

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION
UNITED STATES OF AMERICA,)NO. 6:98-CR-103-C
PLAINTIFF,)
)
VS.) SAN ANGELO, TEXAS
)
TIMOTHY JOE EMERSON,))
DEFENDANT.) APRIL 21, 2003

HEARING ON REVOCATION OF BOND PENDING APPEAL
BEFORE THE HONORABLE SAM R. CUMMINGS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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computer.

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P R O C E E D I N G S

THE COURT: All right. The court calls for hearing Cause Number CR6-98-103. This case is styled United States of America vs. Timothy Joe Emerson. This is a hearing on the question of whether or not the court is going to continue Dr. Emerson on his bond pending appeal or whether that matter needs to be revoked.

Is the government ready to proceed?

MR. McROBERTS: We are, Your Honor.

THE COURT: All right. Defendant ready to proceed?

MR. GUINN: Yes, Your Honor.

THE COURT: All right. Does the government have any evidence which you wish to present?

MR. McROBERTS: Your Honor, we do. At this time, if we could, we would like to call Nicole Weber.

THE COURT: All right, sir.

(THE OATH IS ADMINISTERED BY THE COURT)

THE COURT: Please just lean forward and speak into that microphone. Thank you.

NICOLE WEBER,

GOVERNMENT'S WITNESS, TESTIFIED ON HER OATH AS FOLLOWS:

DIRECT EXAMINATION

BY MR. McROBERTS:

Q. Please state your full name.

A. Nicole Marie Weber.

Q. Do you live here in San Angelo?

A. Yes.

Q. And directing your attention to January of this year, and February, where were you employed?

A. Wal-Mart Super Center.

Q. And what position did you have with Wal-Mart?

A. A cashier.

Q. Let me ask you if you know the defendant in this case, Timothy Emerson.

A. Yes.

Q. Do you see him in the courtroom?

A. Yes.

Q. And would you point him out for us, please.

A. He's the gentleman next to the one in the black.

Q. All right. Seated next to Mr. Guinn?

A. Yes.

MR. McROBERTS: If the record would reflect the identification of the defendant, Your Honor.

Q. (BY MR. McROBERTS) When, to your recollection, is the first time that you ever saw Mr. Emerson?

A. When he came through my line at Wal-Mart about a month, month and a half before February 5th.

Q. And you were there in your position as a checker; is that correct?
A. Yes.
Q. Was there any conversation with Dr. Emerson at that time?
A. Yes. He came through and he sighed and said that that was a rough day. And I talk to my customers. I said, oh, really? And he said, yes. And I said, oh, well, what's wrong? He goes, oh, my ex-wife, she said I tried to kill her. And I said, oh, well, that--that's rough. And we just kind of left it at that.
Q. Was that basically the sum and substance of your first conversation with Mr. Emerson?
A. Yeah, that was the main...
Q. Did you have occasion to see him after that day?
A. Yes. He continued to come through my line almost every day, except for maybe two days, and they were--those two days were together. And when he came back, he goes, oh, did you miss me?
And I said, well, no, not really.
Q. Did you continue to have conversations with him when he came through the line?
A. Yes. He would just come through the line and he would make comments to me, and he would tell me information about me that it would take a lot to look up or find.
Q. Did he ever make reference about the hours that you were working?
A. Yes.
Q. What did he tell you in that regard?
A. He said, oh, you get off at 3:00 today.
And I said, no, no, I don't.
Q. Did you, in fact--were you scheduled to get off at 3:00?
A. Yes, I was.
Q. Did you ever find out how he knew what time you were supposed to be off?
A. The people at work said that somebody--
MR. GUINN: I object to hearsay, Your Honor.
MR. McROBERTS: By the nature of this hearing, Your Honor, I believe the rules of evidence would allow it.
THE COURT: All right. Overruled.
Q. (BY MR. McROBERTS) Go ahead. You can answer.
A. Okay. Somebody at work had said that somebody had called in saying they were my husband and asking for my schedule.
Q. When you said "no," that was just an--why did you tell him no, that you didn't get off at 3:00?
A. Because that's none of his or anybody else's business. That's mine. And it was kind of--I felt kind of scared that he would even want to know that.
Q. During the times that he would come through the line and have these conversations, did he make statements or questions of what you considered a personal nature?
A. Yes.
Q. Would you tell the court some of those, please.
A. Okay. He would come through my line and he would--he made the comment, you have two kids and they go to a home day care. Right?
And I said no. You know, I--
Q. Do you-- Let me ask you this, Nicole. Do you, in fact, have two children?
A. Yes, I do.
Q. Do they, in fact, go to a home day care?

