

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13-30560

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID WARREN,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES' OPPOSITION TO DEFENDANT'S
APPEAL FROM DETENTION ORDER

Pursuant to Federal Rule of Appellate Procedure 9(a) and Fifth Circuit Rule 9.5, the United States respectfully submits this Memorandum Brief in Opposition to Defendant's Appeal from Detention Order. David Warren was convicted of willfully depriving Henry Glover of the right to be free from the use of unreasonable force by a law enforcement officer, resulting in bodily injury and death, under 18 U.S.C. 242, and carrying, using, and discharging a firearm in furtherance of a felony crime of violence resulting in an individual's death under 18 U.S.C. 924(c) and (j). See *United States v. McRae*, 702 F.3d 806, 810 (5th Cir.

2012), cert. denied, No. 12-1411, 2013 WL 1147241 (Apr. 29, 2013). Warren was sentenced to 189 months' imprisonment on the first count of conviction, and 120 months' on the second count of conviction, for a total term of 309 months. *Id.* at 810-811. On appeal, this Court vacated Warren's convictions and sentences, finding that the district court abused its discretion in denying Warren's motion for severance when it was reurged at the close of the evidence during trial, and remanded the case to the district court for further proceedings. *Id.* at 828.

Warren's retrial was scheduled to begin on March 11, 2013, but, after he requested a continuance, was postponed to August 26, 2013. See Doc. 722 at 2.¹ Although this Court previously affirmed the district court's detention order prior to his first trial (see *United States v. Warren*, 397 F. App'x 994, 995 (5th Cir. 2010)),² and the district court again considered and rejected his arguments against detention, Warren again appeals the district court's order of detention.

¹ All "Doc." citations are to the district court docket in this case.

² This Court reviews pretrial detention hearings under "a deferential standard of review that [it] equate[s] to the abuse-of-discretion standard." *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989); see also *Warren*, 397 F. App'x at 995.

DISTRICT COURT PROCEEDINGS

Warren has been in custody since his arrest on June 11, 2010. See Doc. 722 at 1. Before his first trial, the magistrate judge held an evidentiary hearing and denied the motion on the basis that no conditions of release would reasonably assure his appearance or the safety of the community. See Doc. 708 at 1-2. Warren subsequently filed a motion to review and revoke the detention order, which the district court denied after conducting a *de novo* review of the evidence.³ See Doc. 708 at 2. This Court affirmed on appeal, holding that “the denial of release pending trial is supported by the evidence of record and the district court’s order was not an abuse of discretion.” *United States v. Warren*, 397 F. App’x 994, 995 (5th Cir. 2010).

³ The evidence before the court at that time included: the indictment in this case, alleging that Warren, while acting under color of law, used his personal rifle to shoot and kill the victim, Henry Glover, without legal justification, in violation of 18 U.S.C. 242 and 924(c) and (j), see *United States v. McRae*, 702 F.3d 806, 810-815 (5th Cir. 2012), cert. denied, No. 12-1411, 2013 WL 1147241 (Apr. 29, 2013); evidence that the defendant had over \$400,000 in equity in his home (July Tr. 40); evidence that Warren possessed numerous weapons, and that the rifle used in connection with the offense was not a police-issued rifle (July Tr. 41); testimony that Warren owned approximately ten handguns and possibly five rifles, along with scopes for the rifles (Aug. Tr. 19-20); and testimony stating that during Hurricane Katrina Warren had given out at least three of his personal rifles, along with ammunition, to members of the National Guard, and had also provided two police officers with his personal handguns (Aug. Tr. 30-31, 33). The transcripts from the July and August 2010 evidentiary hearings related to the initial pretrial detention order are appended here as Attachments A and B.

Upon remand from this Court's order vacating his conviction, Warren filed a motion to reopen the detention hearing, arguing that there had been a "material change in circumstances" warranting the district court's review of the detention order (see Doc. 662-1 at 1) and that due process has been violated by the length of the detention that has occurred (see Doc. 696 at 9). Warren alternatively sought to have the magistrate's detention order revoked or amended pursuant to 18 U.S.C. 3145. See Doc. 708 at 4-5. The district court rejected Warren's arguments, and denied his motion. See generally Docs. 708, 722.

The changed circumstances Warren identified before the district court are: (1) because the death penalty is no longer being sought in this case he faces a lower maximum sentence; (2) while the maximum statutory sentence for a conviction under 18 U.S.C. 242 remains life imprisonment, the district court can only impose a more severe sentence after a new trial where there are affirmative reasons to impose a more severe sentence; (3) Count 2 of the indictment should be dismissed because of the unconstitutionality of 18 U.S.C. 924; (4) the length of time that he has been incarcerated; and (5) the testimony of his family and friends supporting his release. Doc. 708 at 2-4. The district court held that, under 18 U.S.C. 3142(f)(2), these were not sufficient reasons to reopen the detention hearing. See Doc. 708 at 3-4. The court held that: (1) the fact that the death penalty was no longer being sought was a fact known at the time of the third

detention hearing, prior to Warren's first trial; (2) although it previously sentenced Warren to 189 months' imprisonment on Count 1, the statutory maximum remains life imprisonment; (3) should Count 2 be dismissed, Warren can reurge his detention motion; (4) the length of current detention is not material to the risk of flight or dangerousness; and (5) the testimony of friends and family is generally not considered new evidence. See Doc. 708 at 3-4.

Warren had also moved to have the magistrate's detention order revoked pursuant to 18 U.S.C. 3145(b), which states that a "person * * * ordered detained by a magistrate * * * may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." See Doc. 708 at 4-5. The district court held that, having already heard evidence on and denied Warren's 18 U.S.C. 3145(b) motion to review and revoke the magistrate judge's detention order prior to the first trial, there was in reality no unreviewed detention order in the case. See Doc. 708 at 5. The court held that it was "not convinced that successive 18 U.S.C. § 3145(b) motions provide a way to circumvent the material circumstances requirement in 18 U.S.C. § 3142(f)(2)." See Doc. 708 at 5. The court nevertheless proceeded to conduct a *de novo* review of the issue, reviewing the parties' arguments and the evidence presented, including the trial evidence, and supplemental affidavits and a letter submitted by Warren, and held that, on the

merits, it continued to find detention necessary in light of the factors set forth in 18 U.S.C. 3142(g). See Doc. 708 at 5.

In a separate order, the court reviewed Warren's argument that his continued detention violates the Fifth Amendment's due process clause. See generally Doc. 722. In resolving the claim, the district court analyzed the factors set forth in *United States v. Hare*, 873 F.2d 796, 801 (5th Cir. 1989). See Doc. 722 at 2-7. The court held that: (1) in the context of this case, nothing suggested that Warren's detention was punitive rather than regulatory; (2) while Warren argued that a possible future change of venue could delay the proceedings, the court was committed to trying the case as expeditiously as possible; (3) the complexity of the case, which had been acknowledged by Warren himself, demonstrated that continued detention was regulatory rather than punitive; (4) neither side's trial strategy weighed in favor of Warren's due process challenge; (5) while not unsympathetic to the preparation challenges imposed by Warren's continued confinement, the totality of the circumstances required continued detention; and (6) considering the trial evidence directed to Warren and all of the factors relevant to detention determination, continued detention was necessary. Doc. 722 at 2-6.

The court also rejected Warren's arguments that his continued detention was inconsistent with substantive due process. Doc. 722 at 6-7. Specifically, the court found that Warren's substantive due process argument was "generally coextensive

with his motion for reconsideration, insofar as it suggests his personal qualities and other relevant factors demonstrate that he is not a danger to the community or a flight risk.” Doc. 722 at 6-7. The court held that “[c]onsidering the statutory maximum sentence, and all other circumstances relevant to pretrial detention,” it “remain[ed] convinced that the government has met its burden,” and ordered that Warren should remain detained “as no condition or combination of conditions of release will reasonably assure his appearance and the safety of any other person and the community.” Doc. 722 at 7.

ARGUMENT

The district court did not abuse its discretion in denying Warren’s motion to reopen his detention hearing pending retrial. *United States v. Simpson*, 408 F. App’x 830, 831(5th Cir. 2011) (“This court reviews a district court’s ruling on a motion to reopen a detention hearing under § 3142(f) for an abuse of discretion.”). A strong presumption in favor of detention applies in this matter. Pursuant to 18 U.S.C. 3142(e)(3)(B), if a court finds probable cause that a defendant committed a violation of 18 U.S.C. 924(c), it shall be presumed that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.” “Once the district court has determined that pretrial detention is necessary,” as occurred here, “this Court’s review is limited.” *United States v. Westbrook*, 780 F.2d 1185, 1189 (5th Cir. 1986). This

Court has held that, “[a]bsent an error of law, we must uphold a district court order if it is supported by the proceedings below, a deferential standard of review that we equate to the abuse-of-discretion standard.” *United States v. Rueben*, 974 F.2d 580, 586 (5th Cir. 1992) (citation and internal quotation marks omitted), cert. denied, 507 U.S. 940 (1993). Warren did not present any new or material evidence that would entitle him to reopen the hearing, see *Simpson*, 408 F. App’x at 831, and in any event, the district court reviewed his claims *de novo* and again declined to revoke the detention order, a decision which is also subject to abuse-of-discretion review. See *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989).

The district court also correctly held that Warren’s detention does not violate the Fifth Amendment’s due process clause. The district court appropriately analyzed this matter under the framework set forth in *Hare*, 873 F.2d at 801, and correctly found that none of the *Hare* factors mitigated in favor of Warren’s release. Moreover, the court correctly recognized that Warren’s substantive due process arguments were coextensive with his arguments in support of his motion to reconsider the detention order, and did not err in its analysis or rejection of those claims.

A. *The District Court Did Not Err In Holding That No Material Change In Circumstances Had Occurred Or In Declining To Revoke The Detention Order*

Warren argues that the district court abused its discretion in declining to reopen his detention hearing under 18 U.S.C. 3142(f)(2) or to revoke his detention under 18 U.S.C. 3145. 18 U.S.C. 3142(f)(2) allows a judicial officer to reopen a detention hearing “if the * * * officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Warren argues on appeal that three circumstances here warrant his release: first, that the jury found him not guilty of murder under 18 U.S.C. 924(j)(2); second, and relatedly, that he is subject to a lower maximum sentence on retrial due to the district court’s previously sentencing him to 25 years incarceration; and finally, that he has a constitutional challenge to the mandatory sentence of 10 years under 18 U.S.C. 924(c). None of these are new and material circumstances requiring reevaluation of the court’s original denial of his motion for bond. See *Simpson*, 408 F. App’x at 831. In any event, the court did in fact grant Warren *de novo* review pursuant to 18 U.S.C. 3145(b) and still rejected his claims.

First, although it is true that the jury found that the killing by Warren was manslaughter, not murder, for purposes of 18 U.S.C. 924(j), as the district court

held, the maximum sentence in this case remains, as it was previously, a sentence of life imprisonment.⁴ See Doc. 708 at 4. This is so notwithstanding any due process concerns Warren raises regarding the potential range of sentences after retrial. The possibility of a life sentence is patently not information that was unknown at the time of the original hearing, and Warren makes no argument to the contrary. Furthermore, the district court held that “notwithstanding a consideration of any such [due process-related] presumption” regarding the possible range of sentences, “continued detention is nonetheless appropriate.” Doc. 708 at 4. Given the court’s consideration of the full range of evidence presented regarding the issue (see Doc. 708 at 5), such a holding was not an abuse of discretion.⁵

Warren’s constitutional challenge to 18 U.S.C. 924 is also not a new circumstance bearing on his risk of flight and his dangerousness. The charge that

⁴ Life imprisonment is the maximum possible sentence for the violation of 18 U.S.C. 242 charged in Count 1 of the indictment. See Doc. 708 at 2-4.

⁵ In addition to the original evidence supporting the pretrial detention order, see n.3, *supra*, the district court also had before it the evidence presented regarding Warren’s shooting of Henry Glover presented at trial, which resulted in the jury’s finding that Warren had killed Glover in circumstances constituting manslaughter, see *United States v. McRae*, 702 F.3d 806, 817 (5th Cir. 2012), cert. denied, No. 12-1411, 2013 WL 1147241 (Apr. 29, 2013), as well as the letter and affidavits Warren submitted in connection with his motion to reopen. See Doc. 708 at 5 (“The Court has considered the parties’ arguments and reviewed the evidence presented, including the evidence presented at trial and supplemental affidavits and letter. * * * [D]efendant is detained as no condition or combination of conditions of release will reasonably assure his appearance and the safety of any other person and the community.”).

he violated this statute was contained in the indictment, so any constitutional claim he might have regarding its application here can in no way be said to be new. In any event, the district court indicated that should it grant Warren's motion to dismiss the 18 U.S.C. 924 charge on the basis of its unconstitutionality, the court would consider a new detention motion. See Doc. 708 at 4.

The remainder of the factors Warren proffers on appeal in support of his claim – his character, family ties, employment, financial resources, residence in the community, community ties, past conduct, criminal history, and the like (see Warren Br. 8) – were considered by the magistrate and district court during the original bail hearings. See Doc. 708 at 1-2 (discussing original pretrial detention proceedings); see also Docs. 63 and 125 (Warren's Motion To Reopen Detention Hearing And To Set Bond and Memorandum In Support Of Motion To Review & Revoke Detention Order, discussing his communities ties, criminal history, employment history, family, physical and mental condition, and history of compliance with summonses). These are thus clearly not factors that were “not known to the movant at the time of the [detention] hearing,” and they do not support a motion to reopen. See *Hare*, 873 F.2d at 799 (holding that testimony of friends and family regarding the defendant's consistent appearances in court during prior prosecutions was “not new evidence,” and that his work as an electrician was not sufficiently material to the issue of dangerousness to justify a second hearing).

Furthermore, the district court's order denying the motion to review and revoke the original detention order, encompassing its review of these factors, has already been reviewed and affirmed by this Court. *United States v. Warren*, 397 F. App'x 994, 995 (5th Cir. 2010).

In any event, although recognizing that there was "no unreviewed detention order" in the case, as it had "already considered, heard evidence on, and denied a § 3145(b) motion," the district court nevertheless provided Warren with *de novo* review before rejecting his claims. See Doc. 708 at 5. Given that this Court has already affirmed the prior denial of Warren's 3145(b) motion, see *Warren*, 397 F. App'x at 995, that the district court took into account the totality of the evidence presented as well as supplemental affidavits and a letter submitted by Warren (see Doc. 708 at 5), and that a probable cause finding that a defendant committed a violation of 18 U.S.C. 924(c) carries a presumption that detention is required, see 18 U.S.C. 3142(e)(3)(B), the court cannot be said to have abused its discretion in declining to revoke the detention order. Cf. *United States v. Stanford*, 394 F. App'x 72, 75 (5th Cir. 2010) ("[T]he factors that so firmly supported the initial denial of pretrial bail also firmly support Stanford's continued detention."), cert. denied, 1315 S. Ct. 1028 (2011).

B. No Due Process Violation Is Presented By Warren's Continued Confinement

Warren next argues that the district court erred in its analysis of his due process claim. Specifically, he argues that the court misapplied the factors set forth in *Hare* for examining whether the length of pretrial detention violates due process. His arguments are unavailing.

As this Court held in *Hare*, the examination of whether a pretrial detention has exceeded the limits of due process is to be made on a case-by-case basis. 873 F.2d at 801. “[A] court must consider not only factors relevant in the initial detention decision, such as the seriousness of the charges, the strength of the government’s proof that the defendant poses a risk of flight or a danger to the community, and the strength of the government’s case on the merits,” it must also review “additional factors such as the length of the detention that has in fact occurred or may occur in the future, the non-speculative nature of future detention, the complexity of the case, and whether the strategy of one side or the other occasions the delay.” 873 F.2d at 801.

As this Court recognized in *Hare*, the Supreme Court has clearly held that pretrial detention under the Bail Reform Act does not on its face violate the due-process clause of the Fifth Amendment. See *Hare*, 873 F.2d at 800. On the contrary, in *United States v. Salerno*, 481 U.S. 739, 748 (1987), the Court held that “pretrial detention contemplated by the Bail Reform Act is regulatory in nature,

and does not constitute punishment.” The Court further clarified that “[n]othing in the text of the Bail Clause limits permissible Government considerations solely to questions of flight,” and that, therefore, “when Congress has mandated detention on the basis of a compelling interest other than prevention of flight * * * the Eighth Amendment does not require release on bail.” *Id.* at 754-755. The question is thus whether the *Hare* factors support Warren’s continued detention here. They do.⁶

The first *Hare* factor is the length of detention. *Hare*, 873 F.2d at 801. As the Second Circuit has held in applying a similar test, “[w]hile the length of pretrial detention is a factor in determining whether due process has been violated, the length of detention alone is not dispositive and will rarely by itself offend due process.” *United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir.) (citations and internal quotation marks omitted), cert. denied, 531 U.S. 881 (2000). Warren has been incarcerated since June 11, 2010. There has been no undue delay in proceedings during his detention. The district court initially set trial for August 16, 2010, but granted a continuance until November 8, 2010, due to the complex nature of the case and the numerous evidentiary issues that needed to be addressed. Doc. 127. Trial began on November 8, 2010, and Warren was found guilty on

⁶ Before applying the four-factor test, *Hare* first counsels that a court must consider the factors relevant to the initial detention decision. See *Hare*, 873 F.2d at 801. As the district court noted in its decision rejecting Warren’s due process claims, it reviewed those factors when reaching its decision not to revoke Warren’s detention, and explicitly incorporated that consideration into its due process decision. See Doc. 722 at 3.

