

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3 United States of America,)
)
 4 Plaintiff,) CR 18-01584-001-RM(BGM)
)
 5 vs.)
) Tucson, Arizona
 6 Mohamed Abdirahman Osman,) August 15, 2018
) 3:15 p.m.
 7 _____Defendant. _____)

8 TRANSCRIPT OF PROCEEDINGS
 9 FINAL ARGUMENT/CONTINUED DETENTION/DANGEROUSNESS HEARING

10 BEFORE THE HONORABLE JACQUELINE M. RATEAU
 11 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff:
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16 For the Defendant:
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24 Proceedings were digitally recorded
 25 Transcript prepared by transcriptionist

P R O C E E D I N G S

(Call to order of court, 3:15 p.m.)

CLERK: CR 18-1584, United States of America versus Mohamed Abdirahman Osman is before this court for a continued detention/dangerousness hearing.

Counsel, please state your appearances for the record.

MS. ANDERSON: Beverly Anderson for the United States. Good afternoon.

THE COURT: Good afternoon.

MR. YOUNG: Good afternoon, Your Honor. Jon Young for Mustaf Arale, who is present, assisted by the court interpreter.

THE COURT: Good afternoon, gentlemen.

Ms. Anderson, are you ready to proceed?

MS. ANDERSON: I am, Judge.

THE COURT: And let's be nice to the interpreter. If -- if everybody's going too fast, just raise your hand and then I'll let the attorneys know it's time to slow down, okay?

INTERPRETER: Okay.

MS. ANDERSON: Thank you.

First of all, Your Honor, pretrial services indicated in their report that Mr. Osman has sent \$3,200 to al-Shabaab and that's in the -- quoting the pretrial services report. Additionally, the agent reported recent records reflect the defendant has sent over \$3,200 to known al-Shabaab members and

1 associates. And yesterday you asked Special Agent Trentlage
2 about that. And Special Agent Trentlage was not the agent that
3 spoke to pretrial services, so both Special Agent Trentlage and
4 I called Special Agent Crookshank, who is actually the agent
5 that gave pretrial services that figure. And he advised that
6 that's actually a typographical error and it was actually
7 \$32,000. And you asked Special Agent Trentlage about that
8 figure yesterday. And I think it threw him off because he
9 hadn't heard that figure before. But the figure is actually
10 \$32,000.

11 Our records indicate that the defendant and his wife have
12 sent approximately \$10,000 per year to family members back
13 home. Now, according to the FBI, some of these family members
14 are al-Shabaab members or associates of al-Shabaab. Can the
15 government prove beyond a reasonable doubt that that 32,000 is
16 going to fund al-Shabaab activities? No, we can't. But 10,000
17 per year is a big chunk of money. And I think that has bearing
18 on the defendant's flight risk and his ability to leave the
19 United States should he be released from custody.

20 Your Honor, the government is seeking detention of the
21 defendant based on his danger to the community if he were to be
22 released and also that he's a serious flight risk.

23 First of all, danger to the community, I'd like to address
24 first. The defendant is a known associated -- known associate
25 of a designated terrorist organization. Family members,

1 including his brother Bukhari, his aunt Kowsar, and his uncle
2 Mukhtar, have all been convicted of the bombing on May 24th of
3 2014 of a restaurant in Djibouti. Defendant's aunt Kowsar is
4 currently in custody on those charges. However, Uncle Mukhtar
5 and his brother Bukhari are still fugitives.

6 The defendant, according to our records, and according to
7 the defendant's admissions, the defendant has sent money to
8 Bukhari even after that bombing occurred. And our records
9 reflect that it was \$100, perhaps \$200. And while that might
10 not seem like a lot of money, that goes a long way in Ethiopia.

11 Also, Your Honor, you heard that the defendant was having
12 conversations with Bukhari on Facebook and, no, they were not
13 talking al-Shabaab, they're not that foolish to use the words
14 "al-Shabaab" when they're talking in an open communication such
15 as that, but they were talking in code. And I think that has
16 bearing on the defendant's connection with al-Shabaab members,
17 including his brothers.