A. Yes.

Q. But you told him "no" why?

A. Because I don't want to admit to anything. I don't want anybody knowing anything more than what they need to know.

Q. Had you ever mentioned to him anything about your children?

A. No. I don't talk about my kids in public.

Q. And have you ever told him about where these children were in day care?

A. No.

Q. What else?

A. He told me that my husband was on probation and that he couldn't do anything if anybody tried anything with me.

Q. And was, in fact, your husband on probation?

A. Yes, he is.

Q. And is he still on probation?

A. Yes, he is.

Q. Had you ever told Mr. Emerson that your husband was on probation?

A. No.

Q. Did he ever mention anything about the living relationship--or living relations you have with your husband?

A. Yes. He had said that my husband didn't live with me, that he was staying with his mother.

Q. And was that, in fact, true?

A. Yes, it is.

Q. Did you ever mention that to him?

A. No.

Q. Did he ever make any comments about your wedding ring?

A. Yes. When I was checking out--I usually keep my left hand on the side of the register. And he said, does that ever come off? And I said, no, it doesn't. Well, let me try. And I said, no, really, it doesn't.

Q. Did he ever make reference to knowing where you lived?

A. Yes. He had said that I lived in an upstairs apartment across from the Cedar Crest Apartments.

Q. Do you, in fact--or at this time, did you, in fact, live in an upstairs apartment across from the Cedar Crest Apartments?

A. Yes, I do.

Q. Did he ever make any comments about being able to watch you in your apartment?

A. Yes. He said that he could watch me eat dinner from the parking lot from the side.

Q. Did he ever bring you any documents of any kind?

A. Yes. He had brought me some pieces of paper off the computer where it showed where my husband and I filed for divorce, as well as my husband's probation information.

Q. Did--are these documents that you asked him to search out and find for you?

A. No. I didn't even know you could get that information.

Q. Did he ever give you information about himself; telephone number, address, e-*&l*mail, those type things?

A. Yes. On two occasions, he gave me a slip of paper that had his name, address, phone number, and an e-mail address, and he asked me to contact him.

Q. Do you remember either the address or e-*&l*mail?

A. I don't remember the street, but I used to deliver pizzas, and I--I know he lives off Knickerbocker, and part of the e-mail was something about "my Logan."

Q. My Logan?

A. Yes.

Q. Did you subsequently find out he has a daughter named Logan?

A. I just heard that, yes.

Q. Did he ever make comments about his knowledge that one of your children was not at your house?

A. Yes. He had said that all he--he said, I see one of your kids all the time. I hardly ever see the other one. Why is that?

Q. And, in fact, where was one of your children?

A. My older son was in Indiana visiting.

Q. Did you ever have an occasion to see Mr. Emerson in a vehicle at or near your apartment?

A. Yes, I did.

Q. When was the first time?

A. I was bringing--I had just got my kids up from day care and I was taking them to my mother-in-law's on Walnut Hill, and I drove past, and they were doing, like, a garage sale in that apartment complex. And I glanced over, and it just caught my eye that he looked familiar, and he was in a white, older station wagon, and I realized who that was, and I went on to my mother-in-law's house and told her, you know, that I felt like I was being followed or watched.

Q. And this place where you saw him, was this the apartment complex that's across from where you live?

A. Yes, it is.

Q. And, indeed, from that parking lot, can you see your apartment?

A. Yes. If you look out my--my window, you can see all of that and all of Southwest Boulevard.

Q. Did you ever have-- Before I get to that, let me ask you, did you ever tell anybody about these conversations you were having with Dr. Emerson at work?

A. Yes.

Q. Did you tell the people at work?

A. Yes, I did.

Q. And were you provided protection by the folks there at Wal-Mart?

A. Yes.

Q. And did, in fact, they walk you to your car whenever you left in the evenings?

A. Yes.

Q. Did you ever mention this to the folks at the day-care center?

A. Yes.

Q. And what did they do?

A. She continued to lock her door, and she would verify that it was me or my husband picking up my children, or child, before she even opened up the door, and she had never done that before.

Q. Did you also notify the police department?

A. Yes, I did.

Q. And did you notify the police department the first time on or about February the 5th?

A. Yes.

Q. Was there anything on that particular day that prompted you to notify the police?

A. He had just told me so much information, and I was getting scared at that point and was talking to one of the cashiers, and they said, well, you

really need to tell somebody. And when-- I said that I was kind of scared, I didn't want to cause any problems or anything, and they said that I had a choice of either calling the police there or going home and calling, so I just called there.