December 9, 2010. See *United States v. McRae*, 702 F.3d 806, 810 (5th Cir. 2012), cert. denied, No. 12-1411, 2013 WL 1147241 (Apr. 29, 2013). Warren filed a notice of appeal to this Court on April 14, 2011, and, after a lengthy briefing schedule, including two extension requests filed by Warren, oral argument was held on July 11, 2012, and this Court issued its decision on December 17, 2012. See *United States v. McRae*, No. 11-30345 (5th Cir.). This Court's mandate issued on January 8, 2013. See Doc. 722 at 1. Upon remand, the district court scheduled trial to begin March 11, 2013, but Warren requested a continuance, which the United States did not oppose. See Doc. 722 at 2. A trial is currently scheduled for August 26, 2013. Doc. 722 at 2.

Although Warren has been incarcerated for approximately 35 months, courts have held similar lengths of detention to be consistent with due process principles. See *United States v. Vondette*, 5 F. App'x 73, 76 (2d Cir. 2001) (detention of 40 months); *El-Hage*, 213 F.3d at 79 (detention of 30 to 33 months); *United States v. Millan*, 4 F.3d 1038, 1044 (2d Cir. 1993) (detention of 30 months resulting from mistrial), cert. denied, 511 U.S. 1006, and 511 U.S. 1011 (1994); *United States v. Gonzales*, 995 F. Supp. 1299, 1302-1304 (D.N.M. 1998) (detention of 35 to 37 months); *United States v. Landron-Class*, 705 F. Supp. 2d 154, 156-157 (D.P.R. 2010) (detention of 31 months); see also *Stanford*, 394 F. App'x at 75 (citing *El-Hage* and *Millan* in rejecting a pretrial detention claim, and noting that 30-33 and

30-month detentions were upheld in these cases). Moreover, in this case, the continuing duration of the detention – the second *Hare* factor – is not speculative: the district court held that “trial is firmly scheduled to proceed on August 26, 2013,” and that it is “committed to trying this case as expeditiously as possible.” See Doc. 722 at 4.

The third *Hare* factor is the complexity of the case. See *Hare*, 873 F.2d at 801. It is undisputed that this is a complex case. The case involves over 8000 pages of discovery, and numerous witnesses, including experts. And, indeed, Warren himself stated in his motion for a continuance of the trial date that the matter is “so unusual and/or complex due to the nature of the prosecution, number of witnesses, and the amount of documentary evidence that it would be unreasonable to expect adequate preparation for pretrial proceeding[s] or the trial itself within the time limits established by the Speedy Trial Act.” See Doc. 722 at 4-5 (quoting Doc. 648 at 1-2); cf. *Stanford*, 394 F. App’x at 75 (“As to the third additional factor, Stanford concedes that ‘there is no question that this case is one of extraordinary complexity, involving both an enormous volume of discovery documents and a staggering number of transactions.’”).

Finally, the fourth *Hare* factor is “whether the strategy of one side or the other occasions the delay.” 873 F.2d at 801. Warren argues that it was “governmental conduct and governmental strategy” that led to the delay here,

because the “government’s initial strategy to try all the defendants together * * * [was] what led to the reversal.” See Warren Br. 20. While it is true that this Court vacated Warren’s conviction on the basis that his trial should have been severed, that outcome was an unintended consequence, not a question of government strategy. See Doc. 722 at 5. This Court itself found that joinder of the defendants was proper under Federal Rule of Criminal Procedure 8(b), see *McRae*, 702 F.3d at 821, and, as the United States has stated both in district court and before this Court, its only “strategy” in opposing severance during trial was its recognition of the fact that “[m]any of the government’s witnesses, including testifying officers and investigating agents, were the same for all defendants, and, indeed, the mere explanation of who Glover was, and how his body came to be burned, involved an understanding of the fact that he had been shot by Warren and then transferred to the nearby police compound.” See United States Br., *United States v. McRae*, No. 11-30345, at 44.

Moreover, as noted above, Warren himself sought enlargements of time in this Court and has requested delay of trial in the district court, and, as the district court held, his own trial strategy includes the “presentation of numerous substantive motions, which both parties acknowledge require additional time to resolve.” See Doc. 722 at 5. In short, this is not a case in which the delay is due to

the willful actions of the government, such that a due process violation has occurred.

Warren nevertheless claims that several other factors outside of the *Hare* analysis indicate that a due process violation has taken place here. He claims that (1) the district court failed to consider this Court's finding that there was no evidence that he had acted dishonestly; (2) the court failed to take into consideration reasonable alternatives to incarceration; (3) the court failed to consider the additional affidavits he submitted; and that (4) the court failed to cite any factual reasons why Warren is a risk of flight. Each of these arguments must fail.

First, the district court plainly recognized that "David Warren has never been associated with the cover-up attributed to his co-defendants," but still found that his continued detention was necessary. Doc. 722 at 6. Contrary to Warren's suggestion, this Court's vacation of his conviction and sentence does not undermine the district court's conclusion: this Court held only that there was no evidence that Warren "acted dishonestly or was in any way associated with the acts of his co-defendant officers in obstructing justice and covering-up evidence." *McRae*, 702 F.3d at 823. It did not, however, hold that he was not guilty of the charged crimes.

As to Warren's second and fourth arguments – that the court failed to take into consideration reasonable alternatives to incarceration and failed to cite any factual reasons why he is a risk of flight – both go to the motion to reopen the detention hearing or to revoke detention, which the district court denied after a *de novo* review. See Doc. 708 at 5. Having stated its rationales, and concluded that Warren was a risk of flight and a danger to the community, the court was not required to either consider alternatives to incarceration or to state its conclusions once again. See *United States v. Stanford*, 722 F. Supp. 2d 803, 806-807 (S.D. Tex. 2010) (“The Court, in its initial detention order, carefully examined the evidence * * * and the Fifth Circuit upheld the Court’s findings. The Court need not re-hash them here.”).

Finally, given the district court's explicit statement that it was taking into account the supplemental affidavits and letter submitted by Warren (Doc. 722 at 6; Doc. 708 at 5), there is simply no basis for Warren's claim that the court failed to consider such evidence.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's denial of the defendant's motion for release pending trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2013, I electronically filed the foregoing United States' Opposition To Defendant's Appeal From Detention Order with the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system.

I further certify that all counsel of record are registered ECF Filers and that service will be accomplished by the CM/ECF system.

s/ Holly A. Thomas
HOLLY A. THOMAS
Attorney

Attachment A

APPEARANCES (Cont'd.):

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

I N D E X

| <u>WITNESSES:</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|--------------------|---------------|--------------|-----------------|----------------|
| Todd Smith | 10 | 14 | -- | -- |
| Paul Blouin | 16 | 20 | -- | -- |
| Donald deBoisblanc | 27 | 32 | -- | -- |

EXHIBITS: Marked Received

(None Offered at this Proceeding)

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P R O C E E D I N G S

(Friday, July 2, 2010)

(Court is in Session)

THE COURT: All right, the next matter, please.

THE CLERK: This is Criminal Action 2010-154, *United States of America v. David Warren*. It's set for Motion to Reopen the Detention Hearing.

THE COURT: Very well. Attorneys make your appearances, please.

MR. BROWN: Good morning Your Honor, Willard Brown representing David Warren.

MR. ALBE: And Joseph Albe also, Co-Counsel.

MR. FISHMAN: Jared Fishman and Tracey Knight for the United States.

THE COURT: Thank you all Counselors.

All right, Mr. David Warren is present with his attorneys. Is the Government ready to proceed?

MR. FISHMAN: Your Honor, this hearing had previously been held on June 17th, 2010. At that time the Defense stipulated both to the recommendations of Probation as well as the contents of the report. I believe it was yesterday or the day before we received notice that they wished to reopen the hearing.

The Government's arguments are the same and would note that under 3142(f)(2), the Defense has moved for

1 reopening. The Court need not -- only if the Judicial Officer
2 finds that information provided was not known at the time of
3 hearing it may change any of the conditions of release. It
4 appears to the Government that all of the issues raised in the
5 motion were previously laid out in the stipulated probation
6 report. And again, the Government believes this is a 924(c)
7 presumption case that risk of flight as well as dangerousness
8 are to be presumed and that nothing thus far presented should
9 change the Government's recommendation.

10 THE COURT: All right, Counselors Albe and Brown,
11 what say you concerning that?

12 MR. BROWN: Your Honor, at the time that we had the
13 detention hearing on the 17th, the Defense did in fact
14 stipulate but we reserved our right to reopen the detention
15 hearing based upon the fact that we needed to learn additional
16 information to bring before the Court, but also to urge those
17 conditions under which they were already pending before the
18 Court. But nothing was argued with regard to him being a
19 flight risk or whether or not if he's a danger to society.
20 Those issues were not raised, they were stipulated based upon
21 the report because it was the first time my client was before
22 the Court and we were not properly prepared to even argue those
23 things.

24 THE COURT: All right. Sit down, please.

25 (Pause.)

1 THE COURT: All right. My records show, and these
2 are my notes June 17th, detention hearing and arraignment was
3 scheduled.

4 MR. FISHMAN: And Your Honor, we would just note for
5 the record that that hearing was before Judge Africk.

6 THE COURT: That's what I'm looking at now. I'm
7 seeing his name on the schedule, but thank you. That's why I
8 had to go back and look at it because he came before me on a
9 Friday for his initial appearance and Mr. Albe was here on that
10 day.

11 MR. ALBE: That is correct, Your Honor.

12 THE COURT: All right. I keep pretty good notes,
13 thank you Counselor. Sometimes I don't, but I appreciate that.
14 All right.

15 Now, is there any -- well, did Judge Africk accept
16 the stipulation?

17 MR. BROWN: Yes, Your Honor, he did.

18 THE COURT: And he accepted the reservation?

19 MR. BROWN: Yes, he did.

20 THE COURT: For the Court to reopen?

21 MR. BROWN: Yes.

22 THE COURT: All right. We will hear from you.

23 MR. BROWN: With regard --

24 THE COURT: I do say this now, once the stipulation
25 has been reserved, you have the right to reopen. Now, it's on

1 you to can deal with it, and then the Government can respond.

2 MR. BROWN: With regard to the issues that are before
3 the Court, that would be the risk to society and also a flight
4 risk, the Defense would like to call witnesses in that regard
5 that could testify to both the character and the temperament of
6 Mr. Warren. I think --

7 THE COURT: How many witnesses do you have?

8 MR. BROWN: Three.

9 THE COURT: Then I'll hear them.

10 All right, you all may have a seat, or the client may
11 have a seat, however you all want to deal with that.

12 Mr. Warren, you can have a seat at the table with
13 your lawyers.

14 THE DEFENDANT DAVID WARREN: (Complying.)

15 MR. FISHMAN: Your Honor, the Government would
16 request that the non testifying witnesses be sequestered while
17 the testifying witness is on the stand.

18 THE COURT: All right. Would you call the witnesses
19 up so they can be advised with regard to the rule of
20 sequestration, Counsel?

21 MR. BROWN: I would ask the witnesses to stand, and
22 Mr. Donald deBoisblanc --

23 THE COURT: I'm sorry?

24 MR. BROWN: Mr. Donald deBoisblanc and --

25 THE COURT: Mr. deBoisblanc, come up to the podium,

1 please.

2 MR. BROWN: And Mr. Todd Smith.

3 THE COURT: Is that V-O-I-C-E, sir?

4 MR. deBOISBLANC: It's deBoisblanc.

5 THE COURT: It's deBoisblanc?

6 MR. BROWN: Yes.

7 MR. deBOISBLANC: Yes, deBoisblanc.

8 THE COURT: Oh, okay, deBoisblanc.

9 MR. BROWN: You all have to stand, you have to go
10 wait.

11 THE COURT: I have to talk to them.

12 MR. BROWN: Oh, all right.

13 THE COURT: Mr. Donald deBoisblanc.

14 MR. deBOISBLANC: Yes.

15 THE COURT: Who is the second witness, sir?

16 MR. SMITH: Todd Smith.

17 THE COURT: T-O-D-D, sir?

18 MR. SMITH: Yes, sir.

19 THE COURT: And you, sir?

20 MR. BLOUIN: Your Honor, Paul Blouin.

21 THE COURT: Last name, please?

22 MR. BLOUIN: B-L-O-U-I-N.

23 THE COURT: All right, Mr. Blouin.

24 MR. BLOUIN: Yes, sir.

25 THE COURT: I instruct all three of you that you're

1 not to talk to anyone about this case or your testimony. You
2 can talk to the attorneys if you choose to do so. You're not
3 to talk in and among yourselves. Once you are relieved of the
4 subpoena, if you want to, you could stay in here and sit down
5 and watch the proceedings or go on about your business affairs.
6 But remember, that's the only exception you can talk to either
7 side, if you want to. It's left up to you all. But you'll
8 remain on the outside until your testimony is over.

9 Swear them all in, Ms. Bush, please.

10 THE CLERK: Raise your right hands, please.

11 * * * * *

12 **DONALD deBOISBLANC, DEFENDANT'S WITNESS, SWORN**

13 * * * * *

14 **PAUL BLOUIN, DEFENDANT'S WITNESS, SWORN**

15 * * * * *

16 **TODD SMITH, DEFENDANT'S WITNESS, SWORN**

17 * * * * *

18 THE COURT: Thank you all very much. You all have
19 received instructions.

20 Who is going to be the first witness?

21 MR. BROWN: Todd Smith.

22 THE COURT: Mr. Smith, would you remain. The other
23 two gentlemen may be seated on the outside, please, until
24 called.

25 Sir, you may come over and take the stand.

Smith - Direct

10

1 THE WITNESS: (Complying.)

2 THE COURT: Now normally, if a detention hearing was
3 held it would go before the person who held it. Since there
4 was none, there was a stipulation with a reservation. Judge
5 Africk helps me, he's an Article 3 judge, appointed for life.
6 I'm a magistrate judge, appointed for eight years and under the
7 supervision of the United States Courts. There are six of us
8 and twelve or thirteen judges. So, I just want to say that for
9 the record, this case happens to be allotted to Section "I"
10 which is Judge Lance Africk, as well. So, anything that I do
11 here today can be reviewed by him, depending on what the
12 parties want to do.

13 Move forward, please.

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 * * * * *

17 **TODD SMITH, DEFENDANT'S WITNESS, PREVIOUSLY SWORN**

18 * * * * *

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q. Mr. Smith, could you tell the Court your relationship with
22 Mr. Warren?

23 A. I am David's pastor.

24 Q. And is David an active member of the church?

25 A. Yes, sir.

1 Q. How long has he been a member of your church?

2 A. It will be three years later this year.

3 Q. Is he a family man?

4 A. Yes, sir.

5 Q. Have you met his family?

6 A. Yes, sir.

7 Q. Does he have any kids?

8 A. Do I?

9 Q. Kids?

10 A. Me?

11 Q. No, Mr. Warren.

12 A. Oh, Mr. Warren. Yes, sir, he does.

13 Q. Is David involved in any other activity with regard to the
14 church other than just attending?

15 A. He's faithful every borja (phonetic) day morning. Them
16 living some 40 miles away, they're not able to come back on
17 Sunday nights but every Sunday morning they're there and
18 several times on Wednesday nights when we've had special
19 functions they've shown up as well.

20 Q. Now yesterday I called you and spoke with you about
21 testifying, didn't I?

22 A. Yes, sir.

23 Q. Now, where were you when I talked to you?

24 A. I was on my way back from Nashville, Tennessee from our
25 denominational's general assembly.

1 Q. So, was that your last day for that assembly?

2 A. No, sir, it was to finish up today.

3 Q. So, why would you come back today?

4 A. Because David is a good man and I believe in him, and you
5 know, I wanted to be here for him and his family and do what I
6 could to help him.

7 Q. Now, have you ever seen David lose his temper or get angry
8 or act out in a violent manner?

9 A. No, sir.

10 Q. Has he ever made any promises that he broke or gave his
11 word and lied or anything like that, to you?

12 A. No, sir.

13 Q. Do you know of anything that would cause you to believe
14 that David would not do what he says he would do?

15 A. Nothing. I know of nothing, no.

16 Q. I have one other question. Have you ever visited David
17 and his family at his home?

18 A. Yes, sir, several times.

19 Q. And your impression of his family's surroundings?

20 A. The whole family is a family that loves God, loves the
21 Lord.

22 MR. FISHMAN: Objection.

23 THE COURT: What's the objection?

24 MR. FISHMAN: Six-ten, using character evidence based
25 on religion.

Smith - Direct

13

1 THE COURT: I don't know. I had Reverend Jerry
2 Falwell here several years ago and he testified similar. I'll
3 overrule the objection. I mean, you know, I've had priests. I
4 just haven't had a rabbi yet, but I expect to have that sooner
5 or later. So, you say 610 based on -- he's been testifying
6 about his demeanor and character with regard to how he knows
7 him, you know, that he's a faithful member of the church.

