Q. Do you recognize this? Do you have it in front of you
3 yet?

4 A. Yes.

5 Q. Do you recognize it?

6 A. Yes.

7 Q. What is it?

8 A. This here is the area of Dexter and Laurel Street in
9 Watertown.

05:10 10 Q. Just to remind the jury, can you draw an X at the
11 intersection of Dexter and Laurel?

12 A. (Indicating). Can I --

13 Q. Here, I'll clear that for you. If you press hard with
14 your finger, it will draw a line, or you can just tap it.

15 A. (Witness complies.)

16 Q. That's fine. Is that the intersection?

17 A. Yes, sir.

18 Q. And then I'm going to enlarge that area.

19 Do you see 40 Laurel Street on this map?

05:10 20 A. Yes, I do.

21 Q. Could you circle it?

22 A. (Indicating.)

23 MR. WEINREB: Can I have Exhibit 948-160 just for the
24 witness, please?

25 Q. Trooper, I'm going to show you a series of photos, and at

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1 the end I'm going to ask you if they're fair and accurate
2 photos of what you saw that day.

3 MR. WEINREB: Let's have -161, please; -162, -163,
4 -164, -165, -166, -01, -02, -03, -04, and -05.

5 Q. Are all those photos you took that day?

6 A. Yes.

7 Q. Are they fair and accurate photos?

8 A. Yes, they are.

9 MR. WEINREB: The government offers them into
05:12 10 evidence.

11 MS. CLARKE: No objection.

12 THE COURT: All right.

13 (Government's Exhibit Nos. 948-160 through 948-166; 948-01
14 through 948-05 received into evidence.)

15 Q. So let's go back now to 948-160. What's that a picture
16 of?

17 A. That's a picture of the front entrance to 40 Laurel
18 Street.

19 MR. WEINREB: -161, please.

05:13 20 Q. What's that a picture of?

21 A. That's a picture of the front door and the front porch of
22 40 Laurel Street.

23 MR. WEINREB: -162, please.

24 Q. What's that a picture of?

25 A. That's the -- if you were looking at the house, the right

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1 side, at the front of the house, the right side of the 40
2 Laurel Street.

3 Q. So if you were standing -- do you know where the Honda
4 Civic was abandoned in the middle of Laurel Street? Are you
5 familiar with where a Honda Civic was abandoned on Laurel
6 Street on April 19th?

7 That's okay. If not, let me ask the question a different
8 way. If you were standing on Laurel Street, not near the
9 corner of Laurel and Dexter but further down, further east
05:14 10 along Laurel Street --

11 A. Yes.

12 Q. -- and looking back towards the corner of Dexter and
13 Laurel, is this the side of the house that you would be seeing?

14 A. Yes, sir.

15 MR. WEINREB: -163, please.

16 Q. Is this a close-up of that side of the house?

17 A. Yes, it is.

18 Q. I'm going to circle -- you see the -- what looks like a
19 black dot or hole that I've circled there?

05:15 20 A. Yes.

21 Q. Are there others in the house as well?

22 A. Yes.

23 MR. WEINREB: -164, please.

24 Q. Is that a close-up of one of those holes?

25 A. Yes, it is.

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1 Q. When you observed it on that day, did that appear to be a
2 bullet hole?

3 A. Yes.

4 MR. WEINREB: -165, please.

5 Q. Is that that same bullet hole? Should I go back to 164 or
6 --

7 A. If you go back one, please.

8 Q. Yeah, -164. If you can't tell, that's fine.

9 A. If you go forward, please.

05:15 10 Q. -165.

11 A. No. I believe that's a different bullet hole, sir.

12 Q. Fair enough.

13 -166, and then I'm going to circle two. Does this appear
14 to be the first one we saw, and this the second one in the past
15 series of photos?

16 A. Yes.

17 MR. WEINREB: Now, can we have -01, please?

18 Q. What's this a photo of?

19 A. This is the upstairs on the 40 Laurel Street, second
05:16 20 floor, inside the apartment.

21 Q. So this is that same wall we were just looking at but on
22 the inside?

23 A. Yes, sir.

24 Q. And this right here in the middle that I've circled, this
25 hole in the wall, does that correspond to one of the bullet

1

1 holes on the outside?

2 A. Yes.

3 MR. WEINREB: -02, please.

4 Q. What's this?

5 A. This is inside the apartment, and that's a door in the
6 bedroom that leads into one of the bedrooms there.

7 Q. So is that that same room that we just saw in the previous
8 photograph but the opposite wall?

9 A. Yes.

05:17 10 Q. Do you see this hole right here in the wall?

11 A. Yes.

12 Q. Was that also a bullet hole?

13 A. Yes.

14 MR. WEINREB: Could we have -03, please?

15 Q. What's this?

16 A. That's -- it's a picture that was hanging on the wall.

17 Q. Where is it in relation to the picture we just saw?

18 A. It's on the -- if we step back one, please.

19 MR. WEINREB: Go back to -002.

05:17 20 A. That there is a picture. I believe -- it may be in a
21 different room other than this room that we're looking at now.

22 Q. Is it the room through this doorway?

23 A. It may be through that door right there.

24 Q. Okay.

25 MR. WEINREB: Let's go back to -003. Then could we

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1 have -004 and -005. Go back to -004 for a moment.

2 Q. Is that where the bullet came to rest?

3 A. Yes.

4 Q. Did you also fingerprint items of ballistic evidence
5 recovered from the Watertown crime scene?

6 A. I did.

7 Q. What method did you use to compare the latent prints that
8 you found to known prints?

9 A. I used the -- what is called the HV process.

05:18 10 Q. That HV method, is that the same method that's used by
11 your colleague, Patrick Donahue, and all other Massachusetts
12 State Police fingerprint experts?

13 A. It's Trooper Patrick Moynihan.

14 Q. I'm sorry.

15 A. Yes. And it is the process that we use within the lab and
16 all other analysts within our lab.

17 Q. Are you trained in that method?

18 A. I am.

19 Q. Are you experienced in that method?

05:19 20 A. I am.

21 Q. Are you proficient in that method?

22 A. I am.

23 MR. WEINREB: Exhibit -268, which I believe is in
24 evidence already.

25 Q. I show you -- does that look familiar, the box of

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1 ammunition in that photograph, not in that location but just
2 the box?

3 A. I'm not -- that box --

4 Q. Let me ask you a different question. Were you asked to
5 fingerprint a box of ammunition that was recovered from Laurel
6 Street?

7 A. Yes.

8 MR. WEINREB: Could we have -270 just for the witness
9 now?

05:20 10 THE COURT: This is 948-270?

11 MR. WEINREB: Yes. And then 948-271. Actually, those
12 are both in evidence. That's all right. It doesn't matter.
13 Then could we have 948-937? I'm sorry, 937, just Exhibit 937
14 and then Exhibit 938, 939, and 940.

15 Q. Do you recognize the items that were pictured in those
16 photographs?

17 A. I do, but I had taken different photos at a different time
18 with -- there. So that was either after I processed it, those
19 photos were taken.

05:21 20 Q. But are those photos of the ammunition box that you were
21 asked to fingerprint from Laurel Street?

22 A. Yes.

23 MR. WEINREB: I'd offer 937 through 940.

24 MS. CLARKE: No objection.

25 THE COURT: Okay.

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1 (Government's Exhibit No. 937-940 received into evidence.)

2 MR. WEINREB: So let's go back to 937 then.

3 Q. So this is a photo of the ammo box you were asked to
4 fingerprint?

5 A. Yes.

6 Q. And the initials here indicate that it was photographed by
7 Stephanie Waite?

8 A. Yes.

9 Q. She's the criminalist at the lab?

05:22 10 A. Yes.

11 MR. WEINREB: And 938, please.

12 Q. That's the box with the contents removed?

13 A. Yes.

14 MR. WEINREB: 939.

15 Q. Is that a close-up?

16 A. Yes.

17 MR. WEINREB: 940, please.

18 Q. Same here?

19 A. Yes.

05:22 20 Q. Were any fingerprints recovered from the ammunition box?

21 A. Yes.

22 Q. What did you recover?

23 A. I recovered a partial palm print and a partial fingerprint
24 on the box.

25 Q. Were you able to match either of those to either Jahar

1

1 Tsarnaev or Tamerlan Tsarnaev?

2 A. Yes.

3 Q. What was the results of your analysis?

4 A. I identified on the outer box the left middle finger of
5 Jahar Tsarnaev on the outside of the box, on the outer box.

6 Q. Was there also a magazine for the Ruger pistol recovered
7 from Laurel Street that you were asked to fingerprint?

8 A. Yes.

9 Q. Were there any fingerprints on the magazine?

05:23 10 A. Yes.

11 Q. Were you able to identify them to one of those two
12 individuals?

13 A. Yes.

14 Q. What was the results of that analysis?

15 A. I identified a partial palm print and a partial
16 fingerprint to Tamerlan Tsarnaev on the magazine, and it was
17 the left palm and the left middle finger of Tamerlan Tsarnaev.

18 Q. Was there an air gun that fires metal pellets or BBs also
19 found on Laurel Street?

05:24 20 A. Yes.

21 Q. Were there any fingerprints on the air gun?

22 A. Yes.

23 Q. What was the results of your analysis of the air gun?

24 A. I identified the right index finger of Jahar Tsarnaev on
25 the trigger of the pellet/air gun.

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1 Q. Now, do you know when any of those fingerprints got there?