Q. Now, let me direct your attention to February the 12th. Did you have an occasion to see Mr. Emerson on that date?

A. Yes.

Q. And where were you at the time?

A. I was leaving my apartment to go to Logan's Steakhouse.

Q. And who else was in the car with you?

A. My husband and my younger son.

Q. And how old is that younger son?

A. He is 15 months old.

Q. And you had just--you were leaving your apartment to go to Logan's; is that correct?

A. Yes.

Q. And where did you see Mr. Emerson?

A. He was coming out of the Cedar Crest Apartments.

Q. And did something happen?

A. Yes. I was pulling out, and he was going the opposite way, and I hit my brakes. And my husband yelled, what is going on, or what are you doing? And I said, that's the guy that is following me. And he goes, well, let's go call the police. And I said, no, I'm not playing his game. That's not going to--I am not doing that. And I said, let's just go eat, and when we get back, you know, he'll be gone.

And so we did. We ate. We came back. We didn't see him anywhere, so we both got out and went into the house and we called, and Officer Peterson came out to the house.

Q. Now, when you say he was coming the other direction, was there a near collision?

A. Yes. If I wouldn't have hit my brakes, he would have hit the side that I was on. And, like, the baby sits in the middle seat, and he would have hit on this side.

Q. One other thing, Ms. Weber, I forgot to ask you. In the information he had about you, did he ever make any reference to the type of automobile you drove?

A. Yes. He told me that I drove a green Grand Am.

Q. Did you, in fact, drive a green Grand Am?

A. Yes, I do.

Q. In the comments he made to you, did he also make one that made you particularly feel uncomfortable?

A. Yes.

Q. And tell the court.

A. He said, how far down do you blush? I said, excuse me?

He said, how far down do you blush? And I said, well, I don't know.

And he goes, well, can I look? I said, no.

And at that point, I shut off my light and I went to get a CSM.

Q. What is a CSM?

A. It's a customer service manager.

MR. McROBERTS: Can I have just one minute?

(PAUSE)

Q. (BY MR. McROBERTS) Among other information that Mr. Emerson had about you, did he ever make any reference to doctors?

A. Yes. He told me who my doctor was.

Q. And, in fact, did he know who you--what doctor you were seeing?
A. Yes, that was the correct doctor.
Q. And what did you do as a result of his making those comments?
A. I changed doctors immediately.
Q. Did he indicate he knew anything about your phone?
A. Yes. He said that I had had a private number. And I denied and said no, I didn't even have a phone.
Q. Did you, in fact, have an unlisted number?
A. Yes, I did.
Q. Now, these occasions when you would see Mr. Emerson, is it--were they situations where you were the only checker that was available for him to come through the line to talk to?
A. No.
Q. Was it apparent to you that he purposely was waiting to come through your line?
A. Yes.
Q. What type of items was he routinely buying?
A. For the majority of the time, he would come by and get a Sam's Choice diet drinks, like six or eight at a time. And one time, he bought a DVD player and some disks. And, like, two or three of the times, he gave me his father's check and paid for a gas card.
Q. Now, what is a gas card made to do?
A. The gas card at Wal-Mart is a shopping card that you can use out at the gas pumps, and it will take three cents off of your gas a gallon.
Q. In addition to the--using the father's check to get the gas card, how were the payments made on the other items, the diet drinks and stuff?
A. The food was usually by a Lone Star card, and the DVD player and the DVDs were paid by cash.
Q. Ms. Weber, the final question I have is, you were unaware of any of these federal court proceedings until you were contacted by the probation office in April; is that correct?
A. That is correct.
MR. McROBERTS: I believe that's all I have, Your Honor.
THE COURT: All right. Mr. Guinn?
CROSS-EXAMINATION
BY MR. GUINN:
Q. You have made complaints to the police before, haven't you, Ms. Weber?
A. Yes.
Q. As a matter of fact, you complained to the police about injuries your husband, Zachary, had inflicted on your then 2-month 9-year-old child Todd; is that right?
A. No. He hit my older son, not my younger son.
Q. What's the name of the younger son--the older son?
A. The older son is Todd.
Q. Todd Irvin?
A. Yes.
Q. Who--his birth date is March 12th, 1999?
A. Right.
Q. So when you made the complaint to the police in December of '01, he was two years, nine months. Right?
A. Right. Sorry.
Q. And you made one complaint and--to the Justice of the Peace Court in Tom Green County in December--or excuse me-- September of 2001 that the boy has

bruises and that your husband had threatened to kill Nicole and Todd two weeks ago and that Todd had bruises on his face, didn't you?

A. Right.

Q. And then I wanted to ask--

MR. GUINN: Can I approach the witness, Judge?

THE COURT: Yes.

Q. (BY MR. GUINN) Ma'am, I'm going to show you a letter. Do you recognize your signature on that letter?

A. Yes.

Q. It's written To Whom It May Concern. Do you recognize this letter?

A. Uh-huh.

Q. Is that yes?

A. Yes.

Q. Is it written on Thursday, February 21st, 2002?

A. Right.

Q. And you dropped one of these off at the DA's office, didn't you?

A. Right.

Q. And you told them that it was really an accident in December of 2001, that Todd was fussing and wiggling so Zach told him to stop. Todd did not stop. Zach stated he was trying to get his attention and pop him on the butt, but Todd moved and Zach hit him in the head.

