

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 FIFTY-ONE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, April 28, 2015
9:15 a.m.

Marcia G. Patrisso, RMR, CRR
Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

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I N D E X

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WITNESSES FOR THE
DEFENSE:

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E X H I B I T S

<u>DEFENDANT'S</u> <u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>FOR ID</u>	<u>RECEIVED</u>
3240	Lowell Sun Photo and Article		85
3226A	Photograph		12
3226B	Photograph		12
3226C	Photograph		12
3320	Chart		34
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3303-7A	Internet search history		38
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P R O C E E D I N G S

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

(The Court and jury enter the courtroom at 9:15 a.m.)

THE CLERK: Be seated.

THE COURT: Good morning, jurors.

THE JURORS: Good morning.

THE COURT: Again, I want to be assured that you've abided by my instructions. Have you all?

THE JURORS: Yes.

00:27 THE COURT: Okay. Thank you.

Mr. Watkins?

MR. WATKINS: Thank you, your Honor. The defense calls Rogerio Franca.

CLAUDIA ASSAF, Portuguese interpreter, duly sworn

THE CLERK: Have a seat. State your name and spell your last name for the record.

THE INTERPRETER: Good morning, your Honor. It's Claudia Assaf, Portuguese interpreter.

ROGERIO FRANCA, duly sworn

00:28 THE CLERK: Have a seat. State your name and spell your last name for the record, keep your voice up and speak into the mic.

THE WITNESS: My name is Rogerio Franca, your Honor. It's F-R-A-N-C-A, last name.

DIRECT EXAMINATION

1 BY MR. WATKINS:

2 Q. Mr. Franca, where were you born?

3 A. Brazil.

4 Q. And were you raised in Brazil also?

5 A. Yes.

6 Q. Is English your first language?

7 A. No.

8 Q. What is your first language?

9 A. Portuguese.

00:29 10 Q. Ms. Assaf is sitting to your left there, the certified
11 interpreter.

12 A. Yes.

13 Q. And we've spoken in English generally?

14 A. Yes.

15 Q. You and I? And you've spoken with law enforcement before
16 in English?

17 A. Yes.

18 Q. But Portuguese is your first language?

19 A. Yes.

00:29 20 Q. If you have any difficulty with my questions or with the
21 prosecutors' questions, you'll consult with the interpreter?

22 A. I will.

23 Q. But are you comfortable speaking in English?

24 A. Yes, I am.

25 Q. Mr. Franca, when did you come to the United States?

1 A. In 2006.

2 Q. And how old were you then?

3 A. I was, I believe, 24, 25.

4 Q. And why did you leave Brazil?

5 A. I was persecuted by some police officers.

6 Q. And did you come to the United States as a result of that?

7 A. Yes.

8 Q. When did you -- what year was it that you came to the
9 United States?

00:30 10 A. In 2006.

11 Q. And you're currently living here legally?

12 A. I was illegal.

13 Q. You are legally here now, though?

14 A. No, now I am legal.

15 Q. And you have a work permit?

16 A. Yes, I do.

17 Q. When you first came to Boston, what year was that?

18 A. 2006.

19 Q. And what neighborhood did you live in?

00:30 20 A. Allston.

21 Q. Did you live at more than one address in Allston?

22 A. Yes, I did.

23 Q. And during your time in Allston, did you become friendly
24 with a group of Russians?

25 A. Yes.

1 Q. And tell us about that. How did you become friendly with
2 a group of Russians?

3 A. Allston -- when I moved to Boston, I used to have -- my
4 neighbor used to be next door on the apartment, the same floor,
5 on the first floor, used to be my neighbor by the door.

6 Q. And how was it that you became friendly with them?

7 A. Well, I used to come, for my job, every single day.
8 Sometimes I used to see them where they were talking, used to
9 say hi. That's why -- the time I come to be a friend.

00:31 10 Q. Now, how is their English, the Russians?

11 A. Was good. Mine was not good.

12 Q. So did you practice languages --

13 A. Yes. Actually, I learned a lot from them.

14 Q. And did they help you?

15 A. Yes.

16 Q. But did you also become friends with them?

17 A. Yup.

18 Q. And who were some of those Russians that you became
19 friends with?

00:31 20 A. Vishkan, Konstantin, and Abubakr.

21 Q. And do you know any of the last names of those Russians as
22 you sit here today?

23 A. Yes, I do. Abubakr Turshaev, his last name, and
24 Konstantin is Morosov.

25 Q. And during that time in Allston -- how long did you live

1 in Allston and Brighton?

2 A. It was one year and a half; one year, seven months.

3 Q. During that time there, did you also meet a Russian by the
4 name of Tamerlan Tsarnaev?

5 A. Not in that first location.

6 Q. But sometime during your stay in Allston and Brighton
7 living there, did you meet Tamerlan Tsarnaev?

8 A. Yes, I did.

9 Q. And what were the circumstances of meeting Tamerlan
00:32 10 Tsarnaev?

11 A. For me was kind of like became another friend like the
12 others.

13 Q. Was he friends with the Russians that you met?

14 A. Yes.

15 Q. What kinds of things would you and the Russians do
16 socially?

17 A. Well, having fun, go outside, talking, sometimes go to the
18 party.

19 Q. Now, the Russians, did they like to drink alcohol?

00:32 20 A. Yes, usually they used to drink.

21 Q. Did they sometimes like to smoke marijuana?

22 A. Yes, they do.

23 Q. And was that true of all of them?

24 A. No.

25 Q. Was it true of Tamerlan Tsarnaev?

1 A. Yes.

2 Q. Now, you were living at a different apartment than the
3 Russians while you were in Allston and Brighton?

4 A. Yes.

5 Q. At some point did you move to Cambridge?

6 A. Yes.

7 Q. What street in Cambridge did you move to?

8 A. Cambridge Street.

9 Q. Actually, in Cambridge, Massachusetts, what street did you
00:33 10 move there?

11 A. I don't understand your question. Can you make your
12 question again, please?

13 Q. You mentioned that you had moved to Cambridge Street. Was
14 that Cambridge Street in Allston or Cambridge Street in
15 Cambridge?

16 A. Brighton.

17 Q. In Brighton?

18 A. Brighton.

19 Q. And then after you lived on Cambridge Street in Brighton,
00:33 20 did you move to Cambridge, Massachusetts?

21 A. Yes, I did.

22 Q. And what street was that?

23 A. 20 Harding Street.

24 Q. And when was that that you moved to Cambridge, as best you
25 can recall?

1 A. Around 2008, 2009.

2 Q. And how long did you live on Harding Street in Cambridge?

3 A. Almost two years.

4 Q. Now, Harding Street in Cambridge, is that a
5 multi-unit -- more than one apartment at Harding Street?

6 A. Yeah, it was an apartment of three floors.

7 Q. I'm sorry?

8 A. It was a building of three floors.

9 Q. And which floor did you live on?

00:34 10 A. The first one.

11 Q. And who was your roommate on Harding Street?

12 A. Abubakr Turshaev and another guy from Egyptian.

13 Q. So Abubakr Turshaev, he's one of the friends from Allston
14 and Brighton, and the two of you became roommates?

15 A. Yes.

16 Q. When you moved to Harding Street, did you continue to see
17 Tamerlan Tsarnaev there?

18 A. Yes.

19 Q. How often did he come over to your home at Harding Street?

00:35 20 A. Around three, four times a week. Sometimes every day.

21 Q. And was that all through this period that you lived there,
22 the year and a half or two years that you lived there?

23 A. Not in the beginning of the time I start -- I moved from
24 Cambridge.

25 Q. Did you know where Tamerlan Tsarnaev lived himself during

1 that time?

2 A. Not exactly the house. I just knew he used to live a few
3 blocks from my house.

4 Q. So when he would come over to your home, who would he
5 visit with?

6 A. Abubakr.

7 Q. Would he also visit with you?

8 A. Yeah.

9 Q. And would all of you socialize together at that apartment?

00:35 10 A. Yup.

11 Q. Did you ever go to Tamerlan Tsarnaev's apartment?

12 A. Nope.

13 MR. WATKINS: Your Honor, I'm going to show three
14 exhibits, 3226A through C. I believe there's no objection from
15 the government on this, so I think it could go right to the
16 jury.

17 MR. WEINREB: There is no objection.

18 THE COURT: Okay.

19 (Defense Exhibit Nos. 3226A through 3226C received
00:36 20 into evidence.)

21 BY MR. WATKINS:

22 Q. Now, on the screen to your left, do you see a picture
23 there?

24 A. Yes.

25 Q. Can you point out and identify who each of the people in

1 that picture is?

2 And this is Exhibit 3226A, for the record.

3 A. This is Tamerlan, this one is Vishkan, and this is one is
4 Abubakr Turshaev.

5 THE COURT: I think we'll have to have that again,
6 Mr. Watkins. I'm not sure that was loud enough for everyone.

7 BY MR. WATKINS:

8 Q. All right. Why don't you move the microphone --

9 MR. WATKINS: Thank you, Ms. Assaf.

00:37 10 Q. Could you go through that again and identify each of those
11 people in the picture?

12 A. This one is Tamerlan, this one is Vishkan and this one is
13 Abubakr Turshaev.

14 Q. And Abubakr Turshaev, he was your roommate?

15 A. Yes.

16 Q. Vishkan Vakhabov, did he actually live at Harding Street
17 at that point?

18 A. Who? Sorry.

19 Q. Vishkan Vakhabov.

00:37 20 MR. WEINREB: Objection, your Honor. No last name was
21 ever given for that individual.

22 MR. WATKINS: I'm sorry?

23 THE COURT: I'm not sure. I think it might have been.
24 But anyway, why don't you clarify that, if you'll --

25 MR. WATKINS: I didn't hear the objection.

1 THE COURT: Vishkan's last name.

2 BY MR. WATKINS:

3 Q. The person in the middle, what is his last name?

4 A. I don't know his last name.

5 Q. Oh, I'm sorry. But Abubakr on the right in this picture,
6 that was the person you identified as your roommate?

7 A. Yes.

8 Q. And is this picture taken at 20 Harding Street?

9 A. Yes.

00:38 10 Q. Showing you 3226B, can you identify the people in that
11 photograph?

12 A. Left side Vishkan, the middle one is me, and the right
13 side is Abubakr Turshaev.

14 Q. And what room at 20 Harding is that taken in?

15 A. In the kitchen.

16 Q. Finally, 3226C, who is in that picture?

17 A. The left side, Tamerlan; on the right side, it's me.

18 Q. What kinds of things would Tamerlan Tsarnaev do when he
19 came over to your home that you saw?

00:39 20 A. He used to come a lot to my home. He used to smoke weed
21 in my basement. He used to come home to this -- Abubakr,
22 Vishkan, he used, you know, to call them to go outside to party
23 in Boston sometimes.

24 Q. The three of them, would they go clubbing --

25 A. Most of the time, yes.

1 Q. -- in Allston?

2 Now, is that something that you liked to do?

3 A. I don't like to go outside that much like they like it.

4 Q. Do you smoke marijuana yourself?

5 A. No.

6 Q. And do you enjoy alcohol? Do you drink?

7 A. No.

8 Q. During that time you were living on Harding Street, were
9 you working?

00:39 10 A. Yes.

11 Q. And what hours would you work during the week?

12 A. From six in the morning until seven-thirty, eight o'clock
13 at night sometimes.

14 Q. So when you saw Tamerlan Tsarnaev at Harding Street, when
15 would he be there? Like what times of day, what times during
16 the week?

17 A. Well, usually he used to come early. The time I was
18 working, he used to come to visit Abubakr, most of the time
19 only around twelve, one o'clock.

00:40 20 Q. And would you see him in the evenings sometimes?

21 A. Yes.

22 Q. Would you see him on weekends?

23 A. Yes, also.

24 Q. What did you understand Tamerlan to do for work during
25 that period of time?

1 A. He used to help his dad. I heard from the other friends
2 help his -- he used to help his father, the mechanic, so...

3 Q. A car mechanic?

4 A. Yeah.

5 Q. And what other jobs did you know him to do?

6 A. No, I never heard from another one.

7 Q. Was there a time where you drove with him to look for a
8 job?

9 A. Yes. One day he took me to the -- I believe it's
00:41 10 Watertown. He wanted to apply for a job over there. And I
11 stood inside the car when he get in the office. I don't know
12 if he applied or if he started working this company.

13 Q. So you don't know for sure whether he got that job?

14 A. No.

15 Q. Did you know Tamerlan was a boxer?

16 A. Yes.

17 Q. How did you know that?

18 A. He used to go to games sometimes. He used to bring his
19 backpack with the gloves and everything inside, so...

00:41 20 Q. Did you go to the gym with him ever?

21 A. Twice, a couple of times.

22 Q. And what gym did you go to?

23 A. The one in Brighton, close to the fire department.

24 Q. Did you ever actually go and see him box?

25 A. Yeah, one day I went with Vishkan and Abubakr to see his

1 fight. I believe it was in Beverly.

2 Q. And did he win that particular fight?

3 A. Yes, he did.

4 Q. Are you familiar with the sport of boxing? Do you --

5 A. No.

6 Q. You mentioned that he would smoke marijuana in your home
7 on occasion. Was that while you were there?

8 A. Sometimes I used to come from my job, he was downstairs in
9 the basement smoking.

00:42 10 Q. All right. Did you like that? Did you like the fact that
11 he was smoking marijuana in your home?

12 A. Not at all. Not at all.

13 Q. And why not?

14 A. I never done, and I don't think that's nice for my
15 neighbor who lives upstairs in the building.

16 Q. Did you ever say anything to him about smoking marijuana
17 in your home?

18 A. One day I come up to Abubakr, told Abubakr to tell him
19 that I was not liking the idea. So I believe he did. He
00:43 20 talked to him.

21 Q. And was that the -- well, what was his reaction to that?

22 A. Well, he come up to me one day and said, "Friend, don't do
23 that kind of thing," and I said to him that friends don't come
24 to do such a thing in the basement. The other guy, who's
25 really a friend, don't do it.

1 Q. Let me unpack that a little bit. He came to you and said
2 you were not a good friend?

3 A. Yeah. "Friends don't do that." That's what he said to
4 me.

5 Q. Friends don't do what? What did you understand? Friends
6 don't do what?

7 A. Ask the other guy to stop to do such a thing in the house.
8 That's what he told me.

9 Q. And then your response to him was what?

00:43 10 A. I just keep it quiet myself.

11 Q. Now, when you say you kept quiet yourself, why did you
12 keep quiet yourself?

13 A. I don't like to argue with no one. I don't like problems.

14 Q. And was that particular to Tamerlan? Was there something
15 about Tamerlan that made you not confront him?

16 A. Probably could be, yeah.

17 Q. Can you talk about that?

18 A. Well, most of the time he was drunk, most of the time he
19 was high, and I never could have a nice time like friend to
00:44 20 friend to talk to him about that, like the drugs, the alcohol.

21 Q. Was there a time when you came home and Tamerlan was doing
22 more than just smoking marijuana?

23 A. Yeah, one day I came from my job, and I met him inside my
24 room, him and the other ones inside my room.

25 Q. Let me stop you there. Inside your bedroom?

1 A. Yes, inside my bedroom.

2 Q. And he and the other ones, what do you mean by that?

3 A. I guess they was dividing some drugs inside the room
4 there, on a table inside my room.

5 Q. And what makes you say that they were buying drugs?

6 A. Excuse me?

7 Q. Why do you say that they were buying drugs?

8 A. They was not -- I don't know if he was buying or they were
9 dividing drugs right there.

00:45 10 Q. Oh, dividing drugs?

11 A. Yeah. Like weighing the drugs inside.

12 Q. And you could see that they were dividing drugs?

13 A. Yup, inside the little bags.

14 Q. And what did you do?

15 A. I just told everybody get out of my room. That is no
16 place for them to do that.

17 Q. And did they leave at that point?

18 A. Yeah, after a few minutes they did.

19 Q. After you asked Tamerlan not to smoke marijuana in your
00:45 20 home, did he continue to do that?

21 A. Yes, he did.

22 Q. Now, did you and Tamerlan ever talk about faith and
23 religion?

24 A. Not real deeply about religion. We just talking about the
25 future and the past, how the life it is in the country.

1 Q. Now, what is your faith?

2 A. Catholic.

3 Q. And is that the way you were raised?

4 A. Yes.

5 Q. Did he discuss with you about converting to Islam?

6 A. No.

7 Q. Now, did you know that Tamerlan Tsarnaev had a younger
8 brother?

9 A. Yes.

00:46 10 Q. Do you see his younger brother in the courtroom today?

11 A. I saw him twice knock on the door looking for his brother.

12 Q. I'm asking today whether you see him in the courtroom or
13 not.

14 A. Yes.

15 Q. And is he sitting at counsel table?

16 A. Yes.

17 Q. And back during that time that Tamerlan Tsarnaev was
18 coming over to the apartment, did you meet Jahar Tsarnaev?

19 A. It's like I told you: He knocked on my door twice.

00:46 20 Q. And what were the circumstances to that? What happened
21 when he came over?

22 A. He just was looking for his brother.

23 Q. And were these times that his brother was there or not?

24 A. He used to spend most of the time at my home, so during
25 the day and night.

1 Q. Did Jahar Tsarnaev ever come in your home?

2 A. No.

3 Q. Now, you told us that you lived for about a year and a
4 half -- or two years -- how long did you live on Harding
5 Street, as best you can --

6 A. I believe it's almost two years.

7 Q. After that, those two years, did you move to a different
8 city?

9 A. Yes, Stoughton.

00:47 10 MR. WEINREB: Your Honor, he lived there almost three
11 years.

12 MR. WATKINS: I'm sorry. I misheard.

13 BY MR. WATKINS:

14 Q. How long did you live at Harding Street?

15 A. I cannot remember very well. I believe it was two years,
16 two years something. I can't remember the length of time in my
17 mind, but it's around two years.

18 Q. Around two years?

19 A. Yeah. Two years and a half, let's say.

00:47 20 Q. After that time, did you move to a different city?

21 A. Yes, I did.

22 Q. And what city did you move to?

23 A. Stoughton, Massachusetts.

24 Q. And did you move with one of your roommates down there, or
25 was it on your own?

1 A. On my own.

2 Q. After that, did you see Tamerlan Tsarnaev? Did he come
3 down to Stoughton?

4 A. No, never.

5 Q. Did you see him at all really after that time?

6 A. I just saw him once.

7 Q. I'm going to talk about that in a little bit, but did you
8 also continue to see Abubakr Turshaev?

9 A. Turshaev had been to Stoughton a couple of times with
00:48 10 Konstantin to visit me.

11 Q. And did you learn through them that Tamerlan Tsarnaev had
12 gone to Russia for a period of time?

13 MR. WEINREB: Objection, your Honor. It's hearsay.

14 MR. WATKINS: It's not for the truth.

15 THE COURT: Go ahead. You can have it.

16 BY MR. WATKINS:

17 Q. Did you learn that Tamerlan Tsarnaev had gone to Russia
18 for a time?

19 A. I heard from the other friends, yeah, from Abubakr,
00:48 20 Konstantin.

21 Q. Was there a time -- and did you know what time it was that
22 he had gone to Russia, what year?

23 A. No.

24 Q. Now, was there a time when you saw Tamerlan Tsarnaev again
25 one last time?

1 A. Yeah, I saw him once on Boylston Street.

2 Q. And do you know what year that that was?

3 A. I can't remember very well, but it was around 2012, 2011.

4 Q. Do you know -- you were told that Tamerlan had gone to
5 Russia. Do you know whether it was before or after that?

6 MR. WEINREB: Objection.

7 THE WITNESS: After that.

8 MR. WEINREB: Objection. This is calling for
9 speculation at this point.

00:49 10 THE COURT: No. Overruled.

11 Go ahead.

12 BY MR. WATKINS:

13 Q. So it was after you learned that Tamerlan had gone to
14 Russia?

15 A. Yeah, after I heard he was in Russia.

16 Q. So what kind of work were you doing when you saw Tamerlan?

17 A. I was a limousine driver.

18 Q. I'm sorry. A limousine driver?

19 A. Yes.

00:49 20 Q. And what -- what kinds of people would you drive for?

21 A. I used to drive business guys, business.

22 Q. So you were on Boylston Street, you were working as a
23 limousine driver?

24 A. Yes.

25 Q. And describe seeing Tamerlan, the circumstances.

1 A. Well, I was waiting for my client to come out from the
2 hotel, and it was almost the time for me to come out of the car
3 to take the door for the client. That was the time I saw him
4 walking toward the walk side, and I saw him and said, "Hello,
5 Tamerlan."

6 "Roger, what you doing here?"

7 I said, "Good. How are you?"

8 And he just gave me his cell phone number, "Call me," and
9 we exchanged the cell phone numbers, information. But I never
00:50 10 called him back. That was the last time.

11 Q. Now, when you saw him, was there something about the way
12 he was dressed that struck you?

13 A. Yeah, he was kind of like be weird, different, dressed in
14 white.

15 Q. When you say "dressed in white," can you describe?

16 A. Black shoes, white pants, white suit.

17 Q. Was he with anybody when you saw him?

18 A. Yeah, with his wife.

19 Q. And how did you know that that was his wife?

00:50 20 A. Because I heard from the other friends.

21 Q. Had you met that woman before when you were living on
22 Harding Street?

23 A. Once.

24 Q. So you were able -- were you able to recognize her when
25 she came up on Boylston Street?

1 A. Yes.

2 Q. Now, describe the way that she was dressed.

3 A. She was dressed in, I believe, white too, with dress,
4 black T-shirt, and white pants.

5 Q. And was she covered?

6 A. Yes.

7 Q. And when they came up to you, was there something you
8 noticed about Katherine, what she did, when Tamerlan walked up
9 to you?

00:51 10 A. Sorry. I didn't understand. Can you repeat again?

11 Q. As to Katherine, did she greet you also?

12 A. No, she did not. She stepped one back, one -- one back,
13 you know. She stepped back one foot, I'd say.

14 Q. Stepped back one foot?

15 A. Yup.

16 Q. And did she acknowledge you in any way?

17 A. Yes, she shake her face, say "Hi." That's all.

18 Q. But that's all that she said during that conversation?

19 A. To me, yeah.

00:51 20 Q. With Tamerlan, you exchanged telephone numbers?

21 A. Yes, we did.

22 Q. Did he also say something to you about his faith?

23 A. Yeah, he ask me, "You are not Muslim yet?" I said no.

24 Q. And was there any kind of further conversation?

25 A. No.

1 Q. Did you -- did that seem odd to you in any way, that he
2 asked you about your faith?

3 A. Excuse me. Can you repeat again?

4 Q. Did that seem strange to you that he said something about
5 converting to Muslim?

6 A. Yeah. I never expect he could ask me such a thing.

7 Q. After you exchanged telephone numbers, did you ever try to
8 call Tamerlan Tsarnaev?

9 A. No, I did not.

00:52 10 Q. Did he ever try to call you?

11 A. If he did, I didn't pick up the phone.

12 MR. WATKINS: That's all I have.

13 CROSS-EXAMINATION

14 BY MR. WEINREB:

15 Q. Mr. Franca, after Tamerlan Tsarnaev asked you if you had
16 become Muslim yet, you said no?

17 A. No.

18 Q. And then he just pleasantly walked on his way?

19 A. I can't hear you very well, sir.

00:53 20 Q. Then he just pleasantly walked on his way, just walked
21 off?

22 A. Yeah, he just walk off, and I took my client, and we each
23 side -- each one took away, so...

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

25 THE COURT: All right, sir. Thank you. You may step

1 down.

2 (The witness is excused.)

