U.S.C.A. No. 12-30005

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)
	)
Plaintiff/Appellee,	)
	)
vs.	)
	)
EDGAR J. STEELE,	)
	)
Defendant/Appellant.	)
	)

GOVERNMENT'S SUPPLEMENTAL EXCERPTS OF RECORD
VOL. I of II

On Appeal from the United States District Court
for the District of Idaho
District Court No. CR 10-00148-N-BLW

The Honorable B. Lynn Winmill, Chief District Court Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. EDGAR J. STEELE, Defendant.	Case No. 10-00148-N-BLW **SENTENCING**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

November 9, 2011

Pages 1 to 131

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moment I was arrested, and I knew they couldn't exist. And so I told my wife to stand like a rhinoceros in the road and be not dissuaded. Tell the truth. Tell them that's not my voice on the tapes, because it wasn't, and it isn't. Of course, we weren't able to put that testimony on for the jury. You heard it, though.

Who would do this? The government? Oh, my government wouldn't do that to me. I've had to fight that for years now. I had to fight it with my own wife until this case. She now finally believes it, as so many other people do. It's kind of like, Judge, how a woman who gets raped will suddenly become a supporter of the Second Amendment.

You know, and when I showed up at trial after it had been continued for that week, the week that they needed to hang the bomb on my wife's car, by the way, which never left the state -- and it was defective; it wasn't a bomb. And I think that's probably why this powder was sent out, because they knew that you had continued the hearing for a week. And it was at the end of that week that that bomb was discovered.

And all you've heard is testimony that

there wasn't any bomb until then. So when was it put on, Judge? There is absolutely no proof, no evidence that it was put on before that car left the state. There is no evidence that it or anybody traveled in interstate commerce for the purpose of committing a crime.

And, you know, I was handed this document here that I have got in my hands at that first hearing. It's called a pretrial services report. And right in it -- and this is the one that was prepared just after I was arrested. And right in it, it quotes the ADL about me as offering evidence why I shouldn't be given bail, because I'm a bad guy, because I say things that are politically incorrect. Accused me of writing a number of books; that was false. I have written one book, called "Defense of Racism." And if you measure it by its title, you could be offended. Nobody who has read it has been offended.

So there we were at my first hearing, where I asked for bail. You're not supposed to ask for it at that hearing, but I did anyway. And I see in the document the ADL is being relied upon to give reasons why I shouldn't be given bail. Right at the outset. And I understand that they

were ready with press releases and spokesmen appearing the day I was arrested.

Funny they were able to do that. It's not like I'm important. They said it themselves. "He is not important." I'm not important. It's not like I'm a guy that you've got to have a biography in the can for in case he dies unexpectedly. The news organizations have those for people. Why would they suddenly have this canned dog-and-pony show about me trying to have my wife killed? What's wrong with that picture?

And I was given no bail. And several months later, when we asked for it again, I saw Magistrate Candy Dale shock through with malice, dripping with venom, taking on my lawyer for daring to come to court and once again asking for bail.

My friends, my family had gotten together, and they were putting up a million dollars bail for me, but that was rejected out of hand. No bail.

What's wrong with this picture? Murderers get bail. That cop in Spokane is getting bail. He is out even after he has been convicted. And that's true throughout the

country.

But I get special treatment. You've got to ask yourself why, Judge. Why do I get special treatment? Why am I charged the way I am so that I'm going to be hit with 50 to 60 years' imprisonment in a few minutes? What's that all about?

You said yourself you had never seen anything this size. Why me? Why am I that important? Nobody was hurt in this case. My wife has testified repeatedly that she believes I'm innocent. You have got the perp, the admitted perp, in jail; and yet the system is still pulling out the stops on me. Fifty to sixty -- make it a thousand years, Judge. Here, let me ask this in my allocution: Give me a thousand years. I think that will put me in Guinness Book of World Records. You might as well, because I'm going to be dead in five years wherever I am, chances are. And statistically, even without my medical history, I would be dead in ten years.

So this hoo-ha about the length of the sentence is just window dressing. And why do they need to dress the window in this case? What's the point of it if I'm not important and this is just

a case of murder for hire that went awry?

Well, I must be important, actually; otherwise, you wouldn't be about to bang me with 50 to 60 years. I must be important because we wouldn't have all this media here that's here right now. I must be important because I wouldn't be getting the attention in the media. I wouldn't be getting the condemnation of NGOs that I believe are complicit in my prosecution.

I don't know who fabricated those tapes. It took somebody with know-how and money, somebody a heck of a lot smarter than Larry Fairfax; that's for sure. I don't know who it was. But I see the ADL appearing right from day one. Day one, ADL. I have never seen them quoted in court papers in 30 years of legal practice; and yet, in my case, the ADL has given reasons why I shouldn't get bail, and they're being listened to. And they're out with press statements the same day.

That's real efficient. We ought to turn the running of government over to them. Oh, excuse me, I forgot. We did.

Now, I have a number of topics I want to cover yet. Remember, I haven't been heard. I

wasn't allowed to put on my case, wasn't allowed to present even on the miserable defense that McAllister had prepared for me. Nobody has heard me talk until now.

I have given two interviews. Amazing, all the publicity that's gone on about what I say and think, but these reporters haven't even come and asked me. KXLY did two weeks ago. And a movement paper, the American Free Press, interviewed me a few months ago, all posttrial, of course.

But I have really got to talk about these tapes a little bit. Cyndi heard it at once. She knew they were false. My experts came in and said they were false, that they were fabricated. It wasn't even my voice. Of course, that evidence wasn't heard by the jury.

There is a third tape that my wife was told isn't ready yet. And as she pointed out, it probably still isn't ready because she still hasn't heard it. And why isn't it ready? Because it's a tape that the government has admitted had a defective recorder on it. And there is an hour of the recording missing, a critical hour.

Well, funny thing. You know those

other two recordings that Larry Fairfax participated in? Funny thing, there is a defective recorder there, too. FBI said so. Because the local office sent it back to Quantico for examination. And they said, "We can't do anything with this. It's defective." So they sent it back. What did the FBI do? They sent them another one. It's just like this one.

So we have recordings made by defective recorders, and that was presented at trial. And that, too, was a Brady violation because it wasn't disclosed to us, just like the fact that the original recording was destroyed by Agent Sotka, destroyed before he ever even listened to the copy, certainly never listened to the two of them so that he could verify that somehow or other it got from one to the other correctly.

He delayed ten days before he let my wife hear the first two recordings. My wife has heard them several times since then. My lawyers have heard them. And they have all told me how they have changed in one way or another each time they have heard them. These tape -- or these recordings have been a work in progress. And this third recording we have never even heard.

And I see some more laughter and smiling over here. Man, this guy is a lunatic. This can't be true. Well, this is American justice today.

The American public has been so hoodwinked, so buffaloed. I'm not delusional. I'm a well-educated professional with a long track record of honesty, a long track record representing the politically incorrect wherein I have seen what the government will do. I have never seen it do what it's done to me, though, but I have seen them do it before; and yet we have government agents sitting over here laughing at it during the hearing. What's wrong with this picture, Judge?