18 The defendant is capable -- physically capable of driving a
19 car, he's physically capable of diapering a baby. He's
20 physically capable of typing at a computer. As we've already
21 seen around the world and also even in the United States, you
22 don't need a bomb to pose danger to people or pedestrians.
23 Even driving a car into a crowd of people is serious enough and
24 enough to kill people. And we believe that the defendant does
25 pose a danger and a risk to the community should he be

1 released.

2 Next I'd like to address the serious risk of flight. And
3 the government has the burden of proving the defendant is a
4 flight risk by a preponderance of the evidence, as this court
5 knows.

6 First of all, I'd like to advise the court that we found
7 out when we were executing the arrest warrants on the
8 defendants that they have plans to move to Minneapolis. They
9 gave notice for their apartment, they have airplane tickets,
10 they're all ready to move to Minneapolis.

11 THE COURT: Was that presented by testimony yesterday
12 at all?

13 MS. ANDERSON: No, it wasn't.

14 THE COURT: I'll accept your proffer on that.

15 MS. ANDERSON: And, Your Honor, if you have any other
16 questions, Special Agent Trentlage is here if you have any
17 questions about that or about the \$32,000.

18 THE COURT: Okay. Thank you.

19 MS. ANDERSON: And, Your Honor, just for -- you may or
20 may not know this, but Minneapolis has a huge population of
21 eastern African decent individuals, but they did have plans to
22 already leave -- leave the state.

23 Your Honor, one thing that we've -- that we've learned
24 throughout this case is that the defendant has the capability
25 of obtaining fraudulent documents. He's demonstrated that he

1 has -- he has -- and he has gone to extensive and great lengths
2 to obtain fraudulent documents, including the Somali passport.
3 Your Honor, according to the defendant's testimony and based on
4 the evidence that we have, which is the fake Somali passport --

5 THE COURT: Is that the one that is currently in his
6 possession now that pretrial referred to but it's under another
7 name; is that correct?

8 MS. ANDERSON: You know, I'm not sure about that, Your
9 Honor, because when the defendant -- the defendant's passport
10 has been taken by FBI. And I'm not sure what passport he's
11 referring to.

12 THE COURT: Okay.

13 MS. ANDERSON: And perhaps Special Agent Trentlage can
14 tell us a little bit more about that.

15 THE COURT: That's okay. I don't need him to take the
16 stand again. So the passport was taken during the execution of
17 the search warrant and it's not under the name Osman, correct?

18 MS. ANDERSON: It's under the name Arale.

19 THE COURT: Okay.

20 MS. ANDERSON: Which is a fake name. And so I think
21 that fake passport demonstrates the defendant's capabilities of
22 obtaining fraudulent documents.

23 Also, he told immigration on two different occasions that
24 he obtained at least two different passports by means of
25 smugglers and although we don't necessarily know exactly how he

1 obtained those fraudulent -- that fraudulent passport, we do
2 know that it is a fraud.

3 Your Honor, some of the most compelling evidence of the
4 defendant's flight risk is all of the lies that he's told, not
5 only the lies that he's told but also the fake passport and the
6 means by which he obtained that passport.

7 And I'd like to point out to the court all of the different
8 lies that he's told to immigration officials over the years.

9 According to my count, he's lied at least three different times
10 to immigration officials. He submitted on August 21st of 2013
11 a document, a refugee application, which is called an I-590.

12 And in that document, he -- he understood that the document and
13 his representations were being made under oath and he
14 understood that he was subject to the penalty of perjury.

15 On that document that he submitted in August of 2013, he
16 lied to immigration officials about his identity. He lied
17 about his nationality. He lied about the identity of his
18 family members. He completely left off brother Bukhari, most
19 likely because he was an al-Shabaab member and he didn't want
20 that to come to light. He lied about his ties to a terrorist
21 organization. He didn't tell them that he had been recruited
22 by al-Shabaab, he denied knowing anyone that had ties to
23 terrorist organizations.

24 And, finally, he submitted a fake passport in support of
25 his refugee application. If the defendant had been truthful on

1 that application, he -- he and his family would never have been
2 granted refugee status. And I'd like to point out to the court
3 that the defendant is what's called the principal applicant.
4 In other words, the application, the refugee application is
5 based on the defendant Osman. His wife, Zeinab, is a secondary
6 applicant.