2 A. No, I do not.

3 Q. Does the absence of a person's fingerprint on an object
4 mean that they never touched it?

5 A. No, it does not.

6 Q. So it's possible a person could touch something and either
7 not leave a fingerprint or the fingerprint could get rubbed off
8 later somehow?

9 MS. CLARKE: Calls for speculation.

05:25 10 THE COURT: Overruled. He may answer it.

11 A. Yes.

12 MR. WEINREB: No further questions.

13 MS. CLARKE: Just a couple. Just one moment, your
14 Honor.

15 CROSS-EXAMINATION BY MS. CLARKE:

16 Q. Good afternoon.

17 A. Good afternoon, ma'am.

18 Q. I believe we met over some spilled water up there.

19 A. Yes, we did, ma'am.

05:25 20 Q. My name is Judy Clarke. I'm one of Mr. Tsarnaev's
21 lawyers.

22 Mr. Weinreb asked you about fingerprints that you located
23 on -- on the ammo box, correct?

24 A. Yes, ma'am.

25 Q. And you indicated to him that you located a print of Jahar

1

1 Tsarnaev on the outside of the ammo box, right?

2 A. Yes, ma'am.

3 Q. I understand you also located prints on the live rounds
4 inside the ammo box, is that correct?

5 A. Yes, I did.

6 Q. And those were prints of Tamerlan Tsarnaev, correct?

7 A. That is correct.

8 Q. Not of Jahar Tsarnaev, correct?

9 A. That's correct.

05:26 10 Q. The magazine that you printed and found Tamerlan
11 Tsarnaev's prints was inside the Ruger pistol, is that correct?

12 A. When it came to me, it was separated. However, the
13 magazine came with that Ruger. So it was possible that that
14 magazine was inside that firearm.

15 MS. CLARKE: Maybe we could pull up -- Mr. Bruemmer,
16 if you could help me -- 948-230, which I believe is in
17 evidence, and I hope it's the right picture. 231, I think is
18 what I want.

19 Q. Does that appear to be the Ruger that you took into your
05:27 20 possession?

21 A. Yes.

22 Q. And does the -- let me draw something around. Does that
23 appear to be the magazine?

24 A. Yes, it does.

25 Q. That you tested?

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1 A. Yes, ma'am.

2 Q. And found Tamerlan Tsarnaev's prints on it?

3 A. Yes.

4 Q. And not Jahar Tsarnaev's prints?

5 A. Yes.

6 MS. CLARKE: Thank you. I have no further questions.

7 MR. WEINREB: Nothing further, your Honor.

8 THE COURT: All right, sir. Thank you. You may step
9 down.

05:27 10 THE WITNESS: Thank you, sir.

11 MR. WEINREB: Your Honor, may we approach for a
12 moment?

13 THE COURT: Yes.

14 (SIDEBAR CONFERENCE AS FOLLOWS:

15 MR. WEINREB: So the government would like to re-call
16 Jennifer Montgomery at this time.

17 MR. WATKINS: Your Honor, we would raise the same
18 objection. I don't think they showed good cause at this point,
19 not having complied with the Court's order.

05:28 20 THE COURT: Well, we gave time, I think, to prepare
21 for it, so I don't think we will press it at this point. I'll
22 allow it.

23 Can I just, while you're here, get a read on when we
24 might have to have the Tazhayakov issues? Is that going to be
25 today or tomorrow?

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1 MR. WEINREB: Not today.

2 THE COURT: I think I'd like to have a brief lobby
3 conference at the end of the day about that and a couple other
4 issues.

5 . . . END OF SIDEBAR CONFERENCE.)

6 MR. WEINREB: Your Honor, the government would re-call
7 DNA Analyst Jennifer Montgomery at this time.

8 THE COURT: Miss Montgomery, you remain under oath
9 from your prior appearance.

05:30 10 JENNIFER MONTGOMERY, RE-CALLED

11 DIRECT EXAMINATION BY MR. WEINREB:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. The last time you were here, you testified about your
15 expertise as a DNA analyst?

16 A. Correct.

17 Q. And you were asked some questions about two white gloves
18 found in the Honda Civic on Laurel Street?

19 A. Yes.

05:30 20 Q. And you testified that the blood on the outside of them
21 was Officer Sean Collier's?

22 A. Yes.

23 MR. WEINREB: Can we have Exhibit 877, please?

24 THE COURT: Is this in evidence?

25 MR. WEINREB: Yes.

1

1 Q. Now, were you also asked to compare Jahar Tsarnaev's DNA
2 to blood found on keys -- I'm sorry, not Jahar Tsarnaev's DNA
3 but Sean Collier's DNA to blood found on keys taken from the
4 ignition of the Honda Civic on Laurel Street?

5 A. Yes.

6 MR. WEINREB: Can we have --

7 Q. Did you, in fact, do that comparison?

8 A. Yes, I did.

9 MR. WEINREB: Can I have Exhibit 914, please?

05:31 10 Q. Would this diagram -- or this chart help you illustrate
11 your testimony about the keys?

12 A. Yes.

13 MR. WEINREB: Then, your Honor, I'd ask to show it to
14 the jury.

15 THE COURT: As a chalk?

16 MR. WEINREB: As a chalk.

17 Q. Please help -- explain to us what this chart shows about
18 the comparison between Sean Collier's DNA and the blood found
19 on the keys in the Honda.

05:32 20 A. On the left column is the known head hair standard from
21 Sean Collier, and then on the right-hand side is the swab of
22 the red-brown stains found on a key card from the Honda Civic.
23 If you go down, looking at each location that we test for,
24 you'll see that there's a match.

25 Q. Based on that, was your conclusion that the blood from the

1

1 outside of the keys matched the DNA of Sean Collier?

2 A. Yes.

3 MR. WEINREB: I have no further questions.

4 MR. WATKINS: No questions.

5 THE COURT: Fine. Thank you. Miss Montgomery, you
6 may step down.

7 MR. MELLIN: United States calls Miguel Colon.

8 THE CLERK: Sir, you want to step up here, please?

9 Step up to the box, if you would. Remain standing and raise
05:34 10 your right hand.

11 MIGUEL COLON, Sworn

12 THE CLERK: Have a seat. State your name. Spell your
13 last name for the record. Keep your voice up and speak into
14 the mic so everybody can hear you.

15 THE WITNESS: Miguel Colon, C-o-l-o-n.

16 DIRECT EXAMINATION BY MR. MELLIN:

17 Q. Good afternoon, sir.

18 A. Sir, good afternoon.

19 Q. Sir, where are you employed?

05:34 20 A. I was born in Puerto Rico.

21 Q. I didn't ask where you were born. I asked where you were
22 employed.

23 A. Oh, sorry. I'm employed for the Watertown Police
24 Department.

25 Q. Okay. That's all right.

1

1 Where were you born?

2 A. Puerto Rico.

3 Q. You're dying to tell us so we'll get to it.

4 A. I got everyone smiling here.

5 Q. At some point did you move from Puerto Rico to the United
6 States?

7 A. Fourteen. I was fourteen years old.

8 Q. Where did you move to?

9 A. Lawrence, Mass.

05:35 10 Q. Did you go to high school in that area?

11 A. Lawrence and Belmont High.

12 Q. Did you also go to college at some point?

13 A. Yes, sir.

14 Q. Where did you go to college?

15 A. UMass Boston.

16 Q. At some point did you join the Watertown Police
17 Department?

18 A. Yes, sir.

19 Q. What year was that?

05:35 20 A. 2006.

21 Q. From 2006 'til 2013, were you employed by the Watertown
22 Police Department?

23 A. Yes, sir.

24 Q. As you sit here today, are you still employed by them?

25 A. Yes, sir.

1

1 Q. What job assignments have you held while you're been
2 employed at the police department?

3 A. Night patrol.

4 Q. Let me take you back to April 19, 2013. At some point did
5 you respond to the scene on Laurel Street?

6 A. Yes, sir, I did.

7 Q. Do you recall about what time you responded?

8 A. Approximately quarter of 1.

9 Q. When you drove up, what happened?

05:35 10 A. I saw a scene. Sergeant MacLellan and Officer Reynolds
11 were engaged in a gunfight.

12 Q. Let me ask you if you could please look at Exhibit 771,
13 which is already in evidence. Officer Colon, as you look at
14 771, do you recognize it?

15 A. Yes, sir.

16 Q. What is that?

17 A. Watertown, Mass., Laurel Street area.

18 Q. Do you recall how it is you got to the scene at Dexter and
19 Laurel?

05:36 20 A. How I arrived there?

21 Q. Yes.

22 A. I knew the gunfight was somewhere in Laurel Street. I
23 took Arsenal Street, went northbound on School Street, past
24 Laurel Street. I don't know if I can --

25 Q. You can. And that's an interactive screen. So if you

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1 just touch it, you can draw a diagram where you're going.

2 A. So School Street this way. This is Laurel Street. I knew
3 they were somewhere in there. I wasn't sure if they were on
4 the east or west side of Laurel Street. I continued past, went
5 down Putnam, continued this way, Hazel Street. At the Hazel
6 Street, I came out this way, and that's when I saw the scene.

7 Q. Okay. Just for the record, you kind of do a little bit of
8 a circle on this map, is that right?

9 A. Yes, sir.

05:37 10 Q. You go up School Street, come over Putnam. As Putnam kind
11 of comes to an end, it turns to the left, continues onto Hazel
12 Street?

13 A. Yes, sir.

14 Q. And then you took Hazel Street down to Dexter, turned
15 right and came down Dexter?

16 A. Yes, sir.

17 Q. Let me ask you about a couple of the other streets that
18 are on this map. Over in this area, there's a street with a
19 name. Do you see that?