You bootstrapped the opinions of my experts into the reason for your denial of their being able to be my experts at trial. That ain't the way it's supposed to work. You are supposed to hear about their qualifications, and then you're supposed to decide if they're qualified. Instead, you went ahead and heard all their conclusions, all their research, two days of testimony, and then you ruled that one was not qualified and the other was irrelevant. You did

wrong, Judge. You shouldn't have done that.

Tic-Tac sound, remember that? We heard about that during the trial for the first time. And why was it important for Mr. Haws to come in and present that evidence? Well, it was important because we had presented during the Daubert hearing evidence of 351 anomalies, 351 occurrences, electronic signatures of the type that occur when you dub, splice, cut recordings. 351. One would be enough. One would be enough to disauthenticate them.

And how did you authenticate them? With Larry Fairfax. That's what you ruled from the bench. The self-confessed perp, the liar, the pipe-bomber, the oafish north Idaho handyman. He is the one who you believed that the tapes were correct.

Sotka couldn't be believed because he lied to us going into the trial, and he lied during the trial. Remember how many times he refused to call that original the original because he had destroyed it? He insisted on using a second- or third-generation copy and calling that the original.

I call that a lie, Judge. And I accuse

the government agents in this case of lying repeatedly and throughout this case. And it's been proven. It's on the court record. It's in the transcript.

Authenticated the tape by a proven liar who is being held hostage by a soft ball plea bargain. That's how you authenticated the tape. World-renowned experts, the guy who wrote the book, that's not good enough, but Larry Fairfax is.

My wife testified and would have testified to a great more problems with those recordings, all of which indicate that there is something wrong with them, from the fact that there is train whistles on one done in the barn where you can't hear the train, and there is no train whistles on the other one, though it's at exactly the same time. Both recordings started at exactly 6:02 p.m. What a coincidence. One of them had nine train whistles. The other one had none. Why is that?

Well, the one with none I can explain because you can't hear the train whistle in the barn, but they presented it as critical that the train whistle was on the other one. Why? Because

they had gone to the trouble of getting the railroad company to confirm that there was a train that went through there every day at that time. Of course, they didn't explain why there was no train whistle after 6:02 the next night.

My wife said that it wasn't my voice on the tapes, that it was somebody who was mimicking my voice, every time it came to the subject of the plot. Routine stuff about feeding the animals and whatnot, she said that sounded like me. And that's exactly what the sound experts said. Funny thing. She said it first, during the first week -- well, excuse me -- ten days after my arrest, when she was finally allowed to hear those two recordings.

She wasn't allowed -- she has never been allowed to hear the third recording, don't forget, because it's not ready yet. What does it take to get it ready, Judge? The same stuff that it took to get those two ready during those ten days that they refused to let my wife hear those recordings? What did they do to those tapes to make them ready? My experts would tell. They did tell you, but you didn't let them tell the jury.

I'm not going to reargue the business

about lack of federal jurisdiction. I think it was well put by Mr. Hoyt in his motion for new trial. I found the logic inescapable; I'm astounded to find that you didn't.

Larry Fairfax was an agent of the government when he went to Oregon. He wasn't my agent. They paid him $500 to go to Oregon and be there in case I called him so they would have a record of me making an interstate call. Why would that be important? An interstate call would be proof of federal jurisdiction.

He testified he went to Oregon one other time, too, which, of course, I knew nothing about. Said he went there to see if the bomb was still on the car. Looked at it, wasn't on the car. All we've had is that there is no evidence -- that there is evidence that there was no bomb when that car was outside the state.

The statute calls for somebody to travel interstate in order to create a nexus with interstate commerce and thereby confer jurisdiction upon this court as opposed to state courts.

He didn't go there to commit any crimes. He didn't go -- I didn't send him. He

testified that he didn't go with the intent to commit any crimes. The second time he went, it's unclear what he went for. He just went to receive a phone call. And when he went, he was the government's agent.

Where is the federal jurisdiction, Judge? I don't get it. If anything, this is a state court matter. We shouldn't even be here. You shouldn't have heard this case. This should be dismissed right now for lack of jurisdiction, which is within your power to do, but you won't.

Why am I so important that all of this stuff is happening? I mean, why do you have to -- why didn't you just let the state prosecute me? Why did it have to be brought into a federal courtroom? Why do I face 60 years? Why do we have all of this government prevarication? What's going on here if this is just an ordinary case and I'm just an ordinary guy? I'm sure not being treated that way.

It looks like more than an ordinary case to me, Judge. Why would that be, do you suppose? You're sitting up there talking about you haven't seen a recommendation more than twice what you had seen as a high watermark in the past

until today. And you heard Prosecutor Whelan stand up here, and (clapping) I deserve it. What's that all about? I'm going to be dead in five or ten years anyway. I'm amazed that I haven't had another aneurysm and died in jail.

What's going on here? This just -- this case doesn't add up, no matter what kind of machine you use to do the addition.

What's my motive? I've got motives laid on me. I have yet to hear one that worked. The first one was life insurance. My wife and I canceled our life insurance policies eight or ten years ago, so it wasn't that. I wasn't going to profit by her death, that's for sure.

Then they said she had a boyfriend, and they told her they had pictures of her with this boyfriend. She didn't have a boyfriend. I could have told them that. I know her.

You heard the way I described her. I think she would describe me the same way. That's not the description of somebody who has a boyfriend.

And then when she challenged them and said, "Show me these pictures," and they weren't able to. Why? Because they didn't have them.

Why? Because they lied about them.

So then they decided I had a girlfriend. That was the motive. I'm still having trouble with this one, Judge. If it's really true that I'm going to run off with an 18-year-old -- I'm 66 now -- a girl who is young enough to be my granddaughter and, theoretically, young enough to be my great-granddaughter -- if I'm going to do that, aside from how am I going to survive the honeymoon night, why didn't I just do it? Why do I have to get my wife out of the way? That just doesn't make sense.

Guys run away with their mistresses all the time. They don't have to kill their wife. I wouldn't have to do it, either. Where is the motive there?

At trial, there was something said about uninsured motorists coverage. I'm a lawyer. I have handled a lot of cases involving auto insurance. I well know that you don't collect insurance for intentional acts. And whether it was a bomb, a run off the road, my mother-in-law being shot by somebody, as I was told, those are all intentional acts. And I'm a lawyer, and I know better. Give me a break. There wasn't any

uninsured motorist coverage available.

What was my motive? I didn't have a motive. I don't have a motive today. I didn't have a motive then. The only motive I saw here was for the government and the NGOs, like the ADL, to get me. Yeah, they're out to get me, Judge. And they have got me good. It does happen. It happens all the time.

This murder for hire is a template used by the FBI throughout this country on defendant after defendant. There are so many in jail right now under an identical prosecution that I couldn't even count. Yes, it happens. The toughest thing you got is to think that our government would do anything to us, that they would lie. We proved the lies in this case. By implication, we have proved what they have done.