3 MR. FICK: The defense re-calls Mark Spencer.

4 MR. WEINREB: Your Honor, may we approach?

5 (Discussion at sidebar and out of the hearing of the
6 jury:)

7 MR. WEINREB: Your Honor, we filed a motion in limine
8 with respect to -- first of all, we had made a general
9 objection to all of these computer exhibits on the grounds that
00:54 10 hundreds and thousands of files are being offered potentially
11 as exhibits without any demonstration of the actual relevance
12 of each one. And we singled out two in particular in a motion
13 that we think are particularly irrelevant and prejudicial. I
14 don't know if you had a chance to look at it, but one --

15 THE COURT: Last night?

16 MR. WEINREB: Yes.

17 THE COURT: Yeah, I did.

18 MR. FICK: I don't think I ever got that motion.

19 THE COURT: It's on the docket.

00:55 20 MR. FICK: On the public docket?

21 THE COURT: It's sealed.

22 MR. WEINREB: We emailed it.

23 MR. FICK: I don't recall getting it, so I'm at a
24 little bit of a loss.

25 MR. BRUCK: This is part of the long motion?

1 MR. WEINREB: No, this is something we emailed to you
2 last night, about six o'clock, I think.

3 MR. FICK: I -- we did not receive it or it got lost.

4 THE COURT: Do you have a copy of it?

5 MR. WEINREB: I don't think I do have a copy.

6 THE COURT: I don't remember if I printed it or just
7 looked at it.

8 Yeah, this is it.

9 All right. That's it?

00:55 10 MR. WEINREB: Yes.

11 MR. FICK: Thank you.

12 Was that emailed to me?

13 MS. CONRAD: I don't know. I didn't notice.

14 (Pause.)

15 MR. FICK: So I can -- I can address that, if
16 Mr. Weinreb is finished.

17 MR. WEINREB: The only thing I would add is, in
18 putting in the Internet search history of Katherine Tsarnaev,
19 we were getting quite far afield from the defendant's moral
00:56 20 culpability for these offenses and whether he deserves the
21 death penalty or not. We are really going way off to the side.

22 And particularly when you're talking about the
23 Internet search history of someone twice removed from the
24 defendant, what people search on a computer is already of
25 tenuous significance. And compounded by the levels of

1 indirection, the lack of foundation, the lack of context and
2 its tenuous relationship to the mitigation case, we think that
3 should be excluded.

4 And then as for these translations, again, we are
5 talking about something which has no context, for which there
6 will be little or no foundation, and which is quite far removed
7 from the defendant's moral culpability, particularly when the
8 links between it and what the defendant did or may have done or
9 thought or felt or its influence are going to be left to the
00:57 10 jury to speculate about.

11 MR. FICK: So the issue of Tamerlan's radicalization,
12 the timing of that radicalization, the intensity of that
13 radicalization are a central part of the mitigation case and
14 always has been. Katherine Tsarnaev's searches are a -- very
15 telling pieces of circumstantial evidence that add to the
16 picture of Tamerlan's intentions when he went to Russia in
17 2012. Within a short time before and a short time after those
18 trips, her computer is making searches for things like what
19 happens to the wife of a shahid, what are the rewards for the
00:58 20 wife of a mujahidin.

21 The arguments Mr. Weinreb is making about their
22 significance are standard jury arguments. What significance
23 there is to a piece of circumstantial evidence is a
24 quintessential matter to be argued about, and this is actually
25 a very powerful corroboration of a variety of evidence we're

1 going to present about Tamerlan's intentions when he went to
2 Russia, which is, in turn, a central part of the sort of story
3 of radicalization I'm hearing from whence all of this came.

4 With regard to the audio recordings, first of all, the
5 government has had -- well, they've always had the recordings,
6 but they've had the translations for weeks. The recordings
7 themselves are, again, some of the best evidence of what was
8 going on in Tamerlan Tsarnaev's mind when he was in Russia.
9 There are multiple reasons to believe that these recordings are
00:59 10 of him.

11 One reason is that the other speakers on the
12 recordings refer to one of these speakers as Tamerlan Tsarnaev.
13 It's clear from the context of the conversation when someone is
14 talking to somebody else, you know, "Tamerlan this," "Tamerlan
15 that," that's part of the conversations.

16 Second, the recordings were found both on Tamerlan
17 Tsarnaev's computer and some of them on Tamerlan Tsarnaev's
18 phone, leading to the inference they probably came from the
19 phone to the computer. It's, again, another piece of evidence
00:59 20 pointing to the fact that they are Tamerlan.

21 We expect the members of the Tsarnaev family can
22 identify the voice on the recording as Tamerlan, and Professor
23 Reynolds will talk about his having listened to these
24 conversations and the things that he -- essentially what he
25 draws from them, what significance he draws from them.

1 MR. WEINREB: There is no relevance --

2 THE COURT: We'll come to that when he testifies.

3 MR. WEINREB: I don't think Professor Reynolds can
4 testify about these in any way.

5 THE COURT: But, anyway, to cut it short, you're quite
6 right, but I'll allow it anyway. I'll give him some leeway, at
7 least at this stage. I agree with you it's remote, but that's
8 their --

9 MR. FICK: In terms of the recordings, I -- the way we
01:00 10 structured our exhibit about the Samsung computer essentially
11 is a mirror image of what the government did with the various
12 devices they put in. There's a selection of files, they're
13 extracted, we're putting them in, and we're not going to go
14 into depth into what's in there.

15 THE COURT: You've got it.

16 MR. FICK: Thank you.

17 (In open court:)

18 MARK SPENCER, duly sworn.

19 THE CLERK: State your name, spell your last name for
01:00 20 the record, keep your voice up, and speak into the mic.

21 THE WITNESS: Mark Spencer, M-A-R-K, S-P-E-N-C-E-R.

22 DIRECT EXAMINATION

23 BY MR. FICK:

24 Q. Good morning, Mr. Spencer, and welcome back.

25 A. Good morning.

1 Q. If you'll bear with me one second, I'll finish setting up
2 my equipment here.

3 So, Mr. Spencer, can you please remind the jury where it
4 is that you work?

5 A. I'm the president of Arsenal Consulting, a digital
6 forensics consulting company in Chelsea.

7 Q. And, again, in just a couple of words, describe the kind
8 of work that you and your company do.

9 A. We practice digital forensics, which involves the
01:01 10 identification, preservation, analysis, and reporting on
11 electronic evidence.

12 Q. And just to orient us a little bit from where we kind of
13 left off in the prior phase of the case, I would like to put up
14 on the screen what's previously been admitted into evidence as
15 Exhibit 3308.

16 So, Mr. Spencer, do you remember testifying about this
17 chart when you were previously here?

18 A. I do.

19 Q. And is this a summary of some information about three of
01:02 20 the computers that you analyzed in your work?

21 A. It is.

22 Q. And just to sort of orient all of us, the Samsung laptop,
23 that was a laptop computer?

24 A. That's correct.

25 Q. And there was testimony from, I think, both the FBI and

1 from you suggesting that Tamerlan Tsarnaev was the principal
2 user of that one?

3 A. Correct.

4 Q. And the Sony was also a laptop computer. Is that right?

5 A. Yes.

6 Q. And there was evidence and testimony from various sources
7 that Jahar Tsarnaev was the principal user of that computer?

8 A. Correct.

9 Q. And then this HP, that was a desktop computer from Norfolk
01:03 10 Street in Cambridge. Is that right?

11 A. That's my understanding.

12 Q. And there were multiple users of that computer?

13 A. Yes.

14 Q. Okay. So those are three of the computers that you talked
15 about when you were here before?

16 A. Yes.

17 Q. Okay. Now, again, just to tie up a loose end, do you
18 recall some testimony about a couple of compact disks that were
19 recovered from a couple of vehicles in connection with the
01:03 20 investigation?

21 A. Yes.

22 Q. And did you investigate, at my request, whether the audio
23 files on those CDs could be found on either the Samsung or the
24 Sony computers?

25 A. Yes, we did.

1 Q. And did you create some summary charts reflecting those
2 findings?

3 A. Yes.

4 MR. FICK: Your Honor, if I could get this screen just
5 for the witness, please?

6 Q. What is the chart, the summary chart, that's currently on
7 the screen?

8 A. This is a chart that depicts the file names of each
9 multimedia file that was found on the CD, in this case the
01:04 10 Honda, and whether it was found on the Sony and whether it was
11 found on the Samsung.

12 MR. FICK: Your Honor --

13 Q. And this is something you prepared?

14 A. Yes.

15 MR. FICK: I'd move to admit 3320 into evidence and
16 publish.

17 MR. CHAKRAVARTY: No objection.

18 THE COURT: No objection? All right.

19 (Defense Exhibit No. 3320 received into evidence.)

01:04 20 BY MR. FICK:

21 Q. So which CD is this one referring to?

22 A. The CD recovered from the Honda, 14-31.

23 Q. And what is in the first column, what kinds of
24 information?

25 A. File names.

1 Q. So in other words, the names of each audio or other
2 multimedia file on the disk?

3 A. Correct.

4 Q. And then what does the second column here reflect?

5 A. That column indicates whether we found that particular
6 file on the Sony laptop.

7 Q. Okay. And then similarly, does the third column reflect
8 that same information with regard to Tamerlan's Samsung?

9 A. Yes.

01:05 10 Q. And so the yes or no sort of speak for themselves with the
11 colors associated with them?

12 A. I think so.

13 Q. And did you create a similar chart with regard to the CD
14 recovered from the Mercedes?

15 A. Yes.

16 MR. FICK: If there's no objection, I would move 3321
17 into evidence on the same basis.

18 MR. CHAKRAVARTY: No objection.

19 THE COURT: Okay.

01:05 20 MR. FICK: And publish.

21 (Defense Exhibit No. 3321 received into evidence.)

22 BY MR. FICK:

23 Q. And so does this chart similarly reflect whether -- or
24 where the files on that CD were found as to each of the two
25 computers?

1 A. This chart reflects whether they were found on each of the
2 computers, yes.

3 Q. Now, in addition to the three computers that we've just
4 talked about, did you also examine a MacBook computer seized
5 from Norfolk Street?

6 A. Yes, two MacBook computers.

7 Q. A MacBook Pro and a MacBook Air?

8 A. Yes.

9 Q. I just want to sort of focus on the MacBook Pro for a
01:06 10 minute, if we could.

11 MR. FICK: And if I could again, your Honor, have the
12 screen just for the witness.

13 Q. Putting up on the screen just something for your own
14 memory reference. I probably won't seek to admit it. But let
15 me ask you, did you examine the MacBook Pro computer to
16 determine what was the username for the Mac operating system on
17 that computer?

18 A. I did.

19 Q. And what was the username for the Mac operating system?

01:07 20 A. The username was Katherine Russell.

21 Q. And did you also -- well, let me ask this: Was the Skype
22 communication software on that computer?

23 A. It was.

24 Q. And can you just briefly describe what Skype is?

25 A. Skype is a communications program which allows you to make

1 calls between computers -- between a computer and what you
2 would think of as a regular phone or traditional phone. It
3 even allows instant messaging and file transfer.

4 Q. And did you determine what was the active Skype user on
5 this MacBook computer from your analysis?

6 A. Yes, that was --

7 Q. And what was that name?

8 A. KTsarnaev26.

9 Q. And did the computer -- or did the Skype software also
01:07 10 reflect the existence of a prior username for this?

11 A. Yes.

12 Q. And what was that?

13 A. KORussell26.

14 Q. Now, did -- you testified, I think the last time you were
15 here, about extracting the Internet search history from a
16 computer to find out what search terms may have been entered in
17 Internet searches. Do you recall that testimony?

18 A. Yes.

19 Q. Did you conduct an analysis of the Internet search history
01:08 20 on the MacBook computer?

21 A. Yes.

22 Q. And did you create a summary of your -- or a summary of
23 the data about the search history?

24 A. Yes.

25 MR. FICK: I'd like to put up on the screen, your

1 Honor, just for the witness, if I could, Exhibit 3303-7. If I
2 can get my computer to cooperate with me.

3 (Pause.)

4 Q. Well, let me show you instead what has been identified as
5 3307A. Is that a page from the Internet search history that
6 you -- I'll put this back. Here we go.

7 3307A, is that an extraction -- a page from the Internet
8 search history of the MacBook Pro computer?

9 A. Yes.

01:10 10 Q. And is that search history something you used with
11 standard forensic tools that are used by professionals in your
12 field?

13 A. In this case, a combination of tools.

14 Q. Okay.

15 A. Yes.

16 Q. And are these tools considered to be a reliable means of
17 establishing the Internet search history and then summarizing
18 the results?

19 A. Yes.

01:10 20 MR. FICK: Your Honor, I'd move into evidence Exhibit
21 3303-7A.

22 MR. CHAKRAVARTY: No objection.

23 THE COURT: Admitted.

24 (Defense Exhibit No. 3303-7A received into evidence.)

25 MR. FICK: And I'd ask to publish.

1 THE COURT: Can I just be sure of the identification.
2 You've said 3303-7A, but you've also said 3307. I just want to
3 be sure.

4 MR. FICK: That was my mistake. This is 3303-7A.

5 THE COURT: Thank you. I want the record to be clear.

6 MR. FICK: I apologize.

7 BY MR. FICK:

8 Q. Highlighting the search here from January 23rd of 2012,
9 can you just read what that search is there, the top one?

01:11 10 A. "If your husband becomes a shahid, what are the rewards
11 for you?"

12 Q. And what's the date on that?

13 A. January 23rd, 2012.

14 MR. FICK: And I would also move into evidence, then,
15 your Honor, 3303-7B.

16 THE COURT: Okay.

17 MR. FICK: And publish that.

18 (Defense Exhibit No. 3303-7B received into evidence.)

19 BY MR. FICK:

01:11 20 Q. Is this another page out of that Internet history
21 extraction that you did for the MacBook Pro?

22 A. Yes.

23 Q. And just to -- can you read the search terms there that
24 were searched on January 7th of 2012?

25 A. "Wife of mujahidin." "Rewards for wife of mujahidin."

1 Q. Now, returning to the Sony and the Samsung specifically,
2 did you, as part of your work, do an analysis of what software
3 was installed on each of those two computers?

4 A. Yes.

5 Q. And did you create a summary chart or a checklist with
6 regard to certain selected pieces of software on each of those
7 two computers?

8 A. I did.

9 Q. I'd like to show you --

01:12 10 MR. FICK: Just for the witness, if I could, your
11 Honor.

12 Q. -- what's been identified as Exhibit 3309.

13 Is this the summary chart you created with regard to five
14 specific pieces of software?

15 A. It is.

16 Q. Is it based on an accurate analysis of the two computers
17 as to what is installed?

18 A. It is. It's based off of the forensic images of each
19 computer.

01:13 20 MR. FICK: I would move into evidence, your Honor,
21 Exhibit 3309.

22 MR. CHAKRAVARTY: No objection.

23 THE COURT: Okay.

24 (Defense Exhibit No. 3309 received into evidence.)

25 BY MR. FICK:

1 Q. So is it fair to say the left column lists the name of the
2 software, and then the two following columns have each of the
3 computers with check boxes either filled in or not on them?

4 A. That's correct.

5 Q. And the first piece of software listed, TrueCrypt, what is
6 that?

7 A. TrueCrypt is an encryption application which allows you to
8 encrypt or protect either an entire storage device or storage
9 volume or a portion of a device or volume.

01:14 10 Q. And how powerful or strong is TrueCrypt? How solid is the
11 protection that it provides for anything inside?

12 A. If TrueCrypt is used properly, we are unaware of any way
13 to compromise it.

14 Q. When you say "used properly," what do you mean by that?

15 A. I'm referring to password strength, length and complexity
16 of the password -- passwords generally are used with
17 TrueCrypt -- physical security, meaning you maintain some
18 physical custody of the computer; and just basic practices like
19 not writing your password on a sticky note.

01:14 20 Q. Now, in this case Tamerlan's Samsung had the TrueCrypt
21 software on it, correct?

22 A. Correct.

23 Q. And were there also some folders or volumes that were
24 actually encrypted using TrueCrypt on Tamerlan's Samsung?

25 A. There were.

1 Q. How many were there?

2 A. There were three files which represented -- each
3 represented a TrueCrypt volume.

4 Q. When you say "volume," inside each volume, then, there can
5 be multiple additional folders and files. Is that fair?

6 A. Right. When you access a TrueCrypt volume, it looks
7 essentially like another disk on your computer.

8 Q. And were you able to get into the TrueCrypt volumes on
9 Tamerlan's Samsung?

01:15 10 A. Yes.

11 Q. And how was that?

12 A. The password to all three TrueCrypt volumes was provided
13 by the government, and it also existed in clear text elsewhere
14 on the Samsung computer.

15 Q. So the fact that it existed elsewhere just in a text file,
16 is that an example of what you were talking about before, a
17 not-good practice to keep things secure?

18 A. Right. We would consider that a poor practice.

19 Q. And what was the password for all three of those volumes?

01:16 20 A. AllahuAkbar1.

21 Q. Now, the second piece of software here, Anonymizer, what
22 is that?

23 A. That's a proxy service, "proxy" meaning it sits between
24 the user and the Internet. And the basic functionality there
25 is to make it more difficult to trace your activity on the

1 Internet.

2 Q. And that was on the Samsung but not the Sony?

3 A. Correct.

4 Q. The next two things here, these YouTube downloader pieces
5 of software, what are those?

6 A. YouTube -- it's against YouTube's policy to
7 download -- normally to download videos, so there's a variety
8 of services online and software products that allow you to
9 circumvent that policy and download the video.

01:16 10 Q. Why was that something that you chose to break out for the
11 summary in this case? What is it about that software that was
12 of significance to you?

13 A. In terms of the data that we were looking at on these
14 computers, we saw quite a bit of both Internet history
15 involving YouTube as well as videos which included "YouTube" in
16 their file names.

17 Q. And does that include some of what has been referred to by
18 various witnesses as the kind of jihadi-type material on the
19 computers?

01:17 20 A. Those are included, yes.

21 Q. And this -- the downloader software for YouTube is on the
22 Samsung but not the Sony?

23 A. Correct.

24 Q. Now, with regard to the Samsung, did you create a summary
25 of files -- audio, visual, multimedia files on the Samsung that

1 have "YouTube" in the file name?

2 A. Yes.

3 MR. FICK: If I can get the screen just for the
4 witness, your Honor.

5 Q. I'm putting up on the screen what's been marked as
6 3306-14. Is this the summary chart that you created of
7 the -- of those files?

8 A. It's a part of it, yes.

9 Q. And the entire summary is about 13 pages long -- or 13
01:18 10 pages long. Is that right?

11 A. Yes.

12 Q. And is this based on data that you, as a forensic expert,
13 extracted from the forensic images of the Samsung -- image of
14 the Samsung?

15 A. That's correct. This came -- this data came from within
16 the TrueCrypt volumes on the Samsung and outside the TrueCrypt
17 volumes on the Samsung.

18 Q. Okay.

19 MR. FICK: Your Honor, I'd move into evidence 3306-14.

01:18 20 MR. CHAKRAVARTY: No objection.

21 THE COURT: All right.

22 (Defense Exhibit No. 3306-14 received into evidence.)

23 MR. FICK: And I'd ask to publish.

24 BY MR. FICK:

25 Q. So this is the first page of that 13-page document of

1 multimedia files on the Samsung that have "YouTube" in the file
2 name. Is that right?

3 A. That's correct.

4 Q. Okay. And what does it mean that "YouTube" is in the file
5 name? Does that necessarily mean the file came off of YouTube?

6 A. No. Many of these services which allow you to facilitate
7 circumventing YouTube's policy relating to downloads, they
8 embed the title, which is going to include a -YouTube in the
9 file name.

01:19 10 Q. Now, I'd like to show you a document that's already in
11 evidence as Exhibit 3303-10. This is something we've all seen
12 before. Can you remind the jury what this file is, what this
13 chart depicts?

14 A. This chart depicts the raw number of hits on domain names
15 from Internet history.

16 Q. And this particular chart relates to the Sony, correct?

17 A. Correct.

18 Q. And we talked about this in the prior phase of the trial?

19 A. Yes.

01:20 20 Q. Did you -- using the same forensic tools, did you create a
21 similar graph for Tamerlan's Samsung laptop, the 1W3
22 identified --

23 A. Yes. In this case, tool.

24 Q. And -- I'm sorry. Yes, the tool. And what was the tool
25 called?

1 A. NetAnalysis.

2 Q. And that's a standard tool used in the field?

3 A. I would say relatively common, yes.

4 Q. And so you created an equivalent chart for the Samsung?

5 A. Yes.

6 MR. FICK: Your Honor, I'd move into evidence that
7 chart which has been marked as 3303-9.

8 MR. CHAKRAVARTY: No objection.

9 THE COURT: All right.

01:20 10 (Defense Exhibit No. 3303-9 received into evidence.)

11 BY MR. FICK:

12 Q. So is this the chart that you created reflecting the
13 Internet history on Tamerlan's Samsung laptop?

14 A. Yes.

15 Q. And I'm just pulling out the first couple of things here,
16 and then this one in particular. HorizonHobby.com, have you
17 gone on the Internet to see what that website is?

18 A. I have.

19 Q. And can you just describe in general terms what that
01:21 20 website is?

21 A. It looks like a retailer of radio-controlled planes,
22 boats, cars, accessories.

23 Q. Did you also extract the Internet browsing history from
24 the Samsung laptop?

25 A. Yes.

1 Q. And did you create a summary chart of the browsing history
2 from the Samsung laptop analogous to what you did with the
3 other computers in the case?

4 A. Yes.

5 MR. FICK: Your Honor, I would move that into evidence
6 as Exhibit 3303-005, if I could.

7 THE COURT: Is there any objection?

8 MR. CHAKRAVARTY: No, your Honor.

9 THE COURT: All right.

01:22 10 (Defense Exhibit No. 3303-005 received into evidence.)

11 BY MR. FICK:

12 Q. So showing you on the screen what's been marked as
13 3303-005, is that, in fact, a summary of the Samsung browsing
14 history that you were just talking about?

15 A. Yes.

16 Q. And so, for example, on April 18th of 2013, what's the
17 page title of the page that I've got highlighted there?

18 A. "Photos: Boston bombing suspects. CNN.com."

19 Q. And just paging through, for example, to page 151 of the
01:23 20 history, can you just read the search -- or not the search
21 terms, but the page titles for like the first two of those
22 items here on the screen?

23 A. "Browning hi-power pistols, firearms, product family."

24 Q. And can you read the very last one through down at the
25 bottom?

1 A. "P95 Ruger detail, strip and info, YouTube."

2 Q. And then on the next page of the exhibit, read those two
3 search terms for March 4th -- or not search terms, but those
4 two page titles for March 4th, 2013.

5 A. "Ruger P95 problems, YouTube"; "Ruger P95 review,
6 YouTube."

7 Q. Now, was the Skype communication software also found on
8 the Samsung, Tamerlan's Samsung laptop?

9 A. Yes.

01:24 10 Q. And did you do an analysis to extract some of -- the sort
11 of text-like conversations using Skype on that computer?

12 A. Yes.

13 Q. And did you then create summary charts reflecting those
14 communications?

15 A. Yes.

16 MR. FICK: If I could get the screen just for the
17 witness, your Honor.

18 Q. I'm putting up what's been previously marked as
19 Exhibit 3308-001.

01:25 20 What is this document I have here on the screen?

21 A. This is a summary of a particular conversation on this
22 day, April 19th, 2012, between these two accounts, via
23 Awliya1500 and KTsarnaev26.

24 MR. FICK: Your Honor, I move this into evidence,
25 Exhibit 3318-1.

1 MR. CHAKRAVARTY: No objection.

2 (Defense Exhibit No. 3318-1 received into evidence.)