Isn't that what you said?

A. That's right.

Q. And that was after one emergency protective order had been issued at the request of Child Protective Services. Right?

A. Right. I asked for that order.

Q. And then you asked for another order, didn't you?

A. Right.

Q. And that's because Todd has some mental--I mean, not Todd, but Zachary has some mental problems, doesn't he?

A. He has an anger problem.

Q. And part of that problem and diagnosis, he said he heard Satan's voices in his head, told him to hit the baby, and he was diagnosed with intermittent explosive disorder and impulse control disorder. Right?

A. Right.

Q. And you withdrew your request for a divorce?

A. Right.

Q. And you said you thought it was unfair for Zach, who has heard Satan's voices in his head tell him to hit the children, for him to be away from the children?

A. Right.

Q. You told these things to Dr. Emerson while he was in your line with his father, Joe Emerson, didn't you?

A. No.

Q. Do you remember his father, Joe Emerson?

A. Yes, I do.

Q. Well, you told us a minute ago that he would come through your line by himself time and again. When did you see Joe?

A. He came through once or twice with Mr. Emerson.

Q. And you saw them together?

A. Yes.

Q. And sometimes Joe shakes, doesn't he?

A. I didn't pay much attention.

Q. You don't remember filling out some of his checks for him?

A. No. Mr.--he is the one that always filled out the checks.
Q. You never did?
A. Not that I remember. They have always been filled out.
Q. Who are these other people you told at work that Tim was bothering you?
A. I told a few of the cashiers.
Q. What are the names, ma'am?
A. Sammy is one of them.
Q. Does Sammy have a last name?
A. I don't know. I wasn't there long enough.
Q. Who else?
A. I told Scott, and he was a CSM.
Q. A CS--
A. M.
Q. --M?
A. Uh-huh.
Q. Customer service manager?
A. Uh-huh.
Q. *01*What is Scott's last name?
A. I have no idea.
Q. Is Scott here today?
A. No.
Q. Is Sammy here today?
A. No.
Q. Any other people from Wal-Mart who you told this to here?
A. No.
Q. You don't remember striking up a conversation with Tim and talking about how bad things were going with your husband?
A. I don't talk about my personal life at work, or certainly not with a stranger.
Q. But you do drop of two-page letters to whom it may concern, for anybody to read, discussing all about your children and bruises and borderline bipolar and EPOs. Right?
A. No, not for anybody. That was directed towards Stephanie Goodman.
Q. And it said, To Whom It May Concern?
A. It also went to about ten other people.
Q. Part of the public?
A. No, it was all within the courts.
Q. Ten different people outside your home?
A. Right.
Q. Discussing your children?
A. Right.
Q. And discussing your family situation?
A. Right.
MR. GUINN: I pass the witness, Judge.
MR. McROBERTS: Your Honor, I don't believe I have any questions.
THE COURT: All right. You may step down.
MR. McROBERTS: Ask that this witness might be excused.
THE COURT: Any objection to this witness being excused?
MR. GUINN: Not at this time.
THE COURT: All right. You are excused. Any further testimony by the government?
MS. PIERCE: Yes. We call Gloria Ramirez.
(THE OATH IS ADMINISTERED BY THE COURT)
GLORIA RAMIREZ,

GOVERNMENT'S WITNESS, TESTIFIED ON HER OATH AS FOLLOWS:

DIRECT EXAMINATION BY MS. PIERCE:

Q. Gloria, for the record, would you state your name.

A. My name is Gloria Ramirez.

Q. And how are you employed?

A. I am employed as a United States Pretrial Services Officer.

Q. And how long have you been so employed?

A. With Pretrial since March 1998.

Q. And are you the pretrial services officer whose job it was to supervise Timothy Emerson, the defendant that's now before the court and I'm pointing to in the orange?

A. Yes.

Q. And is it your understanding that Mr. Emerson, before his trial, was released on certain terms and conditions as issued by the magistrate judge?

A. Right. Yes.

Q. Once-- Did you learn that he was later convicted?

A. Yes.

Q. And was he allowed by this court to remain on bond even after he was sentenced--

A. Yes, he was.

Q. --pending his appeal?

A. Right.

Q. Did you also have responsibility for supervising him after his conviction?

A. Yes.

Q. Now, did the terms and conditions of his bond--

MS. PIERCE: And again, I would ask the court to take--if we could, take judicial notice of the original terms and conditions, both pretrial and postconviction.

THE COURT: Yes.

MS. PIERCE: Thank you.