I didn't have a motive. And the only evidence suggesting that I might have a motive was falsified, and it was authenticated by the liar who would say anything to escape the sentence that he deserved, which he was given by the prosecution for him to come in and lie about me. And you let him authenticate those tapes. That was the only authentication of the tapes.

Because the FBI violated its own protocols in making them. They sent Fairfax onto my property, allegedly, with these recorders -- with this recorder. There was no simultaneous microphone monitoring, as there is supposed to be. There was no second agent -- just Agent Sotka -- as there is supposed to be. There was never any --

THE COURT: Mr. Steele, let me interrupt you for just a moment. You have been going about an hour.

And let me point out, Mr. Hoyt, I did check, and we sent an email to counsel on October 12, copies to you and to the government, indicating that we needed to have a time frame for the sentencing. We typically, in a garden-variety sentencing, take about an hour, but we needed to know how much more time to allot.

Based upon what the government responded to, we set this for a two-hour sentencing. We didn't hear from Mr. Hoyt; therefore, we had nothing else to go on. If we had known there was going to be more requested, we would have allotted more time.

I have still been, I think, quite

generous in allowing you to reargue the case, which is not the purpose of the allocution. You have repeated yourself -- we're probably going on two or three times on most of your statements have been said time and again.

So I'm going to give you 15 more minutes to conclude your statement, and then we're going to move on with the rest of the sentencing. And I would, again, remind you that the purpose of allocution is to argue mitigation and reasons why the sentence that the court imposes should be more or less than what the government has recommended or the probation office has recommended or to offer anything else by way of leniency.

But in terms of rearguing the case, the jury has spoken, and that -- the verdict is what the court must impose its sentence upon.

So I'll give you another 15 minutes; then I'm going to have to ask you to conclude your allocution. Proceed.

THE DEFENDANT: Judge, I have an absolute right to say anything I want to for any length at this time.

THE COURT: Actually, sir, you do not. But let's go ahead and proceed.

THE DEFENDANT: Well, I understand that. I get it loud and clear. I'm going to just chock it up to coincidence that you're doing it at the very time that I'm getting into the real government misconduct.

THE COURT: Well, I have no idea what you're going to get into, sir. I can't read your mind.

THE DEFENDANT: I was talking about Sotka violating FBI protocols when he made these alleged recordings.

THE COURT: Sir, you have 15 minutes, and then we'll proceed with the balance of the sentencing. Go ahead.

THE DEFENDANT: And he destroyed the original.

The evidence goes away in this case. It should have gone away at the outset. And I have been denied my attorney-client privilege. I suppose you'll call it repetition for me to go into that now -- how they opened my mail to lawyers, how they listened in to booth -- how you listened in to a booth conversation with my lawyer. You, Judge. You did it. How they listened in on my telephone calls.

And I saw in your response, memorandum

in point, denying the motion for new trial. I saw where you said that it's okay to do that for an attorney that isn't of record. And I was astounded to see you put that in writing. That isn't what the Supreme Court has said. That's not what the Constitution says.

And, as it turns out, the two lawyers that became my attorneys of record -- Mr. Hoyt and, before him, Mr. McAllister -- were the attorneys they were listening in on but before they became of record. And you have given cover to the government by ruling that I had waived my attorney-client privilege somehow just by talking to them. That's amazing.

You know, I have got page after page after page. Here is my page on government misconduct. I'm sure some of it is repetitious, but I figured I would have all the time in the world for this. And it was the first time I was going to be allowed to speak out, so I was going to speak out. But I'm not able to tell you about all of the government misconduct, the lies, the violation of FBI protocols, failing to warn my wife of a bomb, telling my wife not to get a lawyer. We want to talk about witness tampering?

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,
Plaintiff,

v. Criminal Case No. 10-CR-148-BLW

EDGAR STEELE,
Defendant.

DEFENDANT'S SUPPLEMENTAL MOTION FOR NEW TRIAL

DEFENDANT, by and through his attorney, Wesley W. Hoyt, herewith submits his SUPPLEMENTAL MOTION FOR NEW TRIAL under Rule 33, F.R.C.P. Incorporated by reference are arguments and authorities in Defendant's Motion for New Trial (Dkt #s 234 & 236; see also Dkt #259). The affidavits and exhibits filed herewith are incorporated by reference and with the trial record provide the factual basis for Defendant's contentions.

I. DEFENDANT'S STATEMENT OF CONTENTIONS

1.1 ***Defendant's Contentions***. Defendant, convicted of all counts in the *Superseding Indictment,* contends that he was denied due process and a fair trial and should be granted a new trial or the case should be dismissed because of: 1) Lack of jurisdiction as to certain counts, dismissal required; 2) Erroneous supplemental jury instruction new trial, required; 3) Prosecutorial misconduct, new trial required, re: a) Violating Defendant's attorney/client privileged communications; b) Improper agreements with informant; c) Brady violations, new trial required

and implicated by: i) Not disclosing the Fairfax "fiction book" regarding immunity; ii) Not disclosing the Buck Report proving device wasn't explosive; iii) Not producing the third recording re: Defendant's June 11, 2010 arrest; 4) Governmental misconduct, new trial required, re: a) Bad faith destruction of original evidence from recordings of June 9th, 10th and 11th; b) Fabricating evidence against Defendant; c) Intimidating witnesses (tampering); and d) Obstruction of justice and misprision of a felony by Agent Sotka, who chose not to follow FBI procedures in reporting a major terrorism risk from a "car bomb" supposedly at large in the public domain when he first learned of it June 9, 2010; 5) Ineffective assistance of counsel, new trial required; 6) Arbitrary ruling by trial court demonstrating judicial bias favoring the Government, new trial required; and 7) Denial of a public trial, new trial required; as follows:

1.2. ***Dispositive Issues:***

1) **LACK OF JURISDICTION**. Counts 1 and 2, based on 18 USC §1958, solicitation of murder, to be dismissed as this Court lacked jurisdiction under interstate commerce requirement such that this law is an impermissible interference with state sovereignty and was not a law within the enumerated powers of the National Government as applied to Defendant. Under *Bond v. U.S.,* (09-1227) at 13, (June 16, 2011), such a law cannot apply to intrastate matters as any that conduct is reserved to and intercepted by the Ninth and Tenth Amendments to the U.S. Constitution. Because Defendant did not "cause" anyone to travel in interstate commerce, the court may not implicate jurisdiction when there is none.

Under solicitation for murder charges, there was no showing that Defendant utilized interstate commerce facilities. Government informants Larry Fairfax and James Maher were dispatched from Idaho on June 11, 2010 by the government, not the Defendant. They were paid $500 by the FBI to travel to Oregon on June 11, 2010 so that FBI Agent Sotka could have Fairfax call Mr. Steele from an Oregon prefix in the event a call from Fairfax was needed. (TR 367.) Under *U.S. v.*

Coates, 949 F.2d 104, 106 (4th Cir. 1991) there is no federal jurisdiction where the FBI traveled across a state line to make a phone call simply to implicate federal jurisdiction. *Coates* held that when the call was the "sole jurisdictional link" and it "was contrived by the government for that reason alone" (ibid.) just going across a state line by an FBI agent to make a call back to the Defendant was not the use of interstate commerce facilities.