3 THE COURT: All right. Do you want it displayed?

4 MR. FICK: Yes, please.

5 BY MR. FICK:

6 Q. Up here at the top, what are the two terms here, the
7 Awliya1500 and KTsarnaev26? What do those represent?

8 A. Those are Skype usernames.

9 Q. And the Awliya1500, who is that Skype username associated
01:26 10 with?

11 A. Tamerlan Tsarnaev.

12 Q. So is that the Skype username that was sort of the active
13 user on the Samsung laptop computer?

14 A. Yes.

15 Q. And so is this essentially a series of kind of Skype
16 instant messages that went back and forth between those two
17 accounts on April 19th of 2012?

18 A. Right, including images.

19 Q. So in other words, in addition to sending texts back and
01:26 20 forth, you can send images back and forth. Is that fair?

21 MR. CHAKRAVARTY: I'd object to some of the leading
22 that Mr. Fick is doing. We're moving along but --

23 THE COURT: It is a little leading, but go ahead.

24 MR. FICK: All right.

25 BY MR. FICK:

1 Q. So this is the first page of that conversation. Is that
2 fair?

3 A. Yes.

4 Q. Can you read the text that I've just highlighted there
5 from that piece of the conversation?

6 A. "I want to eat. And you want an iPhone."

7 Q. And the next page of the exhibit, can you read that piece
8 of text that was sent from the Awliya to the KTsarnaev?

9 A. "Tell them how hard your life is."

01:27 10 Q. And does -- the image I've highlighted here also an image
11 that was sent from Awliya to KTsarnaev as part of that
12 conversation?

13 A. Yes.

14 Q. Moving to the next page of the exhibit, these are also
15 images that were sent as part of that conversation. Is that
16 right?

17 A. That's right.

18 Q. Now, did you extract a couple of other similar Skype
19 conversations and similarly put them into summary charts like
01:28 20 this?

21 A. Yes.

22 MR. FICK: If there's no objection, I would move into
23 evidence 3318-003, just to speed things up.

24 MR. CHAKRAVARTY: No objection.

25 THE COURT: All right.

1 (Defense Exhibit No. 3318-003 received into evidence.)

2 MR. FICK: And I'll publish.

3 BY MR. FICK:

4 Q. Now, is this another Skype conversation between the
5 accounts we've been talking about from April 30th of 2012?

6 A. It is.

7 Q. And are these images that were sent from the Awliya
8 account to the KTsarnaev account on that day?

9 A. If you back out of there.

01:29 10 Q. Sure. I'm sorry. It's the blocking.

11 A. Those are links.

12 Q. I'm sorry? Okay.

13 MR. CHAKRAVARTY: Your Honor, again, if we could ask
14 the witness to describe what things are as opposed to Mr. Fick
15 asking -- telling him what they are.

16 THE COURT: Okay.

17 BY MR. FICK:

18 Q. Let me ask the question a little bit differently. We saw
19 before images that were actually sent. What's going on here?

01:29 20 What is actually reflected in this particular Skype
21 conversation that may or may not be different from what was on
22 the previous one we looked at?

23 A. These are links to particular YouTube videos.

24 Q. Being sent?

25 A. Being sent from Awliya1500 to KTsarnaev26.

1 Q. And so then the images on the right-hand column, where do
2 those come from?

3 A. Those are screen shots from the videos.

4 Q. And so you've verified that those are, in fact, the screen
5 shots at those links?

6 A. Yes.

7 MR. FICK: Your Honor, if I could get the screen again
8 just for the witness, please.

9 Q. Showing you a folder that we've identified as Exhibit
01:30 10 33 -- I'm sorry. Wrong one. 3306. Do you recognize the
11 contents of this folder, Exhibit 3306?

12 A. I do.

13 Q. Can you, in general terms, describe what is contained in
14 this folder?

15 A. This folder contains derivative spreadsheets and summaries
16 of information from the Samsung laptop; also, folders and files
17 which have been extracted from the forensic image of the
18 Samsung laptop, particular folders; and translations that were
19 provided to me for certain files.

01:31 20 Q. And with putting aside the translations, are the selected
21 folders and files and the various derivative evidence, the
22 spreadsheets -- are those things that you either created or
23 verified the accuracy of against the forensic image of the
24 Samsung?

25 A. Yes. The folder and file extraction is an extraction

1 based on what the user would have access to, which is similar
2 to the summaries that are associated with it.

3 Q. And is that -- well, similar, essentially, in structure to
4 the exhibits that we talked about with Mr. Swindon a couple of
5 weeks ago from the various devices the government put in
6 evidence?

7 A. Similar, yes.

8 MR. FICK: Your Honor, I would move into evidence
9 3306, that collection of material.

01:32 10 THE COURT: The entire folder?

11 MR. FICK: Yes.

12 MR. CHAKRAVARTY: As noted, your Honor.

13 THE COURT: Okay. I'll admit it.

14 (Defense Exhibit No. 3306 received into evidence.)

15 BY MR. FICK:

16 Q. Now --

17 MR. FICK: And if we could publish to the screen.

18 Q. In your analysis of Tamerlan's Samsung, did you take steps
19 to re-create what the user desktop or wallpaper on that
01:32 20 computer would look like?

21 A. Yes.

22 Q. And what steps did you take to do that?

23 A. We took the forensic image that was obtained from the
24 Samsung laptop, and we booted that forensic image up in what's
25 known as a virtual machine, essentially, a virtual computer.

1 So once it booted, we were able to look at the Windows desktop
2 in a way similar to the user would have if he was sitting in
3 front of a real computer.

4 Q. And did you use sort of standard forensic tools to do
5 that?

6 A. Standard technical tools, yes.

7 Q. Okay. And so the screen shot or image that you created,
8 is that what the desktop of the Samsung would have looked like
9 sort of the last time it was on?

01:33 10 A. Very similar to. The relative location of certain objects
11 might be different. The date and time in the bottom right-hand
12 corner of the screen is going to be different. But in terms of
13 which objects are on the screen, imagery, that's going to be
14 the same as what the user saw.

15 Q. So I'm going to put on the screen what is in evidence as
16 part of 3306, 3306-001. Is this what you just described, what
17 Tamerlan Tsarnaev's Samsung desktop looked like?

18 A. Yes, that's the Windows desktop.

19 Q. And what are those sort of boxes of text kind of on the
01:34 20 left side of the screen? Like what is that?

21 A. Those are Windows 7 sticky notes.

22 Q. And what is a sticky note in Windows?

23 A. It's a very basic function. It allows you to take -- the
24 user to jot down some notes with some basic formatting and
25 stick them on the desktop.

1 Q. And in this case, did you separately extract those texts
2 so that they could be looked at sort of separately as a whole?

3 A. We did. We located the sticky notes file itself and
4 extracted out -- they actually have multiple streams of text or
5 multiple copies of text. We extracted out the formatted text
6 for each sticky note.

7 Q. So I'm going to put up on the screen now what is in
8 evidence as the first of those sticky notes and the translation
9 of it, 3306-2 and 3306-2A. On the left here, 3306-2, is that
01:35 10 the sticky note itself with various Cyrillic and a few
11 non-Cyrillic characters?

12 A. Yes.

13 Q. I'm just going to ask you to read the portions of the
14 translation here that are in English.

15 MR. CHAKRAVARTY: Objection, your Honor. There's no
16 foundation to the nature of this translation and the accuracy
17 of it.

18 THE COURT: It was represented it was already in
19 evidence.

01:36 20 MR. CHAKRAVARTY: It's one thing for it to be in
21 evidence, but another thing for somebody to describe what it is
22 and --

23 THE COURT: I think if it's in evidence, it can be
24 read.

25 MR. FICK: We provided it to the government weeks ago.

1 BY MR. FICK:

2 Q. So, anyway, Mr. Spencer, can you please read the English
3 portions of the translation of the sticky note?

4 A. "We all belong to Allah, and to him is our return. Join
5 the campaign, whether it's easy or burdensome, and fight in the
6 way of Allah with your possessions and your souls. It is
7 better for you, if only you knew. If they expected easy profit
8 and a light road, then they would have followed you, but the
9 distance seemed too far for them. Repentance, 9:41-42."

01:36 10 Q. And then you can skip the two things that seem to be
11 vehicle related, and if you could just read the last line for
12 me, please?

13 A. "If you help Allah, so he will help you. Muhammad 7."

14 Q. So that was sticky note number 1. I'm now going to put on
15 the screen what has previously been admitted as 3306-3 and -3A,
16 the other sticky note.

17 So, again, similarly, is it fair to say this is the sticky
18 note you extracted in Cyrillic letters, right?

19 A. Yes.

01:37 20 Q. And I'll just ask you again to read the English parts of
21 the translation here.

22 A. "If Allah had so willed, he would have taken revenge
23 himself, but he wanted to test some of you by means of others,
24 (Muhammad, 4).

25 "He who is fighting, fights for himself. Truly, Allah

1 does not need the worlds. (Al-Ankabut, 6.)

2 "And no one knows your lord's army but him, (Al-Mudassir,
3 31).

4 "Following the words of almighty Allah, who said: Fight
5 them, Allah will punish them through your hands, will belittle
6 them and will grant you a victory over them, and will heal the
7 breasts of the believers.

8 "And if they turn away, say: It's enough for me to have
9 Allah. There is no god but him. I trust only in him, as he is
01:38 10 the lord of the great throne (9:129).

11 "Truth has arrived, and falsehood perished; for falsehood
12 is bound to perishe [sic].

13 "The one for whom Allah stands will not perish.

14 "Allah says in the Qur'an: Fighting may be imposed on
15 you, even though you dislike it. But you may dislike something
16 which is good for you, and you may like something which is bad
17 for you. Allah knows while you do not know. (Surah-2, Bakara,
18 ayat 216).

19 Q. Thank you.

01:38 20 And so, again, those are the full texts of what we can
21 only see partially on the screen on the desktop itself. Is
22 that fair?

23 A. Yes.

24 Q. Now, putting on the screen what is in evidence as 3306-5,
25 what is this document on the screen?

1 A. This document provides a summary of what a user -- it's a
2 list of what files and folders a user would see with their
3 default options.

4 Q. Inside. Inside what?

5 A. In this case, the Document TrueCrypt volume.

6 Q. So in other words, the TrueCrypt file was named
7 "Document"?

8 A. That's correct.

9 Q. And so is this what you would see if you had the password
01:39 10 and you opened it up? If you were the user, this is what --
11 the summary of what you would see inside that TrueCrypt volume?

12 A. This is the list of files and folders that you would see,
13 right. You would not see, with default settings, the system
14 files, for example, and temporary copies of documents.

15 Q. So just, for example, this is actually a folder within the
16 folder, right --

17 A. Right.

18 Q. -- that I just circled on the left here?

19 And then this, for example, that I circled now toward the
01:40 20 right, what is that?

21 A. That's a PDF document.

22 Q. So it's an individual file?

23 A. Correct.

24 Q. So this first page of the exhibit, what -- well, these
25 TrueCrypt folders, these volumes, are they in any kind of

1 hierarchical structure?

2 A. They are just like any other folder structure on your
3 Windows computer.

4 Q. So what we're seeing on the screen here, is that the top
5 level, so to speak?

6 A. Right. That's the top, or root level, of that TrueCrypt
7 volume.

8 Q. And if I paged down into, for example, the next page, what
9 does that represent?

01:40 10 A. That's the contents of the folder 2012-02-24 TT.

11 Q. So in other words, underneath the top level, there's a
12 folder with the name I just circled there on top, that 2012
13 number you just read, right?

14 A. Right.

15 Q. And so are these the files that are inside that subfolder?

16 A. Right. These are the files that a user would see,
17 correct.

18 Q. And the next page, what does this page represent?

19 A. This is a list of the files in another folder,
01:41 20 2012-07-16 001.

21 Q. And if we go back up to the top -- again, we just talked
22 about the contents of the first folder and the second. Is that
23 correct, that I just circled there?

24 A. Correct.

25 Q. And so moving, then, to the third page of the exhibit,

1 what does this page of the exhibit represent? Or the fourth
2 page of the exhibit. I'm sorry.

3 A. Again, this is a list of files that are inside that
4 folder. In this case, they're audio files.

5 Q. Okay. And the next -- I'm sorry. When you say "folder,"
6 is that a subfolder of the Document TrueCrypt volume?

7 A. Yes.

8 Q. The next page, what does that represent?

9 A. A list of files within this particular folder called the
01:42 10 "Hereafter Series."

11 Q. And the sixth page, what is that?

12 A. A list of files within the -- I'm not going to be able to
13 pronounce it -- this folder on the TrueCrypt volume.

14 Q. This, what I'm circling here, it starts with a V,
15 V-D-O-K-H?

16 A. Yes.

17 Q. And what's on the last page of the exhibit here?

18 A. Another list of files within this particular folder.

19 Q. Okay. Now, within -- so is it fair to characterize what
01:43 20 we just looked at a summary of the directory structure of the
21 files that are within this particular TrueCrypt volume?

22 A. Yes.

23 Q. Now, also within 3306, Exhibit 3306, I'm going to put on
24 the screen the exhibit itself with its contents and open up
25 folders and files. What is it that's depicted on the screen

1 right here, this list?

2 A. These are folder names.

3 Q. And so does each one correspond to the -- well, each of
4 the ones named -- with TC in the title, does that correspond to
5 the two -- or to the three TrueCrypt volumes?

6 A. That refers to TrueCrypt. "TC" is short for TrueCrypt.

7 Q. So I just want to -- I'm sorry. "Document" is the one we
8 just looked at, the summary, the sort of pictorial summary a
9 few minutes ago, that's the one that's currently highlighted,
01:43 10 correct, "Document"?

11 A. Correct.

12 Q. And so if we go inside, for example -- and we go inside
13 this folder, I'm going to put up on the screen one of these
14 folders, and I'll assign it a separate sub exhibit number. We
15 will call this one Exhibit 3306A.

16 So is this one of the files that we just clicked on and
17 opened from inside this TrueCrypt volume?

18 A. Yes.

19 Q. I'm going to open another one and assign it the sub number
01:44 20 3306B, and one more and assign it the sub number 3306C. And
21 moving back up a level within, again, the same TrueCrypt
22 volume, I'll open a file and assign it a letter 3306D, and then
23 one more -- one more picture here, 3306E.

24 Again, these are all things that are contained within this
25 one encrypted volume on Tamerlan's Samsung laptop. Is that

1 right?

2 A. That's correct.

3 Q. I'm now putting on the screen what's been admitted as
4 Exhibit 3306-8. What does this exhibit represent, this sub
5 exhibit?

6 A. This is a list of the files and folders that a user would
7 see at the top level of the "Document" -- plural, "Documents"
8 TrueCrypt volume.

9 Q. So is this a different TrueCrypt volume? It's "Documents"
01:47 10 instead of "Document"?

11 A. Yes.

12 Q. Is that just the name that was assigned to it?

13 A. The file name, yes.

14 Q. So this is the top level, so to speak?

15 A. Yes.

16 Q. What does this next page represent?

17 A. This is the contents, a list of files and folders within
18 the "Stuff" folder off of the top or root.

19 Q. And so where I just circled at the top of the exhibit,
01:47 20 does that sort of represent where in the structure we're
21 looking right now?

22 A. Yes.

23 Q. And the next page?

24 A. This is the list of files and folders within the "doc"
25 folder -- subfolder of "Stuff."

1 Q. And the next page?

2 A. A list of files and folders within the "DomAshnee"
3 subfolder of "doc," which itself is a subfolder of "Stuff."

4 Q. And the next page?

5 A. A list of files and folders within the "DomAshnee"
6 subfolder of "doc," which itself is a subfolder of "Stuff."

7 Q. And the next page?

8 A. Again, this is the list of files, in this case within the
9 "Videos" folder, which is underneath "DomAshnee," "doc" and
01:48 10 then "Stuff."

11 Q. And the next one?

12 A. Folders within "Lekcii Abu Saad."

13 Q. And the next one?

14 A. Files underneath "Lekciya po knige Abdully."

15 Q. So in other words, is this one a subfolder of the one we
16 just looked at?

17 A. Yes.

18 Q. And this is just more of that same folder? Or actually,
19 I'm sorry. A different subfolder?

01:49 20 A. Yes.

21 Q. And the next page?

22 A. A list of, again, files from another folder.

23 Q. And the next one?

24 A. Same.

25 Q. I'm sorry. When you say "same," it's a distinct folder

1 within -- going further down the structure as reflected on top.

2 Is that right?

3 A. A list of files within the folder "Zhadnost."

4 Q. And the next one?

5 A. A list of files and folders underneath the "Nasheed"
6 folder.

7 Q. And the next one?

8 A. A list of files under the "New" folder.

9 Q. And the next one?

01:49 10 A. A list of files under the "New Nasheed" folder.

11 Q. The next one?

12 A. A list of files under the "Said Abu Saas Lekcii" folder.

13 Q. The next one?

14 A. A list of files under the "Ukaz Fatwa" folder.

15 Q. The next one?

16 A. A list of files underneath that particular folder.

17 Q. And the various names of the files here, these are names
18 of some of the *Inspire* magazine files we've been looking at at
19 various points in the case?

01:50 20 A. Yes.

21 Q. And, finally, the last page of this exhibit?

22 A. Files within the "Vdokhnovlyai" folder.

23 Q. And did you create a similar summary for the third
24 encrypted volume?

25 A. Yes.

1 Q. Putting up on the screen what's been admitted as 3306-6.
2 And, again, is this the top level of the third encrypted
3 volume?

4 A. It is. This is the top level of documents 11, as a user
5 would see it.

6 Q. And the second of the four pages?

7 A. That's a list of files within the "al-Makdisi" folder.

8 Q. And the third page?

9 A. A list of files with the "Islamic literature" folder.

01:51 10 Q. And the fourth page?

11 A. A list of files within that particular folder.

12 Q. And apart from the TrueCrypt volumes, did you make similar
13 summary exhibits like this for a small handful of other folders
14 on the Samsung?

15 A. Yes.

16 Q. I'm going to put on the screen what's been admitted as
17 3306-10. What is this a depiction of?

18 A. This is a list of files and folders within "New Folder,"
19 which existed on the Windows desktop for the user Umar.

01:51 20 Q. And so page 1 is from that folder. Second page, more of
21 the same. Is that fair?

22 A. Additional items.

23 Q. Additional items. I'm sorry.

24 Page 3?

25 A. More items.

1 Q. And these are all image files within that folder we've
2 been talking about?

3 A. Yes.

4 Q. Page 4?

5 A. More files.

6 Q. 5?

7 A. This is the last page of files.

8 Q. Of that folder?

9 A. Correct.

01:52 10 Q. And what does the sixth page of the exhibit represent?

11 A. This is the contents as a user would see it of the "RRRR"
12 folder, underneath the folder we were previously in.

13 Q. And, finally, the seventh page of the exhibit?

14 A. Additional files.

15 Q. And, again, these are largely images that we were looking
16 at in this folder?

17 A. Yes.

18 Q. Then putting on the screen what has been admitted as
19 3306-12, what does this summary chart represent?

01:53 20 A. This is a list of files within the "RealPlayer downloads"
21 folder. That's a subfolder of videos, which itself is a
22 subfolder of "Umar."

23 Q. "Umar" being the principal user of the Samsung?

24 A. Right.

25 Q. What is RealPlayer?

1 A. RealPlayer is a multimedia player, similar to, in some
2 ways, Windows Media Player.

3 Q. So -- okay.

4 And the second page of the exhibit is simply more files.
5 Is that right?

6 A. That's correct.

7 Q. Putting on the screen what's been admitted as 3306-9, what
8 does this summarize?

9 A. This is a list of files and folders within the "Downloads"
01:54 10 folder, which is a subfolder off of "Umar."

11 Q. And the second page of the exhibit?

12 A. Additional files in "Downloads."

13 Q. And the third page of the exhibit?

14 A. Additional files.

15 Q. And, finally, what's been admitted as 3306-10, putting on
16 the screen, what does this summarize?

17 A. The contents of a folder named "New Folder" off of the
18 Windows desktop under the "Umar" folder.

19 Q. And, again, what format -- what types of files are on the
01:55 20 top level of this folder?

21 A. Images.

22 Q. And the second page?

23 A. More images.

24 Q. And the third page?

25 A. More images.

1 Q. And the fourth page?

2 A. Images.

3 Q. And fifth page?

4 A. The final page of images.

5 Q. And what does the sixth page here represent?

6 A. The contents of the folder "RRRR" underneath the "New
7 Folder" on the Windows desktop underneath the "Umar."

8 Q. And, again, the -- the format of what's included in this
9 folder, what kind of files are these?

01:55 10 A. Images.

11 Q. And the second page?

12 A. More images.

13 MR. FICK: The last thing I want to do is just publish
14 very short bits of two more items from inside one of the
15 TrueCrypt volumes.

16 If I may just have a moment.

17 I'll mark these respectively as 3306F and G.

18 (Pause.)

19 MR. FICK: I'm going to publish a very short bit of
01:56 20 this video file.

21 (Audio recording played.)

22 Q. So that was a portion of what's marked as 3306F, sub
23 exhibit 3306-F -- not dash F, but F.

24 And then 3306 -- sub exhibit 3306G, again, a small portion
25 to publish.

1 (Audio recording played.)

2 MR. FICK: Your Honor, if I may have one moment, I
3 think I'm almost done. In fact, perhaps it makes sense to take
4 the eleven o'clock break.

5 THE COURT: All right. We'll do that.

6 THE CLERK: All rise for the Court and jury. The
7 Court will take the morning recess.

8 (The Court and jury exit the courtroom and there is a
9 recess in the proceedings at 10:48 a.m.)

02:23 10 (The Court entered the courtroom at 11:22 a.m.)

11 THE COURT: There's a request for a brief sidebar?

12 (SIDEBAR CONFERENCE AS FOLLOWS:

13 MR. WEINREB: Your Honor, it's not related to this
14 witness, but I didn't know if we were going to have another
15 chance before the witness is called. So with respect to the
16 so-called reader who's going to read 302s, we have an
17 outstanding motion with respect to Viskhan Vakhobov to bar his
18 testimony through a 302. But I wanted the Court to know that
19 last night, in the event that the Court rules against the
02:33 20 government on that one, the parties traded essentially proposed
21 redacted 302s, and I wanted to just hand those up in case you
22 want to look at them.

23 THE COURT: That would be great. Remind me about his
24 -- is he one who would claim the Fifth Amendment?

25 MR. WEINREB: Yes. That's what we were told by the

1 defense.

2 THE COURT: Okay. Let me just say, I thought about it
3 a good deal overnight. Given the rules of the game for this
4 stage of the case and the statute, if a witness is truly
5 unavailable as opposed to unwilling, I will permit 302s subject
6 to reasonable redactions to be used, but I will accompany it
7 with a caution to the jury about the differences between
8 relying on that kind of evidence and evidence that they see
9 here in the courtroom from witnesses who are under oath and are
02:33 10 cross-examined. I think it's appropriate to caution them about
11 that.

12 With respect to a witness who is unavailable by reason
13 of his invocation of the Fifth Amendment, I think that may also
14 be appropriate to advise the jury of as a caution and in
15 understanding that testimony.

16 MS. CONRAD: Could I just suggest, your Honor, with
17 respect to Dolakov, your Honor, he's unavailable because we
18 can't find him.

19 THE COURT: Right.

02:33 20 MS. CONRAD: There's certain people -- I would suggest
21 that the jury just be told that this person is unavailable.