Q. (BY MS. PIERCE) Did those change at all when you first got him after his conviction?

A. Yes, they did.

Q. Okay. When you first got him, was there anything added or deleted on his pretrial bond, or did that happen later on?

A. That happened later on.

Q. Okay. I gave you five exhibits, I believe, in front of you, and just real quickly, I will ask you to look through them and just tell me if you recognize all five of the exhibits.

A. Yes.

Q. And did each of these exhibits actually come out of your probation file or from the police department or public record--

A. Yes, they did.

Q. --of some sort?

MS. PIERCE: We would offer Government's 1 through 5 for the purpose of this hearing.

MR. GUINN: I object to them, Judge, under hearsay and confrontation.

THE COURT: All right. Overruled. Admitted.

Q. (BY MS. PIERCE) Now, Ms. Ramirez, there came a time in February that Mr. Emerson's terms and conditions of release were modified; is that correct?

A. That is correct.

Q. And could you tell the court, please, just kind of in short order, what led up to that.

A. It was a call that I had received on February the 6th from the detective with the San Angelo Police Department advising me that Mr. Emerson had been stalking a female who was working out at the Wal-Mart Super Center.

Q. And did you actually receive a copy of that police report from the San Angelo Police Department?

A. Yes, I did.

Q. And is that what we have marked as Government's Exhibit Number 3?

A. Right, yes.

Q. And is that report actually written up as the offense of stalking?

A. Yes.

Q. And is Nicole Weber, who just previously testified, the victim in that case?

A. Yes, she is.

Q. Now, the offense--or the police report was made on what date?

A. It was actually made on February the 5th.

Q. That's 2003?

A. 2003, yes.

Q. And you received the information the following day, February 6th?

A. Right.

Q. Now, after you received this information, what, if anything, did you do as Mr. Emerson's officer?

A. I notified my supervisor in Lubbock, Texas, and so he told me to go ahead and fax him a copy of this offense report, and he was going to hand-carry it to Judge Cummings and visit with him about the matter.

Q. And is that supervisor Dale Adams in the Lubbock office?

A. Yes, it is.

Q. And to your knowledge, did Mr. Adams take that and talk with Judge Cummings?

A. He did.

Q. Okay. After that, were the conditions modified?

A. Yes, they were.

Q. And if you will look at Government's Exhibit Number 1, a document entitled Consent to Modify Conditions of Release, is that the modification that was done?

A. Yes, it was.

Q. Now, on Exhibit Number 1, there's a place--after the words "I consent to this modification of my release conditions and agree to abide by this modification," is that signed by Timothy Joe Emerson, M.D., on February 7th, 2003?

A. Yes.

Q. Now, prior to Mr. Emerson signing that document, did you do anything to go over that condition with him to make sure he understood it?

A. Oh, yes, I did.

Q. And was he--to your satisfaction, was he--did he understand that he was to avoid any contact with Nicole Weber, *51*directly or indirectly, or with any of her family members, directly or indirectly?

A. Yes.

Q. After you explained that to Mr. Emerson and gave him a chance to read it, did you feel satisfied that he understood what this new condition was?

A. I did.

Q. Did you explain to Mr. Emerson at that time what could happen should he violate that condition?

A. Yes, I did.

Q. And generally, what did you tell him?

A. I told him that Judge Cummings, rather than revoking his bond, was going to allow him to remain out on bond with the--with that--his conditions being modified to include this, and if he did not comply with this, then further action could be taken.

Q. And "further action" meaning what?

A. His bond could get revoked.

Q. Now, did you also sign Gloria H. Ramirez on the same date, 2-7-03?

A. Yes, I did.

Q. What happened in the process next? After you and Mr. Emerson ran through this and signed it, where did it go next?

A. Okay. I told him that I was putting it in the mail that day, and that was on a Friday. So that way, on Monday, the copy could get to my supervisor, who's Dale Adams, who would then take it to David Guinn and get him to sign it before taking it to Judge Cummings and having him sign it.

Q. Okay. And on the 7th when you're talking to Mr. Emerson and you're signing off on this consent to modify and he's signing off on the consent, did you explain to him the process; that it would go to Lubbock, that it would go to his attorney, or things of that nature that you just explained?

A. I did.

Q. Did you get any indication from Mr. Emerson that he had already talked to his lawyer about it?

A. Yes.

Q. And what did Mr. Emerson tell you on February 7th?

A. I had actually called--when I called him into my office, I had asked him if he had had any contact with his attorney, and he said he had. And I asked him--he told me that his attorney had told him that he needed to stay away from an individual by the name of Nicole Weber, who worked at--who had filed a police report, and that he was not to enter Wal-Mart.

Q. Okay. And he indicated his attorney had already explained that to him?

A. Right.

Q. Is there a place on Government's Exhibit Number 1 then when this consent form is sent to David Guinn, the defendant's counsel that's present in the courtroom, but also the person that's been his counsel throughout the proceedings basically?

