1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

2 CRIMINAL DIVISION

3 ----------x

4 UNITED STATES OF AMERICA :

5 versus : Criminal Action No.

6 ALBRECHT MUTH, : 2011-CF1-15683

7 Defendant. :

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8

9 Washington, D.C.
Friday, September 9, 2011

10 The above-entitled action came on for a motions hearing before the Honorable GERALD I FISHER, Associate

11 Judge, in courtroom number 320.

12 THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE

13 COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF

14 THE CASE AS RECORDED.

15 APPEARANCES:

16 On behalf of the Government:

17 GLENN KIRSCHNER, Esquire
ERIN LYONS, Esquire

18 Assistant United States Attorney

19 On behalf of the Defendant:

20 DANA PAGE, Esquire
CRAIG HICKEIN, Esquire

21 Washington, D.C.

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WITNESSES

For the Government:	Direct	Cross	Redirect	Recross
James Wilson		3	52	

For the Defendant:	Direct	Cross	Redirect	Recross

EXHIBITS

For the Government:	Admitted

For the Defendant:	Admitted

MISCELLANY

Proceedings 3

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

2

3 THE DEPUTY CLERK: Returning to Your Honor's
4 preliminary hearing calendar, United States versus Albrecht
5 Muth, Case Number 2011-CF1-15683.
6 THE COURT: Counsel could just reidentify
7 themselves for the record, please.
8 MS. LYONS: Good afternoon, Your Honor. Erin
9 Lyons for the United States.
10 THE COURT: Good afternoon again, Ms. Lyons.
11 MR. KIRSCHNER: And Glenn Kirschner for the
12 United States.
13 THE COURT: Mr. Kirschner, good afternoon.
14 MS. PAGE: Dana Page on behalf of Mr. Muth.
15 MR. HICKEIN: Craig Hickein, also, on behalf of
16 Mr. Muth, who is present.
17 THE COURT: And once again, Mr. Muth, if you
18 wouldn't mind stating your name for the record.
19 THE DEFENDANT: Albrecht Muth.
20 THE COURT: Okay. Good afternoon.
21 Are we ready to resume?
22 MR. KIRSCHNER: Yes.
23 THE COURT: You want to get through the
24 detective? Thank you.
25 MR. HICKEIN: Can we have the Court's indulgence

very briefly?

THE COURT: Sure.

(Defense conferring with client).

MR. HICKEIN: Thank you, Your Honor.

THE COURT: You can -- you can have a seat, Mr. Muth.

Are we ready to proceed?

MS. PAGE: Yeah.

THE COURT: Detective, if you could come back to the witness stand. Thank you.

Actually, if you could -- Detective, could you just restate your name for the record. I don't believe this court reporter was here when you were here this morning.

THE WITNESS: Okay. James Wilson. J-a-m-e-s, W-i-l-s-o-n.

CROSS-EXAMINATION continued

BY MS. PAGE:

Q. Hi, Detective Wilson.

A. Hello.

Q. I just want to go back to Witness 8 for a few seconds. Did Witness 8 indicate when this conversation at the jail with Mr. Muth supposedly happened?

A. Within a week of him being arrested, being transported to the jail.

1 Q. "Him," Mr. Muth?
2 A. Yes.
3 Q. Okay. And did -- but he didn't give a date?
4 A. No.
5 Q. Okay. And did Witness 8 indicate how it was that
6 he was in -- came into contact with Mr. Muth? Under what
7 circumstances at the jail?
8 A. Initially?
9 Q. Yes.
10 No, when this conversation supposedly happened.
11 A. I believe he was on detail, work detail, I
12 believe.
13 Q. Witness 8 was?
14 A. Yes.
15 Q. And so who -- according to Witness 8, who
16 initiated the conversation? I'm sorry you might have
17 already answered that?
18 THE COURT: I think he answered before lunch. He
19 just said that Mr. Muth was prone to speaking a lot and he
20 was listening to that.
21 MS. PAGE: Okay.
22 BY MS. PAGE:
23 Q. All right. Now, Witness 8 -- when -- when
24 Witness 8 reported to you that according to Witness 8 Mr.
25 Muth had said something about "killing the B," did Witness

1 8 indicate -- was a name given or just the word "bitch"?
2 MR. KIRSCHNER: Object to the foundation for
3 that, the reference "killing the B."
4 MS. PAGE: I'm sorry robbing. I'm sorry robbing.
5 Robbing.
6 THE COURT: Okay.
7 MS. PAGE: I'm sorry.
8 THE COURT: Sustain to that mischaracterization.
9 MS. PAGE: I'm sorry.
10 Q. When Witness 8 indicated to you that Mr. Muth had
11 said -- suggested that Witness 8 robbed the B, was that --
12 did -- did -- according to Witness 8, did Mr. Muth use a
13 name or just use the word "bitch"?
14 A. I don't believe her name was used.
15 Q. Okay. And did Witness 8 say what -- if Mr. Muth
16 indicated what, if any, proceeds there were supposed to
17 have been from this robbery?
18 A. No.
19 Q. Witness 8 never said that -- never told you that
20 Mr. Muth told Witness 8 to kill the person, just to rob
21 them?
22 A. "Do her in" or -- "and be done with her." I
23 believe those were the exact words.
24 Q. Okay. I want to go back quickly to the special
25 agent that received this fax. The fax came from Ms.

1 Drath's phone -- fax number. Is that correct?
2 A. Yeah. Whatever the fax number is, that number
3 was associated with 3206 Q Street.
4 Q. Okay. And the information, according to the
5 special agent, that was provided in the facts was
6 classified information?
7 A. It was -- he termed it classified, but it had
8 already been released to the public.
9 Q. Okay. So it wasn't -- it wasn't -- according to
10 him, it was not information that someone would need special
11 access to?
12 A. Well, we didn't ask that particular question, but
13 he had mentioned that this information had already been
14 released to the public but it was still classified. It
15 hadn't been deemed declassified, so it was still classified
16 information.
17 Q. Okay. When you spoke to the witness, Witness 4,
18 the -- the lawyer that dealt with the will, did Witness 4
19 indicate that there had been a prenuptial agreement between
20 Ms. Drath and Mr. Muth?
21 A. Yes.
22 Q. Did Witness 4 indicate what that agreement was?
23 MR. KIRSCHNER: Objection. Relevance.
24 THE COURT: Overruled.
25 A. No. I don't believe he -- the terms of the

1 prenuptial agreement?

2 BY MS. PAGE:

3 Q. Yes.

4 A. I don't believe so.

5 Q. Did Witness 4 -- did you -- and, again, are --

6 are you aware of what the other arrangements are that are

7 talked about in the will?

8 A. No.

9 Q. Okay. All right. The -- the special agent --

10 did the special agent come forward after having seen the --

11 the reward poster?

12 A. I don't believe so, ma'am.

13 Q. Witness -- Witness 2 -- I'm sorry. Witness 2,

14 you already saw that one, I believe.

15 THE COURT: I thought you had asked about each

16 witness whether they had come forward on their own or been

17 contacted.

18 MS. PAGE: Right. No. I'm asking now about the

19 reward poster. Had --

20 THE COURT: Are we really going to worry about

21 the State Department special agent coming out on the --

22 MS. PAGE: No. Not the State Department person.

23 BY MS. PAGE:

24 Q. But Witness 6 -- Witness 6 is the person that,

25 according to you, met with Ms. Drath and asked about and

1 she asked Witness 6 about help with getting Mr. Muth
2 deported, right?
3 A. That's correct.
4 Q. Okay. And Witness 6 came forward and gave this
5 information to MPD, right?
6 A. Correct.
7 Q. Okay. Did Witness 6 see the reward poster before
8 they came forward?
9 MR. KIRSCHNER: Objection to the form of the
10 question.
11 BY MS. PAGE:
12 Q. Are you aware of whether or not Witness 6 saw the
13 reward poster before they came forward?
14 A. I don't know, ma'am, to be honest.
15 Q. Okay. You didn't ask?
16 A. If he saw the reward poster?
17 Q. Yes.
18 A. No. I mean, it was plastered all over the news,
19 but I didn't ask, no.
20 Q. Okay. And it was plastered all over the news
21 before this person came forward?
22 A. Yeah. Probably so, yes.
23 Q. Well, let me just -- it was plastered all over
24 the news prior to Mr. Muth's arrest?
25 A. That's correct.

1 Q. And these people came -- all these people came
2 forward after the arrest?
3 A. Not all of them.
4 Q. Okay. All right. But we've been over that?
5 A. Right.
6 Q. Did any of the people that you spoke to, any of
7 the witnesses that we talked about, mention having seen the
8 poster?
9 A. Yes.
10 Q. Which one or ones?
11 A. The one that observed the pushing.
12 Q. Okay. All right. The one who had gone to the
13 three locations that night with Mr. Muth?
14 A. No.
15 THE COURT: No.
16 BY MS. PAGE:
17 Q. Oh, I'm sorry. The one that observed the pushing
18 at the house?
19 A. The house, yes, ma'am.
20 Q. Okay. All right. Okay. Witness 9 -- Witness 9
21 you testified provided information about Mr. Muth,
22 supposedly saying that he had -- should've done something
23 to his wife on some trip in a middle eastern country?
24 A. Correct.
25 Q. Did Witness 9 come forward or did -- was Witness

1 9 sought out?

2 A. We sought Witness 9 out.

3 Q. Okay. Based on what?

4 MR. KIRSCHNER: Objection.

5 THE COURT: Sustained.

6 BY MS. PAGE:

7 Q. Based on information provided by some other

8 person?

9 A. Based on prior incidents, yes.

10 Q. What do you mean prior -- "prior incidents"?

11 What do you mean?

12 A. With Witness 9 and the defendant.

13 Q. Okay. Did you -- so there was other incidents

14 between Witness 9 and Mr. Muth other than this conversation

15 about the trip to a middle eastern country?

16 A. Yes.

17 Q. Incidents -- what kind of incidents?

18 A. Domestic-related incidents.

19 Q. Is Witness 9 the same person that -- there wasn't

20 a case between he and Mr. Muth, a criminal case?

21 A. Yes.

22 Q. Okay. Did Witness 9 provide any other

23 information besides what you testified about this

24 conversation about what supposedly should've happened at a

25 middle eastern country?