7 THE COURT: Is he currently under removal proceedings
8 then?

9 MS. ANDERSON: Yes, he is.

10 THE COURT: Okay.

11 MS. ANDERSON: Despite the defendant's lies in his
12 immigration documents, he and his family were granted refugee
13 status. They came to the United States into Tucson in February
14 of 2014. And in 20 -- I'm sorry, June 30th of 2015, he and his
15 wife submitted documentation to obtain legal permanent resident
16 status here in the United States. And they did that through
17 the form of an I-485, which is a document which is required by
18 immigration officials in order to start the process to get
19 legal permanent resident status.

20 And, once again, the defendant lied. And, again, this
21 document, the representations were made under oath. He knew
22 that he was subject to penalty of perjury for any kind of lies
23 that he may have told. But, nonetheless, he continued to lie
24 about his identity, he lied about his nationality, he denied
25 ever obtaining an immigration benefit by fraud, which was a lie

1 because he had submitted the fake passport in support of his
2 refugee status. He lied by denying that he was part of an
3 insurgent group or that he knew anybody that was part of an
4 insurgent group. Again, he denied about knowing anybody that
5 was part of an insurgent group.

6 Once again, on March 9th of 2017, here in Tucson, Arizona,
7 immigration officer Tony Jackson interviewed the defendant and
8 his wife about their legal permanent resident status
9 application, and once again he was placed under oath. He
10 signed a document indicating that he was telling the truth. He
11 knew the consequences of lying but, nonetheless, he perpetuated
12 his lies to immigration by lying about his identity, he lied
13 when he stated he had never used any other name, he lied when
14 he stated he's never been a part of an insurgent group or
15 associated with anyone that has been, he lied when he stated
16 he's never obtained an immigration benefit by fraudulent means.

17 And recall, Judge, yesterday, Special Agent Trentlage
18 talked about the interview that they held with the defendant in
19 June of 2017. And it's at that point the defendant admitted
20 that he had lied. He admitted that his true name is Osman,
21 that he's really Ethiopian. He had lied about his father's
22 name. He had actually been recruited by al-Shabaab. He had a
23 brother, Bukhari, who was part of al-Shabaab. He's given
24 brother Bukhari money. So he admitted to the FBI that he had
25 lied.

1 Now, many of these things we already knew because we were
2 able to -- through investigation, we were able to determine
3 these things on our own.

4 Next, Judge, the defendant lied with his interview with
5 pretrial services. He lied about his nationality. He said
6 he's from Somalia. He lied about his father's identity.

7 So far he's told three different stories about how he
8 injured his arms. The first story was what he told to
9 immigration. He said that he was working in the Bakaara Market
10 in Somalia in 2010 and the market was attacked by al-Shabaab
11 and he lost his arms during that conflict. When FBI
12 interviewed him in June of 2017, he said that was a lie. "I
13 really injured my arms when I was picking up some kind of an
14 explosive device." And what he told pretrial services is that
15 a shelf fell on his arms when he was -- when the shop was
16 bombed. So he's told three different stories about how he lost
17 his arms.

18 The defendant has issues with -- with credibility. The
19 path -- another example of how he lied to pretrial services is
20 he described a path of travel to the United States that's
21 completely different than what he told immigration officials
22 and also the FBI.

23 Now, Judge, all of this has bearing on the fact that the
24 defendant has funds -- he sends \$10,000 per year home to his
25 family -- he's got the knowledge, he knows how to find

1 smugglers who can help him get fake passports, fake immigration
2 documents, and he certainly has the motive to not only lie but
3 to flee should he be released.

4 The defendant is a serious flight risk. He's also a danger
5 but he's also a very serious flight risk. He's only allowed in
6 this country because of his refugee status. And he admitted
7 that he has told lies, lies that got him that refugee status.

8 He has no incentive to stay in this country. The only
9 thing he has to look forward to is a long prison sentence.

10 And, for all of the reasons, we're asking that the defendant be
11 detained as not only a risk and a danger to the community but
12 also as a serious flight risk. Thank you.

13 THE COURT: Thank you.

14 You're up.

15 MR. YOUNG: Judge, we forgot yesterday when we were
16 doing the arraignment to cover Mr. Arale's true name. His true
17 name is Mustaf Adan Arale.