8 Now, what's the extent of that? I don't want to just
9 ignore that motion. What's the extent of 610?

10 MR. FISHMAN: Well, with respect to his knowledge and
11 his basis for knowledge of David Warren's character, that's one
12 thing.

13 THE COURT: Yes.

14 MR. FISHMAN: But using religious beliefs as the
15 basis for making that determination is an absolutely
16 impermissible one, Your Honor.

17 THE COURT: All right. I tend to agree with that.

18 You need to rephrase it or the objection is going to
19 be maintained.

20 BY MR. BROWN:

21 Q. What is your impression of David and his family's setting?

22 A. He is a family man, a safe family setting, a home that is
23 safe for everyone there, and he is a good father and a good
24 husband.

25 Q. So, it doesn't appear that he has a, it was referred to as

1 a dysfunctional family?

2 A. Not at all.

3 MR. BROWN: I have nothing further for him,
4 Your Honor.

5 THE COURT: All right, cross-examination, Counselor.

6 MR. FISHMAN: Court's indulgence?

7 THE COURT: Yes.

8 (Pause.)

9 MR. FISHMAN: Briefly, Your Honor.

10 THE COURT: Yes, sir.

11 * * * * *

12 CROSS-EXAMINATION

13 BY MR. FISHMAN:

14 Q. In your relationship with Mr. Warren, are you aware of
15 what firearms he possesses in his homes?

16 A. No, sir.

17 Q. Are you aware of what family resources are available to
18 Mr. Warren and his wife and his family?

19 A. No, sir.

20 Q. So, you're not aware of what assets as well as --

21 A. No, sir.

22 Q. Are you aware of whether or not Mr. Warren has a passport
23 or the ability to leave the country at any time?

24 A. I do not know.

25 Q. And are you aware that Mr. Warren is charged with offenses

1 that could carry a life sentence as well as the possibility of
2 the death penalty?

3 A. I am aware of that, yes, sir.

4 Q. Have you discussed with Mr. Warren the actual charges that
5 he's facing?

6 A. What I know of this case, I've read in the papers. He has
7 not divulged anything to me that clears up anything.

8 Q. And so, on September 2nd, 2005 where were you?

9 A. I was in South Carolina.

10 Q. And so you weren't with Mr. Warren at the time that this
11 offense was allegedly committed?

12 A. No, sir, I wasn't.

13 Q. And you've had no conversations with Mr. Warren about the
14 truthfulness or the accuracy of any of the charges in this
15 case?

16 A. No, sir.

17 MR. FISHMAN: Nothing further, Your Honor.

18 THE COURT: Thank you very much.

19 Any redirect?

20 MR. BROWN: No, Your Honor.

21 THE COURT: Thank you sir, you may step down. You
22 can either remain because you're dismissed from the subpoena or
23 you can go on about your business affairs.

24 THE WITNESS: Thank you.

25 (Witness is excused)

1 THE COURT: All right, next witness, please.

2 MR. BROWN: Mr. Paul Blouin, Your Honor.

3 THE COURT: We have another grand jury already?

4 Just a minute, Mr. Brown. Let us take the other
5 grand jury return.

6 **(Recess from 10:24 a.m. to 10:29 a.m.)**

7 THE COURT: All right. We're going to resume the
8 hearing concerning Mr. Warren, and I believe you're getting
9 ready to call your second witness, Counsel Brown?

10 MR. BROWN: Yes, Paul Blouin, Your Honor.

11 THE COURT: Yes, sir.

12 Mr. Blouin.

13 (Pause.)

14 THE COURT: Sir, you have been previously sworn. You
15 may be seated.

16 * * * * *

17 **PAUL BLOUIN, DEFENDANT'S WITNESS, PREVIOUSLY SWORN**

18 * * * * *

19 BY MR. BROWN:

20 Q. Good morning Mr. Blouin.

21 A. Good morning.

22 Q. Can you tell the Court your relationship to David Warren?

23 A. Yes, David Warren is employed by GenSouth and I'm the
24 general manager.

25 Q. And --

1 THE COURT: By whom, sir? I'm sorry.

2 THE WITNESS: Oh, David Warren is employed by
3 GenSouth.

4 THE COURT: Okay.

5 THE WITNESS: The general manager, I'm the general
6 manager of GenSouth.

7 THE COURT: All right.

8 BY MR. BROWN:

9 Q. And what is GenSouth?

10 A. GenSouth is a distributor, an IDC, an Industrial
11 Distributor Central for Generac for the State of Louisiana.

12 Q. And what is his position there?

13 A. David was an engineer.

14 Q. He was an engineer?

15 A. In power generation.

16 Q. And how long has he worked for you?

17 A. Going on over two years now.

18 Q. How well acquainted with Mr. Warren are you?

19 A. I grew to know Mr. Warren very well.

20 Q. Has Mr. Warren ever been the type of employee that would
21 lose his temper?

22 A. I have never, ever seen David lose his temper. He's the
23 type of person where he's very calm and anything you give him
24 or anything you ask him to do, he does and he comes back and
25 asks questions or just takes care of whatever you ask him to

1 do.

2 Q. Have you ever seen him in a situation in which you
3 believed that he could have or should have lost his temper?

4 A. I know he's taught me a thing or two about being patient.
5 I've learned a lot from David.

6 Q. Has he ever gave you information that was false?

7 A. No.

8 Q. Has he ever lied to you about his employment or why he
9 couldn't come to work or --

10 A. No, never. In fact, he called me every Sunday evening
11 just to check with me about Monday morning.

12 Q. Has he ever made any promises that he broke?

13 A. Never.

14 Q. Were you ever aware that Mr. Warren carried a gun?

15 A. Yes.

16 Q. Have you ever seen him carry a gun at his job?

17 A. Yes.

18 Q. On the date of his arrest, were you present?

19 A. Yes.

20 Q. Did Mr. Warren have a gun at that time?

21 A. I didn't know whether he did or didn't, but he did have
22 one as I was brought into the room.

23 Q. So, he had a weapon on him?

24 A. Yes. Well, they showed me that he had one. I wasn't in
25 there at the time.

1 Q. Okay.

2 A. To see where they got it from, but.

3 Q. Was it customary for him to bring a gun to work?

4 A. I viewed his resume. I seen that he was a commissioned
5 police officer and we did not have a problem with that.

6 Q. Have you ever visited Mr. Warren at his house?

7 A. Yes.

8 Q. You met his wife and kids?

9 A. Numerous times.

10 Q. Are you aware of the charges that are on Mr. Warren?

11 A. I am aware.

12 Q. Do you understand the possible sentencing of Mr. Warren?

13 A. I do.

14 Q. Have you spoken with him since he's been arrested?

15 A. One time.

16 Q. When was that?

17 A. If my memory recalls, one week ago I spoke to him at their
18 house, at Mrs. Warren's house.

19 Q. A week ago, after he got arrested?

20 A. I would say it was about a week ago when we spoke. I
21 don't remember the exact date. It was in the evening, after
22 work.

23 Q. With regard to the promises of Mr. Warren, has he ever
24 made a promise to you that he broke?

25 A. Never.

1 Q. Has he ever refused to come to work and gave any type of
2 excuse that was not true?

3 A. Never, never.

4 Q. How would you describe him as an employee?

5 A. Having hired a number of people and had to look for that
6 position and replace that position a number of times because of
7 the stress level and what that position has to hold and do,
8 David was the best employee, by far, and we sorely miss him
9 right now.

10 Q. Would you rehire David or let him come back to work?

11 A. Yes.

12 MR. BROWN: I have nothing further, Your Honor.

13 THE COURT: Cross-examination?

14 MR. FISHMAN: Yes, Your Honor.

15 * * * * *

16 CROSS-EXAMINATION

17 BY MR. FISHMAN:

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. You mentioned that when Mr. Warren was arrested he had a
21 gun on him, is that correct?

22 A. When I walked in the room they -- the only thing the
23 officer said, he asked the officer, "Could I give this to
24 Paul?"

25 And the officer said, "No, we'll keep it."

1 Q. All right. And that was a .380 pistol, correct?

2 A. I don't know what it was, sir.

3 Q. And you hadn't seen it on his waistband that day, correct?

4 A. No, sir.

5 Q. So, in fact when the FBI seized that gun, it was concealed
6 in his pocket, was it not?

7 A. I don't know.

8 Q. Now, do you carry a weapon as a result of the work that
9 you do?

10 A. At times, I do. I have a permit.

11 Q. And so, sometimes on your job you carry a weapon?

12 A. Yes.

13 Q. And your other employees carry weapons as they go do their
14 work as well?

15 A. Yes.

16 Q. Are you aware that at the time that Mr. Warren was working
17 for you, he was on leave as a reserve officer with the
18 New Orleans Police Department?

19 A. I didn't know that he was on leave.

20 Q. All right. Because you mentioned that you assumed that he
21 was carrying a weapon because you had seen his resume and you
22 knew he was a police officer?

23 A. Yes, I had seen his resume, correct.

24 Q. But it was never brought to your attention that in fact
25 Mr. Warren was on leave as a police officer while he was

1 working for you?

2 A. My conversations with him, because I was his boss, in all
3 honesty, stayed professional and I stayed away from certain
4 issues because I felt it was not my personal business and it
5 was best for me, because if I needed to be able to let somebody
6 go, I've got to be able to keep my distance from them.

7 Q. All right, sir. As a result of your relationship with
8 Mr. Warren, the professional relationship, there were certain
9 topics that you didn't discuss with him, correct?

10 A. Correct. I didn't delve into it too deeply.

11 Q. For example, you never discussed with him the incidents of
12 September 2nd, 2005, correct?

13 A. No.

14 Q. You didn't discuss other issues that may be of importance
15 in determining someone's character, is that correct?

16 A. I knew of the newspaper and read of the articles.

17 Q. But you just testified that you had a limited knowledge
18 with Mr. Warren, the nature of your relationship, because you
19 were in fact his boss, is that correct?

20 A. What do you mean in the sense of a limited knowledge?

21 Q. For example, did you ever talk to him about any of his
22 work at NOPD?

23 A. Yes, in fact I was always interested in being a police
24 officer so I had a lot of pride in what he did and told me.

25 Q. Had he ever told you that he had been involved in a

1 shooting while he worked at NOPD?

2 A. No.

3 Q. So, that was not the type of matter that Mr. Warren would
4 confide in you about?

5 A. He kept to his business.

6 Q. Now, what about the number of guns that Mr. Warren
7 possesses in his home? Was that something that he ever
8 confided in you about?

9 A. No, I don't know the number of them.

10 Q. What about issues like family resources and assets
11 available to his family? Is that something that he confided in
12 you about?

13 A. Could you explain that a little further, sir?

14 Q. For example, are you aware how much equity Mr. Warren has
15 in his home?

16 A. No, I don't know how much equity he has in his home.

17 Q. Now, how much money was Mr. Warren being paid every month?

18 A. Mr. Warren had a salary of plus \$50,000, I think it was
19 \$55,000 and he was also commissioned.

20 Q. So, \$55,000 a year?

21 A. Yes, sir.

22 Q. And he could also receive additional commissions for work?

23 A. Yes, sir.

24 Q. And are you aware of how much that, of commission
25 Mr. Warren could achieve in the course of a given year?

1 A. It depends on the business. It could range between
2 \$10,000, \$20,000 and \$30,000.

3 Q. So, Mr. Warren could possibly take home as much as \$80,000
4 a year in working for you?

5 A. There would be a possibility of that, yes.

6 Q. And are you aware of whether or not Mr. Warren had saved
7 any of the money he had made while working for your company?

8 A. We never talked about his savings.

9 MR. FISHMAN: Nothing further for this witness,
10 Your Honor.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Is there any redirect?

13 MR. BROWN: No, Your Honor.

14 THE COURT: Mr. Blouin, can you tell me the name of
15 your company again?

16 THE WITNESS: Yes, sir. GenSouth.

17 THE COURT: G-E-N?

18 THE WITNESS: S-O-U-T-H.

19 THE COURT: And what's the nature of the business?
20 You told me the Defendant was a -- you told me that he was an
21 engineer? What is the nature of the business? You said you
22 were distributors?

23 THE WITNESS: Yes, sir, a distributor of power
24 generation equipment and generators.

25 THE COURT: Do you all have any -- you all don't do

1 security work, do you?

2 THE WITNESS: No, sir.

3 THE COURT: And you further said you had a permit to
4 carry a gun yourself?

5 THE WITNESS: Yes, sir.

6 THE COURT: What parishes, or the whole State of
7 Louisiana?

8 THE WITNESS: It's a state permit, sir.

9 THE COURT: How long have you had it?

10 THE WITNESS: I was -- I had one for Alabama too, so
11 I've had the permit for over eight years, Your Honor.

12 THE COURT: Okay. Now, how long have you had one in
13 Louisiana, and for what time period?

14 THE WITNESS: It was back in 2004 and I immediately
15 filed for that in 2004. And I have had one and still have it
16 now.

17 THE COURT: From 2004 to present?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Very good. Thank you very much,
22 Mr. Blouin.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right.

25 (Witness is excused)

1 THE COURT: Next witness.

2 MR. BROWN: I might batter his name a little bit but
3 it's --

4 THE COURT: That's a Louisiana name.

5 MR. BROWN: (Laughter)

6 THE COURT: Donald deBoisblanc.

7 MR. BROWN: DeBoisblanc.

8 THE COURT: I think it's close, right?

9 MR. BROWN: DeBoisblanc, yes.

10 THE COURT: All right.

11 MR. BROWN: Yes, that's his name.

12 THE COURT: You may call him up.

13 MR. BROWN: Donald deBoisblanc.

14 THE COURT: There, you've got it, Counsel.

15 MR. BROWN: That's a hard name.

16 (Pause.)

17 THE COURT: All right, sir. You have been previously
18 sworn and you've got to answer the questions of Counsel,
19 please.

20 THE WITNESS: Thank you, Judge.

21 THE COURT: All right, state your name for the
22 record.

23 THE WITNESS: Donald deBoisblanc.

24 THE COURT: Very good, all right.

25 MR. BROWN: I'll just refer to you as --

deBoisblanc - Direct

27

1 THE COURT: Mr. deBoisblanc.

2 MR. BROWN: -- Donald.

3 THE WITNESS: Yes, deBoisblanc. It's a French name,
4 you know, but Donald would be fine, okay?

5 MR. BROWN: Donald, yes.

6 THE WITNESS: Yes.

7 (Laughter.)

8 MR. BROWN: Because I don't want to beat up on your
9 name.

10 THE COURT: Yes. All right, let's go.

11 * * * * *

12 **DONALD deBOISBLANC, DEFENDANT'S WITNESS, PREVIOUSLY SWORN**

13 * * * * *

14 BY MR. BROWN:

15 Q. Mr. Donald, could you tell your relationship -- can you
16 tell the Court your relationship with Mr. Warren?

17 A. Yes, I am a neighbor to David Warren. He lives next door
18 to me with his wife and five children, four girls and one
19 little boy. They are seated right over there (indicating).

20 He -- I have known him since he moved into the
21 neighborhood about eight or nine years ago. I know his home to
22 be, prior to this event, unencumbered. I know that he was once
23 a police officer and then he -- of course, Mr. Warren is a
24 graduate engineer with a Master's degree in Business
25 Administration from the University of Wisconsin, and then he

1 married his wife and they settled in the New Orleans area. She
2 is from here. And David is a hard working engineer and he's
3 the father to five children.

4 Q. Have you ever had conversations with David with regard to
5 his -- to him being a police officer?

6 A. No, I knew he was an officer, because he told me what he
7 did and during the Katrina storm he stayed at his post as a
8 police officer and I stayed in New Orleans also, so we
9 withstood the storm together and we -- and he had a generator
10 at the house and I, you know, and I had some perishables and of
11 course, nobody had electricity or phones or anything. So, he
12 allowed me to put some stuff in his refrigerator and which I
13 appreciated, and my wife and I stayed during the storm and
14 after the storm and New Orleans wasn't a very safe place to be
15 in.

16 I had asked Dave what routes to take to leave, you know,
17 and he said -- I stayed for three or four, five days and he
18 said, "You'd better leave."

19 I did notice widespread looting of the Breaux Mart and the
20 CVS Drug Store. I mean, they kicked -- people kicked in the
21 door and stole everything, and I saw that with my own eyes. I
22 didn't think it a safe place to be in and I wanted to leave and
23 Mr. Warren gave me some instructions as to what highways were
24 open and matters such as that and I went to Gulf Shores,
25 Alabama and, you know, for a long period, an extended period of

1 time.

2 Q. Now, as a neighbor of Mr. Warren, have you on any occasion
3 heard any arguing, fussing, fighting or anything between
4 Mr. Warren and his wife?