05:37 20 A. Yes, sir. That's Quinby Street.

21 Q. Quinby?

22 A. Yes, sir.

23 Q. Okay. And so now Quinby goes down past Laurel, is that
24 right?

25 A. Yes, sir.

1

1 Q. And where there's that corner below that, is that Cypress
2 Street that is coming over?

3 A. Yes.

4 Q. So is it a -- you can drive straight through down Quinby
5 to the turn that puts you on Cypress, is that right?

6 A. Yes, sir.

7 Q. All right. So let me ask you: When you came on the
8 scene, Sergeant MacLellan and Officer Reynolds were already
9 engaged in the fight?

05:38 10 A. Yes, sir.

11 Q. Do you recall hearing a radio response from Sergeant
12 MacLellan about where officers should respond and where they
13 should not?

14 A. Yes, I do. The gunfight -- Sergeant MacLellan requested
15 they can have a unit coming off of Quinby Street to the end of
16 Laurel Street, and then he scratched that and said it would be
17 a dangerous situation for crossfire.

18 Q. Have you had a chance to listen to that radio transmission
19 recently?

05:38 20 A. Yes, sir.

21 Q. Is that a fair and accurate recording of that
22 transmission?

23 A. Yes, sir.

24 MR. MELLIN: Your Honor, at this time I'd ask to play
25 Exhibit 1564, which is a short clip of the radio transmission.

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1 MR. WATKINS: No objection.

2 (Audio recording played.)

3 Q. Officer Colon, is that the transmission?

4 A. Yes, sir.

5 Q. Again, is Sergeant MacLellan saying at first, "Come down
6 Quinby," but then he says, "Scratch that"?

7 A. Yes, sir.

8 Q. He doesn't want to have crossfire there?

9 A. Yes, sir.

05:39 10 Q. What is crossfire?

11 A. When another person is in the line of fire.

12 Q. So based on that, did any officers at any time block the
13 far end of Laurel Street or where Quinby is?

14 A. No, sir.

15 MR. WATKINS: Objection.

16 THE COURT: Foundation. Sustained.

17 Q. Did you ever see any officers block the far end of Laurel
18 Street at Quinby when you were on the scene?

19 A. No, sir.

05:40 20 Q. Was that -- let me hold that.

21 At some point did you see an SUV coming down the street in
22 your direction?

23 A. Yes, sir.

24 Q. At that time where are you parked?

25 A. When I arrived, I parked my vehicle maybe two vehicle

1

1 lengths from Officer Reynolds' cruiser, in the middle of the
2 road, at an angle.

3 MR. MELLIN: If I could have Exhibit 775 brought up,
4 please.

5 Q. Officer Colon, do you see Exhibit 775?

6 A. Yes, sir.

7 Q. Is that a diagram of some of the vehicles that were on the
8 scene on Laurel Street?

9 A. Yes, sir.

05:41 10 Q. If I blow up this portion, do you recognize the blown-up
11 portion as the block of Laurel that -- where the gun battle was
12 occurring?

13 A. Yes, sir.

14 Q. You see Sergeant -- excuse me, Officer Reynolds' car on
15 the left side of this?

16 A. Yes, sir.

17 Q. Can you circle that for me, please?

18 A. (Indicating.)

19 Q. And then, sir, there's a green Honda that's down the
05:41 20 street. Do you see that?

21 A. Yes, sir.

22 Q. Can you circle that, please?

23 A. (Indicating.)

24 Q. As you drove up and came on the scene, where is it in
25 general where you parked?

1

1 A. When I arrived, I parked somewhere in this area, middle of
2 the road, at an angle. My headlights were facing the SUV.

3 Q. And just for the record, the SUV is not on this diagram,
4 correct?

5 A. No, it's not.

6 Q. Okay. And for the record, also, you indicated that you
7 parked on the street between 49 Laurel and 132 Dexter?

8 A. That area, sir, yes.

9 Q. So down the street a little bit from where Officer
05:42 10 Reynolds parked but not on the same side of the street?

11 A. Yes, sir.

12 Q. All right. At some point did you try to flash a light on
13 what was going on down the street?

14 A. Sir, when I arrived on scene, Sergeant MacLellan was in
15 this area. His vehicle was in this area. I observed that he
16 was exchanging gunfire. His vehicle was moving. I feared that
17 he was -- his cover -- he was going to be exposed to gunfire.
18 So I parked a little further up, and I tried to get the
19 suspect's attention by putting my spotlight on him.

05:42 20 Q. When you say you parked a little further up, a little
21 further up than where you indicated on this?

22 A. Yes, right in this area.

23 Q. In that area, very good. You pointed what light on them?

24 A. Excuse me?

25 Q. What did you shine on them?

1 A. The spotlight. It's on an A pillar of the vehicle. You
2 can move it around and place it to wherever you want to see.

3 Q. When you attempted to point your spotlight down the
4 street, what happened to the spotlight?

5 A. I received gunfire. The spotlight got hit. I had the
6 door open. The door got hit as well.

7 Q. At some point did you see the SUV coming down the street
8 at you?

9 A. Yes, sir.

05:43 10 Q. Could you see who was driving that car?

11 A. Yes, sir.

12 Q. Who was driving that car, sir?

13 A. (Indicating.)

14 MR. MELLIN: Your Honor, for the record, the witness
15 pointed at the defendant.

16 THE COURT: Okay.

17 Q. When you saw that SUV coming down the street, what did you
18 do?

19 A. I went behind 465, towards the driver's side.

05:44 20 Q. You indicated 465. What are you talking about? Officer
21 Reynolds' car?

22 A. Yes, sir.

23 Q. Okay. You went behind Officer Reynolds' car. And then
24 what did you see?

25 A. I observed -- as the SUV was coming down, I saw my --

1 three of my officers jump out of the way. Sergeant Pugliese,
2 MacLellan, and Reynolds jumped out of the way. As it drove by,
3 the vehicle hit the person on the ground, dragged them, and hit
4 Cruiser 465 on the driver's side, front quarter panel area.

5 Q. As that car was driving down the street, you pointed out
6 that you saw the defendant driving it. How was he driving that
7 car?

8 A. As he went past me, after he released from the Cruiser
9 465, I saw him leaning towards the middle console, but he was
05:45 10 still kind of looking at the road.

11 Q. For the record, you've indicated that the defendant was
12 leaning to the right and ducking down but looking over the
13 dash?

14 A. Yes, sir.

15 Q. Were you able to see him do that?

16 A. Yes, sir.

17 Q. After the defendant drove away, what did you do?

18 A. I went and checked on the officers on scene. They had
19 cuffed a suspect. They were treating him. And then I got in
05:45 20 471 and drove out to follow the vehicle.

21 Q. Okay. And 471 is your car?

22 A. Yes, sir.

23 Q. If I could have you look at Exhibit 787.

24 MR. MELLIN: Which is in evidence, your Honor.

25 Q. Officer Colon, do you recognize Exhibit 787?

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1 A. Yes, sir.

2 Q. What is that?

3 A. Laurel Street.

4 Q. Do you see -- as you look at that, do you see your vehicle
5 in that photograph?

6 A. Can you repeat that, sir?

7 Q. Do you see your vehicle in that photograph?

8 A. Yes.

9 Q. Which one is it?

05:45 10 A. (Indicating.)

11 Q. For the record, you circled the car on the right with the
12 headlights pointing in the direction of the photograph?

13 THE COURT: You don't have it? We've seen a very
14 similar one. I know that. Is there any objection to it if it
15 isn't in?

16 MR. WATKINS: I believe this is in.

17 MR. MELLIN: I thought that was in as well, your
18 Honor.

19 THE COURT: I thought so, too, because I've seen it
05:46 20 before.

21 MR. MELLIN: If it's not, I would move it into
22 evidence and ask to publish it a bit late.

23 Q. Officer Colon, you circled the vehicle on the right with
24 the headlights pointing down the street towards the camera, is
25 that right?

1

1 A. Yes, sir.

2 Q. The vehicle with the headlights to the left, do you know
3 whose car that was?

4 A. Officer Reynolds, 465.

5 Q. And you see the SUV coming down the street?

6 A. Yes, sir.

7 Q. You see that?

8 Was there room for the SUV to go between the -- where the
9 people were on the ground and your car to avoid contact?

05:46 10 A. I positioned my cruiser about one to two car lengths ahead
11 of Officer Reynolds. There was room for a vehicle to go by.

12 Q. Now, after, you say you left.

13 MR. MELLIN: If I could have Exhibit 775 pulled up.

14 Q. I just blew up the bottom portion of 775. Can you
15 indicate to the ladies and gentlemen where it is you went after
16 you checked on the status of the other officers and then you
17 left the scene?

18 A. I drove straight ahead, this way, this way.

19 Q. And so, for the record, you drove down Laurel Street and
05:47 20 turned right on Cypress Street?

21 A. Yes, sir.

22 Q. There was room to pass on the right of the green Honda?

23 A. That's where the SUV was parked.

24 Q. Before it left?

25 A. Yes.

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1 Q. Was there room to pass on the left of the green Honda --

2 A. There was room.

3 Q. -- as well?

4 So on either side of that, there was room to pass?

5 A. Yes, sir.

6 Q. Was there anyone blocking your exit down at Laurel and
7 what is shown here as Cypress but up above it would be called
8 Quinby?