18 THE COURT: That a/k/a on the indictment?

19 MR. YOUNG: We can prove it and we will prove it.

20 THE COURT: And that's the a/k/a on the indictment,
21 correct?

22 MR. YOUNG: That's correct. And as the a/k/a, it's
23 spelled correctly.

24 He is also Somali and we can prove that as well.

25 One of many reasons that he's not going to leave the

1 country is medication. The medication has been straightened
2 out at CCA. I had some concerns yesterday but they've been
3 addressed today. He has a cornea transplant in his working
4 eye; he is supposed to get anti-rejection eyedrops. He's got
5 two kind of glaucoma eyedrops, he's got two other kinds of
6 eyedrops. These that he gets one a day, two a day, three a
7 day, four a day, five a day. Apparently they've got that
8 schedule worked out between yesterday and today at CCA so I
9 don't have concerns there. But it's still a reason that he's
10 not going to leave the country.

11 THE COURT: Well, does he have all that medication at
12 home so if he were released, he takes that at home, he could
13 take it with him if he goes somewhere? I'm not sure how
14 this --

15 MR. YOUNG: I guess he can take it with him but he
16 treats at Banner Hospital, that's where his doctors are. He's
17 got medical issues. The -- overall, the conditions at CCA are
18 much better than the conditions were at the milk factory and
19 he's got no complaints. He had concerns this weekend about the
20 medication but I gather from talking to him this morning that
21 that's been addressed.

22 This was supposed to have been a dangerousness hearing.
23 The government just read back to the court the 10-page
24 indictment and didn't really talk about what happened
25 yesterday. What I heard happen yesterday was I heard that

1 Mr. Arale has no criminal history ever. He's married. He's
2 got five children. He's got no hands. He's never hurt anybody
3 in his entire life, either in Somalia or here. He has denied
4 ever becoming an active al-Shabaab member. He didn't admit
5 becoming an al-Shabaab member. He denied it. The report says
6 that he describes ISIS as evil and strongly disagrees with
7 their recruitment of children. The report says that he
8 disagrees with al-Shabaab because their attacks killed fellow
9 Muslims.

10 When he was growing up in -- along the border, there was a
11 sheikh, Sheikh Mahmud (sic), who's since deceased who lived in
12 Jijiga who convinced him to go to Mogadishu. That's what
13 they're describing as having recruited him. But Sheikh Mahmud
14 never claimed to be an al-Shabaab member. That was reflected
15 in the report, that was the testimony yesterday, was this
16 sheikh who was conducting school in Jijiga didn't claim and
17 didn't hold himself out to be an al-Shabaab member.

18 The school in Mogadishu was collapsed, the phone number
19 wasn't working, and it just wasn't a proper school. Even as it
20 was, the school in Mogadishu didn't advertise itself as an
21 al-Shabaab school. So it's just completely erroneous to say
22 that he was recruited by al-Shabaab to go to Mogadishu to join
23 an al-Shabaab school. There's no evidence that that school was
24 al-Shabaab. We don't know what that school is. The
25 government's got no information on that school. And Mr. Arale

1 told the government he doesn't know it to be an al-Shabaab
2 school. But to him none of this felt right and to him, this
3 Sheikh Mahmud didn't feel right so he just -- it would be
4 speculation, and the best we can say is that Mr. Arale
5 speculated that these people might be al-Shabaab.

6 He's one of 12 brothers and sisters. 12 of them. Of the
7 12 of them, one brother, Bukhari, is in trouble in Somaliland.
8 I don't have a lot of detail, nobody's got a lot of detail
9 about that trouble. Somaliland doesn't have a government, at
10 least not a government that's recognizable as a government.
11 And we don't recognize it as a government, Ethiopia doesn't
12 recognize it as a government.

13 There are warring tribes all over Somalia, and I have
14 people that can testify to that. Warring tribes and warring
15 clans, and there is an entire culture within Somalia that's
16 going to be important for this trial.

17 Mr. Arale sent his brother once \$100 for private school
18 tuition. He ordinarily would have paid that tuition through
19 his father but his father was out of town so he sent the
20 tuition directly to his brother. He wanted his brother to stay
21 in school. He wanted to enroll him in university classes. He
22 wanted for him to move to China where Mr. Arale went to school,
23 where many Somalis go to school. It's much cheaper to go to
24 school in China than it is to go to school in the United
25 States.