22 THE COURT: For him, I agree.

23 MS. CONRAD: Saying he's unavailable because of the
24 invocation of the Fifth, I think, is more prejudicial than it
25 is relevant, especially --

1 THE COURT: I think it may bear on the jury's
2 assessment of the evidence.

3 MS. CONRAD: Especially if the reason why he's taking
4 the Fifth has nothing to do with the subject matter of what
5 we're putting in. For example, if we were going to put in a
6 witness like -- who has some knowledge, let's say, of the
7 transfer of the gun to Mr. Tsarnaev but we were going to offer
8 a 302 regarding other matters and his invocation of the Fifth
9 had nothing to do with the matters we were putting in, it seems
02:33 10 to me that it is more prejudicial than probative to tell the
11 jury that he would take the Fifth about some other matter. We
12 may have witnesses, for example, who would take the Fifth with
13 respect to drug use or drug sales and so --

14 THE COURT: I'm not sure it's -- with respect to
15 another matter, if he's invoking when asked to testify here --

16 MS. CONRAD: He's invoking because he knows he could
17 be asked on cross-examination --

18 THE COURT: Okay. So these are the ones that are more
19 or less agreed to, is that it?

02:33 20 MR. WEINREB: No.

21 THE COURT: Okay.

22 MR. WEINREB: This is where we have not agreed.

23 MS. CONRAD: These are dueling versions.

24 MR. WEINREB: Essentially, the government's view is
25 that anything that is the witness' impression,

1 characterization, opinion, as opposed to simply recounting
2 something that the witness saw or heard with their own eyes and
3 is repeated for the jury, I mean, that alone is problematic
4 because we can't explore whether the witness really had an
5 opportunity to hear or see it accurately in the first place,
6 whether they're remembering it accurately, whether they're
7 retelling it accurately. But when it comes to their
8 impressions, for example, Mr. Vakhobov says the only thing that
9 would have caused Jahar to do this is if his brother pushed him
02:33 10 into it or brainwashed him or that Jahar is like a little boy.
11 That's the kind of thing you need to cross-examine on.

12 THE COURT: Yellow is?

13 MR. WEINREB: The black -- the yellow is the
14 government's proposed redactions.

15 THE COURT: So this matches in the first page?

16 MR. WEINREB: Yes, exactly.

17 MS. CONRAD: Right.

18 MR. WEINREB: And this is the --

19 THE COURT: Okay.

02:33 20 MS. CONRAD: So the blacked-out -- may I just say,
21 your Honor, with respect to the last piece, I understand, like,
22 the only thing that could have caused Jahar to do this would be
23 his older brother, that's an opinion. It's speculation. I get
24 that. But to say he was like a little boy, that's his
25 observation, just like a witness, How would you describe so and

1 so?

2 THE COURT: I think I'll have to do the comparison
3 before we get to Vakhabov because I'll have to -- so we may
4 have to take a short break to do that.

5 MS. CONRAD: I don't think we'll get there until after
6 lunch anyway.

7 THE COURT: That's fine.

8 MR. WEINREB: Then there's another witness, this Mirra
9 Kuznetsov, who we're told is ill, but I don't think there's
02:33 10 been a sufficient showing that she won't get better by the end
11 of the week or next week.

12 MS. CONRAD: It's chronic.

13 MR. FICK: -- that causes her great distress, and the
14 stress of this is -- the prospect of testifying really has her
15 beside herself. I think she's endeavoring to get some kind of
16 an actual note from a doctor about that.

17 THE COURT: I think I'll need more than a
18 representation. Okay. All right.

19 . . . END OF SIDEBAR CONFERENCE.)

02:34 20 (The jury entered the courtroom at 11:23 a.m.)

21 MR. FICK: Thank you. I'd like to propose a few more
22 things from 3306 if I could. If I can get the screen for the
23 courtroom.

24 So from the collection of files and folders in 3306,
25 I'm putting up the subfolder Umar downloads. I'm going to open

1 one of these files here, and I will sub-mark this as 3306-H.
2 If I can get my mouse to cooperate, I'll put this up on the
3 screen.

4 Q. Mr. Spencer, is this the individual image that underlies
5 the desktop of the Samsung computer that you recreated? Does
6 it appear to be?

7 A. Yes.

8 MR. FICK: So that I'll mark as 3306-H. Then what I'd
9 like to do is just go through the "new folder" desktop and just
02:35 10 publish some of these images slightly larger and run through
11 them one after the other -- so this is 3306, Umar desktop, new
12 folder -- the image files inside it seriatim.

13 Q. Now, this folder -- well, stepping back for a minute, when
14 one browses the internet, sometimes is it the case that
15 sometimes images, et cetera, are sort of -- what happens when
16 one browses the internet and hits a web page that has pictures
17 on it? Do those pictures get stored on the computer somehow in
18 an automated way?

19 A. There's many factors involved in how that happens, but,
02:40 20 generally speaking, if you're browsing the web and you're
21 seeing images, they're going to be temporarily cached on the
22 computer.

23 Q. Is there a particular place that Windows puts such images?

24 A. The common location is temporary internet files.

25 Q. So this -- the fact that these images we just looked at

1 were just in something called "new folder" on the desktop of
2 the Samsung, can you infer anything about whether they were put
3 there by an automated process or a human hand? I mean, is that
4 where temporary internet files are put?

5 A. No.

6 MR. FICK: Finally, I want to publish a small piece of
7 one audio recording in 3306 from the encrypted files and put up
8 on the screen also the admitted English translation. Bear with
9 me for one moment.

02:42 10 (Audio recording played.)

11 MR. FICK: I have nothing further.

12 MR. CHAKRAVARTY: Mr. Spencer, I have no questions for
13 you.

14 THE COURT: All right, Mr. Spencer. Thank you. You
15 may step down.

16 MS. CLARKE: Your Honor, may we approach?

17 THE COURT: Approach?

18 (SIDEBAR CONFERENCE AS FOLLOWS:

19 MS. CLARKE: Yesterday we overbooked our people, and
02:50 20 today we underbooked our folks. We really thought Mr. Spencer
21 would go close to the lunch break.

22 THE COURT: He tried.

23 MS. CLARKE: We could do some more pictures. But we
24 called the people that we thought were going to go on right
25 after lunch to see if they could get in here. We did that over

1 the break. I don't think we have them yet. It would be the
2 three boxing related witnesses. Miss Petri is on her way over.
3 These are sort of connected to this, but we could read her
4 earlier. And we've asked Mr. Lipson to come on. But we just
5 simply didn't schedule very well. We had a lot of people
6 waiting in the hallway yesterday.

7 THE COURT: If we took --

8 MS. CLARKE: It will be better tomorrow.

9 THE COURT: So I'm going to have to resolve the
02:50 10 Dolakov dispute. If we took some time to do that, would she be
11 here to read?

12 MS. CONRAD: Yes.

13 THE COURT: And Dolakov, is there -- what's the status
14 of that?

15 MR. WEINREB: I think, with Dolakov, we agreed on
16 redacted versions of the --

17 THE COURT: You're going to read all three?

18 MS. CLARKE: Two, Dolakov and Vakhobov.

19 THE COURT: No, 302s.

02:50 20 MS. CONRAD: I think there might be some very slight
21 differences. Maybe we can confer.

22 THE COURT: Why don't we take a short break. I'll
23 look at Vakhobov and see what we can do.

24 MR. WEINREB: Your Honor, I wanted to reiterate for
25 the record, especially since we have some time, there are some

1 -- five Russian witnesses who are going back to Russia on
2 Friday. If there's time to put them on today or tomorrow, that
3 would be better than waiting until Thursday.

4 MS. CLARKE: We're doing the best we can.

5 . . . END OF SIDEBAR CONFERENCE.)

6 THE COURT: We have a slight logistical problem that
7 we're going to solve. We have to take another recess.

8 (Recess taken at 11:36 a.m.)

9 (The Court and jury entered the courtroom at 12:05 p.m.)

03:16 10 THE COURT: All right. Mr. Watkins.

11 MR. WATKINS: The defense calls John Curran.

12 THE CLERK: Sir, want to step up here, please? Step
13 up to the box. Remain standing. Raise your right hand.

14 JOHN CURRAN, Sworn

15 THE CLERK: Have a seat. Please state your name for
16 the record and spell both your first and last name.

17 THE WITNESS: My name is John Curran. J-o-h-n,
18 C-u-r-r-a-n.

19 DIRECT EXAMINATION BY MR. WATKINS:

03:17 20 Q. Good afternoon, Mr. Curran.

21 A. Good afternoon.

22 Q. Mr. Curran, where do you currently live?

23 A. I live in Watertown, Massachusetts.

24 Q. Were you born in Boston?

25 A. Yes, I was.

1 Q. Where were you raised?

2 A. I was raised in Mission Hill, in Roxbury.

3 Q. Have you always lived in the Boston area?

4 A. I have.

5 Q. How old are you currently?

6 A. I'm sorry?

7 Q. How old are you currently?

8 A. I'm 73.

9 Q. Are you employed?

03:17 10 A. No, I'm retired.

11 Q. What did you do before you were retired?

12 A. I worked for 35 years for the Commonwealth of
13 Massachusetts. I was a grant reader, and I would monitor
14 grants once it was funded.

15 Q. In addition to your regular job, did you also do volunteer
16 work and other work?

17 A. Yes. I've been a volunteer coach in boxing through USA
18 Boxing for 47 years.

19 Q. So at what age did you get started with boxing?

03:18 20 A. Probably when I was six. My father and I -- it was a
21 connection that we had. And we would go out in the backyard,
22 and I learned how to throw a jab and the basic punches and
23 movements.

24 Q. Did you fight yourself when you were younger?

25 A. I did. I fought in smokers, and I fought in the Marines.

1 Q. Is there a time where you moved from actual fighting to
2 doing training?

3 A. There's -- I think I had my last fight when I was 19 years
4 old, and then I started working out on my own. And people
5 would ask me how to do certain things, how to throw a jab, how
6 to hit the bag, how to hit the speed bag. And eventually I
7 would be sacrificing part of my workout to work with other
8 people, and that's how I started training people.

9 Q. Did you find that you enjoyed that aspect of it?

03:19 10 A. Very much so.

11 Q. And is that mainly what you've been doing for the last
12 four decades?

13 A. Yes.

14 Q. Was there a time where you became associated with the
15 Somerville Boxing Club?

16 A. There was, 1988 to approximately 2008.

17 Q. What kind of program was the Somerville Boxing Club?

18 A. It was a boxing gym, not necessarily a health club. It
19 was -- we had professionals and we had amateur boxers.

03:20 20 Q. What ages of people would you see at the club?

21 A. We would have guys from 12 to 34.

22 Q. Were there lots of kids there?

23 A. There were at times. It was very popular. We had the
24 world heavyweight champion in the gym, and so that was a magnet
25 to other boxing aficionados.

1 Q. Do you know who Tamerlan Tsarnaev is?

2 A. Yes, I do.

3 Q. What are your first memories of meeting Tamerlan Tsarnaev?

4 A. My first memory was that he was kind of charming. He
5 certainly was eager to participate. And my problem with him
6 was that he was -- he didn't listen to the coaching
7 instructions. He fought with the European style, straight up,
8 different type of hand movements than American boxing. And so
9 it was trying to work with him, teaching him how to box the
03:21 10 American style, and he was reluctant to pick that up.

11 Q. When he first came to your gym, did he already have some
12 skills, boxing skills?

13 A. He did. He had basic boxing skills but, again, in a
14 European mode.

15 Q. Coming to your gym, some kids have skills coming there but
16 most do not; is that fair to say?

17 A. Most do not. Most do not, and that's what the training or
18 teaching is.

19 MR. WATKINS: I'd like to show Mr. Curran Exhibit
03:21 20 3264, which I don't think there's an objection to.

21 MR. MELLIN: That's fine, your Honor.

22 THE COURT: Mr. Mellin.

23 Q. Mr. Curran, on the screen do you see a picture?

24 A. I do.

25 Q. Let's wait.

1 A. I see Tamerlan and I see his father.

2 Q. Mr. Curran, can you wait just a moment?

3 MR. WATKINS: Is it on the -- it is, okay.

4 Q. Can you identify who the two people in that picture are?

5 A. In the boxing helmet is Tamerlan Tsarnaev, and on the left
6 in the black shirt is his father.

7 Q. Now, looking at that picture, is that the approximate age
8 of when he was coming to the gym and you were working with him?

9 A. Yes, that's approximately when he started.

03:22 10 Q. Talking about the helmet he has on, is that standard
11 equipment, to have headgear at a younger age?

12 A. It's mandatory that you wear headgear in amateur boxing, a
13 mouthpiece, and a cup. And the headgear has a stamp on the
14 back of it that says, "Certified by USA Boxing."

15 Q. Now, let's talk a little bit about that. USA Boxing is a
16 umbrella organization?

17 A. It is. It's the umbrella organization for Amateur Boxing
18 United States.

19 Q. There are also -- Somerville Boxing Club, how would that
03:23 20 fit into the USA Boxing organization?

21 A. In order to compete in an amateur contest, your coaches
22 had to be certified by USA Boxing by taking a test every two
23 years. The boxers have to be certified. That's basically it.
24 And our club was certified under the LBC, which is a six-state
25 region, the New England region. That LBC covers the whole

1 region.

2 Q. And are you yourself a certified boxing coach?

3 A. I am.

4 Q. And have you really always been your career with one
5 exception? Have you always been certified?

6 A. I believe so, yes. I mean, this started -- this
7 certification started from a court case in the '90s. So that's
8 when it became mandatory.

9 Q. Now, you had started to talk about boxing in the European
03:24 10 style. That was something you noticed with Tamerlan?

11 A. Yes.

12 Q. And can you describe how that's different than the style
13 that you're used to as a coach?

14 A. Most boxers, American boxers, sit on their legs. They
15 bend their knees. And Tamerlan would be straight up, which is
16 very similar to most European boxers, stand straight up. And
17 the punches are a little different than -- instead of throwing
18 a hook in this position, he throws a hook straight out and
19 across his body.

03:24 20 Q. While you were coaching him, was that something that you
21 tried to change?

22 A. I did. I tried to change that. It was very frustrating
23 trying to change it.

24 Q. Why was that? What was frustrating about it?

25 A. Well, he was reluctant to change the style. It was a

1 style that he had learned in Russia.

2 Q. When Tamerlan came to the gym, would he be accompanied by
3 his father sometimes?

4 A. His father a number of times.

5 Q. What were your impressions of his father?

6 A. Very proud of his son, very supportive of his son,
7 encouraged by his ability in the ring. And it looked like he
8 would -- Tamerlan would try harder when his father was there.
9 Did not try as hard when his father wasn't there.

03:25 10 Q. Did his father also try to give him advice?

11 A. Periodically. And I'd have to caution him about it and
12 just say, Hey, listen. We're trying to teach him stuff and
13 he's not listening.

14 Q. Over the -- does the Somerville Boxing Gym, at that time
15 did it charge a fee?

16 A. Yes. There was a membership fee that was paid at the
17 front desk. And sometimes these kids couldn't afford it, and
18 we'd let them slide for a while. But if you were being taken
19 advantage of, you would put your foot down and say you have to
03:26 20 pay. That's how we keep the lights on. None of the coaches at
21 that time were getting paid.

22 Q. Was there -- do you recall particular difficulties with
23 Anzor paying the fees?

24 A. I had no prior knowledge of that. There was a woman that
25 handled the books, and she has since died.

1 Q. In addition to his father, would Tamerlan be accompanied
2 by anybody else to the gym?

3 A. I saw Jahar probably twice in our gym.

4 Q. When you mention Jahar, do you see him sitting at the
5 table here?

6 A. Young man right there.

7 Q. Do you recognize him from earlier on?

8 A. I do. I think he was probably ten or eleven years old
9 when he was in the gym.

03:27 10 Q. When you'd see Jahar in the gym with his brother -- well,
11 describe that relationship.

12 A. I think they had a close relationship, and I mentioned to
13 somebody that he was like a puppy, following his brother.

14 Q. So -- well, you continued to coach Tamerlan, to the extent
15 he would listen, over some years?

16 A. I think there were a couple of years in maybe 2005 and
17 2006, and then I had him on the National Golden Gloves team.
18 He won the local New England Golden Gloves.

19 Q. Perhaps I could stop you there. I want to go to an
03:27 20 article in the *Lowell Sun*.

21 MR. WATKINS: Again, your Honor --

22 MR. MELLIN: Objection, your Honor.

23 MR. WATKINS: -- I don't think there's any objection.

24 MR. MELLIN: There is an objection. Relevance.

25 THE COURT: Overruled. I'll allow it.

1 Q. Showing you Exhibit 3240.

2 THE COURT: This --

3 Q. First of all --

4 THE COURT: Just to be clear, this will be admitted,
5 Mr. Watkins.

6 (Defendant's Exhibit No. 3240 received into evidence.)

7 A. Yes. I recognize myself, Tamerlan, Tamerlan's father, and
8 Gene McCarthy, the other trainer that was working with me.

9 MR. WATKINS: Is it on the jurors' screens?

03:28 10 Q. Why don't you tap as you go. If you tap on that screen,
11 it will make an arrow perhaps.

12 A. This is John Curran. This is Tamerlan Tsarnaev. This is
13 Gene McCarthy. And this is Tamerlan's father.

14 Q. Now, this article, you've looked at this in the past,
15 correct? You've seen this article?

16 A. Yes, I do.

17 Q. And this is -- well, what newspaper --

18 MR. MELLIN: Objection to the article. Objection to
19 the article being displayed. The photograph is one thing. The
03:29 20 article is something totally separate.

21 THE COURT: Well, we can limit its purpose. It's to
22 show there was an article about the event, I guess, not to
23 prove any particular fact that might be asserted in the text.

24 Q. You've reviewed this article?

25 A. I've read this article recently, yes.

1 Q. And do you recognize the writer as being a boxing writer
2 in Lowell?

3 A. Yes. He's -- Carmen has been the Golden Gloves writer for
4 the Lowell Sun for a number of years.

5 Q. And it describes Tamerlan and his fights in the Novice
6 Class?

7 A. Correct.

8 Q. Because you're in that picture, you were coaching him in
9 the Novice Class of the Golden Gloves?

03:29 10 A. Yes.

11 Q. So let's talk a little bit about the Golden Gloves.
12 First, how does that fit into the USA Boxing umbrella
13 organization, if it does?

14 A. At that time, there was a little in-house fighting between
15 the Golden Gloves nationally and USA Boxing nationally. The
16 Golden Gloves did not really want to adhere to a number of the
17 rules that were set up by USA Boxing, and so they would allow a
18 foreign athlete to fight in a non-Olympic year. And that's
19 what happened in 2009.

03:30 20 Q. Let's talk about it. First, in -- first, let's talk about
21 the Golden Gloves itself. That's an annual tournament?

22 A. It's seven weeks long. It's in January and February, and
23 it's taken place in Lowell, Massachusetts.

24 Q. Was that a -- that's a competition that you've been to for
25 many, many years?

1 A. Yes. I've been there for most of my boxing career.

2 Q. In 2009, did you see Tamerlan Tsarnaev boxing at the
3 Golden Gloves?

4 A. Yes, I did.

5 Q. Over the course of that seven weeks, a boxer, how many
6 times might he box?

7 A. He may have boxed four times.

8 Q. If a boxer loses during the course, then --

9 A. Then he's out of the competition.

03:31 10 Q. In 2009, Tamerlan Tsarnaev made it to the finals?

11 A. He made it to the finals and he won the finals.

12 Q. As a result of winning the finals in 2009, what did that
13 mean? What did he get?

14 A. He gets the opportunity to go to the national competition.
15 That year it was Salt Lake City, Utah.

16 Q. Like fighters, do trainers get selected to go to that --

17 A. That's correct.

18 Q. And in that year, who was the trainer who was selected to
19 go?

03:31 20 A. I was selected and Bobby Russo from Portland, Maine.

21 Q. So did you accompany the champions from Lowell to Salt
22 Lake City?

23 A. That, I did.

24 Q. Can you talk about that experience with Tamerlan Tsarnaev?

25 A. We were leaving from Manchester Airport and he was sick.

1 And at that year there was a particularly bad strain of flu.
2 It was very contagious. And there was another guy on the team
3 that had the same problem. So I put those two guys together
4 and separated them from the rest of the team. And then
5 periodically I would check on them to see how they were doing,
6 did they have soup or something to eat or whatever.

7 Q. This is once you got to Salt Lake City, you were checking
8 on them?

9 A. Correct.

03:32 10 Q. Did Tamerlan Tsarnaev get very far through that
11 competition in Salt Lake City?

12 A. No, he did not. He was sick, and he fought his first
13 fight. And I think in the first round he dropped his opponent,
14 and then he ran out of gas and completed the fight, but he just
15 was totally exhausted.

16 Q. Going a year ahead to the 2010 Golden Gloves competition,
17 were you again in Lowell?

18 A. I was.

19 Q. Did you again see Tamerlan Tsarnaev fight there?

03:33 20 A. I did.

21 Q. Now, were you his trainer at that time or was somebody
22 else?

23 A. I believe somebody else might have been his trainer at
24 that time.

25 Q. What was your experience with Tamerlan Tsarnaev, knowing

1 the boxing industry, about his allegiance to trainers?

2 A. At this time he was a heavyweight, and a heavyweight
3 division is anybody from 178 pounds to 201 pounds. He was
4 under the assumption that somehow I could bypass the rules
5 and --

6 Q. Let me stop you there because you're getting a little bit
7 ahead of me. In 2010, did he again win some fights?

8 A. He did win. He beat the eventual guy that went to the
9 Nationals.

03:34 10 Q. And his name, do you remember who that was?

11 A. Bryan Daniels, I believe.

12 Q. In that competition, did you -- how many times did he beat
13 Mr. Daniels?

14 A. He beat him twice that I remember.

15 Q. That includes the finals in Lowell, correct?

16 A. Correct.

17 Q. So, again, if it had been like 2009, he would have been
18 able to go to the Nationals, the Golden Glove Nationals?

19 A. Correct. But in 2010, USA Boxing put their foot down and
03:34 20 said, No, no foreign athlete can advance beyond the Regional.

21 Q. And so was Tamerlan Tsarnaev able to go to the Nationals?

22 A. No, he was not.

23 Q. Did he talk with you about ways to fix that?

24 A. Yes. He thought that I could pull a rabbit out of a hat
25 and make it possible for him to go.

1 Q. And was that possible?

2 A. No, not at all, not at all.

3 Q. Now, did you act as his trainer beyond 2009 when you were
4 in Salt Lake City?

5 A. I may have worked with him prior to the 2010 Golden
6 Gloves.

7 Q. Maybe I should back up. The Golden Gloves, this is for
8 the entire region, the LBC region that you mentioned?

9 A. No. The beginning of the Golden Gloves is for the -- for
03:35 10 Lowell. And then we have a Tournament of Champions, which
11 encompasses four other states -- or three other states:
12 Connecticut, Vermont, and New Bedford. And we have what we
13 call a Tournament of Champions. So the winners from Lowell
14 fight the winners from those other areas in the Tournament of
15 Champions. The winner of that goes to the national
16 competition.

17 Q. So given the number -- the length of the tournament and
18 the number of fighters there, one has to be pretty good to win?

19 A. Correct, if everything -- all the stars are lined up, yes.

03:36 20 Q. After 2010, did Tamerlan Tsarnaev continue to train at
21 gyms that you were associated with? Did you ever see him
22 again?

23 A. I saw him maybe two times after that. He would stop by
24 our gym and work out.

25 Q. When you say "our gym," were you at a different gym?

1 A. Right now I'm at South Boston Boxing Club.

2 Q. And you would see him a couple of times there?

3 A. I just -- yeah, a couple of times, and then I wouldn't see
4 him for months.

5 Q. As a long-time coach and trainer, would you recommend that
6 a boxer spar without the headgear and mouthguard that we saw in
7 that prior exhibit?