9 A. There was nothing blocking the road, the intersection.

05:48 10 Q. How much time do you think elapsed between the time when
11 you saw the SUV leave the scene and the time that you left the
12 scene?

13 A. Less than a minute.

14 MR. MELLIN: Thank you. Nothing further.

15 CROSS-EXAMINATION BY MR. WATKINS:

16 Q. Good afternoon, Officer.

17 A. Good afternoon.

18 Q. Showing you Exhibit 771, as I understand it, you drove
19 this way?

05:50 20 A. No. That I drove that way?

21 Q. You drove from School Street up Dexter Avenue?

22 A. No. School Street, down Putnam, then turned at the Hazel
23 Street. When Hazel and Dexter hit, I took a right on Dexter,
24 and I approached Laurel Street.

25 Q. Can you draw on this map again how you went when you

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1 arrived at the scene?

2 A. (Indicating.)

3 Q. I thought before when you testified you talked about being
4 up here on Quinby Street?

5 A. I was not on Quinby Street at any point.

6 Q. You were never at Quinby Street at any point?

7 A. Never.

8 Q. So when Mr. Mellin asked you about seeing people up at
9 that end of the street, you don't know whether there were

05:50 10 people up at that end of the street?

11 A. Where the arrow is?

12 Q. Yes.

13 A. I have no idea.

14 Q. How about here, do you have any idea?

15 A. From where I was, I could see that area.

16 Q. But you were not at this end of the street, is that
17 correct?

18 A. No, sir. No, sir.

19 Q. So you came down --

05:51 20 MR. MELLIN: Objection as to what time.

21 THE COURT: Sorry?

22 Q. Were you ever at that end of the street before the end of
23 the incident?

24 A. Can you ask the question again, please?

25 Q. Before -- you came up on the scene, correct?

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1 A. Yes, sir.

2 Q. There was shooting, right?

3 A. Yes, sir.

4 Q. And at that point you were not at Quinby Street; you were
5 down here at Dexter and Laurel, right?

6 A. Where I indicated right there.

7 Q. And that's where your car stopped, right?

8 A. Yes.

9 Q. And that's where you stayed?

05:51 10 A. No. I fired some rounds from that -- from my vehicle
11 after they hit my cruiser, and then I went to behind Officer
12 Reynolds' cruiser because it's a bigger, larger car.

13 Q. But your cruiser remained down at that end of Laurel
14 Street where this -- approximately here, is that right?

15 A. Somewhere in that area, yes.

16 Q. You saw the people shooting from the other end of the
17 street, right?

18 A. Yes.

19 MR. MELLIN: Objection as to "the other end of the
05:52 20 street" reference.

21 Q. Down Laurel Street, looking down towards that Honda Civic
22 you've testified that you saw people --

23 A. The people that were shooting were in front of the
24 Mercedes, the front bumper area.

25 Q. And what you saw was one person shooting, right?

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1 A. I could -- I couldn't tell.

2 Q. You were interviewed a few days after the incident,
3 correct?

4 A. Yes.

5 Q. That was audiotaped, and it was an investigation by the
6 Massachusetts State Police, correct?

7 A. Yes.

8 Q. At that point you said, "I focused on one shooter. That's
9 all I saw." Correct?

05:52 10 A. All I saw was muzzle flash, and that's what my attention
11 went to.

12 Q. Was that one shooter and the muzzle flash?

13 A. The muzzle flash.

14 Q. After that is when the Mercedes came around, correct?

15 A. During the gunfight, yes.

16 Q. Showing you 775, your cruiser does not appear on this
17 diagram, is that correct?

18 A. No, sir.

19 Q. Do you recognize that cruiser, what cruiser that would be?

05:53 20 A. 465.

21 Q. And that would be Officer Reynolds' cruiser, is that
22 correct?

23 A. Yes, sir.

24 Q. And your car was two car lengths up, right?

25 A. Approximately, yes.

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1 Q. And two car lengths, ordinary car, your cruiser, do you
2 know how long your cruiser is?

3 A. I couldn't tell you right off the bat.

4 Q. Fifteen feet maybe?

5 A. Couldn't tell you.

6 Q. But it would be two ordinary car lengths, right?

7 A. If you say so.

8 Q. Well, you drove it.

9 A. I couldn't tell you. I don't know how big my cruiser is.

05:54 10 Q. And that's where your cruiser was as the Mercedes came
11 down the street towards all of you?

12 A. That area, yes, sir.

13 MR. WATKINS: That's all I have.

14 MR. MELLIN: Nothing, your Honor.

15 THE COURT: All right, sir. Thank you. You may step
16 down.

17 MR. CHAKRAVARTY: The government calls Mark Preble.

18 MR. BRUCK: I think we'll need to approach on this
19 witness, your Honor.

05:55 20 THE COURT: All right. I'll see you at the side.

21 (SIDEBAR CONFERENCE AS FOLLOWS:

22 MR. BRUCK: Does the government still intend to
23 introduce the handwritten statements?

24 MR. CHAKRAVARTY: Yes.

25 THE COURT: Who's this?

1 MR. CHAKRAVARTY: This is a witness from UMass
2 Dartmouth. He'll authenticate a variety of records.

3 MR. BRUCK: The records, we have no objection to most
4 of them. They establish the residence and so forth. But they
5 include two handwritten statements that the defendant
6 apparently wrote, judging by the records, giving somewhat false
7 or exaggerated claims about the reasons why he has not
8 completed his obligations, academic obligations. They include
9 something about his family and -- what was the other?

05:56 10 MR. CHAKRAVARTY: They both relate to family.

11 MR. BRUCK: They're both related to family. We don't
12 see any relevance. These records were, as I understand it,
13 intended to show his residence and that he was a student at
14 UMass Dartmouth, but these are quite prejudicial indications
15 that he was telling falsehoods in order to get his academic
16 scholarship restored despite his bad grades. We can't see how
17 that has any relevance to any aspects --

18 MR. CHAKRAVARTY: It goes to a few things. I have the
19 records here. This is 1180C and 1180D, I believe.

05:57 20 THE COURT: What's the --

21 MR. CHAKRAVARTY: There's a few things. So one is,
22 these are statements made by the defendant during the course of
23 the conspiracy in which he cites to, amongst other things, what
24 we allege are false explanations about what his -- what was
25 going on. But more pragmatically, these are dated and signed

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1 evidence of the defendant's handwriting. The defendant's
2 handwriting is a key part of the evidence that's in the boat,
3 and this exemplar of his handwriting is perhaps the best
4 evidence. It's near close in time.

5 And in addition to that, the substance of it itself is
6 also, I would suggest, very relevant to go to show that he has
7 this kind of duality of his existence both in his private world
8 versus what -- and then what he's publicly manifesting in order
9 to get whatever benefits he's going to get.

05:58 10 THE COURT: Is there another one?

11 MR. CHAKRAVARTY: Yes, I'm sorry.

12 THE COURT: This is --

13 MR. CHAKRAVARTY: August --

14 MR. BRUCK: There are numerous other exemplars from
15 the dorm room of his handwriting. I think that is not an
16 adequate reason to introduce such prejudicial material. The
17 period alleged in the Indictment of the conspiracy is in 2013.
18 This is -- all predates that. It's really, I think, just a
19 backdoor way of getting in pretty prejudicial stuff.

05:59 20 MR. CHAKRAVARTY: The government's position is it's
21 both relevant to his state of mind. The substance suggests why
22 he's doing poorly in school. We're not proving up that there
23 are falsehoods. So to the extent that it's prejudicial, it's
24 not clear to me what the prejudice is unless, in the penalty
25 phase, it becomes relevant.

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1 THE COURT: Well, what number is this?

2 MR. CHAKRAVARTY: 1180C.

3 THE COURT: I think this one is admissible because of
4 the references about paying attention to events in Chechnya,
5 about which there will be some context. This one, I think,
6 less so. It's also less remote in time.

7 MR. BRUCK: We'd like to emphasize that the period
8 alleged of the conspiracy begins in March of 2013, and this is
9 January 2013.

05:59 10 THE COURT: Conspiracy isn't the only measure of the
11 relevance.

12 MS. CONRAD: It's also 403, your Honor. I just
13 frankly -- the government -- the Court has taken a pretty
14 strict line in terms of motive evidence with respect to the
15 defense presenting things, and I don't see how just the fact
16 that he uses the word "Chechnya" in there is relevant to
17 anything.

18 THE COURT: Well, all right. I think it ties up to
19 some of the things we heard this morning about -- I think that
06:00 20 one's admissible. The other one I don't think is useful.

21 . . . END OF SIDEBAR CONFERENCE.)

22 THE CLERK: Sir, want to step up here, please? Remain
23 standing. Raise your right hand.

24 MARK PREBLE, Sworn

25 THE CLERK: State your name. Spell your last name for

1

1 the record.

2 THE WITNESS: Mark Preble, P-r-e-b-l-e.

3 DIRECT EXAMINATION BY MR. CHAKRAVARTY:

4 Q. Good afternoon. I'm over here.

5 Mr. Preble, where do you work?

6 A. UMass Dartmouth.

7 Q. What is your position there?

8 A. I'm the vice chancellor of administration and finance and
9 the chief financial officer.

06:01 10 Q. Who, if anyone, is above you in the pecking order at UMass
11 Dartmouth?

12 A. The chancellor.

13 Q. Can you explain what some of your duties are as the vice
14 chancellor?

15 A. I have responsibilities -- basically, I'm the chief
16 business officer. My responsibilities cover all of the
17 nonacademic -- generally all the nonacademic areas: finance,
18 human resources, public safety, facilities, construction, those
19 kinds of places.