1 The brother Bukhari is a painful loss to Arale and a
2 painful loss to the family but he's one sibling out of 12. And
3 to say that the entire family is al-Shabaab connected and say
4 that Mr. Arale is al-Shabaab connected because he's got one
5 brother that went bad is just completely unfair to Mr. Arale
6 and his -- the entire rest of his family. Mr. Arale was
7 kidnapped by al-Shabaab. That's not really much of a
8 connection but he was kidnapped and held prisoner by
9 al-Shabaab.

10 The Somali community -- Mr. Arale is obviously a double
11 amputee. The Somali community has many, many amputees and they
12 describe to me, particularly walking around in Minneapolis
13 where there are so many Somalis, walking around and seeing so
14 many injuries identical to Mr. Arale's. There are many, many
15 explosions obviously in Mogadishu and they don't have the time
16 or the resources to respond to them or to keep track of them or
17 a bomb squad to take care of them. Mr. Arale got caught in one
18 such explosion.

19 These are all reasons that he's a refugee, these are all
20 reasons that he's not going back to Somalia, these are all
21 reasons that he can't go back to Somalia.

22 THE COURT: What about China? I mean, I imagine it's
23 pretty easy for him to go back to China where he lived for
24 three years apparently at least.

25 MR. YOUNG: Well --

1 THE COURT: And where one of his children was born.

2 MR. YOUNG: And he has, I think, a brother still in
3 China so there's maybe connections to China. I don't know how
4 excited China is about having people just plunk down and live
5 there. He had papers, he was in contact with the government in
6 China, he was being allowed to live there, he was identified as
7 a refugee. He had to get smuggled out of Somalia to get to
8 China but once he got to China, he was accepted there as a
9 refugee and that's where he got in the refugee program.

10 I fully understand, I think, the government's position on
11 refugees. And let me clarify that by "government", I
12 completely do not mean Ms. Anderson. I've explained to the
13 family, I've explained to the community that Ms. Anderson is a
14 good person but the Somalis see themselves repeatedly called a
15 disaster, they see Minneapolis called a disaster. They see
16 themselves compared to poisoned Skittles, they hear wishes that
17 they came from Norway instead of these scatological countries.
18 They hear the United States called a dumping ground, a migrant
19 camp, a refugee holding facility. And then the government
20 brings this indictment.

21 There is nobody that hates al-Shabaab more than Mr. Arale
22 and the people that are behind me. They have all lost family
23 or they've lost limbs or they've lost children or they've been
24 tortured and this is why they're refugees.

25 And I would not -- I never would have held this hearing, I

1 would have just submitted on the report, and I never would have
2 invited the community to this hearing if I thought there was
3 going to be one word that would hurt Mr. Arale, and there
4 wasn't. There's nobody in this courtroom on either side of
5 this courtroom that likes al-Shabaab. This is an attempt to
6 find a terrorist where there are no terrorists and to paint an
7 entire community. We are ready to tear down every word in this
8 indictment.

9 Mr. Arale was born where he was born; we can prove it. He
10 was born in the house that he was born in. He was born in the
11 house that his grandparents still live in. His name is what
12 his name is. He lost his hands the way that he lost his hands,
13 and he lost his eyesight at the same time and had other severe
14 injuries as well. He and his wife were caught by al-Shabaab,
15 they were tortured by al-Shabaab. He never joined what he
16 never joined. And I could just not be any happier, Your Honor,
17 than to have been given this case.

18 THE COURT: Thank you, Mr. Young.

19 Ms. Anderson, anything further?

20 MS. ANDERSON: Well, Judge, this is -- this is really
21 confusing because on June 27th of 2017 when the defendant met
22 with FBI at his own home, he said -- this is what Mr. Osman
23 said, he said his true name is Mohamed Abdirahman Osman. He
24 said his family is from Jijiga, Ethiopia; he has no family in
25 Mogadishu. His father is Abdirahman Osman. His mother is

1 Fahima Osman. He was recruited by al-Shabaab when he was a
2 teenager.

3 So now, to hear that the defendant is saying his true name
4 is Arale, if that is true, I doubt that it's true, and we have
5 evidence to prove otherwise, then he lied to the FBI on June
6 27th of 2017 and it just seems like the defendant has a hard
7 time with the truth. He has a hard time telling the truth to
8 the FBI, telling the truth to pretrial services, and telling
9 truth to immigration folks.