1 MR. KIRSCHNER: Objection.
2 THE COURT: Sustained.
3 BY MS. PAGE:
4 Q. Any inconsistent information?
5 A. No, ma'am.
6 Q. And when did you speak to Witness 9?
7 A. Post arrest.
8 Q. Post Mr. Muth's arrest?
9 A. Yes, ma'am.
10 Q. Okay. And was Witness 9 under arrest?
11 A. No.
12 Q. And Witness 9 is obviously not fond of Mr. Muth,
13 I guess would be --
14 A. I'm sorry?
15 Q. Is -- what -- what is -- what is the state of
16 Witness 9's feelings about Mr. Muth at the time you spoke
17 to Witness 9? Is -- is there bad blood between the two?
18 A. There was some bad prior incidents, but it -- it
19 was indifferent.
20 Q. According -- based on your assessment or based on
21 what Witness 9 said?
22 A. Based on the interview I conducted with -- with
23 the witness.
24 Q. I mean, did Witness 9 say Witness 9 was
25 indifferent, or are you just making that assessment based

1 on --

2 A. I'm making that assessment.

3 Q. Okay. All right. Did Witness 9 see the reward

4 poster?

5 A. It didn't mention it.

6 Q. Okay. The -- I got two pages of notes. I'm

7 assuming they're your notes?

8 A. Yes.

9 Q. Okay. This is all that you've written down in

10 connection with this investigation?

11 A. I believe it was another couple sentences on

12 another page from the medical examiner's office.

13 Q. Okay. And this is all taken at the medical

14 examiner's office?

15 A. Yes.

16 Q. Okay. I'd ask for the other page of notes when

17 it's available.

18 THE COURT: All right.

19 MR. KIRSCHNER: The Government's understanding is

20 this is what pertains to the subject matter of his direct

21 examination and we've gone through the few other writings

22 that this detective has produced, and I don't think it --

23 THE COURT: Why -- why would the medical

24 examiner's -- the notes of the discussion with the medical

25 examiner be Jencks for purposes of this hearing?

1 MR. KIRSCHNER: In -- in any event, Your Honor,
2 not to interrupt, she has the entirety of his notes from
3 the medical examiners. I think they may be talking past
4 each other but maybe I'm wrong. I think she has all the
5 Jencks from the Government's perspective.
6 BY MS. PAGE:
7 Q. You didn't type any WACIIS or anything other than
8 what I've been provided in connection with this case with
9 your interviews with any witnesses?
10 A. I typed a 119 of someone else's statement.
11 Q. Of one of the witnesses that we discussed?
12 A. Yes.
13 Q. Which one?
14 A. In the warrant -- we haven't discussed them yet
15 but in the warrant it's listed as evidence -- I believe
16 it's Witness 2.
17 Q. Okay. And in that PD 119, is there any
18 information that's inconsistent with the information that's
19 in the affidavit?
20 A. No, ma'am.
21 Q. All right. The warrant, um -- the warrant -- the
22 warrant, um, indicates that the charge is second degree
23 murder while armed. Is there any information in the
24 Government's possession, in the police's possession that
25 this incident occurred while the murderer was armed?

1 MR. KIRSCHNER: Objection.
2 THE COURT: Basis.
3 MR. KIRSCHNER: The complaint is -- Court's
4 Indulgence.
5 THE COURT: All right. But you've introduced the
6 affidavit into evidence, correct?
7 MR. KIRSCHNER: The affidavit, right.
8 If I could ask the defense counsel to ask again.
9 Maybe I was misinterpreting.
10 THE COURT: She was asking if there was any
11 evidence that the person was armed, the perpetrator was
12 armed since she said that at least in her estimation the
13 affidavit --
14 MS. PAGE: I'm not talking about the complaint.
15 I'm talking about the affidavit in support of the arrest
16 warrant.
17 THE COURT: Right. But the affidavit -- I don't
18 know where specifically on there you're asserting that it
19 -- it says "while armed" --
20 MR. KIRSCHNER: He wasn't charged with --
21 THE COURT: -- but it -- you can just show it to
22 Mr. Kirschner. That's fine.
23 MR. KIRSCHNER: This is sort of an administrative
24 signatory block on the lower left-hand corner of the
25 affidavit. He was not charged with second degree murder

1 while armed nor does the narrative of the affidavit include
2 that cite.
3 THE COURT: I'd allow the one question about
4 that.
5 Can you answer the -- the question she was
6 asking, whether you had any evidence that the perpetrator
7 was armed?
8 THE WITNESS: No.
9 BY MS. PAGE:
10 Q. Additionally, in the -- in the beginning section
11 of the affidavit where the -- it provides the defendant's
12 name and other personal information, the space is checked
13 for armed and dangerous. Is there any information that Mr.
14 Muth was armed and dangerous?
15 A. No.
16 Q. Okay. All of the witnesses that we've spoken to
17 you actually spoke to yourself, right?
18 A. Yes, ma'am.
19 Q. You and Detective Guss?
20 A. Detective Guss, yes.
21 Q. And Witness 1, 2 and 3, the two of you also
22 spoke, too?
23 A. Yes, ma'am.
24 Q. Okay. And Mr. Muth -- you said you and Detective
25 Guss spoke to on two occasions?

1 A. Yes.
2 Q. And both of those were recorded?
3 A. Yes.
4 Q. And the 13th interview, the one that's captured
5 at least by -- in -- in part in the affidavit, is that the
6 second or the first of the two interviews?
7 A. That would be the first.
8 Q. Okay. And then the second interview is when you
9 executed the search warrant for the blood order in -- on
10 all that, or is that a separate interview?
11 A. Well, that would -- that would be -- if you count
12 that as an interview, that would be in between the initial
13 interview, and the arrest is the second interview.
14 Q. Okay.
15 A. And the other one, the search warrant, would be,
16 I guess, would be the second one, and the arrest would be
17 the third one.
18 Q. Okay. And the arrest, was that interview
19 conducted with you, Detective Guss and Detective Branson,
20 or was Detective Branson's interview a completely separate
21 interview?
22 MR. KIRSCHNER: Objection. We're not relying on
23 the subsequent interviews, only the first interview.
24 THE COURT: I overrule the objection.
25 THE WITNESS: I'm sorry?

1 BY MS. PAGE:

2 Q. Was the interview done by Detective Branson --

3 the -- what we're now calling the third interview or was

4 that a separate interview from interviews you and Detective

5 Guss did?

6 A. It was part of the post arrest interview. So

7 Detective Guss and I started the interview for a couple

8 hours and then Detective Branson and another detective

9 concluded the interview until the end.

10 Q. Okay. And have you -- have you watched Detective

11 Branson's part of that interview?

12 MR. KIRSCHNER: Object to scope, Your Honor.

13 This goes well beyond anything we elicited on direct.

14 THE COURT: I'm not necessarily letting her go

15 into great detail. I would ask -- allow that question

16 which you --

17 MS. PAGE: I mean, I have one follow up question.

18 THE COURT: Sure.

19 Can you answer that question, Detective?

20 THE WITNESS: Not all of it, but a portion of it.

21 BY MS. PAGE:

22 Q. Okay. Was there anything inconsistent in the

23 Detective Branson portion of the video with anything Mr.

24 Muth had said in other interviews or conversations?

25 MR. KIRSCHNER: Objection. This is eight hours'

1 worth of tapes.

2 THE COURT: I recognize that, but I'd allow the

3 question.

4 A. From the -- the brief portion I saw of Detective

5 Branson's interview, they discussed something different

6 than what we had talked to Mr. Muth about. So it wasn't

7 inconsistent with what we talked about because it was

8 separate from what we talked about.

9 Q. Was it related to this case?

10 A. Yes.

11 Q. All right. I want to talk about the affidavit

12 now. Three people from the medical examiners office came

13 into contact with Ms. Drath's body, according to the

14 affidavit, right?

15 A. Can I see the affidavit? I need a copy.

16 Q. Yes.

17 THE COURT: You don't have a copy --

18 THE WITNESS: Yeah. I gave it back to him.

19 THE COURT: Okay. That's all right.

20 THE WITNESS: I guess one -- one pronounced --

21 one respond to the scene and one conducted the autopsy.

22 BY MS. PAGE:

23 Q. Okay. So three?

24 A. Three.

25 Q. The first -- the person that pronounced Ms. Drath

1 dead, did that at 12:22 on the 12th, right?
2 A. Yes.
3 Q. Okay. And did this person make any findings or
4 -- or anything, or did that person just make a
5 pronouncement?
6 A. Just a pronouncement.
7 Q. Okay. Did that person provide any information to
8 the family about what that person thought the time of death
9 was or the cause or manner of death?
10 MR. KIRSCHNER: Objection. Scope and relevance.
11 THE COURT: Overruled.
12 A. No.
13 BY MR. KUPERS:
14 Q. Were you there when this person was at the house?
15 A. This person never came to the house.
16 Q. The person that pronounced the body?
17 A. Correct.
18 Q. They did that at the medical examiner's office?
19 A. Yes, ma'am.
20 Q. Okay. All right. So the forensic investigator
21 that's referenced in the report came to the house?
22 A. That's correct.
23 Q. And that person photographed the body and sort of
24 inspected it as it was when they found it?
25 A. Yes.

1 Q. Okay. And that person did not pronounce the
2 person dead?
3 A. Correct.
4 Q. And so that person, the forensic investigator
5 came before 12:22 when the body was pronounced?
6 A. Yes.
7 Q. Okay. And did that person make any findings
8 about the time of death or cause of death or manner of
9 death?
10 A. No.
11 Q. Were you there when that person was there?
12 A. No, I was not.
13 Q. Okay. So do you know if that person made any
14 indications to the family or anyone in the house of -- of
15 how or why or when Ms. Drath would have died?
16 A. To my knowledge, the investigator did not.
17 Q. Okay. And what's your knowledge based on?
18 A. Interview with this person.
19 Q. With the investigator?
20 A. Yes.
21 Q. Did you interview the family as to whether or not
22 the investigator provided them with any information?
23 A. Interviewed the family, yes.
24 Q. About that?
25 A. Yes.

1 Q. And did the -- and did each family member that
2 you interviewed indicate that the investigator had not
3 provided them any information about the possible time of
4 death or the possible manner of death?
5 A. Yes, correct.
6 Q. All right. So the 11:20 time that's referenced
7 that according to the ME -- the medical examiner -- is the
8 time where the death most likely was within 12 hours of?
9 A. Yes.
10 Q. What is that? What is 11:20? Where did they
11 come up with that time?
12 A. That was the time that the forensic investigator
13 did a -- an examination of the body on the scene.
14 Q. Okay. Now, when you spoke to Mr. Muth in the
15 first interview, you indicated that the medical examiner
16 had told MPD that the death likely occurred within eight
17 hours of the medical examiner's office coming into contact
18 with the body, right?
19 A. Yes.
20 Q. Okay. What changed from eight to twelve?
21 A. Subsequent interview with the medical examiner's
22 office -- excuse me -- with the medical examiner.
23 Q. So the medical examiner had given you an initial
24 indication that it was probably within eight hours and then
25 later told you twelve?