A. Right.

Q. And what date does it indicate Mr. Guinn signed that?

A. February the 10th, 2003.

Q. And did it go to Judge Cummings before or after Mr. Guinn signed it?

A. It would have gone to Judge Cummings after Mr. Guinn had signed it.

Q. And Judge Cummings, as indicated on Government's Number 1, signed this February 10th, 2003; is that correct?

A. That is correct.

Q. And at that point in time, in your mind, did this condition become effective on 2-10--

A. February 10th, 2003.

Q. Now, did you get this back so you could explain that this condition is now in place, Mr. Emerson; let's talk about this?

A. I did.

Q. It's in place-- When did you talk to him next?

A. For his monthly office visit, which was February the 12th, 2003.

Q. And this would be after Judge Cummings entered this new condition?

A. Yes.

Q. Okay. Did you talk to Mr. Emerson in person or over the phone?

A. In person.

Q. On the 12th?

A. On the 12th, yes.

Q. And what--generally what time of day did Mr. Emerson come in on the 12th?

A. He had his appointment at 9:00 that morning.

Q. And did he show up for that appointment at or around 9:00?

A. Yes, he did.

Q. Now, when you are there with him on the 12th at 9:00 a.m. or thereabouts, explain what you explained to him about this new condition. I know you have already talked to him about it on the 7th, but what did you explain now on the 12th?

A. I explained to him that--and I showed him. I said, here's a copy of the consent signed by Judge Cummings to be effective February the 10th that you cannot have any contact with her.

Q. And again, did Mr. Emerson seem to understand what you're talking about?

A. Yes.

Q. As far as Government's Exhibit Number 1 is concerned, did you actually give him a copy of Government's Exhibit Number 1?

A. Yes.

Q. Obviously without my exhibit sticker on there.

A. Yes, I did.

Q. So when he walked out of your office on the morning of February 12th, Mr. Emerson in the orange here had a copy of this document with him?

A. Yes, he did.

Q. Did you show him or give him--Mr. Emerson--any other documents to make sure he understood what could happen to him, or that he couldn't violate this condition?

A. Yes, I did.

Q. What else did you explain to Mr. Emerson on the morning of the 12th?

A. I gave him a copy of the order submitted by Judge Cummings filed January the 30th allowing him to stay out on bond.

Q. Okay. And if you will look at Government's Exhibit Number 2, is this the order that you gave Mr. Emerson a copy of on the morning of February 12, 2003?

A. Yes, it is.

Q. Now, is there a portion of this order that you specifically pointed out to Mr. Emerson?

A. Yes. It's in the second paragraph.

Q. And what was that that you specifically pointed out to him on February 12th?

A. Where it says "To obtain release pending appeal, a convicted defendant must establish four factors." It was the first one, that he is not likely to flee or pose a danger to the safety of others.

Q. And what did you say to him about posing a danger to the safety of others?

A. I advised him that the stalking that--the stalking incident that occurred had now placed him to be a danger to safety of others.

Q. Okay. And did you actually make a copy of Government's Exhibit Number 2 for Mr. Emerson to take with him to have one of his very own?

A. Yes, I did.

Q. So the morning of February 12th, 2003, he walked out of your office with Government's 1 and Government's 2 in hand and explained to him?

A. That is correct.

Q. Okay. Now, did you learn about the incident on the evening--or the early evening of February 12th that Nicole Weber has previously testified about, about Mr. Emerson cutting her off and having a--having basically contact across from her apartment?

A. Did I learn about it?

Q. Yeah.

A. Yes, I did.

Q. And when was it that you learned about it?

A. I actually learned about it on April the 1st, 2003.

Q. And how did you learn about it?

A. After conducting my quarterly criminal history checks.

Q. And did you then get a copy of the report that Nicole Weber made to the San Angelo Police Department dated 2-12-03?

A. Yes, I did.

Q. And is that what is Government's Exhibit Number 4?

A. Yes, it is.

Q. And in that particular exhibit, does it indicate the date and time that this incident occurred?

A. Yes, it does.

Q. And what date and what time?

A. It's showing February the 12th, 2003, at 1837.

Q. Okay. 6:37 in the evening?

A. That's correct.

Q. Okay. And this is the same day that you explained that he was supposed to stay away from Nicole Weber indirectly, directly--

A. That is correct.

Q. --or he could be revoked?

A. Right.

Q. And did this--this incident that you learned about, the one that occurred February 12th, 2003, did you learn whether or not Mr. Emerson was on foot when he was near Ms. Weber at her apartment or if he was in a vehicle of some sort?