In the present case, merely sending Fairfax and Maher into Oregon from Idaho was part of a Government plot schemed by Agent Sotka so that Fairfax could call Mr. Steele from an Oregon prefix. Like *Coates* this contrivance did not implicate the use of interstate commerce facilities in order to commit a federal crime. It has been held that the commerce clause was not created to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, otherwise, the federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. *A.L.A. Schecter Poultry Corp. v. U.S.*, 55 S.Ct. 837, 850 (1935). Because there was no Federal nexus, these counts should be dismissed.

2) **ERRONEOUS SUPPLEMENTAL JURY INSTRUCTION**. The jury submitted two "last minute" questions to the Court during deliberations. The Court's answer to the second question regarding the meaning of "interstate commerce facilities" was erroneous because it directed the jury to apply a "but for" reasoning which is based on a Preponderance of the Evidence standard rather than the Beyond a Reasonable Doubt standard as required in all criminal cases.

In fact, the Court should have directed the jury to rely upon the instructions as given without further interpretation. Instead, error was committed with a misleading answer and the jury's verdict must now be overturned and a new trial granted. *Boyd v. California,* 494 U.S. 370, 379-380 (1990); *Payton v. Woodward,* 346 F.3rd 1204, 1211-1213 (9th Cir 2003); *In re Winship,* 397 U.S. 358 (1970); and *Franks v. Franklin,* 471 U.S. 307, 309 (1985).

In a similar situation, in the case of *Bollenbach v. U.S.*, 326 U.S. 607, 611-612 (1946) the U.S. Supreme Court held that in reference to a supplemental jury instruction:

> [P]recisely because it was a "last minute instruction" the duty of special care was indicated in replying to a written request for further light on a vital issue by a jury… In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law. *Quercia* v. *United States*, 289 U.S. 466, 469. The influence of the trial judge on the jury is necessarily and properly of great weight, *Starr* v. *United States*, 153 U.S. 614, 626, and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word. If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptionable and unilluminating abstract charge.

Supplemental instructions, such as used to answer a jury question, are reviewed for abuse of discretion if the question on appeal is whether a factual foundation exists for the instruction and reviewed de novo where the ultimate issue is whether the court's instruction adequately states the law regarding the subject about which the jury inquired. See U*nited States v. Gomez-Osorio*, 957 F.2d 636 (9th Cir.1992). Here the jury was struggling whether the facts supported finding of interstate commerce. The answer creates a virtual presumption of interstate commerce that cannot be overcome (almost a strict liability standard). De novo review should be the standard where the trial court misstated the applicable law. By analogy, in *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450 (1979) there was reversible error in jury charge in which mens rea was presumed. It was held that because the jury may have interpreted the challenged presumption as conclusive, like the presumptions in *Morissette v. United States*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288, and *United States v. United States Gypsum Co.*, 438 U.S. 422, 98 S.Ct. 2864, 57 L.Ed.2d 854, or as shifting the burden of persuasion, like that in *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508, and because either interpretation would have violated the Fourteenth Amendment's requirement that the State prove every element of a criminal offense beyond a reasonable doubt, the instruction is unconstitutional. Pp. 514-527. The same would apply to the Government here.

In *Bollenbach*, the jury was misadvised as to the law and had doubts as to defendant's participation in a theft of securities in one state and their transportation to another. Similar to the case at bar, the jury's question indicated that the jurors were confused concerning the relationships and what constituted the use of interstate commerce facilities. Misadvising the jury in the Court's answer about what constitutes use of interstate commerce facilities, led to a quick verdict, but it denied Defendant due process and a fair trial. Thus, a new trial should be granted.

3) **PROSECUTORIAL MISCONDUCT**. Prosecutor misconduct by continually violating Defendant's attorney/client privilege with intrusions into: 1) Defendant's phone calls to private attorneys he was seeking to interview to hire for this case; 2) Defendant's outgoing "Legal Mail" send from jail where Defendant was held as a federal detainee; and 3) Defendant's in-jail, attorney booth conferences, created reversible error (Aff Edgar Steele, ¶16.) A new trial should be granted to Defendant with a fresh prosecutor, not familiar with Defendant's defense strategies that were derived from listening to privileged communications. In this way, Mr. Steele might have a fair trial.

A second part of the claim for prosecutorial misconduct involves newly discovered evidence as mentioned in paragraph 2 of the initial Motion for New Trial (Dkt # 234) which was the Jeff Buck explosives report, filed, by coincidence the day after the Steele trial was over, on May 6, 2011, in the Larry Fairfax case (Dkt #10-183-BLW). That video to that report, regarding the so-called "pipe bomb" involved in this case, showed it could not explode. The report and video was presented at the Fairfax sentencing hearing without Government objection, a dismissal should enter as to the explosive count based on a Brady violation and an insufficiency of evidence.

When the Government's evidence was that the Bomb Squad was unable to set off the Fairfax "pipe bomb" after two shots with a high powered shotgun shell, this was powerful evidence it was not an explosive device. Coupled with the Buck Report, this new evidence proves

that it was not an explosive device because it did not have the potential to explode. In such a case, the bomb related charges must be dismissed for failure of proof that the bomb would explode. *Medley v. Runnels,* 506 F.3rd 857, 863-868 (9th Cir 2007).

4) **GOVERNMENT MISCONDUCT**. FBI bad faith destruction of the recorded evidence from the device that made the recordings of June 9th, 10th and 11th requires dismissal of charges for spoliation of evidence. Bad faith is shown where the law enforcement conduct indicates that the evidence could form a basis for exonerating the defendant. U*nited States v. Heffington*, 952 F.2d 275, 277 (9th Cir.1991). Here Agent Sotka's conduct in failing to listen to the recording on the initial device prevented him from attest to the authenticity. If authenticity is not proven, then defendant must be exonerated.

In addition, government misconduct comes from Government fabricated evidence that appeared for the first time at trial. This amounted to newly discovered evidence in the form of the sound of "Tic Taks" rattling in the government informant's pocket, a sound not on earlier copies of the recording provided to Defendant. Because it was new evidence presented at trial for the first time and Defendant did not have an opportunity to analyze it, nor did Defendant have an opportunity to reasonably foresee it, then a new trial must be granted to allow Defendant to have a proper analysis. In the event that such sounds are established as "new," they disprove authenticity of the recordings of June 9 and 10, 2010 and the case must be dismissed. (See Disclosure of Herbert Joe, attached as Ex. I to the Affidavit of Edgar Steele.)