1 A. No. It was -- first report within twelve hours,
2 more likely closer to eight hours.
3 Q. So the affidavit was filled out about it being
4 more likely twelve -- more likely within twelve hours prior
5 to receiving the eight-hour information or no?
6 A. After receiving. Initially, it was reported that
7 twelve hours more likely than eight hours, and in a
8 subsequent interview, the medical examiner stated based on
9 the totality of the circumstances, it was possibly closer
10 to twelve. It could be within twelve hours, the
11 twelve-hour time frame.
12 Q. Okay. So they went from more likely twelve than
13 eight to twelve. Is that --
14 A. It's always been twelve, but it -- it changed
15 from maybe closer to eight to probably within that
16 twelve-hour time frame.
17 Q. Okay. And do you know what that change is based
18 on, what the change in the assessment of the timing?
19 A. No, ma'am.
20 Q. Okay. And I take it you were present for the
21 autopsy?
22 A. No. Initially, no.
23 Q. The notes that you took are just from your
24 conversation with the medical examiner?
25 A. From when we were called back in after it looked

1 to be a homicide, yes.
2 Q. And were you provided information at any time
3 from anyone at the medical examiner's office that it was
4 something other than a homicide?
5 A. From the medical examiner's office, no.
6 Q. From anyone?
7 A. No.
8 Q. All right. The house was secured on the evening
9 of Saturday, August 13th, right?
10 A. Yes.
11 Q. Okay. And that was after you had had this
12 discussion with the medical examiner about it likely being
13 a homicide?
14 A. That's correct.
15 Q. And that was after you had the -- the first
16 interview with Mr. Muth?
17 A. That the house was secure?
18 Q. Yeah.
19 A. It -- it -- correctly putting it, it would have
20 been before the conversation because we responded to the
21 home. Mr. Muth voluntarily came back with us to the
22 homicide branch. And at that point, prior to the
23 interview, no one else was allowed inside the house until
24 we got a search warrant.
25 Q. Okay. You got a search warrant for the house or

1 just for the blood order?
2 A. For the house, as well.
3 Q. When was that executed?
4 A. I believe the Saturday date would have been the
5 13th. We got the search warrant. I don't think we
6 executed it until the 14th. We may have gotten it after
7 midnight, so it was either the 13th or 14th.
8 Q. Okay. All right. So no one was allowed into the
9 house from the time you picked Mr. Muth up on the 13th and
10 -- to take him to the interview?
11 A. That's correct.
12 Q. Okay. That was what time of day? I know it was
13 afternoon or evening but --
14 A. Yeah. It was a long day. I really don't recall
15 if it was -- I believe it had just gotten dark, so it was
16 like early evening hours.
17 Q. So like 7:00?
18 A. I don't want to guesstimate on the time, but it
19 was early evening hours.
20 Q. Okay. All right. So it had been about 36 hours
21 give or take a few since the 911 call and the police had
22 first responded to the house?
23 A. The police got there at approximately 8:00. The
24 call came in around 8:00 on a Friday. So 8:00 till
25 Saturday would have been 24 hours. Probably a little less

1 than 36 hours.
2 Q. And during that time, the house was not secure,
3 right?
4 A. That's -- well, Mr. Muth was there.
5 Q. Right. But, I mean, the police hadn't shut it
6 off and made it a crime scene?
7 A. Well, upon the initial arrival of detectives from
8 the natural squad had responded.
9 Q. The what squad?
10 A. The natural -- from the homicide branch, the
11 natural squad. Detectives requested mobile crime and
12 mobile crime had taken pictures prior to the body being
13 removed and when the medical examiner was there and the
14 forensic investigator was there. But after that, that's --
15 you're right.
16 Q. Okay. And that was initially early in the
17 morning before the body was removed at 11:20 or whatever?
18 A. Right. That was Friday morning, yes.
19 Q. Okay. And when the -- the natural squad and
20 mobile crime were there prior to the body being removed,
21 the -- there were other -- there were family members and
22 such there as well?
23 A. Yes.
24 Q. Okay. And people coming and going?
25 A. Family members, yes.

1 Q. And friends offering condolences and such?
2 A. I don't -- I don't know if any friends came. I
3 know family members were there, in-law -- an in-law was
4 there and Mr. Muth was there.
5 Q. Okay. And then after the body was removed and
6 after the mobile crime came and took some pictures, then
7 the police left, right?
8 A. That's correct.
9 Q. Okay. And it didn't become a crime scene or I
10 guess -- it didn't become secure until the next evening?
11 A. That's correct.
12 Q. Okay. And you have no idea who or how many
13 people were in and out of the house during that time
14 period?
15 A. That's correct.
16 Q. Family, friends, whoever?
17 A. I don't know who was there.
18 Q. Right. Okay. Because no police were there; no
19 police were watching the house or anything?
20 A. At -- at that time there was no need.
21 Q. Okay. And -- because at that time, it was
22 believed to be either natural causes or an accident or
23 such, right?
24 A. It was undetermined.
25 Q. Okay. So it was not a homicide -- it was not a

1 murder at that time?
2 A. At that time, no.
3 Q. Not until the medical examiner said so?
4 A. Correct.
5 Q. Okay. Now, you have no idea whether or not
6 windows were opened or closed or doors were opened or
7 closed during the time between when the body was found and
8 when the house was secured, right?
9 A. Which windows?
10 Q. Any of them.
11 A. Well, some windows I have an idea because it's
12 apparent that they weren't open for a long period of time.
13 Q. Okay.
14 A. As far as doors being opened and closed, I have
15 no idea.
16 Q. Okay. And the windows that it's not apparent,
17 the windows that are functioning and that are capable of
18 being opened and closed, you don't know what condition
19 those windows were in as far as being opened or closed
20 prior to the securing of the house on the evening of
21 Saturday the 18th?
22 A. The ones --
23 Q. I mean the 13th?
24 A. Yes. That's -- that -- that's true, yes.
25 Q. Okay. Now, the locks were changed at some point

1 on the house, right?
2 MR. KIRSCHNER: Object to scope. This is weeks
3 afterwards.
4 THE COURT: Sustained.
5 BY MS. PAGE:
6 Q. You have no idea what the condition of the locks
7 as far as being locked or unlocked or functioning or
8 nonfunctioning was prior to securing the house on the 13th?
9 A. That's not true.
10 Q. Okay.
11 A. We knew the locks functioned. We knew they
12 worked. Mr. Muth told us as much that the locks worked.
13 Q. Setting aside what he said, though, through your
14 own investigation did you check the locks --
15 A. Yes.
16 Q. -- to see whether or not they worked?
17 A. Yes.
18 Q. Okay. And all of them did?
19 A. Yes.
20 Q. Did you check all of the doors?
21 A. All four of the doors.
22 Q. And you -- but you have no idea whether the locks
23 were locked between the evening of the 11th and the morning
24 of the 12th, right?
25 A. Independent knowledge or knowledge from an

1 interview?
2 Q. Independent?
3 A. I do not.
4 Q. Okay. And when you had the -- when you spoke to
5 Mr. Muth in the -- the first interview, the 13th interview,
6 he indicated to you that the doors were locked. Is that
7 correct? Over the night of the -- between the 11th and the
8 12th?
9 A. Yes.
10 Q. Okay. But he didn't say that he had checked the
11 locks to see if they were locked. He just said that he had
12 assumed that they were because that was the practice?
13 A. That's incorrect.
14 Q. What did he say?
15 A. He actually admitted that when he entered back
16 into the house that the -- the chain on the front door --
17 when I say the front door, not the basement door, the main
18 level of the house -- was engaged, which makes it locked,
19 and that can only be done from the inside. He also advised
20 us that when he entered into the basement door, he locked
21 the door.
22 Q. Okay.
23 A. So that would mean both of the doors in the front
24 were locked.
25 Q. Okay. But there was no conversation about the

1 other two doors?
2 A. The doors in -- the rear basement two doors?
3 Q. Yeah.
4 A. No.
5 Q. Okay. Now, you made one correction to the
6 affidavit at the beginning of your testimony. You
7 corrected the statement in the affidavit that's indicated
8 that Mr. Muth had initially said that he never touched the
9 decedent, but had later changed to saying -- later you -- I
10 mean -- I'm sorry.
11 In the affidavit it says that Mr. Muth had never
12 -- had told you-all that he never touched the body
13 initially?
14 A. Correct.
15 Q. And then, according to you, when he was
16 confronted about the issue of DNA, according to you, he
17 changed his version and said he had moved her hand, right?
18 A. He had touched her, yes.
19 Q. Touched her hand.
20 But, actually -- and you corrected this --
21 actually in the Sept- -- I don't know why I keep saying
22 September -- in the August 13th interview, he had indicated
23 that when he found her body, he had touched -- he couldn't
24 remember which hand, but one of them?
25 A. He flipped her hand, yes.

1 Q. Okay. Which is touching?
2 A. Yeah.
3 Q. Okay. You also -- the affidavit also indicates
4 that Mr. Muth said that he was the only person in the house
5 from 4:00 or 4:45 until the morning when he found the body,
6 right?
7 A. 9:45?
8 Q. Yes. I'm sorry. Yes.
9 A. Okay. Yes, that's correct.
10 Q. Okay. And -- but in the interview, at some point
11 Mr. Muth actually -- in the -- the August 13th interview
12 with you and Detective Guss, Mr. Muth actually does say
13 that he apparently was in the house with the murderer
14 during that time?
15 A. He made reference that someone else would have
16 had to have been in the house because it wasn't him.
17 Q. Right.
18 A. Yes.
19 Q. And so when he was saying that he was the only
20 person in the house from 9:45 until the morning, what he
21 meant was, he was the only person that he was aware of --
22 MR. KIRSCHNER: Objection to what he meant.
23 THE COURT: Sustained as to state of mind.
24 MS. PAGE: Okay.
25 BY MS. PAGE:

1 Q. The search warrant that you got for the blood
2 order or the swabs or whatever, that search warrant you got
3 after the interview on the 13th. Is that right?
4 A. Yes.
5 Q. And you also got the search warrant for the house
6 after the interview on the 13th?
7 A. It was signed after that interview, but it was
8 being worked on during the interview.
9 Q. Both of them were --
10 A. The search warrant for the house was.
11 Q. Okay. So that wasn't -- and that wasn't executed
12 until much later? Is that -- when was that? I'm sorry.
13 You said that was executed on the 14th?
14 A. I believe we went back on the 14th, yes. If not
15 the 14th, definitely that Monday morning. But I think we
16 started on Sunday.
17 Q. Okay. And when was the -- the --
18 All right. So the -- the search warrant for the
19 DNA was executed on the 14th, right?
20 A. I don't have a copy of the warrant, but if --
21 Q. In the affidavit on page 3, the paragraph that
22 starts the second paragraph "On Sunday, August 14th, we
23 obtained a search warrant."
24 Detectives obtained a search warrant.
25 A. Yes.