06:01 20 Q. As part of your role, were you asked to authenticate some
21 documents that are going to be presented to the Court?

22 A. Yes.

23 Q. Have I shown you what we previously marked as --

24 MR. CHAKRAVARTY: Your Honor, if we could have the
25 screen just for the witness.

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1 Q. I'll just show you the first page, and I'll ask you to
2 describe them in a minute.

3 MR. CHAKRAVARTY: 1180A, please.

4 THE COURT: Sorry. Wrong computer.

5 MR. CHAKRAVARTY: 1180B, 1180C, 1180E, and 1180J.

6 Q. Do you recognize those documents?

7 A. Yes.

8 Q. Are you familiar with them?

9 A. Yes.

06:03 10 Q. Are all those documents that are kept by UMass Dartmouth
11 with regards to specifically a student named Jahar Tsarnaev?

12 A. Yes.

13 MR. CHAKRAVARTY: I'd move in 1180A, B, C, F, and J --
14 excuse me, not F; E and J.

15 THE COURT: Subject to our conversation at the side,
16 admitted.

17 (Government's Exhibit No. 1180A-1180C, 1180E, 1180J received
18 into evidence.)

19 MR. CHAKRAVARTY: If we could go to 1180A, please.

06:03 20 Q. Now, Mr. Preble, what is this document?

21 A. This document is a part of a package that is prepared when
22 a student is looking for housing on campus.

23 Q. Is the name of the student and his biographical data
24 listed up here?

25 A. Yes.

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1 Q. And the person's address when they're applying for school
2 or whenever the date is listed down at the bottom?

3 A. Yes.

4 MR. CHAKRAVARTY: Can we go to Page 2, please?

5 Q. Is this the housing preference form?

6 A. Yes.

7 Q. Do you recognize this room number? Do you know which dorm
8 that's in?

9 A. I can't tell specifically by the number, but my
06:04 10 understanding it was in Pine Dale.

11 Q. And it's Room 7341-1?

12 A. Correct.

13 MR. CHAKRAVARTY: Go to 1180 B, please.

14 Q. What is this document?

15 A. This is a report of our card access system. Our
16 dormitories have swipe cards, and so whenever anybody enters
17 the building, it records the swipe. And reports can be printed
18 afterwards based on those swipes and those entries.

19 Q. When you say a "swipe card," can you describe what kind of
06:05 20 a swipe card you have down at UMass Dartmouth?

21 A. We use a single card for a variety of things. It's used
22 as a key, but it's also used in the dining hall. It's used in
23 the library. It's a credit card size. It has a magnetic strip
24 on the back.

25 Q. Now, for this report, is the date range of the swipe card

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1 data that was queried for the last name Tsarnaev the entire
2 school year from August 1st up to April 19 -- August 1, 2012,
3 up to April 19, 2013?

4 A. That's not the entire school year. The school year went
5 beyond April 19th.

6 Q. Thank you. And working backward, what does the first
7 section of the report describe?

8 A. The first section of the report, there's the date and time
9 of entry, the event, access granted, no entry made. The system
06:06 10 actually records two different pieces of information when the
11 card is swiped and then when the door is opened. So this
12 report recorded that the card was swiped, but the contact
13 didn't break to open the door, so it says, "No entry made."

14 Q. Was that a common problem back in 2013, that the contact
15 of the door --

16 A. On the front door at Pine Dale, yes, not on the back door,
17 on the front door.

18 Q. And so what does this record show about when the swipe
19 card for the name Jahar Tsarnaev was swiped in Pine Dale Hall
06:06 20 after April 15, 2013?

21 A. It shows a date of April 17, 2013, 5:46.

22 Q. And this data doesn't tell you which direction somebody
23 traveled. It just tells you that a swipe was made; is that
24 fair to say?

25 A. They don't have to swipe to go out. They can just swipe

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1 to go in.

2 MR. CHAKRAVARTY: Go to Page 2, Page 3, Page 4, Page
3 5, 6.

4 Q. So there were six pages of swipes for Pine Dale front, the
5 front of Pine Dale Hall; is that fair to say?

6 A. Yes.

7 Q. Now, focusing in on the Pine Dale rear, was there another
8 set of doors into the rear of Pine Dale Hall?

9 A. Yes.

06:07 10 Q. Again, is Pine Dale a dormitory residence at UMass
11 Dartmouth on the campus?

12 A. Say that again. I'm sorry.

13 Q. Is Pine Dale a dormitory that's on campus at UMass
14 Dartmouth?

15 A. Yes.

16 Q. And so what does this say about swipe data -- evidence of
17 swiping the card that belonged to Jahar Tsarnaev after April
18 15, 2013?

19 A. So there's three dates: April 16th, a swipe at 8:54:57.

06:08 20 You can see it says, "Access granted," but it doesn't say, "No
21 entry." So the contacts on the back door were working.

22 Q. Was that what I just underlined there?

23 A. Yes.

24 Q. Please continue.

25 A. After that, there were -- on 4/17/2013, there were three

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1 swipes: 11:29:32; 11:29:25; and 11:39:33 [sic]. Excuse me,
2 the last one was a.m. The other two were p.m.

3 Q. Is the last one 12:39:33 a.m.?

4 A. A.m., correct.

5 Q. So there are two that are within seconds of each other.
6 What would explain that?

7 A. I'm not really sure. There could have been a swipe, and
8 there may have been a delay between the swipe and the door
9 being pushed. So you have to swipe again to open the door.

06:09 10 Q. And then was there a swipe on April 18th, the Thursday?

11 A. On April 18, 2013, yes.

12 Q. And was that at 4:02:43 in the afternoon?

13 A. Yes.

14 Q. Now, just on this report, were there -- in addition to
15 Pine Dale, were there other doors on UMass campus which are
16 reflected as being swiped by the card belonging to Jahar
17 Tsarnaev on the report?

18 A. On this report? I'm not aware of any that shows that.

19 MR. CHAKRAVARTY: So just go to Page 12, please.

06:10 20 Q. These are other swipes for Roberts Hall, but this is --
21 predates the Marathon bombing; is that fair to say?

22 A. Yes.

23 Q. What is Roberts Hall?

24 A. Roberts Hall is another residence hall on campus. It's a
25 first-year residence hall.

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1 MR. CHAKRAVARTY: Can we go to 1180C, please?

2 Q. What is this document?

3 A. This document is a form that is part of the satisfactory
4 academic progress appeal process.

5 Q. Can you explain what that means?

6 A. When a student gets financial aid and they are not making
7 satisfactory academic progress, they're in jeopardy of losing
8 their financial aid. So the student is notified, and they can
9 appeal that denial by following this process. It starts with
06:11 10 this form.

11 Q. This is a form completed by the student?

12 A. This form is completed by the student, correct.

13 Q. This is called a Satisfactory Academic Progress Appeal, is
14 that right?

15 A. Yes.

16 Q. So does that mean that a determination had been made that
17 the student was no longer eligible for financial aid?

18 A. Yes. It's an automatic trigger when the student's
19 progress drops below a certain academic process based on GPA,
06:11 20 percentage of completed course, and anticipated time to
21 graduate.

22 Q. And then the student has an opportunity to submit
23 something to explain why he still needs financial aid?

24 A. Yes.

25 MR. CHAKRAVARTY: Zoom in a little bit more.

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1 Q. Is the student listed for this application Jahar Tsarnaev?

2 A. Yes.

3 Q. You might have some difficulty seeing it there. Can you
4 see it?

5 A. If I take my glasses off.

6 Q. If you could read that for us.

7 A. "This year I lost too many of my loved relatives. I was
8 unable to cope with the stress and maintain school work. My
9 relatives live in Chechnya, Russia, a republic that is opposed
06:12 10 by Russian soldiers."

11 Q. Let me stop you there. Does it say "occupied by Russian
12 soldiers"?

13 A. "Occupied," yup. I am a sorry. "...by Russian soldiers
14 that falsely accuse and abduct innocent men under false
15 pretenses and terrorist accusations. I am at a point where I
16 can finally focus on my school work. I wish to do well so one
17 day I can help out those in need in my country, especially my
18 family members."

19 Q. Then is it signed in the name of Jahar Tsarnaev on January
06:13 20 24 of 2013?

21 A. Yes.

22 Q. Do you know whether this application was granted or
23 denied?

24 A. My understanding -- this is the second semester so this
25 was denied.

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1 MR. CHAKRAVARTY: Can we go to 1180E?

2 Q. Do you recognize what this is?

3 A. This is a transcript.

4 Q. This is just his grades in school?

5 A. Correct.

6 Q. Is it broken down by his first semester, fall of 2011?

7 A. Yes.

8 Q. And these are his courses on the left and his grades on
9 the right?

06:13 10 A. Yes.

11 Q. Spring of 2012 is on the bottom left. There's four
12 courses, and, again, his grades are on the right?

13 A. Yes.

14 Q. 2012, fall, again, four courses, and grades on the right?

15 A. Yes.

16 Q. And the spring semester, which he didn't complete, is that
17 fair to say?

18 A. Yes.

19 Q. It doesn't show any grades?

06:14 20 A. Correct.

21 MR. CHAKRAVARTY: Can we go to 12 -- excuse me, 1180J,
22 please?

23 Q. What is this?

24 A. This is a screenshot from our student record system.

25 Q. What kind of information do you put in the student record

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1 system?