Further government misconduct comes from Agent Sotka's campaign to convince Mrs. Steele to embrace his view of this case, that her husband was trying to kill her. As pointed out in her Affidavit, Agent Sotka's approach was overbearing and verged on witness tampering. The FBI also engaged in witness tampering with respect to Daryl Hollingsworth by trying to persuade him not to testify for Defendant. (See Affidavit of Edgar Steele.) Witness tampering is a form of

obstruction of justice and applies to both parties. Attempts by the FBI to intimidate these defense witnesses was evidence of government bad faith and violated Defendant's right to due process. See *U.S. v. Vavages,* 151 F.3rd 1185, 1188 (9th Cir 1998). In *Vavages*, it was held: "[i]t is well established that 'substantial government interference with a defense witness's free and unhampered choice to testify amounts to a violation of due process.' *United States v. Little*, 753 F.2d 1420, 1438 (9th Cir. 1984). A defendant alleging such interference is required to demonstrate misconduct by a preponderance of the evidence. See *United States v. Lord*, 711 F.2d 887, 891 n. 3 (9th Cir. 1983). Whether substantial government interference occurred is a factual determination to be made by the district court. See *United States v. Baker*, 10 F.3d 1374, 1415 (9th Cir. 1993); Little, 753 F.2d at 1439. Thus, rather than denying Defendant the opportunity to enquire into government misconduct as the record indicates, the trial judge should have had a hearing to make a factual determination whether government interference occurred. (For examples of the trial court's rulings outright denying Defendant the opportunity to present evidence of government misconduct see: TR at: 411, 755, 1404, 1434, 1435, 1436, 1441.) It was reversible error for the Court not to have held a hearing on the subject and a new trial should result.

Additional bad faith from governmental misconduct derives from Agent Sotka failure to report a "car bomb" was involved on Mrs. Steele's vehicle, even thought he was aware of it prior to June 15, 2010 (listening three times to the recording of June 9th gave him the knowledge, TR 358:3-11). It was Agent Sotka who did not follow FBI procedures in reporting a major terrorism risk to other law enforcement agencies, which put the public at risk without notice to stay away from all cars matching Mrs. Steele's car on which there might have a "car bomb." According to Mr. Fairfax, the Bomb had been at large and in the public domain on May 27, 2010. Bad faith over a fundamental public safety issue indicates that bad faith permeates the entire case.

5) **INEFFECTIVE ASSISTANCE OF COUNSEL.** Lack of performance in the form

of inadequate investigation, preparation and presentation at trial by Defense counsel is the basis of a claim of ineffective assistance of counsel. The U.S. Supreme Court held: "…the right to counsel is the right to the effective assistance of counsel." *Strickland v. U.S.*, 466 US 688, 686 (1984).

> Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. Id. at 685. (Emphasis Supplied.)

Neither Roger Peven nor Robert McAllister, the primary attorneys responsible for Mr. Steele's defense, rendered adequate legal assistance. Their representation was marked by poor performance that caused prejudice to Mr. Steele (see Affidavits of Edgar Steele, Robert McAllister and Gary Amendola). "Counsel, however, can also deprive a defendant of the right to effective assistance, simply by failing to render 'adequate legal assistance.'" *Strickland*, at 685, citing *Cuyler* v. *Sullivan*, 446 U.S. 335, 344 (1980).

> [A] person who happens to be a lawyer is present at trial alongside the accused ... is not enough to satisfy the constitutional command [for a fair trial].' *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. at 2063.

The law requires reversal when overall performance of the attorney is substantially deficient as opposed to a single egregious act. *Harrington v. Richter*, U.S. Supreme Court, No. 09-587, decided January 19, 2011 (9th Cir. Calif.). See *Reynoso v Giurbino*, 462 F3d 1099, 1110-1116 (9th Cir 2006).

An attorney's failure to represent his client's interests, is the basis for a new trial if the attorney failed to investigate and adequately conduct pretrial preparation as happened here. *Turner v. Duncan,* 158 F.3rd 449 (9th Cir 1998). Neither Mr. Peven nor Mr. McAllister investigated or adequately conducted pretrial preparation because each had personal problems associated with poor professional performance in other areas of their lives. Both were seriously distracted by legal proceedings that had nothing to do with Defendant in this case. Mr. Peven had spent a month

in alcohol rehabilitation ending December 2007, having been relieved of his job after an "intervention" by his staff for related poor job performance, was engaged in a continual battle over administrative control of his office since that time. He had become embroiled in a 2011 lawsuit for civil damages that implicated his poor management of Federal Defender cases. He was sued by former associates alleging ineffective management in 2009. Board action to remove him from his position was pending according to the lawsuit, which is ongoing and provided a severe distraction from his case related duties, including Mr. Steele's case pending in 2010. (Aff Edgar Steele).

Whereas, Mr. McAllister's personal problems were of a financial nature, he having declared bankruptcy in the spring of 2011 just before trial and was disbarred shortly after trial. He admitted to having been under the scrutiny of the Colorado Bar for embezzlement of client funds before and during the trial and, shortly after trial announced his disbarment on June 6, 2011 (Aff Edgar Steele). Peven and McAllister stand as proverbial "bookends" of ineffectiveness

Ordinarily a claim of ineffective assistance of counsel that depends on evidence outside the trial record can be made only by motion under 28 U.S.C. § 2255 to vacate the conviction and sentence. *U.S. v. Myers*, 892 F.2d 642, 649 (7th Cir. 1990). The Myers court held:

> This case is unusual because the trial record itself compels a strong although not conclusive inference of ineffective representation -- so strong that Myers' conviction should not be allowed to become final until the issue is resolved." – *U.S. v. Myers,* at 649.

Further light and knowledge on the subject comes from the Ninth Circuit, which held:

> Where ineffectiveness of counsel is alleged, the defendant must point to errors or omissions in the record on appeal which establish that he did not receive adequate representation. He has the further burden of demonstrating from the record that there is a reasonable likelihood that counsel's errors or omissions prejudiced his right to a fair trial.... *U.S. v. Birges,* 723 F.2d 666, 669, 670 (9th Cir, Nevada, 1984) [internal citations omitted].

The list of actions not taken by both of these attorneys is too long to mention here, however, the Affidavits of Messers McAllister, Amendola and Steele chronicle many of them, the sum total of which is shocking to think that an attorney with that level of skill and experience was

unable to provide even a minimal performance. Confirmatory of this statement is the Affidavit Mr. McAllister himself who simply states:

> My ineffectiveness stemmed from the level of my personal remorse, mental anguish, substantial worry and cognitive disruption of my thinking processes occasioned by the pending disbarment proceeding which carried with it the likelihood that I might lose my license to practice law, which license had been in good standing for over 37 years. (Aff McAllister, ¶ 2B.)
>
> At the time I was representing Mr. Steele I did not recognize the extent to which my mental state had deteriorated as a result of such remorse had impacted my ability to be effective in representing my client because I assumed I could perform as well as I had performed previously, not understanding the full extent that the prospect of a disbarment would have on me. (Aff McAllister, ¶ 3.)

Under the doctrine of ineffective assistance of counsel, the Court must make a factual finding regarding the sufficiency of evidence of either lack of performance or prejudice from the conduct complained of. Attached hereto are the affidavits of many individuals, including Mr. Amendola, who addresses performance and prejudice from the lack of effectiveness of McAllister.