1 Q. Okay. And that was executed that same day?
2 A. Yes, ma'am.
3 Q. Okay. And that was -- that was just for
4 DNA-related materials and photographs, right?
5 A. Of the defendant, yes.
6 Q. That's completely separate from a search warrant
7 for the house?
8 A. Yes.
9 Q. Okay. And that search warrant was not -- the
10 search warrant for the house was not executed at the same
11 time as this DNA search warrant?
12 A. I mean it's two separate things, but the search
13 warrant on the house was ongoing. It was more than just
14 one day. So we had started it -- I believe, it was when we
15 received -- as soon as we obtained the search warrant, and
16 it continued over the course of many days.
17 Q. Okay. When you --
18 MS. PAGE: All right. Actually, Your Honor, I
19 think this may go into --
20 THE COURT: All right. I'd ask Witness Number 1
21 to leave the courtroom until this area of cross-examination
22 is complete. Thank you.
23 BY MS. PAGE:
24 Q. The affidavit indicates that detectives recovered
25 the letter, and I'm talking about the letter that was

1 supposedly presented to Witness 1 during the time of the
2 search warrant, right?
3 A. Yes.
4 Q. Okay. And that letter was actually presented to
5 you-all with a bunch of other information in binders by Mr.
6 Muth. Is that correct?
7 A. That's incorrect.
8 Q. Where did you find the letter?
9 A. It was in a blue folder in a trunk in the
10 defendant's -- I guess it was he -- he referred to it as a
11 study.
12 Q. What -- and there were other financial documents
13 in that blue folder?
14 A. Yes.
15 Q. Okay. And those other financial documents had to
16 do with money arrangements between he and Ms. Drath?
17 A. There were financial documents with Ms. Drath's
18 name on them. Whether it had to do with Mr. Muth, I don't
19 recall or not, but there was definitely financial documents
20 in there.
21 Q. Did you look at them?
22 A. Yes.
23 Q. All of them?
24 A. Yes.
25 Q. Did you preserve them?

1 A. Yes.
2 Q. All of them?
3 A. Yes.
4 Q. And attached to the letter were some annuity or
5 insurance-type documents. Is that correct?
6 A. No, ma'am.
7 Q. All right. Now, Witness 1 -- Witness 1 reported
8 the information in the affidavit to you and Detective Guss?
9 A. Yes.
10 Q. Okay. And when did Witness 1 report the
11 information that, according to Witness 1, the decedent's
12 remains were -- I'm sorry -- that Mr. Muth had presented
13 this letter?
14 A. Upon us notifying her that the case was going to
15 be ruled a homicide.
16 Q. Okay. So after you had spoken to the medical
17 examiner on the 13th --
18 A. That's correct.
19 Q. -- you-all notified Witness 1 that the case was
20 going to be a homicide. And at that point Witness 1
21 reported the information about this letter?
22 A. She explained to us what occurred at -- at the
23 house after she -- after she arrived and the medical
24 examiner left, her interaction with Mr. Muth, yes.
25 Q. Okay. She didn't indicate anything about that

1 prior to you informing her that this was a homicide?
2 A. Well, we never met her before then. It -- there
3 would have been no chance of her telling us that because
4 police had already left. The medical examiner had left.
5 Q. Okay. So --
6 Okay. And she didn't provide that information to
7 the natural detectives or the police officers or the mobile
8 crime officers that were on the scene prior to the body
9 being removed?
10 A. That happened after. This interaction with Mr.
11 Muth occurred after the police had left --
12 Q. Okay.
13 A. -- after the forensic examiner had left, after
14 mobile crime had left.
15 Q. Okay. All right. So let me ask you this: She
16 didn't call any of the police that had been there or that
17 she had had access to, to provide this information until
18 you told her that it was a -- going to be a homicide?
19 A. That's -- not to my knowledge, she didn't call
20 anyone.
21 Q. Okay. Did she -- did she discuss with you -- was
22 this -- did she provide this information to you over the
23 phone?
24 A. No.
25 Q. Okay. She provided it to -- you called her and

1 said it was going to be determined a homicide?
2 A. We responded to her.
3 Q. Okay. So you went and actually met with her?
4 A. Met and actually interviewed her, yes.
5 Q. Okay. And that -- and then that's when she
6 provided this information at the -- when you responded
7 initially to her?
8 A. Yes.
9 Q. Okay. And did she provide to you the
10 circumstances of the supposed presentation of this letter?
11 A. Yes.
12 Q. What was that?
13 A. After everyone had left, she indicated that she
14 asked Mr. Muth "What are you going to do now?"
15 Mr. Muth -- based on witness, Mr. Muth asked if
16 he was going to be allowed to stay -- stay in the home for
17 three months or 90 days or something to that effect. That
18 was an agreement that he had made with the decedent. Mr.
19 Muth also asked if he was going to be allowed to receive
20 his monthly allowance that the decedent had provided him,
21 which, I believe was $1,800. That was reduced from $2000 a
22 month.
23 And then Mr. Muth presented this document stating
24 that he was due or he should receive on his wife's wishes
25 $150,000.

1 Q. Okay. According to the affidavit, Witness 1
2 indicated that there were other family members present when
3 this presentation occurred?
4 A. There was a -- there was other family members in
5 the house, yes.
6 Q. But not -- that were not part of this
7 conversation?
8 MR. KIRSCHNER: Objection. Relevance.
9 THE COURT: Sustained.
10 BY MS. PAGE:
11 Q. Did anyone else indicate that they heard this
12 conversation?
13 MR. KIRSCHNER: Objection. Discovery.
14 THE COURT: Well, I think it's an appropriate
15 question if anyone else was present and indicated they
16 could not hear the conversation.
17 THE WITNESS: Did or did not?
18 THE COURT: Did not.
19 THE WITNESS: The other witness advised that it
20 was told by Witness 1 what he said, but it did not hear it,
21 no.
22 BY MR. KUPERS:
23 Q. But was it present when the conversation
24 supposedly happened?
25 A. It was present in the house.

1 Q. But not in the room?
2 A. I don't know if he was in the room or not but it
3 was on the same level of the house. But it didn't hear the
4 conversation.
5 Q. Is that Witness 2 or somebody else?
6 A. Witness 2.
7 Q. Okay. Did Witness 1 indicate that, according to
8 Witness 1, Mr. Muth would benefit in any way from Ms.
9 Drath's death?
10 A. Did Witness 1 --
11 Q. I'm sorry. I'll -- I'm sorry.
12 Did Witness 1 -- Witness 1 said that Mr. Muth was
13 asking about whether or not he could get his allowance and
14 presenting this letter asking for money upon Ms. Drath's
15 death, right?
16 A. That's correct.
17 Q. Did Witness 1 indicate that there was any benefit
18 to him financially from Ms. Drath's death aside from this
19 letter, the information or the money that would have come
20 from this letter?
21 A. Besides that was he going to get any other money?
22 Q. Yeah.
23 A. I don't believe so.
24 Q. Did any family member -- member indicate that he
25 would get any money from her death?

1 MR. KIRSCHNER: Objection.
2 THE COURT: Sustained.
3 BY MS. PAGE:
4 Q. All right. Witness 1 also apparently indicated
5 that there were multiple instances of violence between Mr.
6 Muth and Mr. -- Ms. Drath. Is that correct?
7 A. That's correct.
8 Q. Did Witness 1 observe any of these instances of
9 violence?
10 A. I don't believe so.
11 Q. Okay. Where did Witness 1 get the information
12 that there were all these instances, according to Witness
13 1?
14 A. Ms. Drath.
15 Q. Okay. And that was on one -- was the information
16 provided to Witness 1 all at once or over time or what?
17 A. I believe it was over time.
18 Q. Okay.
19 A. Because the witness had said the instances
20 happened over time.
21 Q. Okay. And so, according to Witness 1, Witness 1
22 was told about the violence sort of as it happened?
23 A. That would be fair to say.
24 Q. Okay.
25 A. Or shortly thereafter.

1 Q. Okay. And Witness 1 never interceded?
2 MR. KIRSCHNER: Objection. Relevance.
3 THE COURT: Sustained.
4 BY MS. PAGE:
5 Q. Witness 1 never reported this?
6 A. To my knowledge, no.
7 Q. All right. Witness 2. Oh, I'm sorry. What was
8 the relationship between Witness 1 and Mr. Muth? I don't
9 mean the familiar relationship but what kind of feelings
10 did they have toward -- did Witness 1 have toward Mr. Muth?
11 MR. KIRSCHNER: I -- I object but wouldn't object
12 to a leading question in that as to whether there's any
13 animosity and that sort of thing rather than open-ended
14 describe other peoples' feelings.
15 THE COURT: Overruled.
16 THE WITNESS: All right. So what was
17 witness's --
18 BY MS. PAGE:
19 Q. Well, according to Witness 1, what were Witness
20 1's feelings toward Mr. Muth?
21 A. Witness 1 felt that she would spend time with the
22 decedent separate from spending time with Mr. Muth. Didn't
23 care for Mr. Muth.
24 Q. According to Witness 1, the document that Mr.
25 Muth presented to her was written on April 11th, right?

1 A. Well, according to the document, it's -- the date
2 on it --
3 Q. I'm sorry. According to Witness 1, it was
4 authored October 11th.
5 MR. KIRSCHNER: Objection. Foundation.
6 THE WITNESS: No.
7 THE COURT: I'm not sure what you mean by
8 foundation on that, but -- because I don't have the
9 document in front of me.
10 MS. PAGE: All right. Let me just back up.
11 BY MS. PAGE:
12 Q. In the affidavit, it indicates that Witness 1,
13 when discussing this letter that Witness 1 claims it was
14 presented by Mr. Muth, Witness 1 believed that the letter
15 was dated August 11th?
16 A. That's correct.
17 Q. And when the police found the letter and examined
18 the letter, it turned out to have been dated April 11th,
19 2011?
20 A. That's correct, yes.
21 Q. Okay. And according to Witness 1, this was not
22 Ms. Drath's signature on the document?
23 A. She -- she indicated it did not appear to be Ms.
24 Drath's signature.
25 Q. Okay. She certainly had not reported that there

1 was some forged document to the police prior to you
2 indicating that it was a homicide, right?
3 A. Correct.
4 Q. All right. Witness 2 --
5 THE COURT: Okay. Can you -- the Government --
6 are you going to ask him more questions about witness
7 Number 1 at this point?
8 MS. PAGE: I don't think so.
9 THE COURT: Okay. I think she can come back in
10 the courtroom if you want.
11 BY MS. PAGE:
12 Q. Witness 2 --
13 THE COURT: You can be seated.
14 BY MS. PAGE:
15 Q. Witness 2 -- when was witness -- when did you
16 interview Witness 2?
17 A. Soon after the -- after interviewing Witness 1.
18 Q. And what was -- what -- Witness 2 indicated that,
19 according to Witness 2, during more than 20 years of
20 marriage, there was violence between the decedent and Mr.
21 Muth, right?
22 A. Yes.
23 Q. Okay. Was Witness 2 -- was Witness 2 around for
24 all of those 20 years of marriage?
25 A. Yes.