2 A. We keep lots of information about students in the student
3 record system. A lot of it is taken from the application when
4 a student first applies. Other records, financial records,
5 grade records, where they live on campus, their dining plan.
6 Just about everything about a student is kept in the student
7 record system.

8 Q. And is this student-provided information?

9 A. Mostly, it's student-provided information, but grades are
06:15 10 provided by faculty, obviously. Dining and housing information
11 is provided through those offices.

12 MR. CHAKRAVARTY: If we go to Page 2, please.

13 Q. Does it provide the various contact information such as
14 email addresses and telephone numbers?

15 A. Yes.

16 Q. Does it list, at least at the time of this entry, as of
17 May 9, 2013, the residence hall assigned to him was Pine Dale,
18 7341-1?

19 A. Correct.

06:16 20 Q. That's the same room number that we had seen in 1180A, is
21 that correct?

22 A. Yes.

23 MR. CHAKRAVARTY: That's all I have, your Honor.

24 MR. BRUCK: No questions of Mr. Preble.

25 THE COURT: All right. Mr. Preble, you may step down.

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1 THE WITNESS: Thank you.

2 MS. PELLEGRINI: United States calls Special Agent
3 Kimberly Franks.

4 THE CLERK: Ma'am, up here, please. Step up to the
5 box. Remain standing. Raise your right hand.

6 KIMBERLY FRANKS, Sworn

7 THE CLERK: Have a seat. State your name. Spell your
8 last name for the record. Keep your voice up and speak into
9 the mic, okay?

06:17 10 THE WITNESS: Kimberly Franks, F-r-a-n-k-s.

11 DIRECT EXAMINATION BY MS. PELLEGRINI:

12 Q. Miss Franks, will you tell the jury by whom you are
13 employed?

14 A. The FBI.

15 Q. In what capacity?

16 A. I'm a supervisory special agent at FBI headquarters in the
17 Criminal Investigative Division.

18 Q. FBI headquarters is located where?

19 A. Washington, D.C.

06:17 20 Q. How long have you held that position?

21 A. Approximately one year.

22 Q. And prior to that?

23 A. I was an agent at the Washington field office in
24 Washington D.C.

25 Q. How long did you hold that position?

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1 A. Approximately seven years.

2 Q. Can you give us some of your educational background,
3 please?

4 A. Yes. I went to undergraduate at Campbell University. I
5 went to law school at Wake Forest University. And I practiced
6 law as a corporate attorney for about seven years before
7 joining the Bureau.

8 Q. With your current assignment with the FBI, what are your
9 duties?

06:18 10 A. I am in the Financial Institution Fraud Unit. So I
11 program manage our money laundering units, our asset
12 forfeiture, our mortgage fraud and bank fraud investigations,
13 in various field offices throughout the country.

14 Q. So I want to focus also on another duty which you may
15 have, and that relates to the ERT, the evidence recovery?

16 A. Correct.

17 Q. Do you have duties relating to that aspect?

18 A. Currently, I do not. While I was an agent at Washington
19 field offices, I was on the Evidence Response Team.

06:19 20 Q. We've heard a lot about Evidence Response Team, or ERT.
21 Just briefly, what training did you have?

22 A. I went to what's called ERT basic, which is 80 hours of
23 crime scene investigation. I also had monthly training on our
24 ERT team at WSO. And I went to post-blast investigation, which
25 is a week-long course, to investigate post-blast scenes.

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1 Q. Did you still have those duties as a potential ERT member
2 in April of 2013?

3 A. Yes, I did.

4 Q. And in that capacity, did you have occasion to respond to
5 Boston in April of 2013?

6 A. Yes, I did.

7 Q. When did you come to the Boston area?

8 A. We came approximately a day after the blast. We had been
9 notified immediately after the blast that we would probably be
06:19 10 deployed. And it took about a day to get all of our equipment
11 together and get organized and get on the plane to come up.

12 Q. Was your specific task at that time to be a member of an
13 ERT team?

14 A. Yes. It was as a member of the Washington field office
15 ERT team.

16 Q. And with respect to those duties then, did you have
17 occasion on April 21 of 2013 to respond to the UMass campus in
18 Dartmouth?

19 A. Yes.

06:20 20 Q. What time did you arrive at that location?

21 A. It was past midnight; maybe 1 or 2 in the morning.

22 Q. What were your specific duties?

23 A. I was assigned to be a searcher at the search scene, which
24 was the dorm room.

25 Q. And do you know what dorm room you went to?

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1 A. I went to the -- Dzhokhar Tsarnaev's dorm room.

2 Q. If I give you a casebook, would that refresh your
3 recollection as to the name of the dorm and the dorm room?

4 A. Yes. It was Pine Dale Hall.

5 Q. Thank you. Let me just give you the casebook.

6 A. Thank you.

7 Q. I ask you to look at that and ask you if that refreshes
8 your recollection as to the dorm room number.

9 A. Yes. It was Room 7341.

06:21 10 Q. Thank you. Now, Agent Franks, with respect to the team
11 that responded to that location, how many members were on that
12 team?

13 A. There was approximately seven or eight members.

14 Q. And your job as a searcher meant what?

15 A. It meant that my only responsibility was to search the
16 actual room. So we have other members that do various other
17 tasks, such as sketch or various things, and my role was just
18 to search.

19 Q. And in doing so, were you able though to observe the
06:21 20 performance of the other members on the team and speak with
21 them about what they were doing?

22 A. Yes. On a search, especially this one, we worked very
23 closely together. And you know what the sketch artist is
24 doing. You know what the team leader is doing. There's a lot
25 of communication back and forth, and I was aware of what the

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1 other team members were doing.

2 Q. With respect to your entry to that room -- first of all,
3 let me ask you: When you got there, was the room secured?

4 A. Yes, it was.

5 Q. By whom and in what way?

6 A. There were FBI agents there that had been posted there.
7 They were from New York. There was also a campus security
8 guard.

9 Q. With respect to your entry into the dorm room, did you
06:22 10 enter under lawful authority?

11 A. Yes.

12 Q. Now, you also just mentioned about sketches and diagrams.

13 A. Yes.

14 Q. That was done once you were in the room, is that correct?

15 A. Correct. That process typically takes place as we're
16 doing the searching.

17 MS. PELLEGRINI: For the witness and counsel only,
18 your Honor, although a portion of it is in evidence. May I
19 have Exhibit 620?

06:22 20 Q. Agent Franks, with respect to the image on the screen in
21 front of you, do you recognize that image?

22 A. Yes, I do.

23 Q. Just generally tell us what are you looking at.

24 A. I am looking at a diagram of the dorm room that we
25 searched in Pine Dale Hall.

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1 Q. And with respect to this diagram, have you had occasion to
2 determine whether or not it fairly and accurately represents
3 the layout of the dorm room, including where objects were in
4 relation to one another, when you entered and when the search
5 was performed on April 21st?

6 A. Yes.

7 Q. Have you also had occasion to review all of the
8 photographs that are enclosed in this graphic?

9 A. Yes.

06:23 10 Q. Do they fairly and accurately represent the scene as you
11 saw them during the course of the search?

12 A. Yes.

13 MS. PELLEGRINI: Your Honor, I would at this time
14 offer Exhibit 620, this portion of Exhibit 620, which is called
15 the Dartmouth dorm room.

16 MS. CONRAD: May we be heard at sidebar for a moment,
17 please?

18 MS. PELLEGRINI: Take that down, Mr. Bruemmer.

19 (SIDEBAR CONFERENCE AS FOLLOWS:

06:24 20 THE COURT: Is that package 620 that you gave her?

21 MS. PELLEGRINI: No, sir.

22 THE COURT: You're talking about -- sounds like a
23 multiple-page document.

24 MS. PELLEGRINI: No, no. It's a document. The image
25 in front of her -- I'm sorry, your Honor -- was 620. We call

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1 it the 2D interactive. Previously, portions of it had been
2 entered into evidence when we did the Boylston Street scene,
3 the evidence recovery. This is another graphic that is
4 included in this, which is of the same nature. I thought you
5 could see it on your screen.

6 THE COURT: It's another chapter in the book.

7 MS. PELLEGRINI: It's another chapter. It's another
8 layer.

9 MS. CONRAD: We filed a motion to suppress the search
06:24 10 of the dorm room, so I just want to register that objection to,
11 again, preserve the record.

12 THE COURT: It's been ruled on.

13 MS. CONRAD: Right. I understand that. I just want
14 to make sure it hasn't been waived, and we're preserving the
15 objection. And also two other things, one general and one
16 specific. I think that to the extent the government is using
17 this interactive it should be treated as a chalk as opposed to
18 an exhibit.

19 And, second of all, one of the images, I believe,
06:25 20 that's embedded, if you will, in that -- or maybe two of them
21 -- in that interactive is the document that Mr. Tsarnaev wrote
22 in January of 2013, to which there was a previous objection.
23 So to the extent that another image is coming at this point --

24 THE COURT: Same thing?

25 MS. CONRAD: Same, right, right. As far as the

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1 chalk --

2 THE COURT: I don't remember previous use of it.

3 MS. PELLEGRINI: Your Honor, if I could refresh your
4 recollection on the Boylston part. It's similar to what we
5 have here. So we have an exhibit that basically lays out for
6 the jury a way of organizing what we would normally put in, a
7 number of photographs that -- you can click on a spot.