5 A. No. I would like to say this. He has probably the most
6 disciplined and well mannered children I have ever met. They
7 all are very courteous. They're all --

8 THE COURT: Sir, that was not the question. You have
9 to answer the question. I don't mind you giving that
10 information if it was asked of you.

11 THE WITNESS: Well Judge, I have -- I'm not going to
12 argue the case, but --

13 THE COURT: No, no. You don't have to argue the
14 case, but answer the questions that they put to you. You're
15 going on with your dissertation.

16 THE WITNESS: Well --

17 THE COURT: Just answer the questions. I have no
18 problem with him asking that question, and you can answer it if
19 it's put to you.

20 THE WITNESS: Thank you, Judge.

21 THE COURT: All right. But we can't just have you
22 just go on and on. You're going to have to ask questions.

23 BY MR. BROWN:

24 Q. The question is: Have you ever heard any arguing, fussing
25 or fighting between Mr. Warren and his wife?

1 A. No.

2 Q. Now, have you ever seen Mr. Warren display any type of
3 violent or angry temper?

4 A. No.

5 Q. Have you ever seen Mr. Warren in any situation that would
6 cause him to get angry?

7 A. Well, no. The only time I ever saw Mr. Warren angry in my
8 lifetime, he has a Great Dane dog.

9 Q. Yes, sir.

10 A. And it's very big and the dog would sit on his hind legs
11 and be much taller than me and he'd try to lick you and Dave
12 would get mad at the dog, you know, to try to tell the dog to
13 behave. Other than that, I've never seen any demonstration of
14 any anger from Mr. Warren, whatsoever.

15 Q. He got angry with his pet?

16 A. With his dog, yes.

17 Q. Did he beat his pet?

18 A. No. He reprimanded his pet, verbally.

19 Q. Have David ever visited you at your home?

20 A. Yes.

21 Q. How often?

22 A. Well, on multiple occasions, you know. On many occasions,
23 he has been over to my home and I've been to his home and
24 often, you know, just any time we wanted to we, you know, I may
25 borrow a tool from him or he has a whole workshop full of

1 tools, or he may borrow something from me and that's fine, you
2 know.

3 Q. Has he ever made any promise to you, promises to you that
4 he broke?

5 A. No.

6 Q. Has he made any promises to you at all?

7 A. No. He promised to assist me in doing -- in fixing
8 something in my house, and he did it, you know.

9 Q. Oh, he did?

10 A. Yeah.

11 Q. Have you ever known him to lie about anything?

12 A. No.

13 Q. So, it's your testimony that if Mr. Warren told you
14 something or promised you something, he would keep his word?

15 A. Absolutely.

16 Q. Have you ever met any other members of his family, other
17 than his wife and children?

18 A. Well, his in-laws, yes. I've known his in-laws for 30 or
19 40 years. The Patron family, his wife was a Patron before they
20 married and I know Arthur and Pamela Patron. They're right in
21 court (indicating).

22 Q. It's not the same Patron's as this liquor, right? Because
23 I know they have a liquor called Patron, I just --

24 A. Oh, I don't know.

25 THE COURT: Whatever their business, that's theirs,

1 you know?

2 MR. BROWN: Yes, that's what I was trying to figure
3 out there.

4 THE COURT: All right. Go on.

5 MR. BROWN: Nothing further, Your Honor.

6 THE COURT: Very well. Cross-examination? Thank
7 you.

8 MR. FISHMAN: Thank you, Your Honor.

9 * * * * *

10 CROSS-EXAMINATION

11 BY MR. FISHMAN:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. Now, you mentioned you stayed in New Orleans after the
15 storm?

16 A. I did.

17 Q. And when did you, in fact, leave New Orleans after the
18 storm?

19 A. Oh you know, I can't tell you, four or five days,
20 something like that.

21 Q. Okay. And at the time that you were there, was Mr. Warren
22 living in his house?

23 A. Yes, he was.

24 Q. And you live on the same street?

25 A. We live right next door.

1 Q. In Algiers, correct?

2 A. Yes.

3 Q. Okay. It was a part of New Orleans that hadn't flooded,
4 correct?

5 A. No, we're a little high, we don't flood.

6 Q. During the four days that you remained in New Orleans
7 after the storm, did you speak with David Warren?

8 A. I did.

9 Q. Did you have conversations with him about the looting in
10 the city?

11 A. Yes.

12 Q. And what sort of things did Mr. Warren tell you about
13 looters in the city during that time?

14 A. Well, I think he told me a fellow officer was shot and
15 killed by a looter.

16 Q. How did he react to that?

17 A. I said, "Dave, watch out for yourself."

18 Q. Well --

19 A. He stood at his post, you know, he went to work.

20 Q. Was he upset by the officer who was shot?

21 A. I don't -- well yeah, sure. I would imagine he would be,
22 yes.

23 Q. Did he seem to be overly distraught by this particular
24 incident?

25 A. No, it was an event, an unfortunate event that had

1 occurred to a police officer who I think worked out of the same
2 district that Dave was working out of, post-storm.

3 Q. And what was his reaction to the general sense of the
4 looting that was taking place in the city at that time?

5 A. Well, the police department was dysfunctional and they
6 didn't have any communication, I don't think, between
7 themselves. I walked to the Fourth District and said, "Hey,
8 they're looting the Breaux Mart and the CVS. Go do something
9 about it."

10 And he says, "But we've got no place to put them."

11 Q. Now, are you aware of any orders that might have been
12 given that Mr. Warren might have received that it was okay just
13 to shoot looters?

14 A. I don't know anything about that.

15 Q. All right, so you never had any discussion with Mr. Warren
16 where it was authorized that it was okay to take shots at
17 looters, for example?

18 A. I know nothing about that.

19 Q. Did you have any conversations with him where he gave you
20 the impression that he believed it was okay to take shots at
21 looters in the aftermath of Katrina?

22 A. No, I think there were rules of engagement with regard to
23 -- I remember Sheriff Lee in Jefferson Parish saying that
24 looters were -- he had his methodology of dealing with looters,
25 Orleans Parish may have a different methodology and quite what

1 they were, I don't recall right now.

2 Q. But based on your conversations with Mr. Warren in the
3 aftermath of the storm, did he give you any indication that he
4 believed that the usual rules of engagement had changed as a
5 result of Hurricane Katrina?

6 A. I don't think so. If they had changed, I don't know
7 anything about it.

8 Q. Did Mr. Warren, in the aftermath of Hurricane Katrina,
9 ever tell you that he had to discharge his weapon as a result
10 of his work as a New Orleans Police Department officer?

11 A. What -- you mean after the storm?

12 Q. In the immediate aftermath of the storm, did he ever tell
13 you that he had discharged his weapon?

14 A. I don't remember that.

15 Q. Do you --

16 A. I may have left after -- you know, when this event
17 occurred, I'm not real clear. I left three or four days after
18 the storm. This may have occurred a little subsequent to my
19 leaving. I don't remember.

20 Q. Well, have you had conversations with Mr. Warren since
21 then about him discharging a weapon during the aftermath of
22 Hurricane Katrina?

23 A. No, we didn't talk about the merits of his case.

24 Q. All right. But did he even talk before there was a case
25 about the fact that he had discharged a weapon?

1 A. No.

2 Q. So, in spite of your closeness as neighbors, this was not
3 one of the topics that you discussed?

4 A. If the event, this event -- I don't know when this event
5 occurred, that's number one, I don't know when it occurred.

6 And I can't tell you precisely when I left the city, because I
7 don't remember. I stayed three or four days and I had no A/C
8 and I was threatened by the city. Mr. Warren did tell me,
9 "Take your valuables and leave. It's best that you leave. We
10 have no effective law enforcement here now, after the storm."
11 He did tell me that.

12 And my wife and I packed it up and left.

13 Q. And how long before you returned back to New Orleans?

14 A. Well, I would come back every week or two. I have a law
15 practice, I wanted to see what was going on. Were we getting
16 mail? Were we -- and any activity, were the courts open or
17 anything? And I would go to the office and that didn't flood,
18 it's right in the Central Business District and I went to the
19 house.

20 I was unable to find the cat when we left. The cat
21 doesn't -- he wouldn't come to me and when we were leaving.
22 And so, I was worried about the cat. I had come over there
23 with cat food to try to coax the cat, to bring the cat back to
24 Gulf Shores, and I did come to the house.

25 Q. Well, approximately how long did you resume your residence

1 in New Orleans?

2 A. Post storm?

3 Q. After the storm? When did you come back for good?

4 A. Six weeks.

5 Q. Now, in the time since you've returned to New Orleans, did
6 you ever have any conversations with Mr. Warren about his
7 discharge of a weapon during Hurricane Katrina?

8 A. I don't think so.

9 Q. Did you ever discuss with Mr. Warren the police work that
10 he did while he was working in New Orleans after Hurricane
11 Katrina?

12 A. Maybe in a general sense, the specifics, I don't remember.

13 Q. But you had no discussion about the general atmosphere or
14 the chaos, any concerns that you might have had about looting,
15 for example?

16 A. I do -- I saw the looting.

17 Q. Right.

18 A. I saw it.

19 Q. And you saw it, where?

20 A. On General Meyer.

21 Q. At the CVS?

22 A. Where, as you -- we live on Bedford Drive and General
23 Meyer is a couple of hundred feet away. And you take a right
24 on General Meyer and the Breaux Mart is a half a mile, and I
25 saw people looting.

1 Q. And were there police officers responding to that looting?

2 A. No, they had a SWAT team guarding a convenience store and
3 I asked the fellows, "Can you do anything about the looting?"

4 He says, "We've got no place to put them. We're going to
5 guard this property."

6 Q. All right. So the police officers weren't responding by
7 shooting looters, I guess is my question?

8 A. Those SWAT team fellows had rifles and maybe automatic
9 rifles, as I remember it, they were armed and I think they
10 would have done what was necessary.

11 Q. Necessary, meaning in the event that their life was in
12 danger, they would have discharged a weapon?

13 A. Ask them, I don't know. They were prepared.

14 Q. Right.

15 A. They were armed.

16 Q. Now, was Mr. Warren armed during the storm?

17 A. I don't know. I presume that he was but I didn't notice
18 it, you know.

19 Q. You never saw him carrying a weapon in the aftermath of
20 Hurricane Katrina?

21 A. No.

22 Q. Are you aware of whether or not Mr. Warren possesses any
23 weapons at his home?

24 A. He may, but I don't -- I have never seen them.

25 Q. You've never seen an assault rifle that Mr. Warren might

1 have at his house?

2 A. No.

3 Q. Handguns?

4 A. No. He has young children, I don't know. The guns may be
5 locked up, I don't know.

6 Q. All right, but you've never seen them?

7 A. No.

8 Q. And you're his next door neighbor?

9 A. Correct.

10 Q. All right, thank you.

11 MR. FISHMAN: No further questions.

12 THE COURT: Any redirect?

13 MR. BROWN: No, Your Honor.

14 THE COURT: Mr. deBoisblanc, you said that you had a
15 law practice?

16 THE WITNESS: Yes.

17 THE COURT: Back in 2005?

18 THE WITNESS: Yes.

19 THE COURT: So, that was your business of coming back
20 and forth; are you still practicing, sir?

21 THE WITNESS: Yes.

22 THE COURT: And what area of the law do you practice?

23 THE WITNESS: Civil.

24 THE COURT: Civil?

25 THE WITNESS: Forty percent of my practice is in

1 federal court, but on the civil side, Judge.

2 THE COURT: All right. Thank you very much, sir.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: All right, you can step down.

5 (Witness is excused)

6 THE COURT: All right, next witness?

7 MR. BROWN: That was the last witness, Your Honor.

8 THE COURT: All right, Government's presentation and
9 argument, whatever you decide.

10 MR. FISHMAN: Your Honor, the Government believes
11 that it is more likely than not that there are no conditions
12 which would reasonably assure Mr. Warren's appearance. At
13 this, in this case Mr. Warren is charged with two counts, one
14 that carries a life imprisonment or a possibility of the death
15 penalty, as well as a 924(c) and 924(j) case. The 924(j) also
16 carries a life sentence, and the 924(c) sets off the
17 presumption that Mr. Warren is both a risk of flight as well as
18 a danger. A finding of either dangerousness or risk of flight
19 is sufficient to hold Mr. Warren in this particular case.

20 Mr. Warren is an undeniable flight risk as a result
21 of the charges and the severity of the charges that he's
22 facing. As the report before you states, Your Honor,
23 Mr. Warren has access to a large number of resources, over
24 \$400,000 in equity in his home alone, undisclosed assets in
25 checking and money markets, undisclosed assets as a result of a

1 \$2.9 million sale of business interests. Though Mr. Warren's
2 family is currently in New Orleans, he has been in New Orleans
3 for, I think, a relatively short duration, has family elsewhere
4 in the country, as well as access to a passport and resources
5 to leave the country.

6 Furthermore, Your Honor, the Government believes that
7 the instant offense is in fact a crime of violence. The 924(j)
8 count sets out an incredibly -- and as well as the 242 count
9 sets out circumstances that describe in fact a violent act. It
10 involved the use of a dangerous weapon, a 223 assault rifle.
11 It is well known that Mr. Warren possesses numerous weapons
12 including a concealed weapon when he was arrested.

13 THE COURT: Is that weapon a police issued weapon,
14 the assault rifle, as far as you know?

15 MR. FISHMAN: It is not a police issued assault
16 rifle, Your Honor.

17 THE COURT: All right.

18 MR. FISHMAN: Though the particular rifle involved in
19 this case was confiscated in the course of this investigation
20 and it is now in the possession of the United States.

21 THE COURT: All right, continue.

22 MR. FISHMAN: But for those aforementioned reasons,
23 with respect to the risk of flight and dangerousness, the
24 Government asks that Mr. Warren be continued to be detained
25 pending trial.

1 Thank you.

2 THE COURT: All right. Counselor?

3 MR. BROWN: Thank you, Your Honor. First of all,
4 Your Honor, I think the Government should just forget all
5 about presumption in Mr. Warren's case. First of all, the
6 Government --

7 THE COURT: Now, he has a presumption of innocence.

8 MR. BROWN: Yes, and I am going to --

9 THE COURT: However, the Bail Reform Act enacted by
10 Congress gave us the guidelines by which we are to consider
11 bail or detention, so you know.

12 MR. BROWN: And second, Your Honor, I think
13 Mr. Fishman is remiss in not saying that in October of 2009, he
14 himself told Mr. Warren that he would be seeking indictment for
15 murder and he'd be seeking indictment for the death penalty.
16 Mr. Warren in October --

17 THE COURT: What does that have to do with anything?

18 MR. BROWN: Because Mr. Warren, at the time of his
19 arrest, was at work. If in fact he was a flight risk, after
20 giving him such devastating information such as they're going
21 to see a murder indictment against him, he would have fled if
22 he was a flight risk. He didn't flee, he went to work. He
23 went on a vacation to Arizona, stayed there ten days, came back
24 and went to work. If he would receive that information,
25 knowing that he was going to look at a life imprisonment or

1 knowing that he was possibly facing the death penalty, why
2 didn't he flee after being given that information by
3 Mr. Fishman, who just stood before this Court arguing that he's
4 definitely and undoubtedly a flight risk. The average person
5 would have.

6 THE COURT: How long ago --

7 MR. BROWN: I think.

8 THE COURT: How long ago was he supposed to have
9 given him that information?

10 MR. BROWN: That was in October of 2009.

11 THE COURT: Go ahead.

12 MR. BROWN: Now, he was not arrested until this year.

13 THE COURT: Yes, I'm looking at the indictment, June
14 11th, 2010.

15 MR. BROWN: But he's been armed with this
16 information. He has been armed with it. With regard to him
17 being a flight risk, the Government also argues that he has a
18 passport. Well, his passport, I believe, is expired. But
19 that's something that could be surrendered to the Court. The
20 Court have on a number of occasions when someone had a
21 passport, had them to surrender their passport and remain
22 within the Eastern District of this Court. That is a condition
23 that can be placed or imposed upon Mr. Warren if in fact it
24 believes he's going to leave the country.

25 With regard to him being the -- the Court has

1 listened to testimony from three people that know Mr. Warren
2 very well, his pastor, his employer and Mr. deBoisblanc.

3 I know I said your name wrong, I'm sorry.

4 MR. deBOISBLANC: That's okay.

5 THE COURT: It's deBoisblanc.

6 MR. BROWN: And all, every last one of them put
7 before this Court impeccable integrity and character of
8 Mr. Warren.

9 The other thing, with regard to him being a danger to
10 society, the Government consistently argues that, "Well, he had
11 a gun on him when he was arrested. He had firearms in his
12 house."

13 Your Honor, Mr. Warren was a police officer. As a
14 police officer they had no problems with him having weapons.
15 Now that he's not a police officer, now it comes back to haunt
16 him. So, that tells any future, any police officer when you
17 carry a gun, it's fine but if something happens, you know
18 something, we're going to hold that against you even though you
19 are commissioned to have the gun. He still had his commission
20 to carry the gun. He had his gun at his place of employment.
21 His employer carries a gun, other employees carries a gun, but
22 there is nothing saying that Mr. Warren ever pulled out a gun,
23 pointed a gun at anyone or caused any problems, acted against
24 anybody, other than this incident in which the Government has
25 accused him of murder.