8 A. No, I do not recommend that at all. As a matter of fact,
9 the whole system has changed now that, in order to fight in the
03:37 10 Olympics, you fight without a headgear, which is new this year.

11 Q. But that's not something you agree with?

12 A. No, I don't agree with it. I think they should wear
13 headgear.

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

15 CROSS-EXAMINATION BY MR. MELLIN:

16 Q. Good afternoon, Mr. Curran. You were never the
17 defendant's boxing coach, correct?

18 A. I'm sorry?

19 Q. You were never the defendant's boxing coach, correct?

03:37 20 A. I was never the defendant's -- no, I trained him.

21 Q. No, no, this man, Jahar Tsarnaev.

22 A. No, not at all.

23 Q. And you --

24 A. I didn't even -- he didn't even box. I mean, it wasn't
25 his sport.

1 Q. Right. What was his sport?

2 A. I believe, according to the newspapers, wrestling.

3 Q. All right. And you said that you saw him twice, is that
4 right?

5 A. Correct, when he was a young boy, when he came to the gym.
6 And while we would be working on the floor, he might be inside
7 the ring just rolling around or bouncing off the ropes or
8 getting the feel of what it was like to be in the ring.

9 Q. The times you saw him he was nine or ten years old,
03:38 10 correct?

11 A. Correct, I believe.

12 Q. At least ten years ago, correct?

13 A. Correct.

14 MR. MELLIN: Thank you.

15 MR. WATKINS: Nothing further, your Honor.

16 THE COURT: All right, Mr. Curran. Thank you. You
17 may step down.

18 MR. WATKINS: May I have just a moment, your Honor?

19 The defense calls Kendrick Ball.

03:39 20 THE CLERK: Sir, want to step up here, please. Step
21 up to the box, if you would. Remain standing and raise your
22 right hand.

23 KENDRICK BALL, Sworn

24 THE CLERK: Have a seat. State your name and spell
25 your first and last name for the record.

1 THE WITNESS: My name is Kendrick Ball.

2 K-e-n-d-r-i-c-k, B-a-l-l.

3 DIRECT EXAMINATION BY MR. WATKINS:

4 Q. Mr. Ball, good afternoon.

5 A. Good afternoon.

6 Q. Where do you currently live?

7 A. Worcester.

8 Q. Were you born and raised in Worcester?

9 A. Yes.

03:40 10 Q. Are you currently employed?

11 A. Yes.

12 Q. What are you employed doing?

13 A. I do PCA work.

14 Q. PCA. For the jury, what does that stand for?

15 A. Personal care.

16 Q. That means you help people who need help in daily
17 activities of daily living?

18 A. Yes.

19 Q. In addition, do you operate a boxing gym in Worcester?

03:40 20 A. Yes, I own a boxing gym in Worcester.

21 Q. You're going to have to pull that mic towards you.

22 A. I own a boxing gym in Worcester.

23 Q. What is the name of the boxing gym?

24 A. Camp Get Right Boxing Gym.

25 Q. How long have you owned Camp Good Get Right Boxing [sic]?

1 A. Going on six years.

2 Q. Is that a moneymaking proposition?

3 A. No.

4 Q. Why do you do it?

5 A. For the love of boxing.

6 Q. When did you first get involved with boxing?

7 A. When I was seven years old.

8 Q. How did that come about?

9 A. I had an older cousin that was a boxer, so we basically
03:41 10 followed his footsteps into it.

11 Q. Did you box yourself when you were younger?

12 A. Yes, I did.

13 Q. How long did you -- how far did you get in your boxing
14 career?

15 A. I boxed until I was, like, 17. I won a couple JO titles.

16 Q. Then why did you stop boxing?

17 A. I wasn't really that good.

18 Q. If you're not that good in a competition, what happens to
19 you?

03:41 20 A. You don't advance.

21 Q. So in the times that you didn't advance in a competition,
22 would you do something else to pass the time?

23 A. During the times when I made it to the Junior Olympics at
24 Lake Placid, New York, I would -- when I would lose, I would
25 work the corner with my coach, Carlos Garcia. So I would be

1 the No. 2 in the corner.

2 Q. Did you find that you would enjoy that?

3 A. Yeah. That was -- I think that was my calling, to be a
4 coach.

5 Q. So when did you start actually coaching and training?

6 A. I would assist Carlos with some JO kids a couple years
7 after I left the JOs. And then I started home training my son.

8 Q. Is that what made you decide to open up a gym?

9 A. Yes.

03:42 10 Q. Why was that? Explain how you decided that.

11 A. I had a couple other family members that was boxing, also,
12 so I figured that this is what I like to do. And I went into
13 it with a friend of mine. Then I kind of branched out on my
14 own.

15 Q. Now, the sport of boxing, what is it that you enjoy about
16 it? What is it that you like?

17 A. I just like the sport. It's just a -- when you're in
18 there, it's a one-on-one type of thing. And when you're a
19 trainer, you basically -- when you see somebody do something
03:43 20 that you tell them to do to get the win, it's rewarding.

21 Q. What does it take to be a good trainer?

22 A. Time, dedication, patience, and you got -- I guess you've
23 got to love the sport.

24 Q. Do you study lots of films and videos?

25 A. Yes.

1 Q. Why is that important?

2 A. To be able to have the advantage over the other opponent
3 that you're fighting.

4 Q. Do you also, as a coach, look for people with talent and
5 abilities?

6 A. Yes.

7 Q. I'm going to take you to 2010 and Tamerlan Tsarnaev. Do
8 you recall the first time you saw Tamerlan Tsarnaev?

9 A. Yes.

03:43 10 Q. Where was that?

11 A. It was at the Lowell Golden Gloves.

12 Q. What -- describe why you were there and in what capacity
13 you were there.

14 A. I had a fighter that was fighting in the tournament.

15 Q. And who was that fighter?

16 A. That was Owen Minor.

17 Q. Was there another fighter from Worcester that you knew?

18 A. Yes, Bryan Daniels.

19 Q. Did you see Bryan Daniels fight Tamerlan Tsarnaev in 2010?

03:44 20 A. Yes.

21 Q. Was that once or twice?

22 A. Twice.

23 Q. What happened each time Tamerlan Tsarnaev boxed Bryan
24 Daniels?

25 A. The first time it was a lopsided fight.

1 Q. One-sided in whose favor?

2 A. In Tamerlan's favor.

3 Q. When you say one-sided, can you explain?

4 A. I think Tamerlan was a little bit more advanced than Bryan
5 Daniels, had more experience.

6 Q. And then the second round -- well, maybe we can explain
7 again about the Golden Gloves. There are local fights first,
8 and then there's the Tournament of Champions?

9 A. Yes. They have Regionals. So there's Northern, Southern,
03:45 10 Western, and Central. So whoever wins out of the division, you
11 would meet up in Lowell for the Tournament of Champions. So
12 you would go against those regions, and you'd come down to the
13 finals.

14 Q. So the second time that Tamerlan Tsarnaev met Bryan
15 Daniels was in the Tournament of Champions?

16 A. Yes.

17 Q. And what happens if you win the Tournament of Champions
18 ordinarily?

19 A. You would advance to the Golden Glove Nationals.

03:45 20 Q. Have you had fighters that have advanced to the Golden
21 Gloves Nationals?

22 A. Yes.

23 Q. Have you trained and coached at the Golden Gloves
24 Nationals?

25 A. Yes. I was picked to be a coach of the nationals, I

1 think, two years of the Golden Glove Nationals.

2 Q. Now, I want to show you a clip from a --

3 MR. MELLIN: Your Honor, objection to the clip. This
4 is cumulative evidence at this point.

5 THE COURT: I'll permit it.

6 MR. WATKINS: I'm sorry?

7 THE COURT: I will permit it. What's the number?

8 MR. WATKINS: I'm sorry. The exhibit is 3577, and the
9 actual clip is 3577A.

03:46 10 (Video recording played.)

11 Q. Can you see the clip on your screen?

12 A. Yes.

13 Q. Can you identify who you see in there?

14 A. In the red, with the red headgear, is Bryan Daniels. In
15 the blue, with the yellow headgear, is Tamerlan.

16 Q. You can actually tap on the screen, and it will make an
17 arrow for you. Can you identify Bryan Daniels?

18 A. (Indicating.)

19 Q. And Tamerlan Tsarnaev?

03:47 20 A. (Indicating.)

21 (Video recording played.)

22 Q. So that is the end of the Tournament of Champions for the
23 Heavyweight Division where Tamerlan Tsarnaev won?

24 A. Yes.

25 Q. Now, in addition to winning, was there anything that

1 impressed you about Tamerlan Tsarnaev as a coach?

2 A. I thought he fought really well. I thought he had a lot
3 of experience. And I remember speaking with him and asking him
4 to -- so we can get together and get some sparring.

5 Q. Was anything about his style that struck you, the way he
6 boxed?

7 A. His style was a little -- it was a little different than
8 the normal fighters that come around New England. He boxed
9 with his hand down, his left hand down low.

03:48 10 Q. Is that something that you recommend to boxers? Is that
11 the way you train them?

12 A. No, I don't recommend that.

13 Q. I'm sorry?

14 A. I don't recommend that.

15 Q. Why not?

16 A. Because you basically -- you're taking head shots. So you
17 basically want to have your hands up high to protect from the
18 punches. With your hand down low, you're open for a right
19 hand, which, if you're fighting a righty, you're open for a
03:49 20 power shot, which is a right hand.

21 Q. Was there anything about his personal style that also had
22 an impression on you?

23 A. What do you mean his personal style?

24 Q. The way he dressed.

25 A. He stood out. I remember in the -- at the Lowell Memorial

1 Auditorium, when I first seen him, he was walking down the hall
2 where all the guys get -- basically see the doctor and
3 everything. And he stood out to me. He was walking down the
4 hall. He had a trench coat on, a button-up shirt that was
5 buttoned halfway to the middle of his chest, a pair of jeans on
6 that were pretty tight fitting, and a pair of boots that looked
7 like aluminum foil or something. Like, the color was aluminum
8 foil. He kind of stood out. He looked a little bit different
9 than everybody else, basically.

03:49 10 MR. WATKINS: Your Honor, I'd like to show Mr. Ball
11 Exhibit 3242. This was a government exhibit at one time, but I
12 don't think there's an objection.

13 MR. MELLIN: That's fine, your Honor. I give up.

14 THE COURT: No mas.

15 MR. MELLIN: I was going to say that, but I took it
16 back.

17 Q. Is that similar style to how Tamerlan Tsarnaev dressed
18 when you saw him?

19 A. Yeah, a little, yeah.

03:50 20 Q. So did you give -- make an invitation to Tamerlan Tsarnaev
21 that night at the Golden Gloves?

22 A. Yes.

23 Q. What did you invite him to do?

24 A. I asked him could we get some work, some sparring with one
25 of my heavyweights.

1 Q. Did he come over to your gym to spar with some
2 heavyweights?

3 A. Yes. He came over to spar with my cousin, which is Owen
4 Minor, once. He came to my gym twice to spar, but that time he
5 came to spar with Owen, the first time, with the heavyweight.

6 Q. Did anything strike you about the way he showed up?

7 A. He came to the gym. He came by his self. And I was
8 asking is his coach coming, and he was, like, no, he came
9 alone. And usually -- well, with me, I don't send my fighters
03:51 10 out to go spar without somebody being there. So he came alone,
11 and he basically assured us that he was good.

12 Q. What about equipment? Was there anything about his
13 equipment that --

14 A. When we got ready to start sparring, he didn't have a cup.
15 He didn't have headgear. He didn't have a mouthpiece. So we
16 was, like, you know, we can give you a cup and headgear, but he
17 says he spars all the time without that. So we basically kind
18 of let it go. But --

19 Q. Did he spar with Owen that day?

03:51 20 A. He did spar with Owen that day.

21 Q. How did that go?

22 A. It was a good work. It was good work. They sparred for a
23 couple rounds. Owen caught him with a good body shot. He took
24 a knee and then he came right back and was good -- it was good
25 work.

1 Q. Was there a second time where Tamerlan came to spar with
2 one of your boxers?

3 A. Yes. I reached out to Tamerlan again to come down for
4 some sparring. I told him there was a guy by the name of Edwin
5 Rodriguez who was moving up in the ranks, that he can get some
6 work with him also because the last time -- the first time when
7 Tamerlan came down, he did four rounds with my cousin Owen, and
8 Tamerlan wanted more rounds. But we choose to only do the four
9 rounds because you box for three. I told him he could get more
03:52 10 rounds in. We could use Edwin also.

11 Q. Edwin, was he Golden Gloves? Was he an amateur at that
12 point or had he moved --

13 A. At the time Edwin was a pro. He fought at middleweight,
14 168, super middleweight. I told Tamerlan he could come down
15 and get some work with him. I told him who he was and that he
16 was going to be fighting on TV, to take a look at him. I
17 believe the next time we talked, he would come down and give
18 him some work, but he was saying he'll take it easy on him
19 because he was much bigger than him.

03:53 20 Q. Who was much bigger?

21 A. Tamerlan was much bigger than Edwin. But I assured him
22 that -- Edwin fights at 168, but he doesn't walk around at 168.
23 He's a little bit bigger. I let him know that this kid is the
24 real deal. He said, Don't worry. I'll come down. I'll take
25 it easy with him.

1 Q. What happened when he actually started to spar?

2 A. They sparred. I believe Tamerlan got in first with Owen,
3 and then he got in with Edwin, which we tried to stop him, the
4 second time with no headgear, no mouthpiece, no cup. So we
5 tried to tell him again, and other trainers there were trying
6 to get him to put it on, but he wouldn't.

7 So when he got in with Edwin -- Edwin is known as a body
8 puncher. Edwin was digging into his body really hard, body,
9 head. Boxing is like a game of chess. You kind of make the
03:54 10 right moves, and Edwin was making a lot of good moves where
11 Tamerlan was getting touched up a lot because of his hand being
12 down. After the second round, Tamerlan got out the ring, and
13 Owen got in with Edwin. And Tamerlan was spitting up blood
14 into the spit bucket.

15 Q. Was it concerning to you about how much blood he was
16 spitting up?

17 A. Yeah. I went over to him, and he said that he was okay.
18 He was good. He was good. He wanted to get back in.

19 Q. Did he get back in the ring?

03:54 20 A. Yes, he got back in.

21 Q. Did he continue to take punishment?

22 A. He did; he did.

23 Q. What did he say afterwards?

24 A. After we talked and we said that we're going to link up
25 again, he said that he's going -- he goes Edwin was better than

1 what he thought. He's going to go back to the drawing board,
2 and he'll come back and he'll spar with him again.

3 Q. When was the last time you saw Tamerlan Tsarnaev?

4 A. I seen Tamerlan at the Lowell Memorial Auditorium. I
5 can't remember the year, but 2000 -- it was the year of the
6 bombing. But I seen him at the Lowell Memorial Auditorium. I
7 was there because I had fighters there. I was sitting in the
8 -- I think my fighter was already over, so he was out in the
9 crowd sitting. I went out to the concession stand and I was
03:55 10 coming through the hall, and I seen Tamerlan.

11 Q. So as far as the date, you, of course, like we all do,
12 know when the Boston Marathon bombing was?

13 A. Say that again.

14 Q. Was it the same year as the Boston Marathon bombing?

15 A. Yes.

16 Q. And the Golden Gloves, January and February. So this
17 would be around that time?

18 A. February, yes.

19 Q. And did you have any kind of exchange with Tamerlan
03:56 20 Tsarnaev then?

21 A. Yeah. I seen him and I said, What's up, Tamerlan? He
22 came over. He was with a few gentlemen. We spoke for a little
23 bit. I told him that Owen and I believe a couple of the other
24 guys from the gym was sitting in the -- on the side over there.
25 So we kind of walked into the arena, and he said hi to them,

1 and we sat and talked for awhile.

2 Q. Did you see him again after that?

3 A. No.

4 MR. WATKINS: That's all I have.

5 CROSS-EXAMINATION BY MR. MELLIN:

6 Q. Good afternoon, Mr. Ball.

7 A. Good afternoon.

8 Q. The times that you were coaching Tamerlan Tsarnaev, that
9 was in 2010, correct?

03:56 10 A. I never coached him.

11 Q. The times that you had any interactions with him in a
12 ring.

13 A. I believe it was 2010.

14 Q. Okay. So after 2010, there was not another time where you
15 actually saw him in a boxing ring, correct?

16 A. You mean after he came down and sparred?

17 Q. Yes.

18 A. No, I didn't see him. I contacted him, but the number was
19 off. I didn't see him again until --

03:57 20 Q. 2013?

21 A. Yes.

22 Q. But that wasn't a time when he was actually boxing,
23 correct?

24 A. No, he wasn't boxing then.

25 Q. Okay. When you talked about the clothing he was wearing,

1 that was in 2010, correct, when you thought it was funny the
2 way he dressed?

3 A. Yes.

4 Q. So he was dressing funny in 2010?

5 A. I wouldn't say he was being funny. I think it was just a
6 different style.

7 Q. Right. Do you know the defendant's -- excuse me --
8 Tamerlan's brother, the defendant?

9 A. No.

03:57 10 Q. Ever seen him before?

11 A. No.

12 Q. In that video clip that was shown, did you see the
13 defendant in that video clip?

14 A. Tamerlan?

15 Q. No, the defendant.

16 A. No.

17 MR. MELLIN: Thank you. Nothing further.

18 MR. WATKINS: The defense would call --

19 THE COURT: You're finished?

03:57 20 MR. WATKINS: Yes.

21 THE COURT: Thank you, Mr. Ball. You may step down.

22 MR. WATKINS: Brandon Douglas.

23 MR. MELLIN: Your Honor, objection to this testimony.
24 Cumulative.

25 THE COURT: Let me see you briefly. I'm not sure what

1 it is.

2 (SIDEBAR CONFERENCE AS FOLLOWS:

3 MR. MELLIN: This will be round three of this
4 testimony, so --

5 THE COURT: He said they went the three rounds.
6 Remind me. I looked at this last night but I forgot.

7 MR. WATKINS: We're going, as the Court can see, in
8 chronological order. This would bring it up to the time in
9 2013. This would be another gym owner. It is also -- not gym
03:58 10 owner, a gym employee, a trainer, talking about his experiences
11 with Tamerlan Tsarnaev. This is also somebody who saw Tamerlan
12 Tsarnaev four days before the bombing or three days before the
13 bombing. I think it --

14 THE COURT: What does it prove?

15 MR. WATKINS: What does it prove?

16 THE COURT: What is the probative value?

17 MR. WATKINS: To the extent that it shows Mr. -- it
18 shows Tamerlan Tsarnaev's progression as far as his dress and
19 what he was doing training. What we're going to see is a
03:59 20 decline in the boxing through this particular witness. So this
21 is going to complete the trajectory of the boxing evidence.

22 In addition, there is a video of Tamerlan Tsarnaev and
23 Dzhokhar Tsarnaev and a third person from that three days
24 before the bombing. And I think that is certainly relevant to
25 the relationship between Jahar Tsarnaev and Tamerlan Tsarnaev.

1 This testimony is going to be quite brief along with the --
2 similar to what we've already experienced.

3 MR. MELLIN: Your Honor, I believe it's all cumulative
4 evidence.

5 THE COURT: Well, I think it is going to be brief and
6 we'll -- I'll allow it.

7 . . . END OF SIDEBAR CONFERENCE.)

8 THE CLERK: Sir, want to step up here, please? Step
9 up to the box. Remain standing. Raise your right hand.

04:00 10 BRANDON DOUGLAS, Sworn

11 THE CLERK: Have a seat. State your name. Spell your
12 first and last name for the record.

13 THE WITNESS: Brandon Douglas, B-r-a-n-d-o-n,
14 D-o-u-g-l-a-s.

15 DIRECT EXAMINATION BY MR. WATKINS:

16 Q. Good afternoon, Mr. Douglas. Where do you currently live?

17 A. Watertown.

18 Q. Where were you born?

19 A. Dallas, Texas.

04:01 20 Q. Were you raised in Massachusetts?

21 A. Yes.

22 Q. Did you go to high school here?

23 A. Yes.

24 Q. Did you also go to college?

25 A. Yes.

1 Q. Where was that at?

2 A. The University of Massachusetts at Amherst.

3 Q. Did you receive a degree from there?

4 A. Yes.

5 Q. What's your degree in?

6 A. Political science.

7 Q. After college, did you move to the Boston area at some
8 point?

9 A. Yes, sir.

04:01 10 Q. When was that?

11 A. 2005.

12 Q. Now, Mr. Douglas, are you involved in sports?

13 A. Yes, sir.

14 Q. Are there particular -- is there a particular sport that
15 you are involved with?

16 A. Yeah. I started in wrestling in 1997.

17 Q. After starting in wrestling, did you progress to other
18 kinds of sports?

19 A. Yes, kickboxing, Brazilian Jiu-Jitsu, Muay Thai, mixed
04:02 20 martial arts essentially.

21 Q. Mixed martial arts?

22 A. Yes, sir.

23 Q. You're going to have to move that mic just a little closer
24 to you.

25 A. Okay.

1 Q. Of those sports that you listed, is there one that you're
2 primarily interested in and practice?

3 A. My background is in wrestling, but Brazilian Jiu-Jitsu is
4 probably a close second.

5 Q. Have you always worked out at gyms and practiced mixed
6 martial arts?

7 A. Since 2005, yes, I've been involved in mixed martial arts.

8 Q. Where did you initially go for -- what gyms did you go to
9 when you came to Boston?

04:02 10 A. When I came to Boston? I started at Brazilian Martial
11 Arts Center in Somerville and then transitioned over to Wai Kru
12 Mixed Martial Arts in Brighton.

13 Q. The Wai Kru gym in Brighton, how long have you been going
14 there or involved with that gym?

15 A. I started training there around 2008, started training
16 regularly there in 2008.

17 Q. Now, besides mixed martial arts, do you have a day job?

18 A. Yes, I do.

19 Q. What is that?

04:03 20 A. I work for athenahealth in Watertown.

21 Q. When you first came to Boston, did you also have a day
22 job?

23 A. Yes, I did.

24 Q. What was that?

25 A. I worked for State Street Bank and then Brown, Brothers,

1 Harriman after that.

2 Q. Despite having jobs, you also spend a number of hours in
3 the gyms?

4 A. Yes, sir.

5 Q. When did you first meet Tamerlan Tsarnaev?

6 A. Probably late 2008, early 2009.

7 Q. Where was that?

8 A. At Wai Kru.

9 Q. What did you think of Tamerlan Tsarnaev versus his
04:04 10 athletic skills?

11 A. Tamerlan as an individual or as an athlete?

12 Q. As an athlete.

13 A. As an athlete, he was -- we didn't have a lot of boxing
14 specialists that were on his level. He was incredibly fast,
15 hit very hard, was in good shape cardio-wise. He was a very
16 dangerous competitor.

17 Q. Is Wai Kru known for its boxers?

18 A. No, sir.

19 Q. Why would a boxer go to Wai Kru to do training?

04:04 20 MR. MELLIN: Objection.

21 THE COURT: Overruled. You may answer it.

22 Q. You may answer.

23 A. I may answer? A variety of reasons. Proximity to
24 Cambridge is a potential answer, the flexibility of hours
25 additionally. You know, I think that being in an environment

1 where he was the best boxer probably suited him.

2 Q. Would you work out with him sometimes?

3 A. Yes, sir.

4 Q. When you would work out with him, what would that entail?

5 A. Well, we'd do the basic warmups, jump rope, plyometrics,
6 calisthenic kind of works, bag work, pad work, and then
7 sparring as well.