A. The report indicates he was in a vehicle.

Q. And did that report--or did you learn whether or not he was alleged to have been driving that vehicle?

A. Yes, I did.

Q. And was he, in fact, driving that vehicle?

A. Yes, he was.

Q. And what type of vehicle do you know the Emerson family to have?

A. His father has a 1994 Taurus station wagon.

Q. And do you know what color it is?

A. It's white.

Q. And is that--is it your understanding that was the vehicle that Mr. Emerson was in on the 12th--

A. Right.

Q. --near Ms. Weber's apartment?

A. Yes.

Q. Now, the fact that he's driving a vehicle, and based on the conditions of his release that you know about, did that cause you any concern as far as another violation of his conditions of release?

A. Yes, it did.

Q. And what violation is that, Gloria?

A. Would have been from his original bond conditions, Standard Condition Number 1 stating that he shall not commit any offense in violation of federal, state, or local law while on release in this case.

Q. Okay. And what did Mr. Emerson do in regards to his driving privileges that caused you to believe he violated that condition?

A. He's driving without a license.

Q. And looking at Government's Exhibit Number 5, can you tell us what that is, please?

A. That is a--that was part of the request that I made when I requested my NCIC/TCIC report, and I also requested a driver's license check, and it came back showing that on October the 9th of 2001, his license had been revoked.

Q. And did you and Mr. Emerson discuss the fact that if his license is revoked, he can't drive?

A. Right.

Q. He can't drive legally?

A. Right.

Q. And so in your opinion, was he well aware of that condition?

A. Yes.

Q. And if he was, in fact, driving a vehicle on or about February 12, 2003, would that be a violation--yet another violation of a condition of release?

A. Yes.

Q. Thank you, Gloria.

MS. PIERCE: Pass the witness.

CROSS-EXAMINATION

BY MR. GUINN:

Q. Who was with Tim at your office? Or who brought him down there when you saw the white '94 Ford Taurus station wagon?

A. Who was with him on what date?

Q. Anytime he reported.

A. Usually his father, but he never came into the office.

Q. Excuse me?

A. His father never came into the office.

Q. Did you go out and see his father?

A. No, I did not.

Q. How did you know his dad was there?

A. I--on February the 12th--was it February the 12th? No, it would have been--

Q. Did you ever see Joe Emerson?

A. No, I did not.

Q. Okay. Did you believe or know that Joe drove Tim around?

A. Yes.

Q. Why?

A. That's how he would normally get around, by his father driving him around.

Q. Did you ever see his father drive him around?

A. Did I ever see his father drive him around? No, I never did.

Q. How do you know his father drove him around?

A. Well, I know when he had to come to court, when he had to go to court in Lubbock, he would tell me, "I went with my father."

Q. Okay. So it was just Tim telling you. You don't have any personal knowledge, do you?

A. No.

Q. Okay. Is that--do you have your notes with you from your probation file? Didn't you move that meeting to about 11:00 on the 12th?

A. On February the 12th? I do.

Q. Did you move it?

A. Did I-- Excuse me?

Q. Did you move the time of the meeting?

A. On February the 12th? I believe I did. I don't have my appointment book right in front of me, so I don't know.

MR. GUINN: I pass the witness, Judge.

REDIRECT EXAMINATION

BY MS. PIERCE:

Q. So if you moved it to 11:00, these terms and conditions that he has in his hand are even fresher on Mr. Emerson's mind then?

A. That would be--

MR. GUINN: I object to the speculative nature.

THE COURT: Overruled.

MS. PIERCE: That's all we have.

THE COURT: All right. You may step down. Call your next witness, please.

MS. PIERCE: We have no more witnesses, Your Honor.

We would rest.

THE COURT: All right. Mr. Guinn?

MR. GUINN: Call Joe Emerson.

THE COURT: All right.

MR. GUINN: Judge, Mr. Emerson hasn't been placed under oath.
(THE OATH IS ADMINISTERED BY THE COURT)

JOE EMERSON,
DEFENDANT'S WITNESS, TESTIFIED ON HIS OATH AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GUINN:

Q. Joe, would you introduce-- I'm sorry. Go ahead and get seated.
Can you hear me, Joe?

A. No, I can't hear you. I'm hard of hearing.

Q. Yes, sir. Would you tell the judge your name.

THE COURT: State your name, please.

A. Joe Emerson.

Q. (BY MR. GUINN) Joe, is Tim your son?
Is Tim your son?

A. I can't hear you.

Q. Is Tim your son?

A. I still can't hear you.

MR. GUINN: Can I just go stand next to him, Judge?

A. You're going to have to get up here closer.

Q. (BY MR. GUINN) I will.
Joe, is Tim your son?

A. Huh?

Q. Is Tim your son?

A. He sure is.

Q. Okay. Joe, how does Tim get around?

A. I have to carry him everywhere.

Q. Do you ever give him the keys to your car?

A. No, I didn't.

Q. Do you remember the little gal over here, the brunette gal in the light pale blue dress on the front row by Ms. Rodriquez, the probation officer--or Ramirez?