Mr. Peven was responsible for pre-trial preparation and protection of Mr. Steele's rights during the period before trial. Mr. McAllister was responsible for final pre-trial preparation and trial. As shown in greater detail below, neither attorney's performance met the minimum standard for competence of a trial attorney in a Federal criminal case and the actions of both attorneys caused sever prejudice to Defendant.

Messers McAllister and Amendola failed to offer a jury instruction on defendant's theory of the case, which is further evidence of ineffectiveness. A defendant is entitled to have a theory of the case jury instruction in all events. The federal courts have always held that a defendant is entitled to jury instructions as to the theory of the defense and that failure to provide such instructions are often grounds to overturn a conviction. But, as here, before there can be cogent jury instructions (or error when they aren't provided), there must actually be a defense theory presented to the jury. See for example: *United States v. Vole,* 435 F.2d 774 (7th Cir., 1970). Also see *United States v. Ruiz,* 59

F.3d 1151 (11th Cir.), cert. denied, 516 U.S. 1133 (1996) (Defendant has the right to have the jury instructed on his theory of defense); *United States v. Smith,* 217 F.3d 746 (9th Cir. 2000) (Court failed to instruct upon defendant's theory of the case); *United States v. Kayser,* 488 F.3d 1070 (9th Cir. 2007) (Defendant is due a charge on his theory of defense despite its strength or weakness).

Ineffective assistance of counsel is shown if (1) Mr. McAllister's performance fell below an objective standard of reasonableness or (2) prejudice resulted (see *Strickland,* at 689) to avoid the argument that, "…under the circumstances, the challenged action `might be considered sound trial strategy'" (id., quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). Accordingly, Mr. Steele must show that "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" (*Strickland*, at 690).

As for the second element, the prejudice flowing from Mr. McAllister's substandard performance, Mr. Steele must demonstrate that there was a 'reasonable probability that, but for McAllister's errors, the outcome of the trial would have been different' (id. at 694). For that purpose a reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome" (id.). And in that respect the analysis is not limited to outcome determination- but must also contemplate "whether the result of the proceeding was fundamentally unfair or unreliable" (*Scarpa v. DuBois*, 38 F.3d 1, 16 (1st Cir. 1994), quoting *Lockhart v. Fretwell*, 506 U.S. 364, 369 (1993)). That consideration reflects the fact that at its root the right to effective counsel exists "in order to protect the fundamental right to a fair trial" (*Strickland*, 466 U.S. at 684). Depriving a criminal defendant of a defense certainly renders the resultant trial "fundamentally unfair or unreliable." *Strickland*, supra, sets the 'gold standard' with regards to ineffective assistance of counsel where the *Strickland* court held that:

> The benchmark for judging a claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland,* at 686.

In summary, and as the pinnacle of ineffectiveness, Mr. McAllister's lack of action denied Mr. Steele the opportunity to present the testimony of Dr. George Papcun whose opinions were stated at the April 20, 2011 Daubert Hearing. Those opinions raised a strong inference of FBI fabrication of the two Government Recordings which itself constitutes government misconduct. Because such opinions raised the specter of tampering with or editing those recordings that were presented as if they were true and accurate copies of a continuous and uninterrupted recording of conversations between the informant and Mr. Steele, just one edit raises a reasonable doubt whether the recording is authentic. If there is reasonable doubt as to whether the recording is authentic, then the conviction could not be considered to be "beyond a reasonable doubt" and should be overturned. In addition, McAllister failed to adequately question Mr. Dennis Walsh so that he could be qualified as a forensic expert in the field of audio recordings at the Daubert Hearing. Mr. Walsh is the expert who testified at the Daubert Hearing that he came to the conclusion that the government's recordings were fabricated, whereas, Dr. Papcun's opinions only created an inference of such. Obviously, the stronger defense was developed by Mr. Walsh, whom defendant would have preferred to present as the audio recording expert, but for his exclusion.

Once tampering has been implicated, the burden of going forward was on the Government. Here, the Government, which is required by law to do so, yet it did not make a sufficient showing to eliminate the possibility of alteration of its recordings; in fact, the Government's evidence left open the possibility that the recording could easily have been altered because the recording made in the device was destroyed by Agent Sotka without listening to it. What has been left was the wav form copies provided by the Government to the defense for analysis and used by the Government. Once the original is lost, the recording easily could have been re-recorded with editing and then recorded again into the proprietary format. (See Report of Dennis Walsh of March 10, 2010 as provided to the Govern-ment in discovery.) In order to authenticate the recordings, the

Government presented the testimony of an admitted liar, Mr. Larry Fairfax, who during trial stated that on June 9, 2010 he lied to the FBI when he did not tell them about the existence of a bomb on Mrs. Steele's car. This was a material omission when he promised to disclose all of his criminal activities. Fairfax was represented by retired Idaho State Judge James Michaud who assured his good intentions in 'coming forward' and stood behind the promise to tell all about his criminal activities. That afternoon, Fairfax was sent with the device to meet with Mr. Steele, but was in a barn when the recording was allegedly made and not under surveillance contrary to FBI policy. Also, failing to have a second agent assist Sotka was a violation of FBI policy. Then, Sotka "downloaded" to his computer with proprietary software, the sound information collected by the device, but did not listen to the recording from the device to establish validity. He conducted these actions without another FBI agent being present which was yet another violation of policy. While he was alone on the night of June 9th, he twice listened to said recording of June 9th then destroyed the original. Sotka then listened again to the June 9th recording in the presence of his FBI supervisor and Assistant US Attorney, Tracy Whelan on the morning of June 10th to determine how they should proceed. As these three listened to said recording, they must have heard, just as the jury heard, the words "car bomb" plain and distinguishable near the beginning of the dialogue of said recording (Tr. at p. 360, ls 1-10). No one doubts that if any rational FBI agent, inclined to do his job had heard the words "car bomb" that they, in discharging their public safety duties would have immediately contacted Mrs. Steele and warned her of the possibility that a 'car bomb' might just be the instrument by which she was to be murdered and that she should look under her car for a foreign object or call the local police. An experienced prosecutor such as AUSA Whelan also would have had a similar duty to notify the victim of potential harm from the "car bomb." Failing such a call, can anyone doubt that these three public servants would have at least notified their fellow law enforcement agents in Oregon where Mrs. Steele was visiting her

mother. Can there be any doubt that the Idaho FBI agents who had called for support from the Oregon FBI agents had a duty to advise them that they could possibly be in danger from a 'car bomb' that might be attached to the vehicle of Mrs. Steele? Especially since the Idaho FBI agency was asking the Oregon FBI agency to look in on a case for them at the home of Mrs. Kunzman very early in the morning of Friday, June 11, 2010? What should the Idaho FBI have told the Oregon FBI about what they knew of the recording of June 9th? Should they have said that the Oregon FBI would need to investigate the possibility of a 'car bomb" on Mrs. Steele's vehicle? None of this was done and Mr. McAllister did not ask Agent Sotka whether it was done as a means of impeaching his credibility for it is ridiculous to assume that highly trained enforcers of the law would miss such an obvious statement "car bomb" that jumps out at even the casual observer. Yet, the Government may suggest that its three top law enforcement officials in Coeur d'Alene were so incompetent as to miss what clearly was as obvious as the sun at noon day. Part of his ineffective assistance of counsel is that Mr. McAllister failed to challenge the foundation of said recordings which reeked of fabrication, by making a motion to exclude or to suppress the recordings as evidence in the case. Not doing so, he missed the most significant opportunity to defeat the case against his client. Once challenged, it was the Government that had the burden of showing the recording was not altered, not the other way around. Regarding authenticity of tape recordings (from: *U.S. v. Haldeman*, 559 F.2d 31 (C.A.D.C., 1976)) consider the following:

> Appellants challenge the foundation for the introduction of the tape recordings. In determining whether there was a sufficient showing of accuracy to warrant admissibility, we must keep in mind the governing standard: "the possibilities of misidentification and adulteration (must) be eliminated, not absolutely, but as a matter of reasonable probability * * * ." *Gass v. United States*, 135 U.S.App.D.C. 11, 14, 416 F.2d 767, 770 (1969); accord, e. g., *United States v. Robinson*, 145 U.S.App.D.C. 46, 51, 447 F.2d 1215, 1220 (1971) (en banc), on rehearing, 153 U.S.App.D.C. 114, 471 F.2d 1082 (1972) (en banc), rev'd on other grounds, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); *United States v. S. B. Penick & Co.*, 136 F.2d 413, 415 (2d Cir. 1943).

Although the evidence bearing on admissibility should be carefully scrutinized to see if it measures up to the standard, it may be circumstantial or direct, real or testimonial, and need not conform to any particular model. E. g., *United States v. Sutton*, 138 U.S.App.D.C. 208, 213, 426 F.2d 1202, 1207 (1969).

Defendant was entitled to have counsel cross examine the law enforcement agent involved (specifically FBI Agent Sotka) and make an effective and coherent argument based on the indicia of Government fabrication of evidence (*Tejeda v. Dubois*, 142 F3d 18, 25 (1st Cir 1998)). Defendant was prevented from such cross exam and prevented from the presentation of his expert's opinion by the IAC of Mr. McAllister.

Ultimately, the Government had no case without said recordings, and Mr. Steele had no defense without Dr. Papcun's opinions. Thus, the prejudice to Mr. Steele's case because of Mr. McAllister's inaction meant that the jury was not given any alternative to a "guilty" finding. That Mr. McAllister failed to present any of the defense points of information in an effective manner and failed to make any proffers of such information as evidence when it was excluded by Court ruling is obvious from the witnesses who were standing by, ready, willing and able to testify to such. The Affidavits of Edgar Steele, Cyndi Steele, Dr. Allen Banks, Dr. George Papcun, Dr. Robert Stoll and Billie Cochran all show that evidence was available to be presented which would have: 1) rebutted prosecution testimony; 2) identified Government misconduct; and 3) established an entirely different picture of the Defendant and his circumstances than as portrayed by the Government. For instance, the Government portrayed Mr. Steele as the equivalent of a love sick teenager. Instead, he had established correspondence with over 90 women at the Romantic Tours website, obtaining from each patterned email responses of the same ilk, asking for money in exchange for their "love" over the internet. Extending an expression of love to each of the 90 was a part of his investigation to bring out the predatory nature of the Russian Bride operation. It was

this predatory program that Mr. Steele had planned to write about in his book in order to expose the fraud of the Russian Bride scam that had plagued one of his clients. In doing so, his plan was to find a party in the United States to sue to help his client recover some of his losses.

Dr. Papcun's opinions as stated in the Daubert hearing and in his reports raise the issue of FBI fabrication of evidence. With Dr. Papcun's testimony, the jury easily could have acquitted Mr. Steele, believing that the Government Recordings had been falsified. Thus, the Papcun opinion reasonably may have been the difference between conviction and acquittal.

Mr. McAllister undoubtedly developed a sense of hopelessness, just as other mental conditions can indeed be a cause of IAC by defense counsel. *Strickland*, at 699. Not only was Mr. McAllister ineffective, he flatly refused to follow the instructions of his client to make objections, move for mistrial and especially to subpoena Dr. Papcun for trial in order to ensure that his opinions would be expressed to the jury (see Affidavits of Edgar Steele and the hand written note from Steele to McAllister dated April 21, 2011). On April 21, 2011, the second day of the Daubert Hearing, Mr. Steele stated verbally and in writing to Mr. McAllister that: "[w]e must bring Papcun back for the trial, whatever the cost!" (See Second Affidavit of McAllister and Affidavit of Edgar Steele with Exhibit A attached, the handwritten note from Steele to Mr. McAllister dated 4/21, wherein Mr. Steele wrote: "We must lay a subpoena on Papcun and, perhaps move to continue (the subpoena is mandatory for our appeal).") It appears that the client understood the significance of Dr. Papcun's testimony even if Mr. McAllister didn't. Similarly, not being able to meet client objectives by failing to subpoena Dr. Papcun undoubtedly further contributed to Mr. McAllister's pervading sense of hopelessness.

With regard to the non-appearance at trial of Dr. George Papcun, Mr. Amendola writes: "it was my understanding that Mr. McAllister was in charge and would handle it." As further explained by Mr. Amendola:

> Before the Daubert hearing I asked Mr. McAllister about what we would do about securing Dr. Papcun's attendance at trial if Mr. Walsh was not allowed to testify and he simply responded that we would get him (Mr. Papcun) there, i.e., to trial. (Id., at ¶ 8.)
>
> At more than one meeting with Edgar Steele at the Ada County Jail, Edgar Steele raised the issue of ensuring that Dr. Papcun was available for trial, and raised the subpoena issue more than once. Mr. McAllister assured Edgar Steele that we would get Dr. Papcun there for trial. (Id., at ¶ 10.)

With regard to the issue of Mr. McAllister's trial preparation, Mr. Amendola opined as follows:

> Between the Daubert hearing and the trial, I sensed that Mr. McAllister was distracted and not properly doing the final preparations necessary for the trial. (Id., at ¶ 11.)

According to Mr. Amendola, Mr. McAllister was singularly ineffective in representing Mr. Steele:

> During the trial, it was clear to me that Mr. McAllister was not well prepared. His cross examination of witnesses called by the United States was disjointed and random and often did not get to the issue that needed to be addressed. His examination of witnesses called by the defense was equally weak, disjointed and random. He also paid little attention to directives from Edgar Steele. (Id., at ¶ 12.)