8 Q. We talked about his athletic abilities. What were your
9 impressions of Tamerlan Tsarnaev as a person?

04:05 10 A. When I first met Tamerlan, he was self-deprecating to a
11 degree. He was helpful and generous with his time with
12 beginners. He displayed really good self-control for somebody
13 of his size and skill level with beginners and people of that
14 sort, people smaller than him. Those traits began to change
15 later on, but, originally, I would say that we had a good
16 relationship.

17 Q. Were you aware that he boxed in the Golden Gloves?

18 A. Yes, sir.

19 Q. Were you aware that he won the Golden Gloves, the local
04:06 20 Golden Gloves?

21 A. Yes, I was.

22 Q. The Tournament of Champions in 2009?

23 A. Yes, sir.

24 Q. Were you aware that he also boxed in 2010?

25 A. Yes, I was.

1 Q. And do you know that he won in 2010?

2 A. I do.

3 Q. Did you speak with him about going to the Nationals,
4 Golden Gloves?

5 A. Briefly, yes.

6 Q. And what did he say to you about the Nationals?

7 A. That issues with his citizenship had denied him entry into
8 that tournament.

9 Q. And did he express some personal feeling about that?

04:06 10 A. Yes, sir, he did.

11 Q. Tell us about that.

12 A. He expressed frustration that they wouldn't allow him
13 entry and that he felt that it was an intentional slight
14 directed solely at him.

15 Q. He took it personally?

16 A. Yes, sir.

17 Q. Did he explain why he thought it was personal to him?

18 A. Not that I recall.

19 Q. What, if any, expressions of paranoia did he make?

04:07 20 MR. MELLIN: Objection.

21 THE COURT: Sustained.

22 Q. Did you and Mr. Tsarnaev discuss politics?

23 A. On several occasions, yes.

24 Q. What did he discuss with you about politics?

25 A. Because of my background, I engaged him on a variety of

1 political subjects: issues in Russia and Chechnya, political
2 and violent extremism there, yeah.

3 Q. These were things that you could have conversations with
4 him, a political science major?

5 A. Yes, sir.

6 Q. Did he talk about conspiracy theories at all?

7 A. Yeah, one instance that I recall, yes.

8 Q. Tell us about his conspiracy theories.

9 MR. MELLIN: Objection, relevance.

04:08 10 THE COURT: Sustained.

11 Q. Did he express personal feelings about Chechnya and
12 Russia?

13 A. Yes, of course.

14 Q. Did he talk about the United States' role in the world?

15 A. Yes, sir.

16 Q. Did you pay much attention to him when he was talking
17 about some of these things?

18 A. I paid attention to what he was saying. We were having a
19 conversation, the two of us, so, yeah, I was engaged.

04:08 20 Q. And his demeanor when he was discussing this, was it --
21 was he intense or was he -- a discussion? What was his
22 temperament?

23 A. There was an intensity to it but not altogether
24 unsurprising, I think, given the content of the conversation.

25 Q. Now, was there a time where you stopped training so much

1 at the Wai Kru gym yourself?

2 A. Yes.

3 Q. When was that?

4 A. Probably 2012, 2013, I started to curtail my activities.

5 Q. Did you -- I should have asked. You actually worked at
6 the Wai Kru gym for a period of time?

7 A. Yes, sir, I did.

8 Q. And when were you working at the Wai Kru gym?

9 A. From December 2009 until -- full time until December 2010
04:09 10 and then part time for several more years after that.

11 Q. So would you continue -- whether you were working there or
12 not, did you continue to see Tamerlan Tsarnaev occasionally?

13 A. During what period of time? While I was working?

14 Q. Yeah, while you were working first.

15 A. From the period of 2009 to 2010, yes, I saw him
16 frequently.

17 Q. And then once you started working part time less so?

18 A. Less so, yeah.

19 Q. And was there a period where you stopped seeing him at
04:09 20 all?

21 A. Yes, sir.

22 Q. And did you learn that he had gone to Dagestan?

23 MR. MELLIN: Objection.

24 THE COURT: Sustained.

25 Q. Well, did he tell you himself that he had been to

1 Dagestan?

2 MR. MELLIN: Objection.

3 THE COURT: Sustained.

4 Q. Over time, did you begin to see changes in Tamerlan
5 Tsarnaev's demeanor?

6 A. Yes, sir.

7 Q. Describe those changes.

8 A. There were physical changes. His dress changed. The
9 beard obviously was a pretty drastic departure.

04:10 10 Q. Well, let me unpack that a little bit. The dress, when he
11 first started coming to Wai Kru, what kind of clothing would he
12 wear?

13 A. He was a very flashy dresser, you know, shiny, alligator
14 shoes, and things of that nature.

15 Q. Was he clean shaven?

16 A. Yes, sir.

17 Q. And then later when you saw him, how did those two things
18 change?

19 A. He was dressed much more conservatively, and he had a
04:10 20 large, bushy beard.

21 Q. Did you talk about politics and religion over time?

22 A. After that point, no.

23 Q. Was there always a certain amount of friction between the
24 staff at Wai Kru and Tamerlan?

25 A. Always?

1 Q. Yes.

2 A. No.

3 Q. Over time, did there become friction between the staff at
4 Wai Kru and Tamerlan?

5 A. Yes.

6 Q. Explain how that friction got started.

7 A. I'm not sure how it started. I can tell you how it
8 manifested.

9 Q. Why don't you tell us how it manifested itself.

04:11 10 A. There were instances where Tamerlan would wear street
11 shoes on the mats and in the rest of the gym downstairs, which
12 is highly frowned upon in that community. He would use
13 people's equipment without asking. He could be loud and
14 disruptive to classes. In addition, he would do his own thing,
15 which wasn't entirely frowned upon, but when you're trying to
16 run an organized program, having individuals there being loud
17 and disruptive was definitely damaging to class to a point and
18 that created friction, yes.

19 Q. Was he ever approached and asked to stop those behaviors?

04:12 20 A. Yes. There was one incident that I can recall where that
21 happened, yes.

22 Q. Did he stop?

23 A. Not that I'm aware of, no.

24 Q. I want to turn now to April 14 of 2013. By that time, you
25 were training less at Wai Kru?

1 A. I mean, define "less."

2 Q. Well, how much would you be at Wai Kru?

3 A. Two to three days a week.

4 Q. Friday, April 14th, you were in the Wai Kru gym?

5 A. That evening, yes.

6 Q. I'm sorry. That's not correct. Friday, April 12th, which
7 is three days before the Marathon bombing?

8 A. That Friday evening, yes.

9 Q. On that day, did you see Tamerlan Tsarnaev in the gym?

04:13 10 A. No, sir, I didn't.

11 Q. Who else did you see in the gym with Tamerlan Tsarnaev?

12 A. I didn't see Tamerlan in the gym.

13 Q. I'm sorry?

14 A. I didn't see him in the gym that evening. I was there
15 after he had already left.

16 Q. Right. You knew that Tamerlan Tsarnaev had been in the
17 gym?

18 MR. MELLIN: Objection.

19 THE COURT: Overruled. You may answer.

04:13 20 A. Yes. I was aware that he had been in the gym earlier that
21 day.

22 Q. And as a -- were you still working for Wai Kru gym on
23 April 12 of 2013?

24 A. Part time, yes.

25 Q. So you knew other employees there?

1 A. I knew all the employees there.

2 Q. Do you also know that Wai Kru gym has a number of
3 surveillance cameras?

4 A. I do. I'm aware.

5 MR. WATKINS: Your Honor, I'd like to show Mr. Douglas
6 a video from April 12 of 2013.

7 THE COURT: I'll allow it.

8 MR. MELLIN: Thank you. I know better than to ask,
9 your Honor.

04:14 10 THE COURT: What number is it?

11 MR. WATKINS: Exhibit 3273.

12 THE COURT: All right.

13 Q. I'm going to stop it here and ask if you recognize anybody
14 in this video.

15 A. Yes.

16 Q. If you tap on the screen, you can identify. Who's that?

17 A. That's Tamerlan.

18 Q. And do you see Jahar Tsarnaev?

19 A. (Indicating.)

04:15 20 Q. And there's a third man in this video. Are you able to
21 identify him?

22 A. No, sir. I don't know who that is.

23 Q. What do you recognize this -- where is this video clip
24 from?

25 A. That's in the boxing ring at Wai Kru.

1 Q. I'm going to play the remainder of the video.

2 (Video recording played.)

3 Q. Now, I'm going to stop it there. We just saw Tamerlan
4 Tsarnaev throw a piece of equipment at Jahar Tsarnaev?

5 A. Yes.

6 Q. What is that?

7 A. Those are hand wraps.

8 Q. Did you later learn that your gloves had been used at Wai
9 Kru gym?

04:17 10 A. Yes, sir.

11 Q. What did you learn about that?

12 A. I learned that Tamerlan had gone in the back and took two
13 pairs of gloves, one for himself and one for his brother.

14 Q. Was that from your own property?

15 A. One of those was, yes.

16 Q. Was that something he'd ask for permission from you for?

17 A. No, not from me or the other instructor involved.

18 Q. Was that something that you would condone?

19 A. No, not at all.

04:18 20 Q. You mention that you were not present at that time but
21 came into the gym shortly after that?

22 A. Sometime later that evening, yes, after I got out of work.

23 Q. And did you actually see Tamerlan Tsarnaev there? Did you
24 cross paths?

25 A. Not that I recall.

1 Q. Did you speak with an employee at the -- at Wai Kru gym
2 about what had happened that day?

3 MR. MELLIN: Objection.

4 THE COURT: Yeah, sustained.

5 MR. WATKINS: Your Honor, may we -- this will be the
6 last thing. Perhaps we could --

7 THE COURT: I know what you have in mind. I would
8 exclude it at this point because he's testified to the subject.

9 MR. WATKINS: I'm sorry?

04:19 10 THE COURT: He's testified to the subject or he can if
11 he hasn't completed it.

12 Q. So in speaking -- so what did you learn about Tamerlan's
13 behavior that day?

14 MR. MELLIN: Objection.

15 THE COURT: Sustained, at least to that question.

16 MR. WATKINS: May I have just a moment, your Honor?

17 (Discussion held off the record.)

18 Q. Do you know of any action that was taken after Tamerlan's
19 behavior that day?

04:20 20 MR. MELLIN: Objection.

21 THE COURT: You may answer that.

22 A. Yes, sir.

23 Q. What action was taken?

24 A. The general manager of the gym emailed the owner to
25 express his displeasure with Tamerlan's behavior that evening.

1 MR. WATKINS: Your Honor, for the record, I'd move in
2 Exhibit 3230.

3 MR. MELLIN: Objection.

4 THE COURT: I'll exclude it as cumulative.

5 MR. WATKINS: I have nothing further, your Honor.

6 MR. MELLIN: Very short.

7 CROSS-EXAMINATION BY MR. MELLIN:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

04:20 10 Q. The last time that you talked to Tamerlan Tsarnaev was in
11 January or February of 2013, is that right?

12 A. Yes.

13 Q. Okay. And that's the last time you actually saw him, too,
14 correct?

15 A. Yes.

16 Q. And you pointed out the defendant in the video. Had you
17 ever met the defendant?

18 A. No, sir.

19 Q. Never seen him boxing or doing anything at Wai Kru?

04:21 20 A. No, sir.

21 MR. MELLIN: Thank you. Nothing further, your Honor.

22 MR. WATKINS: Nothing, your Honor.

23 THE COURT: All right, sir. Thank you. You may step
24 down. We will take the lunch recess.

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

1 will take the lunch recess.

2 (Luncheon recess taken at 1:10 p.m.)

3 THE CLERK: All rise for the Court.

4 (The Court enters the courtroom at 2:51 p.m.)

5 (Discussion at sidebar and out of the hearing of the
6 public:)

7 MR. WEINREB: Ms. Conrad mentioned on the way out that
8 they intend to actually put these redacted documents into
9 evidence, put them up on the screen and send them back with the
06:03 10 jury. We object to that. That's not proper. They can be read
11 to the jury like any other witness's testimony, but we don't
12 normally put written copies of witnesses' testimony into
13 evidence just like their transcripts don't go into evidence.
14 Moreover --

15 THE COURT: I think that's right. But just to get it
16 going, we will not do it now, we can always add it later, but
17 right now they'll just get read.

18 MS. CONRAD: Well, Judge, it seems to me then they're
19 being treated more as chalks. I mean, people put documents in
06:03 20 all the time. You put in letters, you put in emails, you put
21 in --

22 THE COURT: I want to get the reading done. You can
23 fight about whether they go in --

24 MS. CONRAD: But we can't have it up on the screen so
25 the jury's just going to hear somebody read? That's going to

1 be a really ineffective presentation. At least it should be up
2 on screen while she's reading. Some people don't hear that
3 well, they don't take notes as quickly. I mean, it's an
4 exhibit.

5 MR. WEINREB: I do not believe --

6 MS. CONRAD: The Court has ruled --

7 MR. WEINREB: -- the document with all sorts of
8 redactions in it, inviting the jury to speculate about why they
9 were redacted, what was being withheld from them should be put
06:04 10 in front of them. It's already an unusual procedure to allow
11 these to be read to the jury in the first place. Adding this
12 element of mystery about what parts are being withheld from
13 them is not conducive to their --

14 MS. CONRAD: I can't imagine why the government --

15 THE COURT: I think that's right. They have
16 notebooks. They can jot their notes down. They'll just read
17 it.

18 MS. CONRAD: Can I have it on the screen for my
19 witness who does not have it in front of her?

06:04 20 THE COURT: Yeah, that's fine. That's fine.

21 (In open court:)

22 THE CLERK: All rise for the jury.

23 (The jury enters the courtroom at 2:54 p.m.)

24 THE CLERK: Be seated.

25 MS. CONRAD: The defense calls Sonya Petri who's --

1 THE COURT: Ms. Petri is only a reader. I don't know
2 that she needs to be sworn.

3 MS. CONRAD: Okay. Well, I'm going to ask her a few
4 preliminary foundation questions, so...

5 THE CLERK: All right.

6 SONYA PETRI, duly sworn

7 THE CLERK: State your name, spell your first and last
8 name for the record, speak into the mic and keep your voice up.

9 THE WITNESS: My name is Sonya Petri, S-O-N-Y-A,
06:06 10 P-E-T-R-I.

11 THE COURT: I'm not hearing you very well. Will you
12 speak into the microphone, please.

13 THE WITNESS: Sorry. Thanks. Let me know.

14 MS. CONRAD: Mr. Lyness, we're not going to be using
15 the display screen, which seems to be on right now. We're
16 hooked up. This is just going to be for the witness, okay?
17 Thank you.

18 DIRECT EXAMINATION

19 BY MS. CONRAD:

06:06 20 Q. Good afternoon, Ms. Petri.

21 A. Good afternoon.

22 Q. Ms. Petri, where do you work?

23 A. Federal Defender's Office in Boston.

24 Q. And what do you do there?

25 A. I am a paralegal.

1 Q. And how long have you been working there?

2 A. Almost a year exactly.

3 Q. Now, I'm going to ask you to take a look at Exhibit 3270A.
4 Can you see it on your screen?

5 A. I cannot.

6 Q. Okay.

7 THE COURT: What's the feed? Is it from the cart
8 computer or from something else?

9 MS. CONRAD: It's from the podium computer, yes.

06:07 10 THE COURT: I'm seeing flowers.

11 MS. CONRAD: I'm sorry?

12 THE COURT: I'm seeing flowers.

13 MS. CONRAD: I'm seeing flowers, too, but Ms. Sarr is
14 not seeing flowers, so I want to see what she sees. There we
15 go.

16 BY MS. CONRAD:

17 Q. Ms. Petri, do you know what this document is?

18 A. Yes.

19 Q. And what is it?

06:07 20 A. It is an FBI 302.

21 Q. And when you say "FBI," you mean the Federal Bureau of
22 Investigation?

23 A. Correct.

24 Q. And what do you mean by a 302?

25 A. It's a report of investigation that the FBI creates after

1 interviewing a witness or someone involved in a case.

2 Q. And in your work at the Federal Public Defender's Office,
3 have you seen documents like this in the past?

4 A. Yes.

5 Q. How many?

6 A. Thousands.

7 Q. And this is an official federal form?

8 MR. WEINREB: Objection, your Honor. This is not
9 appropriate. She's just here to read a document.

06:08 10 THE COURT: Yeah, I think we could tell the jury what
11 a 302 is. I don't think she has to lay the foundation for it.
12 And if you would like, I'd do that.

13 MS. CONRAD: I'm just explaining what a 302 is.

14 THE COURT: Yeah, I'll do it.

15 MS. CONRAD: Okay. Great.

16 THE COURT: When FBI agents interview people, they
17 make a record of it. They write a report that summarizes the
18 interview. It has a form number, as government forms tend to
19 do, and the form number is 302. So in the shorthand language
06:08 20 that we use, a 302 is an FBI report of an interview with
21 someone written by the FBI agent.

22 And this witness is going to read -- the defense is
23 offering for your consideration the contents of some FBI 302
24 reports. And the manner in which it will be presented to you
25 is that this witness, who is, as you heard, a paralegal in the

1 Federal Defender's Office, will simply read the text as
2 presented in the 302.

3 You may take notes on it.

4 BY MS. CONRAD:

5 Q. Now, Ms. Petri, this is a report of an interview with
6 whom?

7 A. Magomed Dolakov.

8 Q. And when and where did that interview take place?

9 A. It took place on April 30th, 2013, in Cambridge,
06:09 10 Massachusetts.

11 Q. And does the report --

12 THE COURT: Excuse me again, Ms. Conrad. I think it
13 would be useful to spell this interviewee's name.

14 BY MS. CONRAD:

15 Q. Absolutely. Can you spell the first name, please?

16 A. Sure. M-A-G-O-M-E-D.

17 Q. And the last name?

18 A. D-O-L-A-K-O-V.

19 Q. And again, this was April 30th, 2013?

06:10 20 A. Correct.

21 Q. And does the report tell you who conducted that interview?

22 A. Yes, it does.

23 Q. And who conducted the interview?

24 A. It was -- I'm having a little trouble seeing the document.

25 Q. Oh, I'm sorry.

1 MS. CONRAD: Ms. Sarr, can you -- I'm not able to
2 control --

3 THE COURT: Can I make another suggestion?

4 MS. CONRAD: Yeah.

5 THE COURT: In addition to the screen, perhaps you
6 could also have a paper copy?

7 MS. CONRAD: Then it's hard for me to follow along if
8 I do that. But why don't I use the document camera.

9 THE COURT: Well, yeah, you can expand the text that
06:10 10 way.

11 MS. CONRAD: Right. And, again, just for the witness.

12 BY MS. CONRAD:

13 Q. So does that tell you who conducted the interview?

14 A. Yes, I believe it does.

15 Q. And who conducted it?

16 A. Filbert III, William O.; and Brown, Timothy D.

17 Q. So that's Timothy Brown and William Filbert?

18 A. Correct.

19 Q. And those are FBI agents?

06:11 20 A. I presume.

21 Q. And I'm going to ask you to -- I'm going to draw your
22 attention to the first -- excuse me -- the third paragraph and
23 ask you to read that for the jury, please?

24 A. Sure.

25 (As read:) Dolakov was born in Mozdok, Russia. Dolakov

1 and his mother ended up moving to Moscow in 2002 to 2003 due to
2 conflicts in the area between the Chechens and the Russian
3 government. Dolakov recalled the FSB would go around and just
4 kill people. Dolakov's father was a CEO at some type of oil
5 company and did not move with them. Dolakov went to the Mephi
6 University in Moscow where he received a degree in physics.

7 Q. And if you would read the next paragraph?

8 A. (As read:) Dolakov entered the United States on June 16,
9 2012. Dolakov went straight to Houston, Texas, where his
06:12 10 sister works and resides. In approximately July of 2012,
11 Dolakov moved to Cambridge, Mass. Dolakov is looking to get
12 into a master's program at MIT but is not currently enrolled at
13 MIT. Dolakov frequents the MIT library and the Cambridge
14 Public Library to study, which he does every day.

15 Q. Can you read the next two paragraphs, please?

16 A. (As read:) Dolakov returned to Moscow in November of 2012
17 because his sister was getting married and his mother was
18 having surgery.

19 While in Moscow, Dolakov had an encounter with the Russian
06:12 20 police and the FSB. Dolakov advised that he was sitting in
21 front of his home talking with his friend Gaisanov in his car.
22 It was around 12:30 a.m. in the morning. Dolakov advised that
23 the police pulled them out of the car and searched them and
24 asked them what they were doing. Dolakov still does not know
25 why the police had stopped them.

1 Q. And going on to the second page, could you read the first
2 paragraph?

3 A. (As read:) Dolakov advised that before he left Russia the
4 first time, he had another contact with the police and FSB.
5 This occurred sometime in 2011. While in Moscow, Dolakov would
6 attend a mosque located on Minskaya Street. Dolakov described
7 the mosque as not radical and advised that there are much more
8 radical mosques in Moscow. Dolakov was walking home from the
9 mosque when he was stopped by the police and taken back to the
06:13 10 police station. Dolakov was fingerprinted and his photograph
11 was taken. Dolakov believes that the government was harassing
12 him and his friends. Dolakov advised that neither of his
13 friends have radical or extremist beliefs in Islam.

14 Q. Please continue with the next two paragraphs.

15 A. (As read:) Dolakov advised that the above events are why
16 he came to the United States and applied for asylum. Dolakov
17 advised that he "knew Tamerlan." Dolakov met Tamerlan at the
18 Prospect Street Mosque around August 2012. Dolakov was talking
19 to a Somali male, and told the Somali male where he was from in
06:14 20 Russia. The Somali male advised that he would have to
21 introduce Dolakov to Tamerlan, who is from the same area and
22 speaks the same language. Dolakov and Tamerlan eventually met
23 later that August, possibly around the 15th or the 20th of
24 August, during the celebration of Eid.

25 Q. Please continue.

1 A. (As read:) Dolakov recalled that when they first met,
2 Tamerlan was wearing a traditional, all white robe, which is
3 worn by Muslims during holy holidays. On the day they met,
4 Tamerlan and Dolakov went to Starbucks and talked about Islam.

5 Dolakov advised that he could tell from their first
6 meeting that Tamerlan was radical in his views on Islam.

7 Dolakov stated that he has met a lot of radicals in Moscow, and
8 that Tamerlan acted and spoke the same way they did. Dolakov
9 got the impression that Tamerlan did not appreciate anything
06:15 10 that Dolakov was saying and was not open to any other beliefs.

11 Dolakov talked about the importance of math, science and
12 studying, but Tamerlan did not feel that any of these things
13 were important. Dolakov advised that their conversation was
14 not hostile but they clearly did not have the same opinions on
15 Islam and what it means to be a good Muslim.

16 Q. All right. I would ask you to continue with the last
17 paragraph on page 2.

18 A. (As read:) When Dolakov and Tamerlan were leaving the
19 Starbucks, an unknown male stopped Tamerlan and asked about his
06:15 20 white robe. Tamerlan explained to the male about the purpose
21 of the robe. The male advised that he was Jewish and Tamerlan
22 began to argue with the male. Dolakov recalled that Tamerlan
23 was becoming physically aggressive toward the male and the male
24 eventually left. Dolakov argued with Tamerlan about how
25 Tamerlan should be more kind when expressing his beliefs about

1 Islam. Dolakov advised that Tamerlan was not screaming at the
2 male but was being very forceful with him.

3 Q. Okay. And going on to page 3, first paragraph, please?

4 A. (As read:) Dolakov met Tamerlan again the very next day.
5 Tamerlan drove to Dolakov's apartment in Somerville and picked
6 Dolakov up. Dolakov could not remember the street address for
7 his apartment in Cambridge, Mass.