1 Now, the Government did not put on any evidence to
2 suggest to this Court, to even suggest to this Court that he
3 actually committed anything. All they're saying is that --

4 THE COURT: They don't have to.

5 MR. BROWN: No, they don't, Your Honor.

6 THE COURT: They have an indictment. Under the
7 law --

8 MR. BROWN: But --

9 THE COURT: Just let me -- listen, under the law --
10 under the law, once you're indicted, certain presumptions go
11 along with it.

12 MR. BROWN: That's correct.

13 THE COURT: If, it all depends on the type of crime
14 that's charged now.

15 MR. BROWN: Exactly.

16 THE COURT: But that's what the attorney was arguing.

17 MR. BROWN: Exactly.

18 THE COURT: Whether or not, they said it's a violent
19 allegation. There's a presumption that comes into play, it's a
20 rebuttable presumption but there is a presumption of flight
21 risk and danger. Now, you argue with me how he's overcome it.

22 MR. BROWN: Exactly, Your Honor. And also, at the
23 time of the hearing on the 17th, Pretrial Services only had the
24 opportunity to interview Mr. Warren prior to the hearing.
25 Since that hearing I believe they had interviewed him again.

1 Their recommendation says there are reasonable conditions that
2 can be imposed with regard to the danger to the community, but
3 he thinks that there appears to be no combination of conditions
4 that would assure his appearance in court.

5 I just told the Court, and Mr. Fishman knows what I
6 just told the Court is absolutely true. If I or anyone or a
7 police officer or the Government, the DA or whoever tells the
8 average person, "We're seeking an indictment against you for
9 murder and possibly the death penalty," I would think that
10 person would leave, I really would. I think that person would
11 flee. His opportunity to flee has long been past. He stayed
12 here, he went to work. When the FBI found him, he was at his
13 desk.

14 There was no resisting the officer, there was no
15 attempt to flee. He had his passport, even though it's
16 expired, he had a weapon on him, he didn't use it against
17 anyone. I don't see where they get the reasonable risk that
18 he's going to flee. I don't see it. Because that opportunity
19 has presented itself more than one time and he has yet to flee.
20 He never fled. He stayed here to come before this Court.

21 THE COURT: When he was arrested, was he under
22 suspension?

23 MR. BROWN: From the police force?

24 THE COURT: That's right.

25 MR. BROWN: From what I understand, and from my

1 client, he had resigned.

2 THE COURT: All right. Did he still have the permit?

3 MR. BROWN: Yes, he did.

4 THE COURT: I'm talking about the permit to carry
5 concealed weapons.

6 MR. BROWN: Yes, Your Honor, I understood the
7 question and yes, he did, which he still has the permit to this
8 day. So, it was not illegal for him to carry a firearm on him
9 at the time of his arrest. Because of the charge, the
10 Government is making -- is blowing up to say, "Well, you should
11 not have had a firearm on you," but he had the permit. It was
12 all within the law to have a gun on him at the time.

13 THE COURT: Go on.

14 MR. BROWN: But Your Honor, and there is no other
15 indication whatsoever that he's a danger to anyone. He's not a
16 violent person. There is nothing showing that he's a violent
17 person. There is nothing showing that he even loses his
18 temper, nothing. There is no prior acts of violence. There is
19 no prior acts of just lying and not keeping to his word. There
20 is nothing. What they have here is an indictment that indicts
21 my client saying, "Well, we're going to indict you for murder
22 and you're looking at a life imprisonment." That's it.

23 There are several factors in this case that's still
24 unknown to the Government. And there's several factors in this
25 case that the Court still doesn't know. And I urge the Court

1 to set a bond with the conditions, with reasonable conditions
2 that can be imposed that all automatically, Your Honor, just
3 from the case itself, that would assure his appearance. The
4 Court has the option of electronic monitoring. The Court is
5 very aware of all of the conditions that can be imposed.

6 With regard to the risk of danger to society, if the
7 Court believes or even thinks that the possibility exists, even
8 though Pretrial Services believes that there can be conditions
9 or reasonable conditions that can be imposed, he can submit his
10 permit, he can turn it in.

11 THE COURT: All right.

12 MR. BROWN: Thank you, Your Honor.

13 THE COURT: Any rebuttal?

14 MR. FISHMAN: Your Honor, just briefly to say,
15 Mr. Brown blatantly mischaracterized any conversation that took
16 place between myself and Mr. Warren back in October. Mr. Brown
17 was not present for that conversation, Mr. Albe was not present
18 for that conversation. It was Mr. Warren's previous attorney
19 and I can most assure you, most assuredly tell you that the
20 Government at no point threatened Mr. Warren that he would be
21 facing the death penalty. The penalties that he was facing
22 were most definitely laid out to him, but at no point was that
23 a threat that he was going to be indicated and the Government
24 was seeking the death penalty.

25 Additionally, Your Honor, the 924(c) presumption in

1 this case has not been overcome, notwithstanding the fact that
2 three witnesses have testified about Mr. Warren's character.
3 None of those three witnesses knew anything about the specifics
4 of this case, knew anything about the specifics that would lead
5 to dangerousness, knew anything about the specifics that would
6 lead to flight risk, and accordingly, Your Honor, the
7 Government does not believe that the Defense has overcome that
8 presumption.

9 Thank you.

10 THE COURT: Thank you. All right, now what part of
11 924 are you speaking to? I'm looking at it under the --

12 MR. FISHMAN: It's --

13 THE COURT: Under firearms, I'm looking under that.

14 That's what 924 --

15 MR. FISHMAN: Right, 924(c) and 924(j) is what
16 Mr. Warren is charged with, but the reference is 3142(e)(3)(b).

17 THE COURT: That's correct.

18 MR. FISHMAN: Which talks about the presumption.

19 THE COURT: All right. Well, as I look at 18 USC
20 3142 under (f), detention hearing, it sets the parameters that
21 I have to look at. "The judicial officer shall hold a hearing
22 to determine whether any condition or a combination of
23 conditions set forth in Subsection (c) of this section shall
24 reasonably assure the appearance of such person as required and
25 the safety of any other person and the community upon motion of

1 the attorney for the Government, in a case that involves:

2 "A, a crime of violence, a violation of Section 951,
3 or an offense listed in 2332b(g)(5)(B) for which maximum term
4 of imprisonment of ten years or more is prescribed.

5 "B," capital B in parenthesis, "an offense for which
6 the maximum sentence is life imprisonment or death."

7 There's no doubt that the charge represents a violent
8 crime and the presumption does come into play. The question is
9 whether or not what I've heard here today and considering the
10 Pretrial Services report as well, since it was stipulated to,
11 if there is enough information here to overcome the presumption
12 of flight risk and danger. And I have examined and looked
13 through the statements. This man, of course, is a family
14 person, children and a wife, a homeowner. We had the testimony
15 of his pastor, his employer, as well as a neighbor who is an
16 attorney.

17 And I have to look at the nature of the charge that
18 has been presented, and the Court notes that the Defendant is
19 presumed under the law to be innocent until such time if ever
20 he overcomes the presumption. A grand jury has already passed
21 the indictment, which is not evidence of anything. However, it
22 is the formal way by which under federal law, citizens or
23 defendants are charged with a felony in the United States,
24 unless they consent to proceed by way of a bill of information.

25 The Bail Reform Act urges judicial officers to try to

1 use the least restrictive conditions to be imposed upon an
2 individual if they are so charged that would reasonably assure
3 the safety of the community as well as the appearance of the
4 Defendant.

5 With such serious charges, what I've heard today does
6 not overcome the statutory presumption of danger as well as
7 flight risk. I understand what Counsel has argued about the
8 Defendant having known possibly since October of 2009 that a
9 prosecution for murder may be presented. However, that did not
10 come into play until he was indicted formally by the grand jury
11 this year, 2010, according to the indictment, June 11, 2010.

12 This is in fact a crime of violence charged. Now,
13 one always and when you're looking to evaluate these things,
14 you have to look at it case by case, on a case by case basis.
15 At this point, the Court makes a finding that there are no
16 conditions of release. And I've read what the Pretrial
17 Services Office said that there may be, but I don't see any, or
18 combinations of conditions of release that would reasonably
19 assure this man's appearance if he were released on bond.

20 Right now, the Court does not know as to whether or
21 not the death penalty will be sought. As I understand the law,
22 the prosecution would have to apply to the Justice Department,
23 and I may be wrong, to get such approval before they can go
24 forward with a death penalty prosecution. But what we have is
25 a possibility if a conviction would take place, that a death

1 penalty -- I'm sorry, that a life imprisonment sentence could
2 come about.

3 Are there any other options that the conviction would
4 take place with no death penalty? Could it be any number of
5 years or mandatory life?

6 MR. FISHMAN: It could be any number of years,
7 Your Honor.

8 THE COURT: Any number of years. Under the law, it
9 requires where he could be exposed to at least ten years, as I
10 understand it. But you have to remember that there is a
11 homicide charged here and at this point there are no
12 conditions. I have considered and listened to the argument
13 about electronic monitoring. I have considered and listened to
14 what his pastor thinks about him, his employer thinks about
15 him. There is evidently a large number of supporters who are
16 present here in Court. I can remember another case I had and
17 there were about 26 or 27 witnesses and there was a stipulation
18 in that regard, a bond was set, not this District Court but the
19 other District Court judge in another case revoked, that is,
20 overruled the determination of bond.

21 I understand that he has a home, as has been noted
22 here and the value of it may be \$400,000. I have learned over
23 the years that it's not money all the time that would keep a
24 person from going. I had one person to run after receiving and
25 being allowed to go to Europe twice on a million dollar bond,

1 the second time \$1.5 million that was put in cold cash here,
2 he ran when it got close to the time. But that has been
3 resolved.

4 Accordingly, I considered all of the other things
5 that I'm thinking about. There's just a list of things in the
6 statute that you have to look at, and I acknowledge that this
7 gentleman has never had a conviction before, that I know of,
8 none whatsoever. But because of the nature of the crime, the
9 possible exposure if a conviction would take place, I make a
10 finding that he has not overcome the statutory presumptions of
11 flight risk and danger.

12 Accordingly, he's ordered remanded to the custody of
13 the United States Marshal until further orders of the Court.
14 It is so ordered. That is the judgment of the Court at this
15 stage.

16 Of course, the Defense has the right to appeal what
17 I've done here today before District Court Judge Africk. Good
18 luck.

19 He's remanded.

20 MR. BROWN: Just for the record, Your Honor, note the
21 Defense's intent to seek review by Judge Africk.

22 THE COURT: Certainly, it's noted.

23 MR. BROWN: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. FISHMAN: Thank you, Your Honor.

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THE COURT: Thank you.

THE CLERK: That completes the docket.

THE COURT: All right.

* * * * *

(Hearing is Concluded)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.



Sherryl P. Robinson

7-12-10

Date

Attachment B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, | * | Criminal Action |
| | * | No. 10-154 |
| Plaintiff, | * | |
| | * | Section "I"(6) |
| v. | * | |
| | * | New Orleans, Louisiana |
| DAVID WARREN, | * | August 23, 2010 |
| | * | |
| Defendant. | * | |
| * * * * * | | |

MOTION HEARING,
BEFORE THE HONORABLE LOUIS MOORE, JR.,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

| | |
|---------------------|---------------------------------|
| For the Government: | United States Attorney's Office |
| | By: TRACEY N. KNIGHT, ESQ. |
| | By: MICHAEL MAGNER, ESQ. |
| | Hale Boggs Federal Building |
| | 500 Poydras Street, Room 210 |
| | New Orleans, Louisiana 70130 |

| | |
|--------------------|--|
| For the Defendant: | Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes |
| | BY: JULIAN R. MURRAY, JR., ESQ. |
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

I N D E X

| <u>WITNESSES:</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|-------------------|---------------|--------------|-----------------|----------------|
| Mary K. Warren | 8 | 17 | -- | -- |
| Wade Schindler | 23 | 26 | 36 | -- |

EXHIBITS: Marked Received

(None Offered at this Proceeding)

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P R O C E E D I N G S

(Monday, August 23, 2010)

(Court is in Session)

* * * * *

THE COURT: All right, call the next matter, please.

THE CLERK: This is Criminal Action 2010-154, *United States of America v. David Warren*. It's set for Motion to Review the Detention Order.

THE COURT: All right. Attorneys make your appearances, please.

MS. KNIGHT: Good afternoon Your Honor, Tracey Knight for the United States, along with Michael Magner.

THE COURT: Thank you.
Counselor?

MR. MURRAY: Good afternoon Your Honor, Julian Murray and Michael Ellis representing Mr. Warren.

THE COURT: You may come up, sir, Mr. Warren. Come on up with your Counselors.

THE DEFENDANT DAVID WARREN: (Complying)

THE COURT: I have before me a Motion to Expedite Hearing on a Motion to Review and Revoke Detention Order. The matter was referred to me by District Court Judge Lance M. Africk. It is ordered that the Motion to Expedite is granted.

The Court further orders that Warren's Motion to Review and Revoke Detention Order be referred to United States

1 Magistrate Judge Louis Moore, Jr., who made the initial
2 determination regarding Warren's detention. This is dated
3 August 14th, 2010.

4 I was trying to have this earlier, but everything
5 seemed to have gotten in the way. This is as soon as we could
6 get it done.

7 MR. MURRAY: We appreciate that, Your Honor.

8 THE COURT: All right. It's your motion. Are there
9 any preliminaries from Counselors?

10 MS. KNIGHT: Yes, Judge.

11 THE COURT: All right.

12 MS. KNIGHT: Just briefly. This is the third hearing
13 that we're having on detention. Initially, on June 16th, this
14 matter was brought before Judge Africk, where the Defense
15 stipulated to the Pretrial Services report and to detention at
16 that time. And then, on July 2nd, it was brought back before
17 you so the Defense could present additional evidence. And if
18 you remember, at that hearing the Defense presented
19 Mr. Warren's pastor, his neighbor, and his employer.

20 This Court found at that point that the Defense had
21 not rebutted the presumptions in this particular case, and
22 ordered that Mr. Warren be detained.

23 And then, subsequently, the Defense filed this
24 instant motion to review and revoke detention with Judge
25 Africk, but in the motion there was a statement that the

1 Defense intended to present additional evidence and Judge
2 Africk asked that it be brought back to you, so that you could
3 hear that additional evidence and make a determination at this
4 time.

5 But for clarification, from my reading of 3142(f),
6 the movant can present new evidence and reopen a detention
7 hearing as long as that evidence is information that was not
8 known to the movant prior to that hearing. The two witnesses
9 that were listed in the Defense's motion were the Defendant's
10 wife and a friend of his. The Defendant's wife, as far as I
11 believe, has been present at the prior two hearings, did
12 interview with Pretrial Services, that Pretrial Services report
13 was stipulated to. And so, I'm not sure if what new evidence
14 she has to offer, she didn't testify at the hearing.

15 And then secondly, the friend, Mr. Wade Schindler, is
16 also someone who has been in contact with the Defense prior to
17 the initial detention hearing.

18 So, just to understand what the parameters of this
19 hearing are, I just wanted to make sure that the evidence that
20 will be presented will be new evidence.

21 THE COURT: All right. Mr. Murray, any statements?
22 Are you all ready to proceed?

23 MR. MURRAY: I've heard no objection, Your Honor.
24 We're going to present our evidence and she can object if she
25 wants to object at the proper time.

1 THE COURT: All right. Call your first witness.

2 MR. MURRAY: Okay.

3 THE COURT: Are there any preliminaries that you want
4 to make? That's fine.

5 MR. MURRAY: No, Your Honor. We're going to call the
6 witnesses.

7 THE COURT: Very well.

8 MR. MURRAY: We want a sequestration, I assume,
9 Counselor?

10 MS. KNIGHT: Yes, please.

11 MR. MURRAY: All right.

12 THE COURT: All right.

13 MR. MURRAY: Now, you can just go out in the hallway.

14 THE COURT: How many other witnesses, just one, are
15 you going to call?

16 MR. MURRAY: Yes.

17 THE COURT: All right. Sir, come up a minute.

18 All right, you're under the Rule of Sequestration.

19 Any other witnesses, you're not to discuss your testimony with
20 anyone except the attorneys, either side, if you so choose,
21 until these proceedings are over or until you are relieved and
22 you can come in and sit down, if you like, or go on about your
23 business affairs.