10 Mr. Young says the defendant has no criminal history.
11 Well, we have no indication of what kind of criminal history he
12 has in Ethiopia where he came from. We know that he doesn't
13 have a criminal history here in the United States for the four
14 short years that he's been here.

15 And he was -- yesterday Special Agent Trentlage was asked
16 did he ever -- do we have any evidence that he ever hurt
17 anybody. Well, no, we don't, not here in the -- not here for
18 the four short years that he's been here in the United States.
19 But, Your Honor, he admitted to the FBI that he was recruited
20 by al-Shabaab, and I can tell you that al-Shabaab kills people
21 and hurts people and maims people and does all sorts of nasty
22 things.

23 So although we don't have any evidence of anything like of
24 any criminal history back in Ethiopia, it just doesn't mean
25 much. All we can do is gather records for what we've got here

1 in the United States.

2 Finally, Your Honor, I would just like to point out, as the
3 court -- as the court asked Mr. Young, what about going to
4 China. He could go -- he could go to any -- any country that
5 he wants. He could obtain a passport, he could get to Mexico
6 in an hour. He and his family. He's -- again, he's got the
7 means to do it. He can send \$10,000 to family members. That's
8 a lot of money for somebody to send overseas.

9 He's got the means, he certainly has the motivation
10 because, based on the lies that he himself told to immigration
11 officials, as I mentioned, he's got the motive to not stick
12 around here. He's got the motive to leave Tucson, to leave
13 Arizona, and to leave the United States. And we would ask that
14 he be detained.

15 THE COURT: Thank you.

16 I'm going to go ahead and make my findings on the record.
17 The court finds that the testimony of FBI Special Agent
18 Trentlage is credible. However, the government has not proven
19 by clear and convincing evidence that if released the defendant
20 would pose a danger to the community.

21 The government has, however, met its burden of proving by a
22 preponderance of the evidence that if released the defendant
23 poses a flight risk. While the defendant does have three
24 children who are US citizens, he also has a child who lives in
25 Somalia with his mother-in-law and another child who was born

1 in China.

2 The defendant's mother and father both live on the border
3 of Somalia and Ethiopia. The defendant has 12 siblings, one of
4 whom lives in China and the others live in Somalia.

5 The defendant was born in either Somalia or Ethiopia where
6 he has lived all his life until May of 2011 when he moved to
7 China and then he moved to Tucson in 2014 where he apparently
8 has lived with his wife and children in the same house for the
9 last three or four years.

10 He has a Somalian passport and is currently in the US as a
11 refugee. However, he is also under removal proceedings.

12 When interviewed by pretrial services and the arresting
13 officer, the defendant provided inconsistent information
14 regarding how he was injured.

15 The pending charges involve false swearing in immigration
16 matters and false statements to a department or agency of the
17 United States. The indictment alleges that the defendant lied
18 about his name, his citizenship and nationality, the name of
19 his father, and whether he was ever a member or ever
20 participated in a rebel group or insurgent organization.

21 Given the nature and seriousness of the offense charged,
22 the weight of the evidence against the defendant, and the
23 defendant's family and community ties, the court finds that no
24 combination or -- of conditions exist that would reasonably
25 assure the defendant's appearance at future court proceedings,

1 and he shall remain detained pending trial.

2 I have ordered a transcript of yesterday's evidentiary
3 hearing to facilitate the likely appeal to Judge Marquez. I
4 don't plan on transcribing this proceeding unless either of you
5 would like to do that; I'll leave that up to you.

6 Anything further, counsel?

7 MS. ANDERSON: No, Your Honor.

8 MR. YOUNG: Nothing, Your Honor.

9 THE COURT: Thank you all.

10 And thank you to the interpreter very much.

11 INTERPRETER: Thank you.

12 (Whereupon, the matter was concluded at 3:46 p.m.)

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C E R T I F I C A T E

I, Cindy J. Shearman, court-approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter to the best of my ability.

s/Cindy J. Shearman
Cindy J. Shearman, RDR, CRR, CRC

October 24, 2018
Date