8 Dolakov recalled that Tamerlan was driving a Honda CR-V.
9 Tamerlan took Dolakov to a mosque located south of the city of
06:16 10 Boston and close to a beach. Dolakov believes the mosque was
11 the Quincy mosque, but he was not sure.

12 Q. Please continue on the next -- and read the first two
13 sentences only of the next paragraph.

14 A. (As read:) When they got to Tamerlan's home, Tamerlan's
15 wife, Katherine, was there. Dolakov recalled that they
16 continued to talk about Islam, and Tamerlan continued to
17 express his radical views on Islam.

18 Q. And continuing on to the fourth sentence of that
19 paragraph, skipping the third.

06:17 20 A. (As read:) Tamerlan told Dolakov that the men who were
21 fighting the Russian military, the mujahidin, were brave.
22 Tamerlan told Dolakov that "he was going to join the
23 mujahidin." Tamerlan told Dolakov that when he had gone back
24 to Dagestan, he had wanted to join the mujahidin. Dolakov
25 argued with Tamerlan, advising him that the war was not easy

1 and that a lot of innocent people were dying. Dolakov told
2 Tamerlan that he had a wife and a child and responsibilities.
3 Dolakov recalled asking Tamerlan what if his daughter had to
4 grow up without a father. Dolakov did not understand why
5 someone would marry an American woman and have a beautiful
6 child and still desire to join these groups.

7 I'm sorry. Can you move the sheet up a little bit?

8 Q. Yup.

9 A. Thank you.

06:17 10 Q. The last sentence of that paragraph, please?

11 A. (As read:) Dolakov does not remember if Tamerlan knew or
12 had friends that were fighting, or if Tamerlan had family that
13 was fighting.

14 Q. And please read the last two paragraphs.

15 A. (As read:) Dolakov talked to Tamerlan about a bomber in
16 Ingushetia, spelled I-N-G-U-S-H-E-T-I-A, that had attacked a
17 funeral and killed a lot of innocent people. Dolakov tried to
18 argue that it was not normal for someone to do that, but
19 Tamerlan said that the bomber was right, another "sign" that
06:18 20 Tamerlan was a radical.

21 It was also during this encounter that Dolakov found out
22 that Tamerlan was from Dagestan, not Chechnya. This upset
23 Dolakov because Tamerlan would not really understand what the
24 war and fight was really about.

25 Q. Please continue. I'll turn it over.

1 A. (As read:) Dolakov had seen the results of the fighting
2 and the war, and tried to explain to Tamerlan that there was a
3 lot of blood and death, but Tamerlan never listened to Dolakov.

4 Q. Please continue with the last sentence of the next
5 paragraph beginning with the word "Dolakov."

6 A. (As read:) Dolakov did not see Tamerlan again until
7 January of 2013.

8 Q. And please continue to the next paragraph.

9 A. (As read:) In January 2013, Dolakov returned to the
06:19 10 United States from Russia. Dolakov started going to the
11 Prospect Street Mosque again, and eventually ran into Tamerlan
12 praying. Dolakov advised that they were sometimes speak at the
13 mosque, but they did not hang out outside of the mosque.

14 Q. Just stop there, please, and go on to the next paragraph.

15 A. (As read:) Dolakov once asked Tamerlan if he was working.
16 Tamerlan advised that "Allah sent him money." Tamerlan also
17 told him that his wife works and he, Tamerlan, takes care of
18 their child.

19 Q. Okay. I'm going to ask you to go down to the last
06:20 20 paragraph, please.

21 A. (As read:) Dolakov advised that on April 12, 2013,
22 Dolakov went to the Prospect Street Mosque to pray. Dolakov
23 believed that it was around 12 p.m. Dolakov saw both Tamerlan
24 and his brother, Dzhokhar Tsarnaev, at the mosque praying.
25 Dolakov recalled that Dzhokhar seemed to be ill because he had

1 a runny nose. Dolakov did not know they were going to be at
2 the mosque that day.

3 After prayer, Dolakov asked Tamerlan if he was still
4 "training." Tamerlan said he was. Dolakov asked about
5 Tamerlan's gym and told Tamerlan that he needed to get in shape
6 before the summer comes. Dolakov asked Tamerlan if he could
7 take Dolakov to the gym sometime and help him train. Tamerlan
8 suggested they all go right then. Dolakov advised that he
9 really did not want to go right then, but that Tamerlan was
06:21 10 persistent. Dolakov told Tamerlan that he did not have any
11 workout clothes, and Tamerlan stated that Dolakov could use
12 some of his clothes.

13 Q. Could I stop you there for one second, and go to the
14 previous page and tell us what date we're talking about.

15 A. April 12, 2013.

16 Q. Okay. And if you could please continue with the second
17 paragraph on -- the first full paragraph on page 5.

18 A. (As read:) Dolakov finally agreed, and the three of them,
19 Dolakov, Tamerlan and Dzhokhar, went to Tamerlan's home so
06:21 20 Tamerlan could get his gear. Dolakov advised that when they
21 got to Tamerlan's house, Dolakov stayed in the car, and
22 Tamerlan and Dzhokhar went inside to get their stuff. Dolakov
23 advised that they were in the home for about 10 to 15 minutes.
24 When they returned to the car, Dolakov observed Tamerlan grab a
25 pair of sneakers out of a gold minivan that was parked in front

1 of the house.

2 Q. Okay. And if you could please read the next paragraph.

3 A. (As read:) Dolakov recalled that in the CR-V there was a
4 medium-sized cardboard box in the rear driver's side passenger
5 seat. Tamerlan told Dolakov that he was sending the box to his
6 mother in Russia and that it was full of clothes. Tamerlan
7 moved the box from the backseat and put it in the rear of the
8 CR-V on top of a white sheet that was covering items in the
9 trunk of the car. Tamerlan also put his gym bag in the back of
06:22 10 the CR-V with the box.

11 Q. And then please read the next paragraph.

12 A. (As read:) Tamerlan then drove the three of them straight
13 to the gym in Allston, Mass. Tamerlan parked his car on the
14 Brighton Avenue near the gym and the three entered the gym.
15 Dolakov believes they got to the gym around 3 p.m. and stayed
16 for approximate two hours. While at the gym, Tamerlan was
17 working a clock by the boxing ring, and Dolakov was hitting a
18 bag. Dolakov advised that he was using boxing gloves that
19 Tamerlan gave him. Dolakov advised that Dzhokhar was doing his
06:23 20 own thing and was very quiet. Dolakov advised that Dzhokhar
21 was always very quiet and often just listened rather than
22 saying much.

23 Q. Okay. And then continuing on to page 6, I would ask you
24 to read the first sentence of the first full paragraph.

25 A. (As read:) After Tamerlan was done shower and changing --

1 MR. WEINREB: Your Honor, I would ask that the next
2 paragraph be read as well, the one that was skipped over.

3 "After they were finished" --

4 MS. CONRAD: I'm sorry. Which one?

5 THE COURT: On page 5.

6 MS. CONRAD: I'm not offering that. If the government
7 wants to offer it, they can.

8 MR. WEINREB: That's fine.

9 THE COURT: Okay.

06:23 10 BY MS. CONRAD:

11 Q. Go ahead.

12 A. The first full paragraph?

13 Q. The first sentence of the first full paragraph: "After
14 Tamerlan."

15 A. Thank you. (As read:) After Tamerlan was done shower and
16 changing, the three of them went and got something to eat at a
17 halal restaurant.

18 Q. And the last sentence of that paragraph?

19 A. (As read:) Tamerlan drove straight from the restaurant to
06:24 20 Dolakov's apartment.

21 Q. And please continue with the next paragraph.

22 A. (As read:) Dolakov advised that they didn't really speak
23 much that night. Dolakov recalled that they talked a little
24 about music, but they never spoke about America or the
25 marathon. Dolakov advised that that was the last time he saw

1 Tamerlan or Dzhokhar.

2 Q. Please continue.

3 A. (As read:) Dolakov advised that since seeing Tamerlan in
4 2013, he seemed to be the same person with the same beliefs
5 that he had in August of 2012 when they first met.

6 Q. I think that might be it for that report. If I may just
7 have one moment. Oh, one more. So then on page 8 of that
8 document, I'd ask you to read the first sentence that you see.

9 A. (As read:) At about 11 p.m. on April 30, 2013, agents met
06:25 10 Dolakov at the Starbucks in Harvard Square.

11 Q. Please continue.

12 A. (As read:) While sitting with the agents, Dolakov
13 recalled that when he was in the car with Tamerlan and
14 Dzhokhar, he and Tamerlan were arguing about Islamic knowledge
15 and if you need to learn Arabic to have a true understanding of
16 the Qur'an or if you can read it in other languages and
17 understand it the same. Tamerlan said that it did not matter
18 what language you read the Qur'an in, you can still understand
19 it and learn from it. Dolakov believed to truly understand the
06:25 20 Qur'an, you need to learn it in Arabic. Tamerlan also told
21 Dolakov that there was a lot of knowledge on the Internet.
22 Dolakov told Tamerlan there is also a lot of rubbish on the
23 Internet. Tamerlan told Dolakov about two websites, Hunafa and
24 the Kavkazcenter. Tamerlan said that he recommended these
25 websites to visit and thought that they were a good database

1 for the knowledge about Islam. Dolakov believes that Hunafa
2 and Kavkazcenter may be jihadi websites.

3 MS. CONRAD: Okay. Now let's turn to 3271A.

4 I would offer 3270, your Honor, if I didn't already do
5 that.

6 THE COURT: Well, no, I think we set the terms. It's
7 the reading --

8 MS. CONRAD: So should I just refer to 3271 as for
9 identification, then?

06:26 10 THE COURT: Yes.

11 MS. CONRAD: Okay. Thank you.

12 BY MS. CONRAD:

13 Q. So showing you 3271A for identification, Ms. Petri, can
14 you tell us what that is?

15 A. That is another FBI 302.

16 Q. And who is this an interview with?

17 A. It is also an interview with Magomed Dolakov.

18 Q. And does this report tell you when that interview took
19 place?

06:26 20 A. It does.

21 Q. And when was that?

22 A. May 21, 2013.

23 Q. And where?

24 A. In Cambridge, Massachusetts.

25 Q. And who conducted that interview?

1 A. William O. Filbert III, and James B. Bailey.

2 Q. And does it say where the interview took place?

3 A. It appears at the apartment of Dolakov.

4 Q. And going on to the next page, I just would ask you to
5 read the one paragraph that's highlighted here.

6 A. Okay. (As read:) Dolakov believes that the only time he
7 saw Dzhokhar Tsarnaev was the Friday before the marathon.

8 Dolakov thought that he may have seen him once before during a
9 Friday prayer, but he could not remember. The only time

06:27 10 Dolakov talked to Dzhokhar was on the Friday when they went to
11 the gym. Dolakov advised that Dzhokhar did not really speak
12 when he was with his brother Tamerlan. The only time Dolakov
13 and Dzhokhar spoke was at the gym when Tamerlan was showering.

14 Q. Okay. Now, turning to 3269 for identification, is that
15 another FBI 302?

16 A. Yes, it is.

17 Q. And again, who is this an interview with?

18 A. It is also an interview with Magomed Dolakov.

19 Q. And on what date?

06:28 20 A. June 11, 2013.

21 Q. At where?

22 A. Brighton, Massachusetts.

23 Q. And does it say where the interview took place
24 specifically?

25 A. Yes, it does. At a Starbucks Coffee on Soldier's Field

1 Road.

2 Q. And who conducted that interview?

3 A. It appears to be conducted by Craig E. Ring and maybe
4 Bailey, James B., or James B. Bailey. I don't know.

5 Q. It's hard to tell, right?

6 A. Yes.

7 Q. And, again, when did that take place, on what date?

8 A. June 11, 2013.

9 Q. And could you please read the second paragraph on that
06:28 10 page?

11 A. (As read:) Dolakov advised in August 2012 he went to a
12 mosque in Quincy, Massachusetts, with Tamerlan Tsarnaev, and
13 Tsarnaev and Dolakov went to the mosque in Tsarnaev's --

14 Q. I'm sorry. After "and," where it says "Tamerlan Tsarnaev
15 and," is there something blacked out?

16 A. Yes, there is.

17 Q. Okay. So that should be the end of the sentence. Start
18 the next sentence, please.

19 A. Sorry. "And," and end of sentence.

06:29 20 (As read:) Tsarnaev and Dolakov went to the mosque in
21 Tsarnaev's Honda CR-V and arrived in a minivan taxi.

22 Q. I'm sorry. If you could just, when it's blacked out, just
23 say "blank"?

24 A. Sure.

25 Q. Okay?

1 A. Should I read that sentence again?

2 Q. Sure.

3 A. (As read:) Tsarnaev and Dolakov went to the mosque in
4 Tsarnaev's Honda CR-V, and, blank, arrived in a minivan taxi.
5 Following the prayers at the mosque, Dolakov, Tsarnaev and,
6 blank, ate lunch at the mosque, and then went to, blank's,
7 residence to drop off his taxi. All three of them then
8 traveled in the Honda CR-V to a beach in Quincy, Massachusetts.
9 They stayed at the beach for approximately one or two hours
06:29 10 waiting for their friends.

11 Q. Please continue.

12 A. (As read:) Dolakov recalls discussing a suicide bombing
13 with Tsarnaev during their time at the beach. A police officer
14 in Ingushetia was killed, and during his funeral a suicide
15 bomber came and blew himself up, killing a number of other
16 individuals. Dolakov saw no reason for this senseless
17 violence, but Tsarnaev considered the police officer, his
18 friends and his family all kefir, or non-believers, in Islam.

19 Following their time at the beach, Dolakov, blank, and
06:30 20 Tsarnaev drove in the Honda CR-V to Tsarnaev's residence in
21 Cambridge, Massachusetts. At Tsarnaev's home, Dolakov and
22 Tsarnaev watched jihad videos, blank. While he was there,
23 Dolakov met Tsarnaev's wife, Katherine, who was preparing
24 dinner. The interaction with Katherine was only a minute or
25 two, and when it was time to eat, Tsarnaev served the food

1 while his wife went to a different room. Tsarnaev's mother was
2 not at the apartment; she was doing social work for some old
3 people.

4 Q. Okay. I'm going to now show you 3274A for identification.

5 THE COURT: Before you move on, I think the government
6 was going to offer a paragraph in the --

7 MS. CONRAD: Oh, I'm sorry.

8 THE COURT: I think it's just better to do it with the
9 same witness.

06:31 10 MS. CONRAD: Okay.

11 CROSS-EXAMINATION

12 BY MR. WEINREB:

13 Q. Good afternoon, Ms. Petri.

14 A. Good afternoon.

15 Q. I just want to ask you to read one line. You were
16 talking -- when you read the first interview with Mr. Dolakov,
17 you read a portion where he and Tamerlan Tsarnaev and Dzhokhar
18 Tsarnaev drove to a gym in Allston?

19 A. Uh-huh. Yes.

06:31 20 Q. So could you just read the paragraph that is circled in
21 black pen?

22 A. Certainly. (As read:) After they were finished working
23 out, Tamerlan went to take a shower. While Tamerlan was in the
24 shower, Dolakov saw that Dzhokhar was using an iPhone 5.

25 Dolakov started asking Dzhokhar about school. Dolakov believed

1 that Dzhokhar told him that he was majoring in mechanical
2 engineering. Dzhokhar also told him that he wanted to visit
3 Russia and was tired of America.

4 MR. WEINREB: Thank you.

5 CONTINUED DIRECT EXAMINATION

6 BY MS. CONRAD:

7 Q. Okay. Showing you Exhibit 3274 -- what's been marked for
8 identification as 3274, what is this document?

9 A. It's an FBI 302.

06:32 10 Q. And who was interviewed -- what interview is reflected in
11 this?

12 A. The interview of Viskhan Vakhabov.

13 Q. And when did that occur?

14 A. April 20, 2013.

15 Q. Where?

16 A. In Allston, Massachusetts.

17 Q. And who conducted that interview?

18 A. Jeffrey F. Hunter.

19 Q. And where did the interview specifically take place?

06:32 20 A. At Vakhabov's residence.

21 Q. And drawing your attention to the last paragraph on that
22 first page, could you please read that to the jury?

23 A. Certainly. (As read:) Vakhabov was born in Kurchaloy,
24 Chechnya. His parents sent him to Kazakhstan to finish school
25 because his school in Chechnya was destroyed during the second

1 Chechen war. He resided in Kazakhstan for approximately three
2 years. After leaving Kazakhstan and prior to moving to the
3 United States, he resided in Azerbaijan for approximately one
4 year. Vakhobov and his family (father, mother, brother and
5 sister) departed Azerbaijan utilizing a United Nations program
6 to come to the United States in --

7 Q. In -- hold on. Let's try this.

8 A. -- 2004. Sorry, December 2004.

9 (As read:) The United Nations program placed Vakhobov and
06:33 10 his family in Chelsea, Massachusetts.

11 Q. Please continue.

12 A. (As read:) Vakhobov's brother, Israpil Vakhobov, attends
13 the University of Massachusetts-Dartmouth (UMass Dartmouth)
14 with Dzhokhar Tsarnaev.

15 Q. And please read the next paragraph, all but the last
16 sentence.

17 A. Okay. (As read:) Vakhobov met Tamerlan Tsarnaev and his
18 family in Roxbury, Massachusetts, within two or three months of
19 being in the United States. Tamerlan Tsarnaev and Dzhokhar
06:34 20 Tsarnaev are brothers and were residing in the same house when
21 Vakhobov first met them. Vakhobov's parents know Tamerlan
22 Tsarnaev's parents. Tamerlan Tsarnaev's father is from
23 Chechnya and his mother is from Dagestan. He is not sure where
24 Tamerlan Tsarnaev was born; however, Tamerlan Tsarnaev has a
25 Dagestani accent. Tamerlan Tsarnaev's parents left the United

1 States and returned to Russia.

2 Q. And please continue reading the next paragraph.

3 A. (As read:) Vakhobov and Tamerlan Tsarnaev used to go out
4 and have fun. They would smoke, drink and go to clubs.

5 Tamerlan Tsarnaev introduced Vakhobov to some of his "weed"
6 smoking friends in Cambridge.

7 Many years ago, Tamerlan Tsarnaev gave Vakhobov a
8 "moderate" version of the Qur'an. However, as of approximately
9 two years ago, Vakhobov noticed a change in Tamerlan Tsarnaev's
06:35 10 behavior. Tamerlan Tsarnaev told Vakhobov that a true Muslim
11 would not go out and smoke and chill out. Tamerlan Tsarnaev
12 told him that just because you say you are a Muslim, it does
13 not mean that you really are.

14 Q. Would you go to the last line, please, of that page.

15 A. (As read:) Approximately one year ago, Tamerlan Tsarnaev
16 traveled from the United States to Dagestan. Tamerlan Tsarnaev
17 telephonically contacted Vakhobov one time from Dagestan.

18 Vakhobov does not know the purpose of Tamerlan Tsarnaev's
19 travel to Dagestan. Tamerlan Tsarnaev's father was residing in
06:35 20 the United States during the time period Tamerlan Tsarnaev
21 traveled to Dagestan. Tamerlan Tsarnaev's father told Vakhobov
22 that Tamerlan Tsarnaev was in Chechnya, and that Tamerlan
23 Tsarnaev had not been there since he was a little baby.

24 Dzhokhar Tsarnaev was at UMass Dartmouth during the time period
25 that Tamerlan Tsarnaev was traveling overseas.

1 Q. Please continue.

2 A. (As read:) After being in Dagestan for four to five
3 months, Tamerlan Tsarnaev returned to the United States
4 approximately six months ago.

5 Q. I'm going to stop you there and ask you to read the second
6 full paragraph on that page.

7 A. Beginning with "he"?

8 Q. Yes.

9 A. (As read:) He has spoken with Tamerlan Tsarnaev
06:36 10 approximately four to seven times since Tamerlan Tsarnaev has
11 returned to the United States. Tamerlan Tsarnaev would tell
12 him that extremist violent jihad was the proper path.

13 Q. Please continue with the last paragraph on that page.

14 A. (As read:) Approximately four weeks ago, Vakhabov
15 provided a ride home from UMass Dartmouth for his brother,
16 Israpil Vakhabov, and Dzhokhar Tsarnaev. Upon arriving at
17 Dzhokhar Tsarnaev's home, Dzhokhar Tsarnaev invited Vakhabov
18 inside. Dzhokhar Tsarnaev told Vakhabov that Tamerlan Tsarnaev
19 was inside and wanted to speak with him. Vakhabov did not want
06:37 20 to go inside because he felt Tamerlan Tsarnaev was likely to
21 try to teach him about religion or to criticize his religious
22 practices. Vakhabov attempted to telephonically contact
23 Tamerlan Tsarnaev from his vehicle outside the residence.
24 However, Tamerlan Tsarnaev's number was disconnected, and
25 Vakhabov deleted the number from his cellular telephone.

1 MS. CONRAD: I have nothing further. Thank you very
2 much, Ms. Petri.

3 MR. WEINREB: I have nothing.

4 THE COURT: Okay. I guess that's it. Let me just say
5 a little more to the jury about this. You've effectively had
6 testimony from witnesses without the witnesses being here.
7 You'll recall in the prior phase of the case I told you we
8 would be following rules of evidence and you'd see me applying
9 them. The rules of evidence are more relaxed by law for this
06:38 10 proceeding, and there's so great a flexibility, so that when
11 witnesses are for one reason or another unable to be here, we
12 can make some substitutions for the testimony.

13 But you should keep some things in mind about this
14 process. The 302 reports are, as you've heard, by their nature
15 a summary of what the interviewed person has said to the
16 agents. They're not necessarily verbatim transcriptions of the
17 conversation, but summaries, and they may be made from the
18 agents' notes and then put together in a report either that day
19 or perhaps the next day.

06:38 20 The agents do not independently check or verify the
21 substance of the interviewees' statements, they simply record
22 them. It is a federal crime to impede a federal law
23 enforcement investigation by giving false information, but a
24 witness interviewed under these circumstances is not placed
25 under oath, as a witness in the courtroom would be.

1 Perhaps importantly from your perspective, unlike a
2 witness who testifies here in the courtroom, you're not able to
3 observe the person giving the information to the extent your
4 observations might help you assess the reliability of the
5 evidence. And that's a difference you might think about as you
6 evaluate this evidence. And also unlike testimony at trial, a
7 statement given elsewhere and recorded by the FBI in these
8 reports is not subject to cross-examination by any party to
9 fill in or clarify matters; it's simply accepted at face. So
06:39 10 you may take all of those things into account in deciding the
11 reliability of the evidence as you evaluate it with all of the
12 other evidence in the case at the time when you do that.

13 A reason why we would substitute this kind of evidence
14 for live testimony here in the courtroom is principally because
15 the witness for one reason or another is unable to be present
16 to do that. With respect to the first three 302s of
17 Mr. Dolakov, Mr. Dolakov is simply not available to be brought
18 here. With respect to Mr. Vakhabov, whose name, by the way I
19 don't think was spelled for you, so the second witness was
06:40 20 V-I-S-K-H-A-N, first name, V-I-S-K-H-A-N, V-A-K-H-A-B-O-V.
21 V-A-K-H-A-B-O-V.

22 Mr. Vakhabov indicated that if he were brought here,
23 he would invoke his Fifth Amendment privilege not to testify as
24 to matters that might incriminate him. And that made him
25 unavailable for testimony here because that invocation would be

1 respected. It did not prevent his statement from being read.