24 MR. SCHINDLER: Okay.

25 THE COURT: Thank you.

Warren - Direct

8

1 All right.

2 MR. MURRAY: Call Kathy Warren, Your Honor.

3 THE COURT: Yes, sir.

4 Come up, ma'am.

5 * * * * *

6 **MARY KATHERINE "KATHY" WARREN, DEFENDANT'S WITNESS, SWORN**

7 * * * * *

8 DIRECT EXAMINATION

9 BY MR. MURRAY:

10 Q. You go by Kathy, correct?

11 A. Yes.

12 Q. Is it all right if I call you Kathy?

13 A. Yes.

14 Q. All right. Are you nervous?

15 A. Yes.

16 Q. Okay. Now, you're married to the Defendant here, David
17 Warren, correct?

18 A. Yes, I am.

19 Q. How long have you been married?

20 A. Thirteen years.

21 Q. And you have children?

22 A. Yes, we do.

23 Q. Are those beautiful children yours?

24 A. They are. Those are our five children, yes.

25 Q. How many?

1 A. Five of them; one son, David, Jr. and four daughters,
2 Sarah, Caroline, Rebecca and Laura.

3 Q. And you were in court the last bail hearing, were you not?

4 A. I was.

5 Q. When you came to court, were you expecting to testify?

6 A. I was.

7 Q. And your attorneys had at that determined not to put you
8 on the stand, correct?

9 A. That's correct.

10 Q. All right. Now, I want to go over some of the both
11 testimony that was given and the statements that were made by
12 Government Counsel, and ask you to comment on some of these
13 things.

14 First of all, Counsel for the Government stated that one
15 of the reasons that detention was, in his opinion, appropriate
16 was because he's facing the possibility of death; do you recall
17 that?

18 A. Yes, I do.

19 Q. And of course we know now he's not?

20 A. That's correct.

21 Q. Because the Justice Department decided not to pursue that?

22 A. That's correct.

23 Q. Now, another reason given was the short duration of time
24 spent in the New Orleans area?

25 A. Correct.

1 Q. How long have you been here?

2 A. Almost eight years.

3 Q. And do you have a home here?

4 A. Yes, we do.

5 Q. And you came here from where?

6 A. From Milwaukee, Wisconsin.

7 Q. And why?

8 MS. KNIGHT: Your Honor, I'm going to object. All of
9 this was in the Pretrial Services report. It was stipulated
10 to. This is not new evidence, as required in the --
11 (inaudible; not speaking near the microphone)

12 MR. MURRAY: Your Honor, we have the right to a de
13 novo hearing before Judge Africk and we said that -- and "de
14 novo" means exactly that, he can add any additional witnesses
15 he wanted to add. Rather than hearing it himself, he sent it
16 back to you. So, we're in the same position that we would have
17 been in had we been before Judge Africk, and we could have
18 presented this additional evidence.

19 THE COURT: Objection noted. However, this is new
20 evidence, but it's not new insofar as what's in the report, but
21 I will hear it. Overruled.

22 BY MR. MURRAY:

23 Q. Now, do you recall Counsel for the Government arguing that
24 he had access to a passport?

25 A. That's correct.

1 Q. Does he, in fact, have access to a passport?

2 A. His passport is expired.

3 Q. Do you recall Counsel for the Government on more than one
4 occasion talking about undisclosed assets?

5 A. Yes, they did.

6 Q. Did you hear any evidence regarding undisclosed assets?

7 A. No, no evidence at all.

8 Q. Do you in fact have any assets that have not been
9 disclosed?

10 A. Absolutely not.

11 Q. Do you recall Counsel for the Government saying that the
12 rifle that your husband had was confiscated?

13 A. Yes, they did.

14 Q. Was it in fact confiscated?

15 A. No, it wasn't.

16 Q. How did the Government get it?

17 A. He gave it to his attorney, who turned it over to the
18 Government.

19 Q. In fact, turned it over to NOPD?

20 A. I just know that he gave it to his attorney, who then
21 turned it over, but I --

22 Q. All right. Now, in the pretrial report it mentions that
23 back in 1997, your husband came into the gross amount of \$2.9
24 million; do you remember hearing that?

25 A. Yes, I did hear that.

1 Q. Now, do you in fact have anything like that?

2 A. No.

3 Q. What happened to the money?

4 A. At the time his father had passed away and we sold the
5 business, and his father's portion of that business went
6 through initial income taxes and following that, estate taxes,
7 and David's portion of it also went through income tax. And
8 then the portion that he was left with after that, he
9 reinvested into another business which we purchased, I believe
10 within the same year. And then, he continued to invest into
11 that business, but it wasn't doing well. And when we prepared
12 to come down here, he sold that business at a great loss and
13 was expecting to continue to receive payments for that, and for
14 a while we did, and he was able to work for NOPD as we used
15 that as a supplement to our income.

16 But then when that money was gone, he decided to stop
17 working with NOPD and get a better paying job at that time.

18 Q. And --

19 A. What happened was we were supposed to be receiving
20 payments for that, but they stopped and we're no longer
21 receiving them.

22 Q. And with the five children, yourself, and who else lives
23 with you, if anyone?

24 A. David and I and his mother and the five children.

25 Q. Was he able to support all of you on a policeman's salary

1 without getting the additional payments he was supposed to be
2 receiving?

3 A. No, he wasn't.

4 Q. Okay. And that's why he quit?

5 A. Correct.

6 Q. Did he serve as a reserve officer?

7 A. He did.

8 Q. Okay. Do you recall there being some question at the time
9 of the last hearing regarding him having a pistol on his person
10 at the time he was arrested?

11 A. Right.

12 Q. To your knowledge, was he entitled to carry that pistol?

13 A. Yes, he was.

14 Q. That concealed weapon?

15 A. Yes, he was.

16 Q. Based upon what?

17 A. He was still -- he still had his credentials as a reserve
18 officer and he had a concealed carry permit.

19 Q. I'm going to show you --

20 MR. MURRAY: And I'm going to show a copy to
21 Government Counsel.

22 BY MR. MURRAY:

23 Q. -- an e-mail.

24 A. (Witness examines document.)

25 Q. And ask you if you can recognize this e-mail?

1 A. Yes, I do recognize it.

2 Q. And what is that?

3 A. It's an e-mail sent to David regarding the -- to David
4 along with the other reserve officers regarding, I believe, a
5 new captain that was coming onboard and informing them of who
6 it was and what their responsibilities were.

7 Q. All right. So, that's from the New Orleans Police
8 Department, Louis Dabdoub, informing your husband, among
9 others, of a new commander, correct?

10 A. Correct.

11 Q. And he got that how long before he was arrested?

12 A. This is dated May 24th and he was arrested June 10th, I
13 believe.

14 Q. And in addition to the commission on behalf of the New
15 Orleans Police Department, did he have any other permits from
16 any other jurisdictions?

17 A. Yes, he did. He had a concealed carry permit from
18 Florida.

19 Q. And does he have reciprocity with Louisiana?

20 A. Yes, it does.

21 Q. Now, the detention recommendation by Pretrial Services was
22 not so much, wasn't so much concern about him being a danger,
23 but a concern about whether or not he would show up for court?

24 A. Right.

25 Q. If he were so disposed to flee, do you have any assets

1 upon which he would be able to do that?

2 A. No.

3 Q. Why?

4 A. Because I'm paying you. You're not cheap.

5 (Laughter)

6 Q. And not only that but you've got a twofer, you've got

7 Mr. Ellis also, to help me?

8 A. That's right, right.

9 Q. And approximately, how much equity do you still have on
10 your home?

11 A. Maybe \$150,000.

12 Q. All right. And you base that upon what?

13 A. On the fact that we bought it in 2002 for \$372,000 and
14 then Katrina hit, and then we had to, with all of this, take
15 out a loan against it and we have \$200,000 against it right
16 now.

17 Q. All right. And we heard the Judge talking about soft
18 market; do you agree with that, soft real estate market?

19 A. Yes, I do.

20 Q. All right. Would you be willing to put up the equity that
21 you have in your home as bond for your husband?

22 A. Yes, I would.

23 Q. Now, pretrial officers tend to look at things rather in a
24 cold fashion, they look at actual facts. They don't know that
25 much about the personalities and about the affection and things

1 like that. Tell the Court a little bit about your relationship
2 with your husband and his relationship with you, the children,
3 and his mother?

4 A. Well, I mean I can tell you that we moved down here to be
5 near my family. He is an only child and his father has passed
6 away and his mother does live with us. And so, since I had a
7 large family down here we wanted to be near family and we moved
8 down here. And David is obviously an excellent father, and he
9 would not do anything to teach his children that he should run
10 away from authority. He would probably stand to be the best
11 example of standing under the authority and being here to face
12 the charges, and not at all run away. He never would.

13 Q. What about just being deprived of their love?

14 A. That's exactly right. He, I mean obviously he is a family
15 man. He is home every night with us and he would never leave.
16 We are his life. He would not go anywhere else; he has nowhere
17 else to go, or anyone to go with him.

18 MR. MURRAY: Give me one moment, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause)

21 BY MR. MURRAY:

22 Q. One further thing, Kathy. Do you recall at the last
23 hearing, Government Counsel commenting that he has family
24 elsewhere in the country that he could possibly go to?

25 A. Yes.

1 Q. Is that in fact true?

2 A. No, he doesn't. He has some -- his mother has two sisters
3 in Arizona, but that's not somebody that he's going to run to.

4 Q. Is his father alive?

5 A. No, he has passed away.

6 Q. Is his mother alive?

7 A. Yes, she lives with us.

8 Q. Does he have any siblings?

9 A. No, he has no siblings. He's an only child.

10 Q. And the aunts that live in Arizona; tell us their ages?

11 A. I don't know their ages, but they are elderly.

12 Q. I guess what I'm trying to find out is, I don't know, I
13 don't mean their exact ages, but I mean are these ladies that
14 could be hiding him out, I guess is what we're trying to find
15 out?

16 A. No, they are both physically very weak and incapacitated.

17 Q. All right.

18 MR. MURRAY: Tender the witness, Your Honor.

19 THE COURT: Cross-examination.

20 * * * * *

21 CROSS-EXAMINATION

22 BY MS. KNIGHT:

23 Q. Good afternoon, Ms. Warren.

24 A. Good afternoon.

25 Q. Did you evacuate for Hurricane Katrina?

1 A. I did.

2 Q. You and your children, is that right?

3 A. Yes, we did.

4 Q. And so, it was before the storm that you left the area, is
5 that right?

6 A. Yes, we did.

7 Q. And where did you go?

8 A. To Katy, Texas.

9 Q. And how long did you stay there?

10 A. For a week or a week and a half.

11 Q. And did you return back to this area at that time?

12 A. No, we went to some other family in South Louisiana.

13 Q. And when did you actually return to the New Orleans area?

14 A. September 16th or 17th.

15 Q. So, you were not here when the events that your husband
16 has been charged with took place?

17 A. No.

18 Q. And when did you actually learn that your husband had shot
19 someone?

20 A. I believe around the time that we came back.

21 Q. In September?

22 A. Right.

23 Q. And your attorney indicated that the Government attorney
24 at the last hearing had mentioned undisclosed assets. In the
25 Pretrial Services report your husband was unable to give a

1 balance regarding savings account and money market account.

2 Can you tell the Court, if you know, what the balance of those
3 accounts are?

4 A. We have a -- we don't have a savings account, we have two
5 checking accounts. The checking account has \$1,000 in it as of
6 this morning, and I have another checking that's mine, and it
7 has about \$30 in it.

8 Q. Now, you also mentioned knowing about the .380 caliber
9 pistol that your husband was arrested with, correct?

10 A. I don't know anything about it. I know that he -- I have
11 been told that he had one when he was arrested.

12 Q. Okay. So, that's a gun that you were not aware of, that
13 he owned?

14 A. I didn't say that. I just, I don't know about the gun. I
15 do know that he owns guns, but I can't tell you that much about
16 the guns that he owns, is what I'm saying.

17 Q. How many guns would you say your husband owns?

18 A. Hand guns?

19 Q. Yes, ma'am.

20 A. I think about ten, that I'm ball parking.

21 Q. Ten hand guns; and how about long guns or rifles?

22 A. Maybe five.

23 Q. And were you familiar with the assault rifle that was used
24 to shoot this citizen in this particular case?

25 A. I'm not familiar with his guns. I know that he has them,

1 but I'm not -- I wouldn't call myself familiar with his guns.

2 Q. Okay. So, you think he has a total of approximately
3 fifteen guns?

4 A. Right.

5 Q. And are these guns kept in your home?

6 A. They are locked in a safe.

7 Q. Do you know if any of the rifles had scopes on them?

8 A. I believe that he -- I know that he has scopes. I don't
9 know which rifles have scopes on them.

10 Q. Do you know how many scopes he has?

11 A. No, I don't.

12 Q. But more than one?

13 A. Yes.

14 Q. And you also indicated that you believed your husband was
15 able to carry the gun that he had when he was arrested, is that
16 right?

17 A. Yes.

18 Q. And your basis for that is that you believe that he was on
19 reserve, is that right?

20 A. He was a reserve officer, yes.

21 Q. Did you know that your husband was actually on leave at
22 the time as a reserve officer?

23 A. He told me yesterday that the words were medical, non-
24 medical leave of absence, but that he was still a reserve
25 officer.

1 Q. But he was not practicing as a reserve officer at that
2 particular time, correct?

3 A. He was not putting in hours as a reserve officer at that
4 time.

5 Q. And additionally, he would have also been on leave during
6 the time that he received the e-mail that you referred to, is
7 that correct?

8 A. Yes, if he was on leave, yes.

9 MS. KNIGHT: Nothing further, Your Honor.

10 THE COURT: Do you have any redirect questions?

11 MR. MURRAY: No, Your Honor.

12 THE COURT: Thank you, ma'am. Watch your step when
13 you go down.

14 THE WITNESS: Yes, sir.

15 MR. MURRAY: Now, we would like the Court to view the
16 report that the witness has identified.

17 And excuse me, Kathy, one more thing. I just want
18 you to show the Judge where it relates to your husband.

19 THE COURT: All right. You're still under oath,
20 ma'am.

21 THE WITNESS: Yes, sir.

22 It's just showing you that this is his e-mail
23 address, I believe.

24 THE COURT: You can say it loud.

25 THE WITNESS: This is his e-mail address

1 (indicating).

2 THE COURT: All right. This is the May 24th document
3 that you were speaking of?

4 THE WITNESS: Yes, sir.

5 THE COURT: Did you introduce it into evidence?

6 MR. MURRAY: Judge, I --

7 THE COURT: It's just for purposes of showing us?

8 MR. MURRAY: We really would rather not have the e-
9 mail address in a public record.

10 THE COURT: I got you.

11 MR. MURRAY: Ms. Warren is living by herself with the
12 children and the mother, but we did want the Court to see it.
13 I don't --

14 THE COURT: Well, let me read it.

15 (Pause)

16 THE COURT: All right, thank you.

17 (Witness is excused)

18 THE COURT: All right.

19 MR. MURRAY: At this time, Your Honor, we call Wade
20 Schindler.

21 THE COURT: Mr. Schindler.

22 Marshal, would you get Mr. Schindler in, please?

23 THE MARSHAL: Yes, sir.

24 THE COURT: Mr. Wade Schindler.

25 Come on up, sir.

1 THE CLERK: Step up and raise your right hand,
2 please.

3 * * * * *

4 **WADE D. SCHINDLER, DEFENDANT'S WITNESS, SWORN**

5 * * * * *

6 DIRECT EXAMINATION

7 BY MR. MURRAY:

8 Q. Dr. Schindler, tell the Judge your profession?

9 A. I'm a forensic criminologist at Tulane, and I have a
10 private practice also.

11 Q. And I'm calling you doctor because you do in fact have a
12 Ph.D.?

13 A. Yes, sir. Yes, sir.

14 Q. In what?

15 A. Criminal Justice.

16 Q. Criminal Justice?

17 A. Yes, sir.

18 Q. Do you know the Defendant, David Warren?

19 A. I do.

20 Q. How long have you been knowing him?

21 A. I believe since I think it's 2004, it's some time around
22 there.

23 Q. All right. And in what capacity do you know him?

24 A. He came to me as a private citizen wanting to get the
25 State Police concealed hand gun permit.

1 Q. All right. And why would he come to you for that?

2 A. I'm an authorized State Police instructor for that
3 particular program.

4 Q. All right. And did, after coming to you for that reason,
5 did he ultimately end up becoming personal friends with you and
6 working with you in any way?

7 A. He did such an excellent job that I asked him if he would
8 like to join the NRA National Instructor Program as an intern.
9 There's so many years that you have to intern with us before
10 you can take your test to be recognized nationally.

11 Q. And did he?

12 A. He entered the program, yes, he did.

13 Q. And how did he do?

14 A. He did extremely well. He's well spoken, got along very
15 well with people, and I really -- he did a great job.

16 Q. How about dependability?

17 A. He always showed up. I could depend on him to show up to
18 meet his students and get them at ease and get them ready to go
19 on the range, do classroom work with them.

20 Q. Did you ultimately end up meeting his wife and his
21 children?

22 A. I sure did, and I believe it was about that time when he
23 went on the Police Department.

24 Q. Did you give him any advice about that?

25 A. Yes, I did. I suggested that he did so well with us, that

1 -- and he talked about wanting to serve the community. I said,
2 "Well then, why don't you take the test and see if you can get
3 on with the Police Department."