8 THE COURT: This is the same exhibit, is that --

9 MS. PELLEGRINI: It's the same exhibit, but it's a
06:26 10 different portion of it.

11 THE COURT: No, I understand that. All the
12 interactives are in one even though they relate to different
13 topics?

14 MS. CONRAD: There's different foundations for each
15 one. I mean, on Boylston Street, that had to do with where
16 certain cameras were and so forth. On this, it's basically
17 providing a view. I don't have an objection to the
18 photographs. I have an objection to the chalk itself.

19 THE COURT: We did treat the other as a summary and
06:26 20 admitted it as an exhibit.

21 MS. CONRAD: I'm not sure that the Boylston Street was
22 ever admitted because there was an objection.

23 MS. PELLEGRINI: It was admitted. It was overruled
24 and admitted.

25 THE COURT: I think we did. So I'll be consistent and

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1 apply that to this as well.)

2 . . . END OF SIDEBAR CONFERENCE.)

3 MS. PELLEGRINI: May I have that back on the screen,
4 Mr. Bruemmer?

5 Q. Miss Franks, I think the last thing I asked you about was
6 about the photographs that are attached or able to be viewed
7 through this graphic, is that correct?

8 A. That is correct.

9 Q. You indicated that you have reviewed those; and, in fact,
06:27 10 those are the photographs that fairly and accurately represent
11 the status and state of the dorm room during the course of the
12 search, is that correct?

13 A. That's correct.

14 MS. PELLEGRINI: Your Honor, I would offer this as the
15 second portion or third portion of Exhibit 620, which relates
16 to the Dartmouth dorm room and ask that it be published to the
17 jury so that I can work with it.

18 THE COURT: Okay. My only question is: Is there a
19 way of identifying the parts to the whole?

06:27 20 MS. PELLEGRINI: Yes, there is, your Honor. On the
21 left-hand side of the screen when it appears, there's a bar,
22 which basically leads to an index. And when that is -- I don't
23 know if it's in front of the Court at the moment. But when
24 that is clicked, it leads to an index, and you can see how it
25 is divided up and that the layers are identified.

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1 THE COURT: Okay. This index that you've now shown is
2 specific to the UMass Dartmouth dorm room?

3 MS. PELLEGRINI: No. The index includes a way of --
4 basically, it's a little map.

5 THE COURT: Never mind. I can read the --

6 MS. PELLEGRINI: Okay.

7 THE COURT: Okay. All right. Well -- so on the
8 index, there is a heading, "Dartmouth Dorm Room."

9 MS. PELLEGRINI: Correct.

06:28 10 THE COURT: Are you offering -- just so the record is
11 clear, are you offering what is included under that heading in
12 this exhibit?

13 MS. PELLEGRINI: Yes, your Honor, we are.

14 THE COURT: Okay. It's admitted. I just wanted to be
15 sure it was clear what the dimensions of the admission was --
16 were.

17 MS. PELLEGRINI: Are or whatever.

18 THE COURT: Go ahead.

19 MS. PELLEGRINI: Thank you.

06:28 20 (Government's Exhibit No. 620 received into evidence.)

21 MS. PELLEGRINI: Is that up and now open before the
22 jury, please, your Honor?

23 Q. All right. Agent Franks, with respect to Exhibit 620, can
24 you tell us what we're looking at now that the jury can see the
25 image before them?

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1 A. We are looking at a representation of the dorm room at
2 Pine Dale Hall, Room 7341.

3 Q. With respect to that portion that you searched, if I move
4 my mouse over, little boxes appear. Do you see that?

5 A. Yes.

6 Q. Are those, in fact, related to areas where the search team
7 recovered items and took those items into their possession?

8 A. Yes.

9 Q. I'm going to go to the first one where a label appears as
06:29 10 "Shelf." Do you recall that area?

11 A. I do.

12 Q. Now, the screen has split, and we have the graphic of the
13 dorm room on the left-hand side and the desk shelf on the
14 right-hand side, is that correct?

15 A. That's correct.

16 Q. Do these photos, of which there are two, fairly and
17 accurately represent what you saw as you entered the dorm room
18 and what was seized that day?

19 A. Yes.

06:30 20 Q. What are we looking at here for desk shelf?

21 A. We are looking at a shelf beside his bed -- beside the
22 bed. It is Evidence Item No. 25 that we found, which was a
23 box.

24 Q. And do you recall what was in the box?

25 A. BBs.

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1 Q. And what's the little yellow square with the No. 25 on it?

2 A. That's how we identify pieces of evidence as we're
3 searching. We start with No. 1, and we work our way through as
4 many items of evidence as we find.

5 Q. So going to the second photo on the desk shelf, what are
6 we looking at here?

7 A. This is a close-up of the box of BBs that were found on
8 the shelf.

9 MS. PELLEGRINI: May I have -- may I approach again,
06:30 10 your Honor?

11 THE COURT: All right.

12 Q. Agent Franks, I'd like you to look at what I've put in
13 front of you which is marked for identification as Government
14 Exhibit 1109. It's in a clear plastic bag. Do you recognize
15 the contents therein?

16 A. I do.

17 Q. How do you recognize that?

18 A. We have a label that we put on every item of evidence, and
19 it has various items of information. One is my name and my
06:31 20 initials.

21 Q. So you actually processed this particular piece of
22 evidence, is that correct?

23 A. That's correct.

24 Q. All right. And just in a very general way, what -- with
25 respect to the picture on the graphic and the Placard No. 25,

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1 is this, in fact, the same item?

2 A. Yes, it is.

3 MS. PELLEGRINI: Your Honor, the government would
4 offer 1109.

5 MS. CONRAD: Just the previously raised issue.

6 THE COURT: All right. Admitted.

7 (Government's Exhibit No. 1109 received into evidence.)

8 Q. Agent Franks, if you could open that, please?

9 So you've removed two bags from the larger one, is that
06:32 10 correct?

11 A. That's correct.

12 Q. All right. Can you tell us what we're looking at here?

13 A. We are looking at the original box that was found in this
14 bag. And then the BBs have been separated out into another
15 bag.

16 Q. The BBs, I believe, have a second government exhibit, is
17 that correct?

18 A. That's correct.

19 Q. And that's 1110? Am I looking at that correctly?

06:32 20 A. Yes.

21 MS. PELLEGRINI: Your Honor, the government would
22 offer Exhibit 1110 as well.

23 THE COURT: All right. Same ruling.

24 (Government's Exhibit No. 1110 received into evidence.)

25 Q. So this is the box and those are the BBs correct?

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1 A. That is correct.

2 Q. You can put those back.

3 Heading on to the second location in the graphic, we have
4 an item labeled as "drawer," correct?

5 A. Correct.

6 Q. And what are we looking at here?

7 A. This is the drawer that was also found next to the bed,
8 and the drawer is opened with several evidence item numbers
9 inside.

06:33 10 Q. All right. See if we can get that -- it doesn't go any
11 larger, unfortunately, in this. But what are we looking at
12 here?

13 A. It looks like --

14 Q. A close-up of the same photo?

15 A. Yes, that's correct.

16 Q. All right. And what are we looking at in this graphic?

17 A. This is Evidence Item No. 15, which consisted of a receipt
18 from Dick's Sporting Goods.

19 Q. Do you know what this is for?

06:33 20 A. Yes.

21 Q. What is this receipt for?

22 A. It is for a Smith & Wesson and then the warranty plan that
23 was purchased with it.

24 Q. Showing you what's been marked for identification as
25 Government Exhibit 1241, do you recognize that item?

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1 A. Yes.

2 Q. Is that the same item, in fact, that appears in the
3 graphic, that is, the Dick's Sporting Goods receipt?

4 A. Yes.

5 Q. How do you recognize it as such?

6 A. Again, we have our items of information that we put on
7 every piece of evidence when we seize it, and I recognize the
8 information on the evidence tag.

9 Q. All right. Could you open that one, please?

06:34 10 So, for the record, you've removed two separate receipts,
11 is that correct?

12 A. That's correct.

13 Q. Thank you. And this third item in the desk drawer, do you
14 recognize this item?

15 A. Yes.

16 Q. What are we looking at here?

17 A. It was Item No. 16 that was collected, and it's the
18 packaging for the Smith & Wesson BB gun.

19 Q. All right. I'd like to show you what's been marked for
06:35 20 identification as Government Exhibit 1244 and ask you if you
21 recognize this packaging.

22 A. I do.

23 Q. Again, how do you do so?

24 A. Because of the information that we put on our evidence
25 label, which includes my name and initials.

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1 Q. All right. In fact, can you open this up for us, please?

2 Agent Franks, for the record, could you describe what
3 you've just taken out of the package?

4 A. It is the packaging for a Smith & Wesson BB gun.

5 Q. All right.

6 MS. PELLEGRINI: Your Honor, if I haven't done this, I
7 offer 1244.

8 (Government's Exhibit No. 1244 received into evidence.)

9 Q. When you say "a Smith & Wesson BB gun," what do you mean?

06:36 10 A. That's the brand name and the type of weapon, as indicated
11 on the packaging.

12 Q. And does it also indicate that -- any usage of BBs?

13 A. Yes.

14 Q. Is that on the packaging?

15 A. Yes.

16 MS. PELLEGRINI: May I have Exhibit 934 already in
17 evidence?

18 Q. Agent Franks, I'm going to ask you to look at Exhibit 934
19 and ask you to hold that up. With respect to the item that's
06:37 20 in Exhibit 934, is that, in fact, consistent with the packaging
21 of the Smith & Wesson that we just looked at?

22 A. Yes, it is.

23 Q. Does it, in fact, have the name Smith & Wesson on it?

24 A. Yes, it does.

25 Q. I'll take some of these back. It's getting kind of

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1 crowded.