1 Q. And where did Witness 2 -- well, Witness 2
2 described one incident of violent -- or one incident,
3 right?
4 A. Yes.
5 Q. And that was -- according to Witness 2, there was
6 soup in the decedent's hair, right?
7 A. Yes.
8 Q. Witness 2 did not observe whatever it is that
9 supposedly led up to this soup being in her hair, right?
10 A. An argument.
11 Q. But that was what the decedent told him, not what
12 he -- or it -- not what it observed. Is that true or not?
13 Right or not right?
14 A. No, that's right.
15 Q. Okay. Witness 2 came to the house and saw the
16 soup but didn't see any of the lead up to how the soup got
17 there?
18 A. Correct.
19 Q. Okay. And Witness 2 didn't provide any other
20 specific information about any other incidents, right?
21 A. Correct.
22 Q. Okay. And so the information that Witness 2
23 provided about the soup incident and these other, according
24 to Witness 2, multiple incidents comes from information
25 provided by -- to Witness 2 by Ms. Drath?

1 A. That's correct.
2 Q. Okay. And how often did Witness 2 see Ms. Drath
3 or come into -- or I guess even communicate with her?
4 MR. KIRSCHNER: Objection. Relevance.
5 THE COURT: Overruled.
6 A. Often.
7 BY MS. PAGE:
8 Q. Like daily?
9 A. Not daily or every couple days but very often.
10 Q. Okay. And Witness 2 never reported anything, any
11 violence, right?
12 A. To the police?
13 Q. Yeah.
14 A. I don't believe so.
15 Q. Never reported it -- well, never did anything
16 about it one way or the other that you're aware of?
17 A. Besides addressing Mr. Muth or -- never contacted
18 police. That's correct.
19 Q. Okay. So, according to Witness 2, at some point
20 Witness 2 addressed Mr. Muth about this?
21 A. Yes.
22 Q. Okay. And what -- what happened with that?
23 MR. KIRSCHNER: Objection.
24 THE COURT: Sustained.
25 BY MS. PAGE:

1 Q. And then after Witness 2 -- well, when, during
2 the course of this 20 years, did that happen, according to
3 Witness 2?
4 A. I'm not sure there was a specific date that was
5 given, but --
6 Q. You mean, like, recent or ten years -- a long
7 time ago?
8 A. I'm not -- not sure.
9 Q. Okay. And after that -- after Witness 2
10 addressed Mr. Muth, that was the end of it?
11 A. To my knowledge.
12 Q. And Witness 2 didn't report to you ever having
13 seen any injuries on Ms. Drath, right?
14 A. I don't believe so.
15 Q. All right. Witness 3 -- when was Witness 3
16 spoken to by -- by you-all?
17 A. Prearrest and post arrest.
18 Q. Prearrest and post arrest?
19 A. Yes.
20 Q. Okay. When did Witness 3 provide this
21 information that's captured in the affidavit?
22 A. Prearrest and post arrest.
23 Q. Same information both times?
24 A. Yes.
25 Q. Okay. Um, Witness -- did Witness -- did Witness

1 3 provide the information to you and Detective Guss both
2 times or to somebody different or what?
3 A. Initially, it was two other detectives on the
4 squad and then it was -- after it was brought to our
5 attention also Detective Guss.
6 Q. Okay. And was that the natural detectives you're
7 talking about?
8 A. No.
9 Q. Okay. Was it -- was the first time Witness 3
10 reported this to detectives after the medical examiner's
11 office had indicated that this was a homicide?
12 A. Yes.
13 Q. Okay. And after the wanted posters had been put
14 up or had been plastered on the news?
15 A. It could have been a close proximity, but I'm not
16 sure if it was before or after the wanted posters. It was
17 very, very early in the investigation that we made contact
18 with Witness 3.
19 Q. And did you -- did -- did the initial detectives
20 that talked to Witness 3 -- did Witness 3 seek them out or
21 did they seek Witness 3 out?
22 A. The detectives was in the neighborhood gathering
23 information and happened upon Witness 3.
24 Q. All right. Well, let me ask this: Were they,
25 like, canvassing, knocking on doors?

1 A. Correct.
2 Q. And Witness 3 didn't, like, walk up to them on
3 the street?
4 A. That's correct.
5 Q. Okay. And Witness 3 indicated that the, I guess,
6 the early morning of the 12th, it was woken up at 3:30
7 a.m.?
8 A. It had woke up -- awakened at 3:30 a.m.
9 Q. Okay. It was -- it was awake at 3:30 for
10 whatever reason?
11 A. Yes.
12 Q. And then at some point between 3:30 and 6:30
13 heard this sinister laugh?
14 A. Yes.
15 Q. Okay. Now, Witness 3 had a conversation with a
16 neighbor about this sinister laugh, right?
17 A. Yes.
18 Q. And that was prior to having any contact with
19 MPD?
20 A. Yes.
21 Q. Okay. And Witness 3 had asked the neighbor if
22 the neighbor was playing with their baby or something like
23 that?
24 A. Something to that effect, yes.
25 Q. So this Witness 3 was investigating this sinister

1 laugh that it heard?
2 A. After realizing what had occurred, yes.
3 Q. Wait. But -- so Witness 3 had the conversation
4 with the neighbor about whether the neighbor was playing
5 with the baby after Witness 3 learned about Ms. Drath's
6 death?
7 A. Yes.
8 Q. Okay. And Witness 3 at that point thought maybe
9 the laugh was the neighbor playing with the baby?
10 THE COURT: You mean up until that point?
11 MS. PAGE: Right.
12 A. It didn't know what the sound was so that's why
13 it asked the neighbor if -- if it was the neighbor playing
14 with the baby.
15 BY MS. PAGE:
16 Q. Okay. And when the neighbor -- I assume the
17 neighbor told -- I assume that -- well, according to
18 Witness 3, did the neighbor say "No, I wasn't playing with
19 my baby"?
20 A. Correct.
21 Q. Okay. And at that point then Witness 3 began to
22 wonder what this was?
23 MR. KIRSCHNER: Objection.
24 THE COURT: Sustained.
25 BY MS. PAGE:

1 Q. Is there any information in the Government -- in
2 the Metropolitan Police Department's possession that
3 indicates that Mr. Muth benefits in any way from Ms.
4 Drath's death?
5 MR. KIRSCHNER: Objection.
6 THE COURT: Overruled.
7 A. Not to my knowledge.
8 BY MS. PAGE:
9 Q. And you're the second detective on the chain,
10 right?
11 A. I'm the lead detective's partner, yes.
12 Q. Okay. And Mr. Muth called 911, right?
13 A. Yes, ma'am.
14 Q. And reported that he had found his wife dead?
15 A. Yes.
16 Q. Did you hear -- did you listen to the 911 call?
17 A. I did not.
18 Q. Okay. Has someone from MPD listened to it? I
19 mean, I guess other than the call taker?
20 A. I don't -- I don't know to be honest. I believe
21 so, but I'm not sure.
22 Q. Okay. And Mr. Muth has always maintained his
23 innocence, correct?
24 MR. KIRSCHNER: Objection.
25 THE COURT: Overruled.

1 A. He told us he didn't do it.
2 BY MS. PAGE:
3 Q. And Mr. Muth came to or went with you to be
4 interviewed on the 13th voluntarily, right?
5 A. Yes, ma'am.
6 Q. And he was cooperative?
7 A. Yes, ma'am.
8 Q. And when you came to execute the blood order, he
9 was cooperative?
10 A. Yes, ma'am.
11 Q. And when you spoke to him upon arrest, he was --
12 or when you arrested him, he was cooperative?
13 A. Yes, he was.
14 Q. Okay. And cooperative during the interview after
15 the arrest?
16 A. Yes.
17 Q. Cooperative the whole way through?
18 A. Yes.
19 Q. Okay.
20 MS. PAGE: Court's Indulgence.
21 BY MS. PAGE:
22 Q. All right. During the time between when mobile
23 crime took the initial pictures on the 12th and the body
24 was removed and when the house was secured on the evening
25 of the 13th, items were being moved and things were

1 happening inside the house, right?

2 A. Yes.

3 Q. Okay. And you don't know what was moved --

4 THE COURT: Hasn't he already answered that he

5 wasn't there during that time?

6 MS. PAGE: That's true.

7 THE COURT: Yeah.

8 MS. PAGE: Okay. Court's brief indulgence.

9 That's all. Thank you.

10 THE COURT: All right. Thank you.

11 Any redirect?

12 MR. KIRSCHNER: Brief redirect, Your Honor.

13 Thank you.

14 **REDIRECT EXAMINATION**

15 BY MR. KIRSCHNER:

16 Q. I'm going to try to be just a few minutes,

17 Detective Wilson.

18 You were asked a couple of times whether the

19 defendant -- do you have any information that the defendant

20 stood anything to gain from his wife's death, and you've

21 also introduced or -- or identified Government Exhibit 4,

22 which is the same paragraph saying, "If my wife dies, give

23 me $150,000 or maybe 200,000 if her estate totals more than

24 600,000," correct?

25 A. That's correct.

1 Q. With some handwritten notations under here in
2 what purports to be Ms. Drath's signature?
3 A. That's correct.
4 Q. And he presented this to the family at the scene
5 on the Friday after she was found dead?
6 A. Yes.
7 Q. And so if they had honored this or if this was in
8 any way legally binding, did he stand to gain anything?
9 A. Yes.
10 Q. 150- or 200,000?
11 A. 150- or 200,000.
12 Q. But if the will that you've already identified
13 stood, it says he's disinherited and gets nothing?
14 A. That's correct.
15 Q. It does talk about other provisions being made.
16 Do you have any information that he was receiving other
17 monies, other allowances, from Ms. Drath?
18 A. Other than the 1,800 or $2,000 a month?
19 Q. Other than the monthly allowance that started out
20 at 2,000, that she cut down to 18?
21 A. No.
22 Q. And is it your understanding he was going to stop
23 getting that if she died?
24 A. Yes.
25 Q. But if this was honored, he would get up to 200 K

1 on it?

2 A. That's correct.

3 Q. You were asked about the State Department special

4 agents that investigated the document that was faxed from

5 the household and who interviewed Ms. Drath, and you were

6 asked whether they did anything other than just interview

7 Ms. Drath and take the information.

8 Do you know if they wrote up in a report the

9 information that they had gathered during the interview

10 with Ms. Drath?