4 And then he finally did it.

5 Q. On a scale of one to ten, with one being very low, ten
6 being very high, how would you describe him insofar as his
7 devotion to his family?

8 A. I don't think there's a high enough score, but ten
9 certainly would be the minimum score. He's very devoted to his
10 family and I just -- I haven't met too many individuals that,
11 in every aspect of -- for instance, if I would ask him a
12 question and he would have to -- and he would say, "Well, I
13 need to check with my wife before I can do that, because we may
14 have something planned."

15 So, I know he's a family man and that's really all he
16 talked about was his family.

17 Q. Can you ever envision him absconding and leaving his
18 family so he wouldn't have to face criminal charges?

19 A. Never thought of it.

20 MR. MURRAY: Tender the witness, Your Honor.

21 THE COURT: Cross-examination.

22 MS. KNIGHT: Could I have just one second,

23 Your Honor?

24 THE COURT: Yes, ma'am.

25 THE WITNESS: Could I get some water, Your Honor?

1 THE COURT: Yes, sir.

2 THE WITNESS: Thank you.

3 THE COURT: That's what it's there for.

4 THE WITNESS: Thank you. I'm having a little problem
5 with my throat right now.

6 THE COURT: Yes, sir.

7 * * * * *

8 CROSS-EXAMINATION

9 BY MS. KNIGHT:

10 Q. Good afternoon, Mr. Schindler.

11 A. Hey.

12 Q. All right. Did you evacuate for Hurricane Katrina?

13 A. I was in Los Angeles at the time.

14 Q. All right. And you remained out of the New Orleans area
15 for some time after the storm?

16 A. I did for a few weeks. I was actually working for the
17 Attorney General's Office in Louisiana on a State Police
18 shooting, so I had to get back as fast as I could and report in
19 to the Shreveport office.

20 Q. And at what point did you again make contact with
21 Mr. Warren after the storm?

22 A. I really can't remember when I made contact after the
23 storm. I know some time after the storm, but I couldn't pin
24 that down.

25 Q. And do you recall at what point you learned that

1 Mr. Warren had shot someone during the storm, or following the
2 storm?

3 A. The first I heard about it was he had come in to do the
4 internship program one night, and I really didn't think he was
5 going to be there but he did show up, because I knew he had a
6 lot to do. And he mentioned that in his police work, he had
7 shot somebody or shot at somebody. That was the first I heard
8 of it.

9 Q. And I believe you previously told Special Agent Johnson
10 and Mr. Fishman that he was sure that he had hit someone, hit
11 the person, is that correct?

12 A. I don't know if I said that or not. I don't -- I don't
13 think so, but okay.

14 Q. Do you know?

15 A. I have always thought that he said, "I wasn't sure if I
16 hit anyone."

17 Q. And he said that he shot this individual because he had
18 been attacked, is that right?

19 A. He told me that he shot at the individual because the
20 individual -- he was frightened by the individual, correct.

21 Q. And did he also tell you --

22 THE COURT: Wait a minute, wait a minute, wait a
23 minute. That was not a responsive answer.

24 Do you remember the question that you've just
25 propounded?

1 MS. KNIGHT: Um --

2 THE COURT: The record will reflect it. Go on. Go
3 on to the next question.

4 BY MS. KNIGHT:

5 Q. Did he also --

6 THE COURT: I heard it and I heard the answer. Go
7 on.

8 BY MS. KNIGHT:

9 Q. Did he also -- did he ever tell you that at the time that
10 he shot at the individual, that he, meaning David Warren, was
11 up on the second floor of a building and the individual was on
12 the first floor?

13 MR. MURRAY: I object to the relevancy of this,
14 Your Honor, unless she wants to try the case now. I mean, we
15 didn't call him regarding the facts of the case.

16 THE COURT: Well, he is under cross-examination.

17 MS. KNIGHT: Judge, it also --

18 THE COURT: And he has been given, unless you want to
19 abandon that and go to something else, he is under cross-
20 examination and he, as already previously this witness,
21 Dr. Schindler has already said that what he thought Mr. Warren
22 told him he had done. So, I'm going to permit the question.
23 It's not going to turn into a trial though.

24 BY MS. KNIGHT:

25 Q. Sir?

1 A. Can you repeat the question?

2 Q. Did he tell you that he, Mr. Warren, was on the second
3 floor of the building and the person that he shot at was on the
4 first floor?

5 A. That's correct.

6 Q. And did he also tell you that he was behind a locked gate
7 when he shot at this individual?

8 A. I'm not sure he said locked gate, but there is a gate and
9 there is a gate that -- a fence that goes across that area,
10 yes.

11 Q. And did he tell you that he shot at this individual as the
12 individual was running away?

13 A. Running away?

14 Q. Yes.

15 A. No.

16 Q. Would you ever -- well, you know that you -- you've
17 already indicated that Mr. Warren is an excellent shot, is that
18 right?

19 A. (No response)

20 Q. Or do you believe that he is an excellent shot?

21 A. I'm sorry, you said I already indicated, you mean --

22 MS. KNIGHT: Strike that.

23 THE WITNESS: Okay.

24 BY MS. KNIGHT:

25 Q. Do you believe that Mr. Warren is an excellent shot?

1 A. Mr. Warren is an excellent shot with a hand gun.

2 Q. And he has vast knowledge of different types of guns?

3 A. I would say that he has vast knowledge of hand guns.

4 Q. And a strong interest in guns, as well, is that right?

5 A. Yes.

6 Q. What types of guns are you aware of that Mr. Warren owns?

7 A. I know that he -- I know that he owns some long guns, only
8 because of some investigation that he had given some guns to
9 them, to the National Guard who, I think some of them didn't
10 have guns and some of them had guns without bullets, so he was
11 -- he had given them something, a few things. So, that's the
12 way that I know that he had long guns. Other than that, I've
13 never seen him with a long gun, just the hand guns.

14 Q. So, you're referring to during the storm, Mr. Warren told
15 you that he gave long guns to members of the National Guard, is
16 that right?

17 A. That's correct.

18 THE COURT: Wait a minute. The National Guard
19 doesn't have guns? Is that what I'm hearing here?

20 THE WITNESS: That's correct, Your Honor.

21 BY MS. KNIGHT:

22 Q. And how many long guns did he have?

23 A. I think he gave -- what I remember, I think he said he
24 lost three guns. They weren't returned to him, let's put it
25 that way, and I don't know how much ammunition. That's -- I'm

1 not sure of the amount of ammunition, but I know there were at
2 least three guns that were not returned to him by the National
3 Guard.

4 Q. And he also provided ammunition; is that what I heard you
5 say?

6 A. I believe he had provided it, because the National Guard
7 did not have ammunition.

8 Q. And how many long guns did he have left after he gave
9 those guns away?

10 A. Oh, I don't know. I've never -- I've never actually seen
11 the long guns. I've only seen -- I've only read about three
12 guns that he loaned to the reserve or the National Guard
13 rather.

14 Q. You said you've read about it?

15 A. Yes.

16 Q. Where did you read about it?

17 A. I saw a -- he was trying to get the guns back, they were
18 from the Adjutant General's Office, I believe.

19 Q. The what?

20 A. I saw a document -- he tried to get the guns back from the
21 National Guard and he showed me a letter that he had tried to
22 get them back.

23 Q. And are you aware of how many hand guns Mr. Warren has?

24 A. I don't know how many, but I know he had a duty gun for
25 the Police Department, an off duty gun, and maybe -- I believe

1 there was probably two others that I'm aware of.

2 Q. So, about four, approximately, that you're aware of, of
3 hand guns?

4 A. That I am aware of, yes.

5 Q. And he lost three guns to the National Guard?

6 A. Well, I know that he tried to get them back. I'm not sure
7 if he got them back or not.

8 Q. And so, this was something that he took upon himself to
9 arm members of the National Guard?

10 A. Well, from what I understood is that they -- I think it
11 was they met on the street on a call and the National Guard
12 just didn't have any -- they didn't have long guns and they
13 didn't have ammunition, so he helped them, and I believe he
14 also helped other police officers.

15 Q. And I assume that that would have been a decision made by
16 the National Guard if they didn't have guns; that they weren't
17 supposed to have guns, and so Mr. Warren felt it was his
18 responsibility --

19 MR. MURRAY: Judge, I'm going to object to this. How
20 far are we going with this? I mean --

21 THE COURT: Well, if they're National Guard people,
22 it has been my experience that the military people are supplied
23 their own guns. That's been my experience. So, I think it's
24 an area that needs to be inquired into and I will permit it.
25 Overruled.

1 BY MS. KNIGHT:

2 Q. And so, Mr. Warren thought it was his responsibility to
3 provide the National Guard with guns?

4 A. I don't know the reason why he helped them, other than
5 they needed help.

6 THE COURT: And to go further with that, my
7 reasoning, I realize the National Guard is ruled by the State,
8 the State, the Governors, as I understand it, can call them up.
9 However, there have been occasions -- that's as far as I'm
10 going to go with it. You can go on.

11 BY MS. KNIGHT:

12 Q. And sir, you also indicated that you believe that
13 Mr. Warren provided guns to other police officers, is that
14 correct?

15 A. I believe that's correct.

16 Q. And how many guns did he provide to other police officers?

17 A. I believe he told me that there were two ranking officers
18 that did not have long guns.

19 Q. Do you know who those ranking officers are?

20 A. No, I have no idea.

21 Q. So, he provided two guns to ranking officers. Anyone
22 else?

23 A. That's all I know about.

24 Q. Has he also discussed with you owning any additional
25 rifles, or purchasing any additional rifles after he lost the

1 three that he gave to the National Guard?

2 A. No.

3 Q. And when was it that you recommended him for the NRA
4 program?

5 A. This was right after he completed the basic hand gun
6 course.

7 Q. Do you remember the year that was?

8 A. I believe it was either -- I'm pretty sure it was either
9 2003 or 2004.

10 Q. And how long did he continue to work in that capacity?

11 A. As a volunteer internship person, he continued to work in
12 that, I believe until Katrina.

13 Q. And he --

14 A. Before Katrina.

15 Q. And he no longer worked for you after that?

16 A. (No response)

17 Q. After Katrina?

18 A. He -- I want to make sure you understand. He does not
19 work for me, he does an internship program. It's a national
20 program through NRA. The only thing I do is certify him as
21 being there, completing certain aspects of the training, and
22 then get him ready to take the national course -- the national
23 exam.

24 Q. But he does assist you in teaching some of your classes,
25 is that right?

1 A. We give him -- or we gave him different portions of the
2 class to teach, and then he would be monitored by one or two of
3 us, who are national instructors.

4 Q. And did that continue after Katrina?

5 A. I don't believe.

6 Q. Now, you have been hired by Mr. Warren to serve as an
7 expert witness, is that correct?

8 A. I have been hired by Mr. Warren to serve as a consultant
9 on the case.

10 Q. And what is your fee for that consultation?

11 A. It's \$175 an hour.

12 Q. And are you being paid for your testimony here today?

13 A. No.

14 Q. Is that just because of your friendship with Mr. Warren
15 that you're not being paid for your testimony today?

16 A. I just don't think it would be appropriate for me to come
17 here and recommend him and then be paid for it.

18 Q. And I just have one further question regarding the ranking
19 officers that Mr. Warren provided guns to. Were those officers
20 part of the Fourth District where he was working, after
21 Katrina?

22 A. I believe -- I believe that's what he said, yes.

23 MS. KNIGHT: Thank you.

24 THE COURT: Any redirect?

25 MR. MURRAY: Briefly, Your Honor.

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REDIRECT EXAMINATION

BY MR. MURRAY:

Q. Regarding the National Guardsmen needing rifles; do you recall that Jackson Barracks flooded under nine feet of water, where they had their armory?

A. That's correct.

MR. MURRAY: No further questions.

Thank you, Dr. Schindler.

THE WITNESS: You're welcome.

THE COURT: I have a few questions. Were you ever in the National Guard?

THE WITNESS: No, not the National Guard. I was in the Air Force.

THE COURT: In the Air Force, okay. Aren't there certain rules and regulations in the military where, about the type of weapons that a person, that the enlisted individuals, whether they are officers or regular Corpsmen can have?

THE WITNESS: Under normal times, I would say that those rules would apply, if they had them. In the case that they had no support, no weapons and no ammunition because of Katrina, I would think they would be grateful to get them from anybody.

THE COURT: Not whether they'd be grateful, but is it lawful? That's what I'm saying.

1 THE WITNESS: Well --

2 THE COURT: It may be excused, but is it lawful?

3 THE WITNESS: I am not sure that it would be illegal
4 because of the fact that they're not doing it with malice.
5 They're just trying to survive. So, I'm not sure that that
6 would qualify it as being an illegal act, in my opinion as a
7 Tulane University professor.

8 THE COURT: All right, thank you.

9 THE WITNESS: You're welcome.

10 THE COURT: Yes, sir.

11 (Witness is excused)

12 MR. MURRAY: Your Honor, if I could just be heard
13 briefly on this matter?

14 THE COURT: Well, I've got to see if there's going to
15 be any Government witnesses and then I'll hear from both of you
16 all.

17 MS. KNIGHT: No witnesses, Your Honor.

18 THE COURT: Very well.

19 MR. MURRAY: Okay, I apologize.

20 THE COURT: Proceed, Counsel.

21 MR. MURRAY: I should have asked you.

22 THE COURT: That's all right.

23 MR. MURRAY: Judge, the issue for Pretrial Services
24 is whether or not he would show up at court, not whether --

25 THE COURT: Not just for Pretrial Services, that's

1 for me to decide that. They can come up with the opinion; many
2 times I disagree with them. I disagreed with them last week on
3 two officers and set bonds for them. So, it's not necessarily
4 all the time that I agree with Pretrial. They recommended
5 detention on two officers last week that I had detention
6 hearings on.

7 MR. MURRAY: No, I understand, Your Honor.

8 THE COURT: All right.

9 MR. MURRAY: And that's why we're here.

10 THE COURT: All right.

11 MR. MURRAY: But the only point that I was making is
12 that whether he would show up in court --

13 THE COURT: And whether or not he's dangerous. Both
14 of them, I think I said both of those things in my opinion.
15 Now, you all can go back and look at it. I'm almost sure I
16 did. But I'll hear you out, I intend to hear everything out
17 and try to see what you're looking for here. Let's try to see
18 it all the way through, that's what I'm going to look at.

19 MR. MURRAY: Okay, Judge. I would tell the Court
20 that we're aware, of course, of the bonds that were set for
21 Mr. Williams.

22 THE COURT: Yes, sir.

23 MR. MURRAY: For Mr. Moore.

24 THE COURT: Who is not kin to me.

25 MR. MURRAY: That's correct.

1 (Laughter)

2 MR. MURRAY: I understand that, Judge.

3 THE COURT: All right.

4 MR. MURRAY: You know, charged with beating a man to
5 death, and yet police officers acting under the cover of law,
6 according to what the Government says in the indictment, and
7 they covered it up. They were also charged with obstructing
8 justice, and yet, they're out on bond and we have a hard time
9 -- the family has a hard time understanding why it is that
10 Mr. Warren can't be out on bond.

11 Any combination of conditions, Judge, and this man
12 doesn't have the ability to go anyplace if he wanted to, and he
13 doesn't want to. He wouldn't leave his family. If you want
14 to, you could -- we would hope you wouldn't do it, Judge, but a
15 combination of conditions, he could be put at house arrest with
16 a monitor if he walked outside it would go off, there's no
17 place for him to go. And yet, at least we'd be able to prepare
18 him for trial.

19 That zoo where they have him right now, it's
20 absolutely impossible to prepare a man for trial in that jail
21 where he is in St. John Parish.

22 THE COURT: You all sat here today, you've seen a
23 whole bunch of folks come in here looking at from ten to life,
24 and they've got to go through these detention hearings too, a
25 bunch of them that came in today. So, I have to look at

1 everybody and make an individual decision. You're absolutely
2 correct, based on what I learn about these folks.

3 MR. MURRAY: I understand, Judge.

4 THE COURT: All right.

5 MR. MURRAY: But all I'm suggesting to the Court is
6 there are a combination of conditions that you can put on him.
7 He'd be perfectly willing to combine with anything that you
8 want done. He would not leave, could not leave, but there are
9 a combination of conditions, that's all I'm saying. And
10 whatever the Court thinks is appropriate, you know, obviously
11 we'll comply with it.

12 If the Government's concerned about the guns, take
13 the guns away. Have them locked up someplace where he doesn't
14 have access to them. You know, it's -- we would hope that he
15 would be able to make bond and go back to work so he can
16 support his family, Judge. But if you think him going back and
17 forth to work might be a flight risk, then put him under house
18 arrest with a monitor bracelet on. If he leaves, it goes off.
19 I mean, that combination of conditions would prevent him from
20 doing anything.

21 So, we do respectfully suggest, Your Honor, that just
22 like Mr. Williams and Mr. Moore, that Mr. Warren --

23 THE COURT: Well, they suggested -- their attorneys
24 suggested that somebody else, I remember Mr. DeSalvo, and
25 Mr. Hessler (phonetic), I think they suggested that somebody by

1 the name of Ponytail or some kind of name, that there was a
2 struggle before. They brought all kind of stuff up, that they
3 said maybe these guys didn't -- did not do this. They came up
4 with all kind of things.