A. Yeah.

Q. Who is that gal?

A. I can't tell from here. I can't tell from here. My other glasses are in the car.

Q. Okay. Do you ever take Tim to Wal-Mart?

A. Yes.

Q. About how often?

A. About twice a week.

Q. Okay.

A. Because--the reason for that, he bought soft drinks, Thunder, and it's similar to Dr. Pepper, what he used to get, but they were 50 cents at Wal-Mart, and I bought six at a time, and he drank about two of them a day.

Q. Joe, do you remember a time when I called down there and told--talked to you and talked to Tim about not going to the Wal-Mart anymore?

A. We didn't. We didn't go to the Wal-Mart anymore. We went to the north Wal-Mart. I never did go to the other Wal-Mart anymore.

Q. Did you take Tim over there anymore?

A. No.

Q. Did Tim take the car and go anywhere?

A. No, no, never.

MR. GUINN: Pass the witness, Judge.

MR. McROBERTS: No questions, Your Honor.

THE WITNESS: Now, you're going to have to come up here too.

THE COURT: Well--

MR. McROBERTS: No questions.

THE COURT: All right. You may step down. We're through.

THE WITNESS: Do what?

THE COURT: You may step down.

THE WITNESS: Okay. Thank you. I just got out of the hospital.

MR. GUINN: Judge, I don't have any further witnesses. We would rest.

THE COURT: All right. All right. The court will entertain argument. Mr. McRoberts?

MR. McROBERTS: Your Honor, I will be very brief. The court is well aware of the considerations here. But basically what we're talking about is, I think, two factors that are intertwined. One is a violation of the underlying condition that is encumbered before anyone could be released on bond at any time, that is, whether or not you pose a danger to the safety of another. I think the evidence is clear here that Mr. Emerson engaged in a pattern of very inappropriate behavior, stalking a young woman that he had no association with, who wished no association with him.

But then we also have another overriding consideration that before any bond can be granted, it's the idea that a person that's on that bond has to abide by the conditions that are in the bond. And here, we have a specific condition saying that he should not have any contact with this woman, and whether he shows up at 9:00 on the 12th or 11:00 on the 12th, at 6:37 that afternoon, he is in a vehicle engaged in a near-collision activity. He cannot abide by the conditions that the court imposed on the 10th for nine hours, or even seven hours.

For these reasons, Your Honor, primarily because we do feel that Mr. Emerson does constitute a danger to the safety of others, we would ask this court to revoke this bond and put this man in jail pending his appeal.

THE COURT: All right. Mr. Guinn?

MR. GUINN: Judge, we don't have a violation here. You have got to believe this woman to believe there's a violation. Joe Emerson isn't going to lie for anybody. He drives Tim around. At 6:37 is the time on the offense report.

That's not the time it allegedly occurred. We could proffer the court Tiffany Gullely. The defendant was on the phone with her at that moment, at 6:30 in the evening. He wasn't anywhere around where this lady says he was.

Judge, you don't have a violation of conditions. I urge you not to revoke the appeal bond set in this case.

THE COURT: The court having heard the evidence and considered the exhibits that have been admitted will make the following findings:

The court placed this defendant, Timothy Joe Emerson, on a bond pending appeal by my order dated January 30 of 2003. One of the conditions of that order was that the defendant not pose a danger to the safety of others, and at the time that I entered that order, I found that, in my opinion at that time, in January, he was not a danger to the safety of others. However, by order dated February 10 of 2003, the court modified the conditions of release in which I required the defendant, Dr. Emerson, to avoid any contact with Nicole Weber directly or indirectly, or with any of her family members, directly or indirectly.

Next, I find that-- Well, that order signed February 10, 2003, was a consent order, in effect, in which Dr. Emerson had signed that order on February the 7th of 2003.

Next, I find that on the date of February 12th, 2003, Timothy Joe Emerson was counseled by Pretrial Service Officer Gloria Ramirez in which he was made aware that the court had signed this modification and had added this additional condition as shown in the February 10 order.

Next, I find that Timothy Joe Emerson violated the conditions set forth in the modified order by coming into contact with Nicole Weber later in the day of February 12th, 2003, as testified to by Ms. Weber.

The court then will conclude that the defendant, Timothy Joe Emerson, has violated the conditions of release. The court is going to revoke the appeal--the bond--or the bail pending appeal and will remand Mr. Emerson to the custody of the United States Marshal to be delivered to the United States Bureau of Prisons. I will be signing a written order to that effect sometime tomorrow.

I am going to withdraw from evidence Government's Exhibits 1 through 5. I will be handing these back to the government attorneys so that you may keep those in your file.

All right. You may stand aside.
(END OF HEARING)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

DATE SEPTEMBER 30, 2003

Mechelle Daniel
Official Court Reporter