11 THE COURT: Can I just ask what -- what -- what

12 -- of what significance is that? It's really the conduct

13 that they did or didn't do. They may have written a

14 report, but that's not --

15 MR. KIRSCHNER: And in that, I was going to

16 refresh his recollection with it because I think he was

17 specifically questioned on cross whether --

18 THE COURT: Sure.

19 MR. KIRSCHNER: -- they --

20 THE COURT: Well --

21 MR. KIRSCHNER: -- reached out to anybody else to

22 tell them what Ms. Drath had reported.

23 THE COURT: I think they were asking about

24 Metropolitan Police Department, is what she was

25 specifically -- that or some police agency.

1 MR. KIRSCHNER: I -- I would ask just a couple of
2 questions here, Your Honor. Can I ask the Court some
3 leeway?
4 THE COURT: Sure. And I just -- I don't -- I
5 don't think there's a real dispute about whether they
6 respond -- whether that information was provided to them in
7 my mind. So whether they went further with it or not, I
8 accept that there was a claim by Ms. Drath to them that she
9 was concerned about her safety and wanted Mr. Muth to be
10 deported.
11 MR. KIRSCHNER: So can I just ask if they then
12 met with or communicated all of this to Ms. Drath's family
13 so they could follow up with it?
14 THE COURT: It doesn't matter.
15 MR. KIRSCHNER: It doesn't matter?
16 THE COURT: Yeah. It doesn't really matter.
17 Sure.
18 MR. KIRSCHNER: I'll move on.
19 BY MR. KIRSCHNER:
20 Q. You were asked whether any of the family members
21 reported any of the abuse or the assault of conduct that
22 they learned about from Ms. Drath to the Metropolitan
23 Police Department, correct?
24 A. Yes.
25 Q. Did Ms. Drath, herself, report it to the

1 Metropolitan Police Department?

2 A. Yes, she did.

3 Q. In 1992?

4 A. Yes.

5 Q. And as result, was he convicted of assaulting his

6 wife in 1992?

7 A. Yes.

8 Q. Did she report it again to the Metropolitan

9 Police Department in 2008 when she alleged that he had hit

10 her with a chair, thrown soup at her hair and sat on her

11 chest?

12 A. Yes.

13 Q. That was reported to the police?

14 MS. PAGE: Your Honor, I object to the leading.

15 THE COURT: Sustained.

16 BY MR. KIRSCHNER:

17 Q. Was that incident reported to the police?

18 A. Can I answer?

19 THE COURT: Yes.

20 THE WITNESS: Yes.

21 BY MR. KIRSCHNER:

22 Q. In 2010, did she report to the police the

23 incident about which you've testified when he was throwing

24 trash out in the street and threatening to kill Americans?

25 A. Yes.

1 Q. Did she ever get a restraining order against him?
2 A. Yes.
3 Q. Did W-9 ever get a restraining order against him?
4 A. Yes.
5 Q. And do you recall what that was for? You were
6 asked about W-9. Do you recall why W-9 got a restraining
7 order against the defendant?
8 A. Yes.
9 Q. Why?
10 A. Because he threatened to kill him.
11 Q. And anybody else?
12 A. And his friend.
13 Q. W-9's --
14 A. W-9's friend. I'm sorry, yes.
15 Q. And was that reported to the police by W-9?
16 A. Yes, it was. Yes, it was.
17 Q. You were asked -- you were asked briefly about
18 whether the medical forensic investigator from the ME's
19 office told Mr. Muth or the family members anything about
20 her findings or the injuries that the decedent may have
21 sustained?
22 A. Yes.
23 Q. And did you interview that forensic investigator
24 yourself?
25 A. Yes, I did.

1 Q. And did she indicate whether Mr. Muth had any
2 particular interest and whether he kept asking her
3 questions?
4 A. Yes.
5 Q. What was he asking her on the scene?
6 A. The investigator reported that Mr. Muth was
7 insistent on what -- correction. She described as anxious;
8 kept asking "Cause of death?" "Cause of death?" "Is there
9 trauma?" "Where's the trauma?" And he kept asking that
10 over and over and over again.
11 Q. Did she answer him?
12 A. No, she did not.
13 Q. And -- and yet in the affidavit that obit was
14 produced sent from his e-mail account saying she died from
15 a fall as a result of trauma?
16 A. Yes.
17 Q. Did you learn from any source of anybody
18 providing any information to him along those lines?
19 A. No.
20 MR. KIRSCHNER: Court's Indulgence. I'm just
21 about done.
22 BY MR. KIRSCHNER:
23 Q. And defense asked you about Witness 7, the
24 so-called Pakistani gentleman that the defendant spent time
25 with in the hours leading up to -- leading up to the night

1 of August 11th.
2 A. Yes.
3 Q. And you were asked whether the defendant provided
4 you with information that -- that helped you find the
5 Pakistani gentleman or words to that effect. Did the
6 police directly ask Mr. Muth who is the Pakistani gentleman
7 that you spent all that time with that night?
8 A. Multiple times.
9 Q. And what did he say?
10 A. He would not provide information.
11 Q. You were asked about some e-mail traffic. And
12 have you seen lots and lots and lots of e-mail traffic?
13 A. Yes.
14 Q. And did you see a lot of e-mail traffic between
15 W-7 and the defendant?
16 A. W-7, yes.
17 Q. And was some of it sort of intensely personal in
18 nature?
19 A. Very.
20 Q. Okay. Do you remember whether you saw all the
21 e-mail traffic or only some of it? Have you reviewed it
22 all?
23 A. No, I did not.
24 Q. Okay. As you sit here, do you remember if you
25 saw the exchange that W-7 reported to you about the

1 communication on the morning of the 12th where he said,
2 "You can't be with me if you're going to be that drunk,"
3 and the defendant said, "I know. I don't even remember
4 what went on."
5 Do you remember if you saw that e-mail, or was
6 that just reported to you by W-7?
7 A. I know he reported it to us. I'm not sure if I
8 read it through the hundreds of pages or if that was
9 something he reported.
10 Q. Do you have inches and inches thick what is the
11 e-mail traffic generated by the defendant?
12 A. Thicker than a ream of paper.
13 MS. PAGE: I'm sorry. Between Witness 7 and the
14 defendant?
15 MR. KIRSCHNER: By the defendant.
16 THE COURT: By the defendant to Witness 7 or --
17 BY MR. KIRSCHNER:
18 Q. By the defendant to Witness 7 how much is there?
19 A. Thicker than a ream of paper. That's what I
20 thought he was talking about.
21 MR. KIRSCHNER: Court's Indulgence.
22 I think that's all I have. Thank you, Detective.
23 THE COURT: All right. Thank you, Detective.
24 You may step down.
25 THE WITNESS: Thank you, Your Honor.

1 (Witness excused.)
2 THE COURT: Let's take about a short five-minute
3 break, and then if there are any arguments to be had on
4 probable cause and conditions of release, I'll hear them
5 then.
6 MR. KIRSCHNER: And, Your Honor, can we reserve
7 the right to recall the detective on flight risk and
8 dangerousness if that becomes necessary.
9 THE COURT: Sure. Sure.
10 Okay. Let's take a short break.
11 (Brief recess.)
12 THE COURT: All counsel and the defendant are
13 present. Does either side wish to be heard on probable
14 cause?
15 MS. PAGE: Your Honor, before we do that, can the
16 Government and us approach?
17 THE COURT: Sure.
18 (Bench conference.)
19 MS. PAGE: The marshal said that he wasn't sure
20 but apparently there was something going on with a camera
21 by one of the family members in the back of the room and
22 that person was asked to leave. I don't know if they were
23 videoing or taking a picture or what, but obviously that's
24 not appropriate.
25 THE COURT: (Head nod.) Who --

1 MS. PAGE: I don't know if that -- I mean, I
2 don't know. I didn't see it but apparently some people
3 from our office saw the marshals approaching this person
4 about a camera -- I mean a phone. I'm sorry. A phone.
5 THE COURT: Okay. So -- and taking some sort of
6 photographs?
7 MS. PAGE: Well, the marshal said -- I asked him
8 what was going on? He said he wasn't sure, but he thought
9 that they were taking a picture.
10 MR. KIRSCHNER: The marshal -- I'm sorry. The
11 marshal knows who this person is and can identify them to
12 us as well?
13 MS. PAGE: I assume so.
14 MR. KIRSCHNER: Okay.
15 MS. PAGE: He asked them to leave as I understand
16 it.
17 THE COURT: Do we know which marshal we're
18 talking about? Is this the gentleman coming back now?
19 MS. PAGE: No. It's the bigger guy.
20 THE COURT: The one who is standing or the one
21 who sits?
22 MS. PAGE: Sitting.
23 THE COURT: Okay.
24 MS. PAGE: My -- our -- our investigators
25 approached us and said that they had seen something that

1 they thought was videotaping with a phone, but they weren't
2 sure. But then they said that the marshal had approached
3 this person and had been watching and the marshal said he
4 wasn't sure, but it might have been a picture.
5 THE COURT: So you're basically requesting that I
6 do -- do you want me to -- I mean, I'm happy to consult
7 with the marshal and find out what he knows, but let's
8 assume for the moment that somebody either audio or
9 videotaped part of this. Are you asking me to seize the
10 phone?
11 MS. PAGE: Yes.
12 THE COURT: Okay. And Mr. Kirschner, I need you
13 to find out. Are you able to talk to the family to see if
14 any of them --
15 MR. KIRSCHNER: You said family member.
16 MS. PAGE: I may have -- I may have overstated
17 that. I thought that that's what our investigator said,
18 but I may have made that up or misheard that or --
19 MR. KIRSCHNER: If I may, there's only one male
20 family member. He's still seated in the courtroom. There
21 is no other male family member.
22 MS. PAGE: I didn't say male.
23 MR. KIRSCHNER: Oh, I thought you said male. I'm
24 sorry. I'm sorry.
25 MR. HICKEIN: The interest certainly was on the

1 Court's right side, audience left side in the courtroom.
2 THE COURT: Marshal, can I ask you to just come
3 forward for just a moment. Thank you.
4 Good afternoon.
5 U.S. MARSHAL: Yes, sir.
6 THE COURT: My understanding is you may have
7 observed somebody in the audience who might have been using
8 a cell phone improperly to record something or --
9 U.S. MARSHAL: I had heard the sound that someone
10 makes when takes a picture. Then, I got up to look and to
11 confiscate, and I didn't see anybody with a cell phone.
12 That's -- I mean, it's possible it could have made a noise
13 while it was in their pocket, too, but I didn't actually
14 see it.
15 THE COURT: So -- I mean --
16 U.S. MARSHAL: I would have taken it, if I would
17 have seen it, somebody with it.
18 THE COURT: So do you need me to do anything
19 further?
20 MS. PAGE: I guess not.
21 THE COURT: Okay. All right.
22 MS. PAGE: Thank you.
23 U.S. MARSHAL: Thank you.
24 (Open Court.)
25 THE COURT: All right. So does either the