5 But that -- you know, they came up with something
6 else, it seems that there had been another struggle and, you
7 know, I've got notes on it.

8 MR. MURRAY: Well, I mean Judge, he's presumed
9 innocent. I mean, I didn't think --

10 THE COURT: Well, yes, yes, yes.

11 MR. MURRAY: All right.

12 THE COURT: But what I'm looking at, you have to look
13 at all of the surrounding circumstances. Guilt or innocence is
14 not the issue right now. I mean, you look at the strength of
15 the Government's case here, because there is an indictment,
16 that's only a charge. But it's probable cause to bring the
17 charge, that's all, but it's not proof beyond a reasonable
18 doubt. Here, we're talking about bail and whether or not,
19 conditions that could be scheduled upon this gentleman that
20 will reasonably assure his appearance and the safety of the
21 community. That's one of the problems I'm worried about.

22 I mean, if you're sharing guns with other folks, I
23 don't understand that. I really don't -- I don't get that. I
24 mean --

25 MR. MURRAY: Post Katrina --

1 THE COURT: You mean the side arms weren't good
2 enough for them, if they had them? The side arms weren't good
3 enough? They weren't in a combat mission. I mean, I don't get
4 it. That's what I'm trying to get. I don't get it.

5 MR. MURRAY: Judge, I mean post Katrina around here,
6 if National Guards flooded and the National Guardsmen were out
7 there without weapons, and he were to lend them weapons, it
8 seems to me that's an honorable thing, something for which he
9 is to be commended.

10 THE COURT: Yes, but the Army came in there later.

11 MR. MURRAY: Pardon me?

12 THE COURT: Didn't the Army come in there later?

13 MR. MURRAY: Yes.

14 THE COURT: With General Honore?

15 MR. MURRAY: They finally did come in later, yes,
16 sir.

17 THE COURT: And one of the things I saw on TV, he
18 told them, "Put down your weapons." I saw that and I know many
19 other citizens saw that. I just don't know. I have to listen
20 and keep listening to this.

21 MR. MURRAY: Okay.

22 THE COURT: What else? What other conditions are you
23 suggesting?

24 MR. MURRAY: Judge, anything you want. They can put
25 up the house as collateral. So, if they have the collateral is

1 frozen, then obviously he has no money to go anyplace. That's
2 another condition that you can put on there if you were
3 disposed to do so.

4 He's got family members that would --

5 THE COURT: There's no doubt that he has a fine
6 family.

7 MR. MURRAY: Pardon me?

8 THE COURT: There's no doubt about that.

9 MR. MURRAY: I'm sorry?

10 THE COURT: There's no doubt in my mind about that.

11 MR. MURRAY: I'm sorry. I didn't hear you, Judge.

12 THE COURT: I said there's no doubt in my mind that
13 he has a fine family. There's no doubt about it.

14 MR. MURRAY: But they could be custodians, and I'm
15 talking about -- I'm talking about the in-laws would be willing
16 to be custodians and make sure that --

17 THE COURT: Well, that's what his wife testified.
18 That's why they came back down here, one of the reasons,
19 because she wanted to be around her family members.

20 MR. MURRAY: That's correct.

21 THE COURT: He brought his mother with him. I
22 understand.

23 MR. MURRAY: And I think all of those combination of
24 factors, Judge, that's going to assure that he's going to show
25 up and that's what it's really about.

1 THE COURT: Well, that's a little bit different, as
2 you know. It's not just showing up. I have to look at the
3 danger element of this. That's one of the other things that I
4 looked at before, you know.

5 MR. MURRAY: Well, that's what I said, Judge. If he
6 gets rid of all of the guns and you're satisfied that he
7 doesn't have access to any guns, the man has never been a
8 danger. I mean, he's got one incident that he's defending
9 against, but he's not a Mafia hit man or anything. I mean,
10 there's no reason to believe that he's going to be a danger to
11 anyone.

12 THE COURT: What I heard Mr. Schindler, Dr. Schindler
13 testified to the point that he said that -- he allegedly said,
14 what he remembered, was that the man frightened him. And I was
15 just -- and then I heard the Prosecutor ask the question about,
16 and then it was cut off, about whether or not he was running
17 away. Now --

18 MR. MURRAY: I don't have any evidence of that,
19 Judge. I hear questions coming from Counsel, but I don't hear
20 any evidence of that, and we're not trying the case yet.

21 THE COURT: Well, but I'm just saying that there are
22 two different things here. I heard the doctor said that he --
23 that that was what he recalled having a conversation with
24 Mr. Warren, that he was frightened by the man.

25 MR. MURRAY: He feared for his life, absolutely, and

1 he feared for his partner's life, no question about that.

2 THE COURT: Okay.

3 MR. MURRAY: And under the circumstances -- again
4 Judge, we're not here to try the case.

5 THE COURT: I haven't heard -- I know, but I didn't
6 hear anything about saying whether or not the man was armed.
7 Nobody said anything like that to me, that I know of. Maybe I
8 missed it. Maybe I missed it.

9 MR. MURRAY: We didn't -- we didn't go over it one
10 way or the other, Judge. I mean --

11 THE COURT: And I hear you, all right.

12 MR. MURRAY: We submit the matter, Your Honor.

13 THE COURT: I'm going to give the Government a chance
14 to argue, as well. Thank you.

15 MS. KNIGHT: Your Honor, as you know, the grand jury
16 in this matter did make a probable cause determination. They
17 indicated David Warren for unjustifiably shooting an unarmed
18 man.

19 THE COURT: Where was the man shot, if you all know?

20 MS. KNIGHT: He was --

21 THE COURT: Does anybody know?

22 MS. KNIGHT: -- shot at the District Investigative
23 Unit, which is off --

24 THE COURT: No, no, I understand that, but where was
25 he shot; what part of his body? Do we know?

1 MS. KNIGHT: The man was running away, Your Honor,
2 when he was shot.

3 THE COURT: Do you know what area of the body he was
4 shot in? Is that a part of the discovery in this case?

5 MS. KNIGHT: We, the Government believes --

6 MR. MURRAY: Judge, excuse me. We have to object.
7 She's testifying. This isn't a hearing. I mean, she's
8 testifying as to what happened. We're not here to try the case
9 and I think that's --

10 THE COURT: Well, one thing about it, in a detention
11 hearing you can consider hearsay but not from the lawyer. I'll
12 put the Pretrial Services officer on, because I still have some
13 questions myself. I can do that. I can call him up and find
14 out if he knows. You know, I don't want to do it that way, but
15 I certainly can. You know, I was just trying to get to a
16 point, you know.

17 But you all give me a chance to read that, just the
18 same. Just hold up, would you, Attorneys, just me a chance to
19 read that.

20 (Pause)

21 THE COURT: All right, you may come up. Continue
22 your argument, please.

23 MS. KNIGHT: Thank you, Judge.

24 THE COURT: I've read the report.

25 MS. KNIGHT: Mr. Warren is also charged with using an

1 assault rifle to commit a crime of violence. And if you
2 remember from the first hearing, the rifle that he utilized,
3 that assault rifle was not a weapon that was provided to him by
4 the New Orleans Police Department, it was one of his own
5 personal weapons.

6 You've previously found that the Defense had not
7 rebutted the presumptions that were presented by a charge of
8 the 924(c). He is presumed to be a flight risk and a danger,
9 and I submit to you, Your Honor, that today there has been no
10 new evidence that would change that or rebut that presumption
11 that he is a flight risk and a danger. He presented today
12 testimony from his wife and a friend, who both have personal
13 reasons as to why they would like to see their friend or loved
14 one home, but certainly cannot be neutral and unbiased in their
15 opinion and their knowledge of the facts in this particular
16 case.

17 Mr. Warren is still facing the possibility of two
18 life sentences in this particular case, and for the 924(c)
19 charge, at least a minimum of ten years imprisonment. These
20 are very serious offenses. They are crimes of violence. They
21 hold substantial penalties. Mr. Warren, you learned today, has
22 numerous firearms, long guns and hand guns. No one knows
23 exactly how many of these guns he has left.

24 And in addition, he was out, passing out firearms to
25 National Guard and other policemen during Hurricane Katrina;

1 certainly, it can be presumed to be a danger to the community.
2 He also has every reason to leave this jurisdiction based on
3 the penalties in this particular case, and certainly has the
4 financial ability to do so. And as this trial continues to get
5 closer, the concern or stress over these charges and the
6 outcome will certainly increase.

7 We would suggest to you, Judge that based on all of
8 this that there are no conditions and no combination of
9 conditions that would assure his appearance here in court, or
10 protect the community from his violent acts.

11 THE COURT: Thank you.

12 Is there any rebuttal?

13 MR. MURRAY: Yes, sir. I don't mean to be
14 repetitious but a combination of conditions, the ones that we
15 talked about, if he's put under house arrest with a bracelet
16 on, he cannot leave the house without that bracelet going on
17 and he could be arrested immediately. He's got no assets to go
18 anyplace, he has no desire to go anyplace, and if you put those
19 conditions on him, he couldn't go anyplace, except come here to
20 court, which is where he's supposed to be.

21 THE COURT: All right. When was the last hearing?
22 What month? July what? Do you know the date of the last
23 hearing?

24 MS. KNIGHT: It was July 2nd.

25 THE COURT: July 2nd?

1 MS. KNIGHT: Yes, July 2nd.

2 THE COURT: So, that's the last time I heard case?

3 MS. KNIGHT: Yes, sir.

4 THE COURT: The last time this case was here there
5 was an attorney, in my notes, who gave testimony, Attorney
6 Donald deBoisblanc, Mr. Todd Smith and Mr. Paul Blouin. And
7 Pastor Smith testified.

8 Mr. Blouin was his employer, if I'm not mistaken.
9 Yes. Blouin, B-L-O-U-I-N. And he also had visited the
10 Defendant at his home. He also suggested that Mr. Warren was
11 the best employee he had so far. He also said that Mr. Warren
12 had permits obviously here today and Mrs. Warren attested to
13 the same thing, that he had -- that her husband had permits in
14 Florida as well as down here. I'm just comparing this.

15 His pastor said he was a faithful -- that he was
16 faithful in his attendance at church, good man, family man,
17 safe home, and he was aware of the possible sentence that could
18 come about only if a conviction would take place.

19 Then when Attorney deBoisblanc testified, he knew the
20 Defendant eight or nine years and that the Defendant was an
21 engineer with a Master's Degree in Engineering. And he talked
22 about him using a generator that Mr. Warren had during the
23 storm. He had never seen the Defendant mad or angry. The only
24 time he said he saw him get upset was when his Great Dane stood
25 up and licked him. He didn't know the Defendant to lie.

1 The attorney was questioned about reporting looting
2 at CVS, I guess that's the drug store, and Breaux Mart. He
3 said he didn't know anything about the rules of engagement for
4 NOPD. He didn't remember anything about the event when it
5 occurred, the subject shooting. He did mostly civil practice,
6 and that he had never seen the weapon the Defendant may have
7 had.

8 When I compare that with what I heard today, what new
9 things have I heard? Well, we started out with Mrs. Warren,
10 and I just looked over the Pretrial Services report and the
11 children's ages and the number of them, are all reported here.
12 The age of his mother and her name was reported here. He had
13 close relationships with his wife's mother. His passport
14 expired. And she told us about what happened when his father
15 died and the taxes that had to be paid and the investments that
16 didn't go well, and that he had to go to work, and after, they
17 didn't get what they were supposed to, or thought they should
18 have gotten on reinvestment. He had to leave the NOPD and was
19 looking for a better job.

20 She also talked about what's available for bond, if
21 one was set, \$150,000 in equity in her home, that's what's
22 left, according to what I've heard.

23 She talked about her relationship with the children
24 -- his relationship with the children and everybody. So, and
25 she talked about the hand guns and the long guns that her

1 husband supposedly had, and the scopes.

2 The Court fully recognizes it's not against the law
3 to own certain types of weapons if you get them legally and
4 that certain types of weapons require permits. I didn't hear
5 any of those kind mentioned.

6 Well, Dr. Schindler testified, he has a Ph.D. in
7 criminal justice, forensic criminalist, who is also being
8 retained, which is nothing unusual in a criminal case, or in a
9 civil case to prior, to hire or retain experts. He gave him a
10 scale when asked about a scale, from one to ten, with regard to
11 his devotion to his family. He rated him above a ten. He was
12 only asked to go to ten, but he went on and rated him. He
13 never thought of the Defendant absconding the law and leaving
14 his family.

15 And on cross-examination he said he was in Los
16 Angeles at the time of Katrina, but he came back by way of
17 Shreveport, Louisiana, some time afterwards. I forgot the -- I
18 just thought about that. The Defendant's wife was -- they had
19 gone to Texas and then they came back to Louisiana, but they
20 weren't here during the alleged shooting.

21 Then you all went into, about the description of the
22 place, the Second District -- the Fourth District over there
23 where they talked about a gate in the fence. He was asked
24 about being an excellent shot with a hand gun, and that he
25 owned some long guns, and that he had passed out guns to the

1 National Guard and tried to get them back, and he wasn't
2 successful. Okay.

3 There's nothing too much new here. I still see this
4 gentleman as being dangerous. Nobody explained the fear. I
5 haven't heard as to whether or not any other guns were there.
6 From what I'm looking at, there's the presumption of innocence
7 any time a citizen is charged. However, when I consider all of
8 the conditions that have been suggested, as I thought I had
9 looked at before, my opinion hasn't changed with regard to
10 there being conditions of release that I can schedule upon this
11 gentleman that would reasonably assure his appearance and the
12 safety of this community.

13 What most concerns me as well is the danger part.
14 It's one thing. I heard the part about the National Guard
15 being flooded out, I just can't understand how one would give
16 weapons and there be no record of it, and they wouldn't return
17 them. I don't know if martial law had been declared at that
18 time, but I do know that this is a grave situation that we're
19 looking at. The other men who made bond were not charged with
20 the shooting, as I remember. They're charged with the cover
21 up.

22 Now, we cannot forget that there are allegations in
23 this indictment under 924(c). Citizens, and Mr. Warren is a
24 citizen, have got the right to be safe. However, the law does
25 provide for one being able to defend oneself or to defend

1 others when a person's life is threatened, or his loved ones or
2 someone else that they may be responsible for if it's faced
3 with immediate danger, possibly death.

4 I just wonder from listening to this, the passing out
5 of guns to other so called law enforcement officers who are
6 supposed to be keeping the peace as best they can; there's
7 certain rules of engagement that have to be followed. If this
8 is what happened, a person, if this happened, was sited in a
9 scope, or this person was such a marksman without a scope on a
10 long gun, that he could shoot someone who allegedly was
11 running, and bring them down. Nothing said from any witness
12 that the person was armed. That appears, and I keep saying
13 that appears to be want them in cold blood. And I'm not
14 spinning the words, that's what it appears to be.

15 Now, whether or not the Government can prove it, I
16 don't know. But I just can't sit here and evaluate a situation
17 and Counselor brought up about these other two officers, Moore
18 and Williams, the alleged beating of a citizen, the stomping or
19 batoning of that person, and the testimony was that they
20 brought him to the hospital and dropped him off, dropped him
21 off, and of course the man died. There's a difference in the
22 comparison of those two.

23 One man, being a new officer, just out of the Academy
24 not long with a 17 year career officer, as I remember the
25 testimony, comparing it; and I made the comment during the

1 hearing that it looks like he was showing him how to do it.
2 That's the way it appeared to me from the evidence.

3 Now, what I've said I can say again. I find, based
4 upon what I've heard and I reconsidered, that electronic
5 monitoring won't do. I know it's hard on the family to hear
6 this. I also make a finding that the home incarceration won't
7 do. It's not going to protect this community from the danger
8 that is presented here.

9 There are two possible life sentences if a conviction
10 would take place, that's another variable. If the death
11 penalty isn't sought, that's the Prosecutor's decision. And
12 what we're looking at here is a very, very serious allegation,
13 and that's what it is, an allegation, and that's all it is.
14 And having reviewed it all and listened very attentively, and
15 reviewed the Pretrial Services report and looked at the law
16 again, considering conditions of release and combinations of
17 conditions of release, I'm still convinced that nothing has
18 changed. We have no conditions of release that I can schedule
19 upon David Warren that would reasonably assure his appearance,
20 nor the safety of this community, if he were released on bond.
21 So, my detention order remains in place.

22 Of course, it's subject to review and appeal. Thank
23 you very much. It is the judgment, it is denied.

24 MR. MURRAY: I guess we should note our objection,
25 Your Honor, just for the record.

1 THE COURT: It's so noted, yes, of course.

2 MR. MURRAY: Thank you.

3 THE CLERK: That completes the docket.

4 THE COURT: Thank you.

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6 (Hearing is Concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above-entitled matter.

S/Sherryl P. Robinson
Sherryl P. Robinson

8/30/10
Date