2 MS. CONRAD: Thank you, your Honor.

3 THE COURT: Does that complete your --

4 MS. CONRAD: I have another witness, your Honor.

5 THE COURT: Oh, you do? Good.

6 MS. CONRAD: Yes. The defense calls Sam Lipson. If
7 that's okay.

8 THE COURT: It is certainly okay.

9 MS. CONRAD: Sam Lipson.

06:42 10 SAM LIPSON, duly sworn

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

14 THE WITNESS: Sam Lipson, S-A-M, L-I-P-S-O-N.

15 DIRECT EXAMINATION

16 BY MS. CONRAD:

17 Q. Good afternoon, Mr. Lipson. Can you tell us where you
18 grew up?

19 A. I grew up in Cambridge, Massachusetts.

06:42 20 Q. Cambridge, Massachusetts? And what do you do for a
21 living?

22 A. I'm a director of environmental health in the public
23 health department.

24 Q. Where did you go to school?

25 A. I went to high school at Cambridge Rindge and Latin, and

1 then I went to undergraduate at University of Chicago and UC
2 Berkeley, and then I did graduate work at UMass in Boston.

3 Q. And do you still have family members living in Cambridge?

4 A. I do.

5 Q. Specifically, does your mother still live in Cambridge?

6 A. She does.

7 Q. And what is your mother's name?

8 A. Joanna Herlihy.

9 Q. Can you spell that for the court reporter?

06:43 10 A. J-O-A-N-N-A, H-E-R-L-I-H-Y.

11 Q. And where does your mother live?

12 A. 410 Norfolk Street.

13 Q. And how long has she lived there?

14 A. Since '94, I believe.

15 Q. Does she own that building?

16 A. Yes.

17 Q. And how many apartments are in that building?

18 A. There are three apartments.

19 Q. At some point did she rent an apartment to the Tsarnaev
06:43 20 family?

21 A. Yes, she did.

22 Q. And did you come to meet members of that family?

23 A. I did meet at one time or another every member of that
24 family.

25 Q. And who was the first person in that family that you met?

1 A. Anzor, who is the father.

2 Q. Can you spell that, please?

3 A. A-N-Z-O-R.

4 Q. And when approximately was that, do you remember?

5 A. Probably -- it was 2002, I'm pretty sure.

6 Q. Now, were you living at 410 Norfolk at that time?

7 A. No, I wasn't.

8 Q. And how is it that you met Anzor?

9 A. Well, as somebody renting the apartment from a

06:44 10 Russian-speaking part of the world, my mother thought it would
11 be interesting to her children to meet them as they moved into
12 the third floor.

13 Q. Now, at that time, did you speak Russian yourself?

14 A. Yes.

15 Q. And how did you learn Russian?

16 A. It was my minor in college, and my father was a professor
17 of Russian and Slavic linguistics.

18 Q. And does your mother also speak Russian?

19 A. She does.

06:44 20 Q. When you -- when you first met Anzor, was he alone?

21 A. When I first met him, was he physically alone?

22 Q. Yes. I don't mean -- not living alone, but did you meet
23 him by himself?

24 A. Yeah, I met him one-on-one initially.

25 Q. And did you have some more contact with him as time went

1 on?

2 A. I did.

3 Q. And tell us a little bit about how that came about.

4 A. Well, he was working as an automobile mechanic, although
5 he didn't have his own shop. So he was looking for people who
6 had cars that needed to get work done. I brought my car to him
7 on many occasions to get work done.

8 Q. And where would he do that work?

9 A. Mostly either on the street or in an alleyway behind a
06:45 10 shop on Broadway, or occasionally in an established garage he
11 would rent in order to be able to use the lift.

12 Q. And I'm going to show you --

13 MS. CONRAD: Unless the government has an objection, I
14 would offer to introduce Exhibit 3260; otherwise, I'll just
15 show it to the witness only.

16 MS. PELLEGRINI: To the one, 3260, I have no
17 objection, your Honor.

18 THE COURT: I'm sorry?

19 MS. PELLEGRINI: To the one, 3260, I have no
06:45 20 objection.

21 MS. CONRAD: Okay. So we'd offer 3260 and ask that it
22 be published.

23 (Defense Exhibit No. 3260 received into evidence.)

24 BY MS. CONRAD:

25 Q. Mr. Lipson, do you recognize what that's a picture of?

1 A. Yes, I do.

2 Q. And what is that?

3 A. That's the rug shop on Broadway in Cambridge that was in
4 front of the alley where Anzor would work on cars.

5 Q. And showing you Exhibit 3258, can you tell us what that
6 photograph depicts?

7 A. Yeah, that is the alleyway behind the rug shop.

8 MS. CONRAD: Your Honor, I'd offer that as well. I
9 think the jury's now seeing it.

06:46 10 MS. PELLEGRINI: No objection, your Honor.

11 THE COURT: All right.

12 (Defense Exhibit No. 3258 received into evidence.)

13 BY MS. CONRAD:

14 Q. So when you say "in the alleyway," can you put your finger
15 on the screen and show us approximately where your car would be
16 when Anzor was working on it?

17 A. Oh, yeah. It would be on this side (indicating).

18 Q. So just right out there in the street?

19 A. This is an alley. The street is --

06:46 20 Q. Right.

21 A. Where you'd be standing if you took this picture, you
22 would on the street.

23 Q. But there was no protection, for example, from the
24 elements?

25 A. No, it was pretty exposed, yeah.

1 Q. And tell us what your impressions of Anzor were when you
2 first met him and were getting to know him.

3 A. Well, he was a very strong guy. I just really took note
4 of how powerful he was. Big, upper-body strength. You know,
5 big, very powerful handshake. He was also very warm, he was
6 very inviting. When I first met him, for instance, to go have
7 tea at his house, that was sort of an offer that was put out
8 there I think almost every time -- I met him the first few
9 times. But very confident, strong person, you know.

06:47 10 Q. Did that -- what kinds of things did you talk to him about
11 other than your car?

12 A. Finding a garage he could rent. I know that he was trying
13 to get his own business started. So he had had trouble finding
14 a place to rent, and never did in the end, but we talked about
15 what neighborhoods might be more affordable for garages.

16 Q. Was there a particular opportunity that came up that he
17 was sort of excited about at one point?

18 A. Yeah. There was an apartment, Section 8 apartment, in
19 Chelsea that was going to be available that would have been big
06:48 20 enough for the family but also had a garage that was attached
21 and would have allowed him to work in the garage and have a
22 place that he could afford.

23 Q. Let me ask you -- just stop you for a minute. What's
24 Section 8, do you know?

25 A. Yeah, Section 8 is a federal rental subsidy program.

1 Q. And the Tsarnaev family qualified for that?

2 A. Yes.

3 Q. And, in fact, your mother received Section 8 payments when
4 they were living at her apartment?

5 A. Yes.

6 Q. And what happened with this opportunity in Chelsea?

7 A. Well, as I understand, they weren't able to take the
8 rental because it had leaded paint, and with younger kids, they
9 were uninterested in renting it. They would have had to get a
06:49 10 full removal for lead paint.

11 Q. Let's talk about the kids for a second. So we talked a
12 little bit about Anzor. Did you come to meet the rest of the
13 family over time?

14 A. Yeah.

15 Q. And tell us who the members of that family were?

16 A. Well, there's Jahar and Ailina and Bella and Tamerlan and
17 Zubeida and Anzor.

18 Q. So there were six of them?

19 A. Yeah.

06:49 20 Q. And they were all living in the apartment at 410 Norfolk?

21 A. Yes.

22 Q. And showing you what's been introduced previously as
23 Exhibit 1185-01 --

24 MS. CONRAD: What? You don't have it? Okay. I'll
25 just put it on the screen.

1 And this is in evidence, so if we could have this for
2 everybody, please.

3 Q. Do you recognize what this is a picture of?

4 A. Yes.

5 Q. What is it?

6 A. That's my mother's building.

7 Q. At 410 Norfolk?

8 A. Yes.

9 Q. And which floor were the Tsarnaevs on?

06:50 10 A. They were on the third floor.

11 Q. Can you just touch the screen and show us where their
12 apartment would be?

13 A. (Witness complies.)

14 Q. Would you say that's a fairly small apartment for a family
15 of six?

16 A. Yeah. Even though there were three bedrooms, they're very
17 small. It's a very crowded hallway, very narrow... So, yeah,
18 all the apartments are very crowded.

19 Q. And what -- you eventually met Zubeidat, is that right, or
06:51 20 "Zubeida," as you refer --

21 A. I call her "Zubeida," or Zarema Zubeida.

22 Q. And she was the mother?

23 A. Yes.

24 Q. And what were your impressions of her?

25 A. Well, she was a very lively person, very colorful person,

1 warm, very talkative; had kind of a high sort of singsongy
2 voice, as I recall, kind of -- sort of excitable but very --
3 kind of a spark, I guess, you know.

4 Q. How did her personality compare to Anzor's?

5 A. Well, Anzor, although he seemed very confident and, you
6 know, strong, he really didn't speak much. He was a person of
7 few words, is kind of the way I imagined, you know, sort of a
8 cowboy. He made good eye contact, was very warm, but didn't
9 speak much, whereas Zarema Zubeidat would be very loquacious.

06:52 10 She spoke a fair amount. Her English was fairly good.

11 Q. And how was Anzor's English?

12 A. Not very good. He spoke primarily Russian, I spoke only a
13 little Russian. I mean, my Russian is 25 years old so it's not
14 so great. But he didn't -- didn't speak a whole lot. It was
15 simple, shorter sentences.

16 Q. Did you observe any changes in Anzor over the years from
17 2002, I guess, going forward to 2013 -- well, actually, he left
18 around 2012, right?

19 A. Yes.

06:52 20 Q. So for that ten-year period -- during that ten-year period
21 did you notice any changes with him? First of all, let's start
22 with physically.

23 A. Yeah. In the last few years, he had seemed to have lost
24 weight, or seemed to be kind of less energetic, anyway. I
25 would say that that sort of muscular build that I first noticed

1 when I met him was diminished a fair amount.

2 Q. Were you aware of any medical problems that he was having?

3 A. I was. I had heard that he had --

4 MS. PELLEGRINI: Objection to what he'd heard.

5 BY MS. CONRAD:

6 Q. Did you make any observations of any physical ailments
7 that he seemed to have?

8 MS. PELLEGRINI: That's asked and answered already.

9 THE COURT: No, go ahead. You could have that.

06:53 10 MS. CONRAD: I don't think -- thank you.

11 BY MS. CONRAD:

12 Q. Did you make any observations of whether he was suffering
13 from any physical ailments?

14 A. When I would talk to him, mostly around times I would
15 bring my car or pick up my car or just explain to him what
16 might be wrong with the car, there were times that he appeared
17 to be in pain.

18 Q. And how would you -- what observations did you make that
19 led you to that conclusion?

06:54 20 A. Well, observations that he seemed un -- even less
21 communicative than normal. It wasn't like he would hold his
22 stomach or anything, but he would just seem to be making as few
23 motions as possible. But also, I had it relayed to me that he
24 had --

25 MS. PELLEGRINI: Objection.

1 THE COURT: Sustained.

2 BY MS. CONRAD:

3 Q. Did he tell you that he was having physical problems or
4 complained of pain?

5 A. He did.

6 Q. What did he say?

7 MS. PELLEGRINI: Objection.

8 THE COURT: No, you may have that.

9 THE WITNESS: Yeah, he talked about just generally
06:54 10 that he was in pain, and not going into great detail about
11 where the injury may have come from. But, again, he didn't use
12 a lot of words when we spoke.

13 BY MS. CONRAD:

14 Q. I sort of skipped over something I want to go back to for
15 a moment. What observations did you make about his work ethic?

16 A. He was a tough guy.

17 Q. Tell me about that.

18 A. He is a tough guy, I'm sure.

19 Well, he worked often at night in cold weather in the
06:55 20 alley. He didn't have a garage, so he had to work outside. He
21 would still be out late on many nights after dark. And he
22 would work in the cold months of the year, again, without a
23 garage. So I saw him as a pretty tough person who was pretty
24 determined to do work.

25 Q. Did you make any observations of changes in his

1 personality or demeanor over the ten-year period that you knew
2 him?

3 A. Yeah. Yeah. I mean, it was fairly obvious that he was,
4 you know, burdened in later years quite a bit. We had talked
5 in the earlier years about renting a garage and where he might
6 start a business, and it didn't seem like he had any interest
7 in that towards the end. And I think he just seemed unhappy in
8 general. He just didn't seem very forward and warm in the way
9 that he had been when I first met him.

06:56 10 Q. Was he unfriendly towards you?

11 A. No, he was never unfriendly.

12 Q. What about Zubeidat or -- sorry -- Zubeida. What changes
13 did you notice in her over the ten-year period?

14 A. Well, I should say I did not see her nearly as often.
15 Anzor I saw much more often because he would work on my car.
16 Zubeida I would see sometimes in front of the building if I was
17 going to visit my mother.

18 But she began to dress differently in the last two years
19 on the one or two occasions I had seen her. I'm not very
06:57 20 observant about dress, I should say. I often miss even friends
21 of mine, I might not notice if they're wearing a new shirt.

22 But there was a -- she was covering herself on her head and --

23 Q. You mean in the Muslim tradition of wearing a head
24 covering or hijab?

25 A. Yeah. And in earlier years when I met her she had very

1 colorful jewelry, earrings and that sort of thing, and I didn't
2 see that in later -- later years when I did see her.

3 Q. So I take it she had not been covering her hair in the
4 early years that you knew her?

5 A. Yeah; that's correct.

6 Q. That is something you noticed?

7 A. Yes; I did notice.

8 Q. Anything else you noticed about the kinds of clothes that
9 she wore given your limited observations?

06:57 10 A. Yeah. Yeah, I did notice these colorful prints that she
11 had, you know, a shawl or dress, that was, you know, very
12 lively in the early years when I first met her.

13 Q. And later?

14 A. Kind of simple clothes, like darker colors, you know.

15 Q. What about her demeanor or how she presented herself? Did
16 you notice changes about that over the years?

17 A. Yeah. You know, I think that she and both Anzor had a
18 certain optimism and energy when I first met them. It was a
19 new place, new opportunities. And she was very excited about
06:58 20 the things she was going to try. She would talk -- she was a
21 very talkative person, so she would talk energetically about
22 things that might come to pass.

23 Q. You talked about, I think, things she was interested in
24 doing. Do you know what she was doing, for example, for work?

25 A. She was doing some work, I think, early on as a

1 home-health aid. So I know she went back and got training in
2 cosmetology. I had talked to her about cosmetic --
3 cosmetology, like cosmetic tattoo, because I knew a little bit
4 about it through my own work, and I was interested that she was
5 trying to do that.

6 Q. And can you just explain to us what cosmetic tattoo is?

7 A. Sure. This is basically putting permanent tattoo to
8 substitute for makeup that you would apply every day. This
9 would be like --

06:59 10 Q. So like eye-liner or something like that?

11 A. Exactly. Or maybe an eyebrow enhancement, that kind of
12 thing.

13 Q. And was that something she wound up pursuing
14 professionally?

15 A. It was my understanding she wasn't able to get regular
16 work in that area. She may have gotten some work initially,
17 but it didn't turn into a career for her and --

18 Q. Now, you described her as outgoing, talkative. And did
19 that change over time or did the way she talked change over
06:59 20 time?

21 A. Yeah. I mean, again, I should say I saw her far less
22 often. I might have seen her once or twice a year, but it was
23 fairly obvious to talk to her that there was an anxiety. She
24 would speak of, you know, her fears and concerns mostly and how
25 things weren't working out. I mean, it was an anxious -- these

1 were anxious conversations. She spoke very quickly but she had
2 a high pitch that really made it seem like she was very upset,
3 or nearly upset. I mean, there was sort of a tense tone.

4 Q. And would you say it was hysterical?

5 MS. PELLEGRINI: Objection.

6 THE COURT: You may answer it.

7 THE WITNESS: In that direction.

8 BY MS. CONRAD:

9 Q. Now, what about the children? Did you know the daughters
07:00 10 Ailina and Bella very well?

11 A. I didn't know them very well, no.

12 Q. And did you notice -- but did you notice a change in how
13 they attired themselves over time?

14 A. No, I did not really run into them in the way that I would
15 occasionally run into Zubeida and...

16 Q. What about Jahar? And by the way, do you see Jahar in the
17 courtroom?

18 A. I do.

19 Q. And he's sitting at counsel table?

07:01 20 A. Yes.

21 Q. And when was the last time you saw him?

22 A. It might have been 2012.

23 Q. And how old was he when you first met him?

24 A. He was eight.

25 Q. And what was he like?

1 A. Very sweet.

2 Q. What did he look like?

3 A. Skinny kid.

4 Q. Was he -- did you have much interaction with him?

5 A. No, not a lot. I think he was a little shy. I think he
6 was -- around adults who were not family members. You know, he
7 didn't necessarily interact a lot so we didn't have a lot of
8 conversations.

9 Q. But if you greeted him, how would he respond?

07:02 10 A. He was a sweet kid. I mean, you know, he made eye contact
11 and would smile. You know, you get a sense of that. You know,
12 even with kids you get a sense.

13 Q. Was he -- would you sort of see him come and go from the
14 apartment?

15 A. Yeah, especially in later years that was almost the only
16 way I would happen to see him, by -- if I'm walking in and he's
17 maybe racing off to -- often on a bicycle, just looking busy.

18 Q. How did he seem?

19 A. Oh, cheerful. You know, I'd say it's hard to think of a
07:02 20 time when he wasn't -- even if it was brief, some kind of
21 cheerful greeting or, you know, wave or something.

22 Q. What about Tamerlan? What was he like when you first met
23 him and got to know him a little bit?

24 A. Also very strong, you know, muscular physique. He was
25 older, of course.

1 Q. When you say "older" --

2 A. Than Jahar, since we were talking about...

3 And so he had -- when I first met him, he was more mature
4 in other ways as well. You know, he dressed nicely. It looked
5 like he -- I saw him dress in sort of more euro-style clothing,
6 cologne, you know, smooth, kind of slick.

7 Q. And how old was he when you -- approximately when you
8 first met him, or how old did he appear to be?

9 A. Probably about 15.

07:03 10 Q. And by the way, do you know more or less who the oldest
11 child in the family was and who the youngest was? And who was
12 the oldest?

13 A. Tamerlan.

14 Q. And who was the youngest?

15 A. Jahar.

16 Q. And how would -- what were your interactions with Tamerlan
17 like in those earlier years?

18 A. Not a lot, but he was more sort of gregarious. Like he
19 would initiate a handshake, a short conversation, maybe, in the
07:04 20 hall. And he was kind of very -- you know, I'd say
21 charismatic. You know, he had a quick smile and would kind of
22 present himself, you know, take the initiative.

23 Q. Now, how did that change, or did that change, over the
24 years?

25 A. Yeah, you know, as I said with Zarema, I did not see,

1 other than Anzor, other members of the family very often, so
2 this is based on having maybe run across him once a year over
3 the last several years. But he had developed -- grown a beard
4 in the last couple of years.

5 Q. When you say "a beard," do you mean like a goatee or --

6 A. No, I mean a full beard. And he felt more kind of
7 reserved and distant.

8 Q. Now, let me just stop there for a second and let me just
9 sort of try to get a bead on who's living in the apartment over
07:05 10 the years. Now, you said initially it was the parents and the
11 four children. And did that change over time?

12 A. Yeah. There was movement of -- as I said, initially Jahar
13 was not with them. I don't believe the girls were either.
14 They came later. And there were different times when one of
15 the parents would return to Kazakhstan for a visit. In later
16 years, I understand there were people moving in and out.
17 Tamerlan moved out at one point, but I didn't keep track of any
18 of that.

19 Q. Do you know if the girls moved out at some point?

07:06 20 A. I wasn't aware until the time of Ailina's wedding of the
21 girls moving out.

22 Q. And how old was Ailina when she got married, do you
23 remember?

24 A. She might have been 15. She might have been 15.

25 Q. And do you know where she got married?

1 A. Olmonty.

2 Q. And how do you know that?

3 A. We -- there was a video of the wedding that had been
4 shared with my mom, and we sat down and watched it.

5 Q. And so did Ailina move out at that point, or she had moved
6 out when she got married?

7 A. Yeah, for a period of time, but I wasn't really involved
8 with the movement of folks back and forth so I didn't really
9 notice how long she was away.

07:06 10 Q. Did you become aware at some point that Tamerlan had gone
11 back to Dagestan or somewhere in Russia?

12 MS. PELLEGRINI: Objection.

13 THE COURT: You may answer it.

14 THE WITNESS: Not at the time.

15 BY MS. CONRAD:

16 Q. After the fact?

17 A. Yeah.

18 Q. And at some point, do you know whether Anzor and Zubeidat
19 moved back to Dagestan?

07:07 20 A. Yeah, I knew that in 2012 that they both left.

21 Q. And do you know where Jahar was living in 2012?

22 A. Well, I knew he had gone to college, so I assumed he was
23 there most of the time, anyway.

24 Q. "There" meaning in college?

25 A. Yeah. Yeah.

1 Q. Would you see him around very much?

2 A. No. And again, I didn't even see him around that much
3 before he went to college. But if I think about the last time
4 I may have run across him, it might have been after he started.
5 But that would have been a chance encounter in front of the
6 building, I guess.

7 Q. So at that point with Anzor and Zubeidat gone back to
8 Dagestan and Jahar off in college, do you know who was living
9 in that third-floor apartment?

07:08 10 A. Yeah, I knew that Tamerlan and Karima were living up there
11 with their newborn.

12 Q. And who's Karima?

13 A. That was Tamerlan's wife.

14 Q. Do you know if that was the name she was born with?

15 A. Oh, it was not.

16 Q. Do you know what it was?

17 A. Katherine.

18 Q. And is that Katherine Russell?

19 A. Yes.

07:08 20 Q. And at that point when Tamerlan is living with his wife
21 and child, how were your interactions with him?

22 A. Almost nonexistent. I mean, I might have run across him
23 once in that last year or so in the hallway of the building, I
24 believe -- narrow hallway, you know, can't -- if you're both
25 passing you have to interact a little bit. So that would be

1 the only interaction that I can recall.

2 Q. And was he as outgoing and friendly as he had been before?

3 A. No. I'm not even sure he made eye contact.

4 Q. Did you greet him?

5 A. Yeah, I think instinctually I normally -- if it's somebody
6 I know, I normally say hi at least, just without thinking about
7 it.

8 Q. And did he respond at all?

9 A. I don't recall that he did. I remember feeling that he
07:09 10 was -- had kind of withdrawn quite a bit, and it was almost as
11 if it was someone you don't know, you know, even though we had
12 known each other before, you know.

13 Q. For ten years, right?

14 A. Yeah. Again, not on a frequent basis, but I had known him
15 from the time he was about 15 and we would -- you know, to
16 sight we would know each other and recognize each other.

17 Q. Now, are you aware there came a time when your mother
18 decided to evict Tamerlan?

19 MS. PELLEGRINI: Objection.

07:10 20 THE COURT: Yeah, sustained.

21 We're just about at four o'clock. Do you have --

22 MS. CONRAD: That was -- I just have a couple more
23 questions.

24 THE COURT: Are you going to have --

25 MS. PELLEGRINI: I am. I have cross.

1 THE COURT: I think we should take the recess at this
2 point. Unfortunately, that means Mr. Lipson will have to come
3 back in the morning, but I don't want to rush it. It will be
4 more orderly.

5 So, jurors, we'll recess on the same conditions, and
6 I'll see you in the morning.

7 THE CLERK: All rise for the Court and the jury. The
8 Court will be in recess.

9 (The Court and jury exit the courtroom and the
10 proceedings adjourned at 3:59 p.m.)

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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: 4/28/15