1 Government or the defense wish to be heard on probable
2 cause?
3 MS. PAGE: Yes, I do.
4 THE COURT: All right. Ms. Page.
5 MS. PAGE: Your Honor, I would ask the Court not
6 to find probable cause. There's absolutely no evidence
7 that Mr. Muth did this. There is the --
8 THE COURT: No direct evidence.
9 MS. PAGE: Yes.
10 There's the assumption that it must have been him
11 because he's the only person that lives there with Ms.
12 Drath.
13 THE COURT: But there's no -- there's no evidence
14 of any other intrusion in the home at this point, correct?
15 MS. PAGE: There is no evidence of it, but there
16 was no investigation of it, either, because according to
17 Detective Wilson, they didn't start checking those sorts of
18 things until -- at -- the 13th, after there had been any
19 number of people in and out of the house, he has no idea
20 what the state of the windows were, the locks were, the
21 doors were. Other than Mr. Muth saying "The front door was
22 locked, and I locked the basement door," there's no
23 evidence that -- that the other doors weren't open, closed.
24 Can't -- you know, who knows?
25 The windows, there's no information about, and in

1 the affidavit it says that when they did their
2 investigation on the 13th, after they secured the house,
3 the windows were shut. And some of them presumably had
4 been shut for quite some time, but there were other windows
5 certainly that had -- that could be opened. It may have
6 been opened. There's no information about --
7 THE COURT: Well, but I thought that the
8 affidavit said that all the other windows appeared to have
9 had screens on them except for one that I believe is like
10 11 feet high, and there was no evidence of a ladder.
11 MS. PAGE: But, I mean, they didn't look -- I
12 mean -- well, so there's no ladder there. That doesn't
13 mean someone didn't climb in the window and leave.
14 THE COURT: Right. They -- just, I think, the
15 affidavit was suggesting that would be very difficult,
16 given the height of that particular window; that you can
17 use a ladder to get to it, and there didn't seem to be any
18 evidence of a ladder or use of a ladder on --
19 MS. PAGE: Well, there wasn't any evidence --
20 THE COURT: -- on the ground.
21 MS. PAGE: There wasn't any evidence of that
22 36 hours --
23 THE COURT: Correct.
24 MS. PAGE: -- after the body was discovered;
25 24 hours, you know, maybe after whatever happened.

1 THE COURT: Correct.

2 MS. PAGE: So there's no -- there's no evidence

3 that there wasn't someone else in there, either. And there

4 is -- there is -- there is just -- there is -- there is

5 nothing. I mean, there's no -- they base most of the

6 affidavit on Mr. Muth's statements to the detectives, which

7 are -- you know, which they put in the most sinister light,

8 which are sort of matter of fact statements or questions

9 that are legitimate questions. Two of the points that I --

10 I would submit are their strongest points in the affidavit,

11 one was corrected by the detective on direct and one was

12 corrected on cross: this inconsistency about touching the

13 body, which is not -- was not inconsistent, and the fact

14 that he said that no one else was in the house, which he,

15 you know, said he didn't know of anyone else in the house,

16 and then he later said apparently someone else was in the

17 house.

18 THE COURT: All right. But only -- that latter

19 part is apparently someone is in the house by deduction on

20 his part.

21 MS. PAGE: Right. Right. No, I'm not saying

22 that he said "I saw someone else in the house." He

23 certainly didn't say that. But -- so this is just purely a

24 circumstantial case, and there's no information other than

25 this letter that, you know, the Witness 1 claims may not

1 have her mother's signature on it, that shows that he would
2 benefit in any way from her death. In fact, he's hurt by
3 it. He -- he does -- he no longer gets his allowance,
4 because if she's not there to give it to him, he doesn't
5 get it. He doesn't have any interest in her property
6 because of the will, and so the whole -- the notion that --
7 I mean, it's -- it's sort of ridiculous; the notion that I
8 would kill my wife to get the money that I'm going to ask
9 for after she's dead is -- is ridiculous. And if he -- I
10 mean, it just -- it doesn't make sense. And all of this
11 business about which this is -- well, I guess this is more
12 about dangerous -- I don't know -- dangerousness. I don't
13 know if the Court wants me to be heard on -- or wants me to
14 be heard on that.
15 THE COURT: Probable cause is the first question.
16 MS. PAGE: Right.
17 THE COURT: Some of it may overlap. I don't
18 know.
19 MS. PAGE: But, I mean, I think, there is -- I
20 mean, there is just no direct evidence at all. And there's
21 -- there's no real circumstantial evidence either, except
22 sort of it had to have been because we can't figure
23 anything else out.
24 THE COURT: Any further argument?
25 MS. PAGE: No. Not on probable cause.

1 THE COURT: Okay. Mr. Kirschner, do you want to
2 be heard on probable cause.
3 MR. KIRSCHNER: If -- if the Court thinks that
4 it's necessary.
5 THE COURT: No, I don't.
6 MR. KIRSCHNER: Thank you.
7 THE COURT: Thank you.
8 I -- I would find probable cause here. Again,
9 this is not a trial. It's not a matter of proof beyond a
10 reasonable doubt, but I think there's ample circumstantial
11 evidence that he was the only person in the house during
12 the time when the events supposedly took place. And we
13 have prior animosity. We at least have some possibility of
14 financial gain, but that's just one of more than one
15 possible motive for this. We have other statements by him
16 suggesting it, and then the other -- there are the other
17 witnesses that were identified today beyond the affidavit,
18 one of whom -- at least, again, we're at the point of a
19 preliminary hearing, but one of whom basically has a
20 confession from him. So I think there's probable cause for
21 it, to find him -- to find a basis for a charge of second
22 degree murder.
23 So you want to be heard on release issues?
24 MS. PAGE: Yes.
25 I would ask that Mr. Muth be released. The

1 Government, through the detective, indicated -- well, that
2 there was, I guess, multiple acts of domestic violence.
3 Apparently, only three were ever reported. Only one led to
4 a conviction. That was a conviction for simple assault.
5 That was in 1992. And I don't think that that makes Mr.
6 Muth a danger to the community. One simple assault from
7 1992. Even with the allegations which didn't result in
8 convictions or cases that went anywhere, I still don't
9 think that he presents a danger to the community. He is
10 certainly not a flight risk.
11 THE COURT: Well, why -- why would you say that?
12 MS. PAGE: He was interviewed on the 13th. It
13 was made clear to him directly that he was a suspect. He
14 wasn't arrested until a number of days later. Certainly,
15 he had any opportunity at that point to flee and he didn't.
16 He has no history of fleeing. He was cooperative with the
17 investigation throughout from beginning when they first
18 spoke to him until when he was arrested and he spoke to
19 them. The detective said he was cooperative throughout.
20 There's no indication that he's a flight risk at all.
21 THE COURT: Well, he's -- he -- he does have
22 foreign citizenship and the ability to move
23 internationally, at least from what little I've heard. I'm
24 not saying --
25 MS. PAGE: But I mean, he would --

1 THE COURT: I'm not saying that it makes it more
2 likely than not that he's a flight risk. I'm just saying
3 those are factors.
4 MS. PAGE: But I think if that were something
5 that he were going to have take advantage of, he would have
6 taken advantage of it.
7 THE COURT: Possibly.
8 MS. PAGE: And apparently the police have his
9 passport. I'm not a hundred percent sure of that, but I
10 believe that's true.
11 THE COURT: Maybe so. Okay.
12 Anything further on the flight issue?
13 Do you want to be heard on flight, Mr. Kirschner?
14 MR. KIRSCHNER: On -- on --
15 THE COURT: Flight and dangerousness.
16 MR. KIRSCHNER: And dangerousness.
17 Dangerousness we think is -- is certainly clear
18 cut at this point. You have actually four police reports
19 because W-9 also reported that he had threatened to kill
20 him and kill his friend. That resulted in a court case,
21 albeit not a conviction. And then there were three by
22 Viola Drath; only one resulted in a conviction. She
23 declined to follow through with the others.
24 He -- there is documentation, both in the Secret
25 Service -- excuse me -- and the State Department

1 investigator's interview with Ms. Drath that he's making
2 claims that he's going to kill Americans. That's also in
3 the MPD report from the September 2010 incident when they
4 went to his home and he was dressed in his uniform,
5 wouldn't show his hands. He was intoxicated and throwing
6 trash out in the street and was claiming that he was going
7 to kill all the Americans. This is a volatile individual
8 who has killed now his wife and has announced an intent to
9 kill others, whether it's W-9, his friend, Americans
10 generally or a reference to -- he -- something about
11 bombing Georgetown. This is volatile, dangerous
12 individual, and he's proven that over the years. And we
13 would suggest that he is a danger to the community. This
14 is not an isolated one time explosion of domestic violence.
15 This is much more than that.
16 Also, we do believe he's a flight risk. He
17 apparently has international ties. He is from German --
18 Germany originally. He -- we retrieved earlier today, from
19 the family division of this court, a document that we can
20 provide a copy of the order granting a motion to serve by
21 publication. I recognize I'm proffering now, but this Ms.
22 Drath filed for divorce, secured an attorney. He secured a
23 process server and Mr. Muth was nowhere to be found. They
24 finally had to petition the Court to publish notice to
25 satisfy the requirement to give him notice of the separation

1 and the divorce proceedings. Ms. Drath didn't follow
2 through on that, but the attorney could never find Mr. Muth
3 to be served.
4 And, again, we could call -- there are other
5 incidents where he fled for periods of time and couldn't be
6 found. I would be proffering though, and if the Court
7 likes, I could call a detective to more fully complete the
8 record on the flight risk end, but we think, quite frankly,
9 on the danger to others in the community, given his
10 volatility, given everything he has announced to do and
11 people he has announced to hurt, we do think he poses a
12 danger by clear and convincing evidence such that no
13 condition short of pretrial detention would protect the
14 community.
15 MS. PAGE: Your Honor, if I may --
16 THE COURT: Um-hmmm.
17 MS. PAGE: -- about the -- the threats and stuff?
18 I mean, the Government talks about all these
19 threats and all these bombing and all this anti-American
20 stuff, which apparently in -- on one occasion, the police
21 observed some comment, did nothing. They didn't arrest
22 him, and Detective Wilson testified that that's because
23 they weren't sure that a crime had been committed.
24 Certainly, there's many, many, many people that
25 come through this courthouse charged with threats, among

1 other things, that the police didn't hear, that they
2 believe a crime had been committed. So for the Government
3 and -- and, you know, this information was given supposedly
4 to the State Department and it was not investigated by MPD
5 or by whoever investigates these sorts of things, I don't
6 know -- but for them to go on and on about all these
7 threats and all this stuff when it's completely, you -- you
8 know, never been investigated before, seems unfair.
9 THE COURT: Well, it's just going to tell us what
10 the state of the evidence is. I'm not sure I would say
11 whether it's fair or unfair. It's just pertinent
12 information.
13 MS. PAGE: I guess, I would ask the Court not to
14 consider it, because it's not -- its information has gone
15 nowhere.
16 THE COURT: All right. Give me just one moment.
17 Well, the statute requires or provides that --
18 and I'm talking about 1325 at this point -- that Mr. Muth
19 is to be treated pursuant to 1321 unless the Court has
20 reason to believe that no one or more conditions of release
21 will reasonably assure that the person will not flee or
22 pose a danger to any other person or to the community in
23 general. I -- I cannot conclude that he would not pose a
24 danger and would not flee, and I would hold him under 1325.
25 We need to set a felony status conference date.