2 THE COURT: Miss Pellegrini, just to keep the
3 accounting straight, I'm not sure you offered 1241, which were
4 the receipts.

5 MS. PELLEGRINI: Then I do so, your Honor.

6 THE COURT: No objection?

7 MS. CONRAD: The same.

8 THE COURT: Just the same. Okay, fine.

9 (Government's Exhibit No. 1241 received into evidence.)

06:38 10 MS. PELLEGRINI: They're -- I'm sorry, your Honor.
11 For the record, they went in?

12 THE COURT: 1241 and 1244 are in.

13 MS. PELLEGRINI: Thank you.

14 Q. All right. Agent Franks, with respect to the next
15 location in the dorm room, I have the mouse over an item marked
16 "chair." Do you recognize this?

17 A. Yes.

18 Q. And with respect to the photos being shown here, what are
19 we looking at here?

06:38 20 A. We are looking at a photo in the dorm room of the chair
21 and then the desk behind it.

22 Q. Going to the next photo, what is this item?

23 A. This is Evidence Item No. 27, which was a black coat that
24 was found on the chair in the dorm room.

25 Q. I show you what's been marked for identification as

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1 Government's Exhibit 1232. Do you recognize that item?

2 A. Yes, I do.

3 Q. And this is what?

4 A. This is the black jacket that was found on the back of the
5 chair in the dorm room.

6 Q. How do you recognize it as such?

7 A. Again, the items of information that we put on all of our
8 evidence items when we seize them.

9 Q. I'm going to ask you to leave that there on the side for a
06:39 10 second.

11 Going to the space marked "shelf near bed" and the
12 attendant pictures, do you recognize that area?

13 A. Yes.

14 Q. And starting with the picture, do you recognize this area
15 shown here?

16 A. Yes.

17 Q. What do you recall was seized from this area?

18 A. I recall papers, personal papers.

19 Q. And what else?

06:40 20 A. And also a hat.

21 Q. And with respect to personal papers, now, why would you
22 seize personal papers?

23 A. This was to help establish which side of the room each of
24 the individuals was living on.

25 Q. Were you able to do that through review of the papers?

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1 A. Yes.

2 Q. Were you able to establish that this, in fact, was
3 Dzhokhar Tsarnaev's side of the room?

4 A. Yes.

5 Q. And second picture here, do you recognize this item?

6 A. Yes.

7 Q. What is this?

8 A. This is Evidence Item No. 4, which is a thumb drive.

9 Q. Showing you Exhibit 1247 marked for identification, do you
06:41 10 recognize the packaging for this?

11 A. Yes.

12 Q. And this is what?

13 A. This is the Micro Center two-gigabyte thumb drive.

14 Q. How do you recognize it as such?

15 A. Again, the items of information that are on all of our
16 evidence tags, which include my name and initials.

17 Q. I'd ask you to open up --

18 MS. PELLEGRINI: Actually, your Honor, I would offer
19 at this time Government's Exhibits 1247 and 1232.

06:41 20 THE COURT: Subject to the same objection, it's
21 overruled and admitted.

22 (Government's Exhibit No. 1232 received into evidence.)

23 (Government's Exhibit No. 1247 received into evidence.)

24 Q. All right. Agent Franks, it's a long way to the jury box.

25 I'm going to ask you to take that out of the package and hold

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1 that up so the jury can see it.

2 A. (Indicating.)

3 Q. Is this, in fact, the thumb drive that's in the image on
4 the screen now and was found in the Defendant Tsarnaev's dorm
5 room?

6 A. Yes, it is.

7 Q. Next from the shelf near the bed, do you recognize these
8 items?

9 A. Yes.

06:42 10 Q. And what are these?

11 A. These are cell phones.

12 Q. And they were located in this area?

13 A. Yes.

14 Q. By the way, Agent Franks, what's the purpose of the -- I
15 can't write on this one -- of the measurement, the ruler at the
16 bottom?

17 A. We use those in our close-up photos just to get an idea of
18 the size.

19 Q. I'd like to show you what's been marked for identification
06:43 20 as Government's Exhibit 1248 and 1251. Do you recognize those
21 items?

22 A. Yes.

23 Q. And what are they?

24 A. It is two cell phones, one Samsung and one iPhone.

25 Q. How do you recognize it -- them?

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1 A. The items of information that we put on our evidence tag,
2 which include my name and initials.

3 MS. PELLEGRINI: Your Honor, the government would
4 offer both Exhibits 1248 and 1251.

5 THE COURT: All right. Admitted. Which is which?

6 MS. PELLEGRINI: I'll let Agent Franks answer that
7 question. Actually, she may not know.

8 THE WITNESS: I don't think I do.

9 MS. PELLEGRINI: I'll have to go back to the exhibit
06:44 10 list, your Honor. 1248 is the Samsung. I'm looking for the
11 second. And 1251 is an iPhone.

12 THE COURT: Okay.

13 Q. What is -- in this image, Agent Franks, what are we
14 looking at here?

15 A. This is Evidence Item No. 7, which was a white hat that
16 was found on the bed in the dorm room.

17 Q. And this image as well?

18 A. The same item, just from the opposite side.

19 Q. So if I go back, this is the image from the front with the
06:45 20 brim, correct?

21 A. Correct.

22 Q. And the back --

23 A. Correct.

24 Q. -- of the hat?

25 A. Yes.

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1 Q. And, for the record, with respect to what the image
2 indicates, is the logo or any identifying information on the
3 hat, what does that read?

4 A. Polo Ralph Lauren, MCMLXVII.

5 Q. So showing you what's been marked for identification as
6 Exhibit 1231, do you recognize that item?

7 A. Yes, I do.

8 Q. Is that, in fact, the hat in question?

9 A. Yes, it is.

06:45 10 Q. How do you recognize it as such?

11 A. Again, the items of information that we put on our
12 evidence tag, which include my name and initials.

13 Q. Can you open that, please?

14 MS. PELLEGRINI: Before removing it from the other bag
15 inside, your Honor, the government would offer Exhibit 1231 at
16 this time.

17 THE COURT: All right. Same terms.

18 (Government's Exhibit No. 1231 received into evidence.)

19 Q. Agent Franks, is that, in fact, the hat that was located
06:46 20 in the defendant's dorm room?

21 A. Yes.

22 Q. Now, I note, for the record, that there appears to be a
23 hole and a little marking in there, is that correct?

24 A. That's correct.

25 Q. Do you know -- actually, there's several. Do you know

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1 what those are from?

2 A. I believe from the lab and any evidence techniques that
3 they would have performed on it.

4 Q. In fact, does this have what we call a Q number?

5 A. Yes, it does.

6 Q. Am I correct in saying that that would be a question item?

7 A. Yes.

8 Q. Is there also a laboratory sticker?

9 A. Yes.

06:46 10 Q. So that meant that this item was sent to the laboratory in
11 Quantico, Virginia?

12 A. Correct.

13 Q. For a minute, I'd just like to leave this exhibit. We'll
14 come back to it.

15 MS. PELLEGRINI: And I'd like to go to Exhibit 22. I'd
16 like to go to the first point, Mr. Bruemmer. This is already
17 in evidence, your Honor. So it's up for the jury, I hope.

18 133. Thank you.

19 Q. Agent Franks, do you see the image on the screen before
06:47 20 you?

21 A. Yes.

22 Q. And do you see the hat --

23 A. Yes.

24 Q. -- on the person in the center of the picture?

25 A. Yes.

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1 Q. Is that hat consistent with the one that you found in the
2 Defendant Tsarnaev's dorm room?

3 A. Yes.

4 MS. PELLEGRINI: Can you go to the second point, Mr.
5 Bruemmer, on the same exhibit?

6 Q. And looking at the image that appears now, is that
7 consistent with the hat, particularly the number and the
8 styling on that white hat?

9 A. Yes.

06:48 10 Q. And from the back, with the logo that appears -- it's
11 backwards, so the logo of the horse and rider is on the back of
12 the head, is that correct?

13 A. Yes.

14 Q. Is that also on the white hat that we just talked about?

15 A. Yes, it is.

16 MS. PELLEGRINI: All right. Thank you, Mr. Bruemmer.
17 I still have a little ways to go, your Honor.

18 THE COURT: How much?

19 If you're that uncertain, why don't we break.

06:48 20 MS. PELLEGRINI: I don't like to be rushed.

21 THE COURT: We'll call it a day, jurors.

22 MS. PELLEGRINI: I have three more boxes.

23 THE COURT: Okay. Again, my instructions about no
24 communications of any kind and exposure to media. We'll see
25 you in the morning and continue with making progress with the

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1 case.

2 I do want to have a little bit of a lobby conference
3 on scheduling.

4 (Whereupon, at 3:55 p.m. the trial recessed.)

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3 We, Marcia G. Patrisso, RMR, CRR, and Cheryl
4 Dahlstrom, RMR, CRR, Official Reporters of the United States
5 District Court, do hereby certify that the foregoing transcript
6 constitutes, to the best of our skill and ability, a true and
7 accurate transcription of our stenotype notes taken in the
8 matter of Criminal Action No. 13-10200-GAO, United States of
9 America v. Dzhokhar A. Tsarnaev.

10
11 /s/ Marcia G. Patrisso
12 MARCIA G. PATRISSO, RMR, CRR
13 Official Court Reporter

14 /s/ Cheryl Dahlstrom
15 CHERYL DAHLSTROM, RMR, CRR
16 Official Court Reporter

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Date: 10/15/15