1 I -- I would suggest a date roughly 60 days from today.
2 That will take us till sometime in November. If November
3 -- the 18th is a good day. I can do it other days of the
4 week, but the 18th is a Friday. I know a number of
5 attorneys have trial schedules. The 18th might be a better
6 day.
7 Does that work for everybody?
8 MS. PAGE: Yes.
9 THE COURT: November 18th?
10 MR. KIRSCHNER: That's fine, Your Honor.
11 THE COURT: All right. I've set it for a felony
12 status conference for November 18th.
13 Can I just -- if I can just go back to the first
14 matter that was brought to my attention this morning. To
15 the extent there -- that -- I don't know whether defense
16 counsel has looked into the legal issues that Mr. Muth has
17 raised about rights under the Geneva convention or
18 otherwise rights to access to -- to counselor advice, but
19 if you wish to initiate that or you think that that's being
20 unconstitutionally blocked, I'd be happy to consider
21 anything further that you submit on that. Again, the
22 Government has ten days to respond to whatever you're
23 putting in writing.
24 MS. PAGE: Okay.
25 THE COURT: Otherwise we'll see everybody on

1 November 18th.

2 MS. PAGE: I will file the -- what Mr. Muth read

3 by Monday.

4 THE COURT: All right.

5 MS. PAGE: Also, there's a -- we want to -- well,

6 we want to submit a medical -- a medical alert.

7 THE COURT: Sure.

8 MS. PAGE: And then Mr. Muth actually is asking

9 that he be in protective custody while he's in jail.

10 THE COURT: Can I just ask -- I -- I thought that

11 Mr. Muth had said earlier that he was at this time in

12 protective custody. Am I wrong about that?

13 MS. PAGE: I think he's on whatever the jail's

14 23-hour lockdown thing is I think.

15 THE COURT: What --

16 MS. PAGE: His concern is that even during times

17 when he's out and about, whenever those might be, he does

18 not want to be within the access of anyone else.

19 THE COURT: Well, I can -- I can say -- I'm happy

20 to recommend protective custody for him. I don't know if

21 ultimately that's a court -- something that I can

22 determine. I would certainly strongly recommend it to the

23 Department of Corrections. If it's not put if place and

24 you think that that's a concern let me know again. I'll --

25 I'll do what I can on that issue.

1 MS. PAGE: What he's asking for is that, I guess,
2 during the one hour typically he's with other people for
3 that rec time or whatever you call it, he is requesting
4 that he have the rec time but that it be on a different
5 schedule than everyone else so that he remains separated.
6 THE COURT: And, again -- and I'm not -- I'll be
7 happy to look into it. I don't know that that's something
8 that I can impose a court order about. But I'll be glad to
9 look into that. It may take a couple of days to try to
10 resolve that.
11 Okay. See everybody on the 18th.
12 MR. KIRSCHNER: Your Honor, can we approach with
13 the defense briefly?
14 THE COURT: Sure.
15 (Bench conference.)
16 THE COURT: Yes.
17 MS. LYONS: Your Honor, I just wanted to follow
18 up on the issue that the defense raised. The marshals
19 approached us as we were sitting and said it appeared to
20 them that a family member had been taking photographs, and
21 they asked what we wanted done. And I said at this point
22 just wait. I'll bring it to the judge's attention.
23 THE COURT: So it's --
24 MS. LYONS: So I just wanted to let the Court
25 know that we had received -- it was a different marshal

1 approached and counsel --

2 THE COURT: And do you know who the family member

3 is?

4 MR. KIRSCHNER: It's W-1.

5 THE COURT: All right. Well, if W-1 has a

6 camera, we can seize the camera right now and see if

7 there's any -- I'd ask you to request that you give -- that

8 you give me the cell phone.

9 MR. KIRSCHNER: Can we take it -- provide it to

10 our electronics expert in the office and let him delete

11 whatever photographs she may have taken and return it to

12 her? I'm not --

13 THE COURT: I don't have any problem with it. It

14 -- the result, it seems to me, that that information gets

15 off the camera. If recordings or photographs were taken in

16 the courtroom, they will have to be deleted.

17 MR. KIRSCHNER: I think we should --

18 MS. PAGE: I would ask that the Court do that;

19 not the Government. Whether it's the marshals or whoever,

20 and we would ask for access to it, same as the Government.

21 If the Government is going to have access to it, we have

22 access to it.

23 THE COURT: Well, what -- what would be the

24 relevance of all that? I mean, other than she took it.

25 I'm not entitled to do it, so you delete it. Then what?

1 Why -- why is that an issue for access to information?
2 MS. PAGE: I'm not sure I have a response.
3 MR. HICKEIN: Well, I could proffer something,
4 Your Honor.
5 THE COURT: Sure.
6 MS. HICKEIN: She's -- she's going to be
7 testifying against our client. If she's sitting here
8 taking exclusively photos of our client, than it's more
9 relevant than if she's taking photos of you or the court
10 reporter or other --
11 THE COURT: And so -- right. But so we delete
12 it.
13 MR. HICKEIN: Well, I think we should be entitled
14 to at least know what the content of the photographs are.
15 Frankly, I think we should be entitled to see them.
16 MR. KIRSCHNER: If the Court would prefer, I will
17 ask Mr. Marsh from our office to make copies, and I'll
18 provide them to counsel.
19 THE COURT: Sure. I mean, I don't really have
20 any -- I mean, do you really have any concern that the
21 Government is going to not -- is going to do something
22 improper with what it picks up --
23 MR. HICKEIN: No. No. And I'm sorry if that's
24 what I was suggesting.
25 THE COURT: No. And I'm not -- so --

1 MS. PAGE: But I mean, I guess, his issue is what
2 is the bias that comes from whatever the motivation was. I
3 -- and it's true.
4 THE COURT: I guess I -- I guess I sort of think
5 the bias is probably already there. I'd say this might be
6 the evidence in an indirect way. So I would allow the
7 Government to take the -- take the camera. If you want to
8 inquire of her now before we finish these proceedings. If
9 she's unwilling to do it, I will order her to turn over the
10 camera to -- actually to the marshals and they can turn it
11 over to you as far as I'm concerned.
12 MR. KIRSCHNER: Can we -- I'm sorry. Your Honor,
13 go ahead.
14 Can we then conclude our business here, and
15 rather than call her out, under the circumstances, let us
16 talk with her --
17 THE COURT: That's what I'm saying. I'd like you
18 to do that.
19 MR. KIRSCHNER: If we need to bring it back to
20 Your Honor's attention, we will.
21 THE COURT: Fine. I'm happy to --
22 MS. PAGE: Your Honor, I would ask that the Court
23 admonish the family and explain that this is not
24 appropriate.
25 THE COURT: Well, I don't know if it's the family

1 in general. The woman --

2 MS. PAGE: Or the witness.

3 THE COURT: Sure. I think the Government can

4 tell them that.

5 MS. PAGE: But -- but --

6 THE COURT: You know, I don't -- I'm not trying

7 to make this an insignificant matter, but I think she can

8 be told that if there's any resistance turning over the

9 phone, just bring her back in. I'll direct her to do it,

10 and I'll tell her further that she can't do this.

11 What I'm a bit concerned and surprised about is

12 at least I thought at one point during these hearings that

13 there was a -- somebody from the Government's Victim's

14 Assistance Unit who was here. I'm surprised that nobody

15 would have told her that in advance, but --

16 MR. KIRSCHNER: I have never told witnesses

17 prophylactically they shouldn't, because there are signs

18 posted outside; so --

19 THE COURT: Yeah. I mean, I just -- I don't mean

20 to be shoving it on counsel. I'm just saying somebody from

21 the Victim's Assistance ought to be telling people that.

22 So anyway. Why don't you talk to her. Take the

23 camera. If she's resistant to it --

24 MR. KIRSCHNER: And then we have one ex parte

25 matter for the Court's signature.

1 THE COURT: Sure. Okay.

2 MR. KIRSCHNER: Thank you.

3 THE COURT: Thank you.

4 (This portion of the bench conference is under seal.)

5 [redacted]

6 [redacted]

7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 (Open Court.)

23 THE COURT: All right. Anything further from

24 either of the parties at this point?

25 MS. PAGE: I don't think so, but I think they're

1 still working on the other thing.

2 THE COURT: All right. Good. We'll come --

3 bring it back, if it's not resolved. Okay. Thank you.

4 MS. PAGE: Thank you, Your Honor.

5 (Bench conference.)

6 MR. KIRSCHNER: Your Honor, the witness explained

7 that she was fiddling with her phone trying to turn it off

8 or do something, and she inadvertently snapped a picture of

9 herself. Myself, the detectives, and the lead U.S. marshal

10 just watched her scroll through her most recent photograph,

11 the very last one was half of her own face. That's being

12 deleted. I think it was an innocent mistake. She

13 shouldn't have taken it out of her pocket, but she was not

14 snapping photographs of people in here.

15 THE COURT: Okay.

16 MS. PAGE: Okay.

17 THE COURT: Thank you. Appreciate it.

18 (Proceedings adjourned at approximately 4:10 p.m.)

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1 **CERTIFICATE OF REPORTER**

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3 I, Kristin Gilliam, an Official Court Reporter for
4 the Superior Court of the District of Columbia, do hereby
5 certify that I reported, by machine shorthand, in my
6 official capacity, the proceedings had and testimony adduced
7 upon the hearing in the case of the UNITED STATES OF AMERICA
8 versus ALBRECHT MUTH, Criminal Action Number 2011-CF1-15683,
9 in said court on the ninth day of September, 2011.
10 I further certify that the foregoing 84 pages
11 constitute the official transcript of said proceedings, as
12 taken from my machine shorthand notes, together with the
13 backup tape of said proceedings to the best of my ability.
14 In witness whereof, I have hereto subscribed my
15 name, this the third day of October, 2011.
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19 Kristin Gilliam
Official Court Reporter
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