Regarding he closing argument, Mr. Amendola states that: "[i]t was terrible" and goes on to explain:

> The closing argument did not address key legal issues, including legal issues identified in the jury instructions. I had earlier raised those issues with Mr. McAllister. My recollection is that the closing argument did not address Count IV at all. The closing argument also did not address the validity of the recordings between Larry Fairfax and Edgar Steele in any meaningful way that could possibly persuade the jury to disregard those recordings. In my opinion, the closing argument was rambling and ineffective. (Id., at ¶ 13.)
> In conclusion, Mr. Amendola critiques the performance of what he calls "trial counsel"

including himself in that category, as follows:

> In my opinion, trial counsel for Edgar Steele were ineffective and did not provide him with adequate, competent or effective representation. (Id., at ¶ 14.)
>
> The law is clear that whenever a court is reviewing a case for IAC, it is a "mixed question of

law and fact." *Strickland*, at 698; citing *Cuyler v. Sulivan*, 446 U.S. 335, 342 (1980). The significance is that the standard applied to an allegation of IAC is a review for "performance" or "prejudice," either one of which will trigger a reversal or the grant of a new trial; all it takes is a "…showing that the decision reached would reasonably have been different absent the errors." (*Strickland*, at 696.)

IAC comes from many possible sources and in this case, from Mr. McAllister's (1) failure to have any defense theory whatsoever; (2) his failure to conduct any meaningful adversarial challenge, as shown by his failure to effectively cross-examine any of the prosecution's witnesses; (3) his failure to object to virtually any evidence; (4) his failure to prepare for and allow defense witnesses to tell their story and to introduce documentary evidence in support of Mr. Steele's defense; (5) his failure to move for a mistrial when it was announced that Agent Sotka had destroyed the original recordings from June 9th and 10th; (6) failure to make a meaningful closing argument; and, (7) failure to subpoena Dr. Papcun so that he could express his opinions to the jury

The standard is whether there is a "…reasonable probability that . . . the result . . . would have been different." *Strickland*, at 694. The jury asked questions and deliberated over two days. The massive evidence not presented and errors cited herein can lead only to an affirmative conclusion. As a result, a new trial should be granted based on ineffective assistance of counsel.

6) **ARBITRARY JUDICIAL ACTION IN FAVOR OF THE GOVERNMENT**. A new trial is required because of arbitrary judicial action favoring the Government. The record is replete with examples of the trial court's favoritism toward the Government (e.g. arbitrary exclusion of Defendant's expert over a timing problem create by the Court, exclusion of the Government's admissions against interest statements offered by Mrs. Steele, erroneous restrictions on witness examination, and rushing the defendant through trial, to name a few.) What the Court consistently ruled was witnesses could say nothing bad about the Government and nothing good about the Defendant. The following are a few of the many examples:

a) **Arbitrary Exclusion of Defendant's Expert.** No example is more compelling that the Court's flip-flop-flip over the question of the scheduling of Dr. George Papcun, forensic audio-media expert, for testimony. As stated in his Affidavit, Dr. Papcun was "ready, willing and able" to testify, once he received clearance from the Court that his testimony had been scheduled.

At the Daubert hearing, the Court flipped and ruled that Dr. Papcun could not testify unless pre-conditions were met. On Monday afternoon, May 2, 2011, the Court flip-flopped and approved Dr. Papcun for testimony to occur telephonically the next day, Tuesday, May 3, 2011. However, when the next day arrived, at the insistence of the prosecution claiming that it had a right to "Confront" defense witnesses, the Court flip-flopped-flipped and retracted its ruling, ordering instead that Dr. Papcun would have to appear in court to testify on Wednesday, May 4, 2011 at 8:30 a.m. or he would not be allowed to testify. The Court and prosecution well knew that Dr. Papcun was in Polynesia, but that he was willing to get on a plane and return to America for testimony when notified that he was scheduled and travel arrangements were made. As Dr. Papcun states in his Affidavit, if the Court had entered Tuesday's order on Monday, there would have been enough time for him to have traveled back for testimony by Wednesday morning at 8:30 a.m. But, given the realities of traveling to and from that part of the world, notification by the Judge Tuesday, for him to appear by Wednesday morning would not work. The best he could have done by Tuesday, would have been to arrive in Boise, Idaho late in the afternoon, about 4:30 p.m., Wednesday, May 4, 2011 to be ready to give his trial testimony at 8:30 a.m. on Thursday, May 5, 2011 (by Court Order, the trial ended at 2:00 p.m. each day, so a 4:30 p.m. arrival would not have fit the Court's time parameters). Were it not for the bias in favor of the Government and had the Court honored its initial ruling, Dr. Papcun would have testified by video conferencing Tuesday, because Defendant was arranging for him to go to the nearest U.S. Consulate or Embassy with such equipment. Unfortunately, when the Court's ruling changed from testimony by teleconference to in-court testimony, no further action was taken to establish the teleconference link. Thus, the jury never heard a witness testify as to the large number of transients in the recordings of June 9th and 10th which indicated editing from which Defendant could argue fabrication of the recordings. This was especially so in light of the fact that FBI Agent Sotka had just admitted that he had destroyed

the original recording without ever listening to it (TR 360:7-10). The Court's error made it impossible for Defendant's expert to testify and is the basis for the grant of a new trial.

b) **Arbitrary exclusion of admissions against interest by Government.** When Mrs. Steele was being examined by defense counsel, she was asked about conversations with Agent Sotka. Repeatedly the Government objected on the grounds of hearsay and repeatedly the Court erroneously sustained the objection. (TR 844:1-9, 848:14-23, 849:13-20). Under F.R.E. Rule 801(d)(2) the statements of FBI Agent Sotka constitute an admission of a party opponent and are not hearsay. The ruling was erroneous and caused Defendant substantial prejudice by blocking the Defendant from presenting critical evidence of the lies told by Agent Sotka which is part of the defense of Government misconduct and shows FBI bad faith which was the basis of Defendant's theory of defense. Defendant should be granted a new trial. (Aff Cyndi Steele, ¶7.)

c) **Denial of right to cross examine Government witness.** Allowing the Government to play the video recorded deposition of Tatyana Loginova without requiring her to appear in court, denied Defendant his Fifth Amendment right of confrontation. *Crawford v. Washington*, 541 U.S. 36 (2004). It was a manifestation of the fundamental unfairness in Mr. Steele's trial that the Court refused to recognize his right to confront witnesses against him under *Crawford* while the Court conjured a right to confront for the Government that has never existed, and then using that conjured up right attributed to the Government, reversed a ruling that would have allowed Dr. Papcun to testify by video conferencing, rather than requiring him to personally appear as a witness. The jury verdict should be overturned based on the trial court's failure to exclude the video deposition of Ms. Loginova as it deprived Defendant of his right of confrontation.

d) **Erroneous restrictions on witness examination.** The Court placed unreasonable restrictions on Defendant limiting his ability to cross examine prosecution witnesses as well as direct examination of defense witnesses by repeatedly prohibiting defense counsel from

enquiring into government misconduct. (e.g., TR at pages: 1404; 1434; 1435; 1436.) When government misconduct is at the heart of Defendant's case, then such limitations are unreasonable and the jury verdict should be overturned. *Holmes v. Bartlett* 810 F.Supp 550 (SDNY 1993); and *Wilson v. Mintzes* 761 F.2nd 275 (6th Cir 1985).

Witnesses who were prepared to testify about relevant and material information, but were blocked from doing so by erroneous Court rulings to the extent of denying Defendant the opportunity to present the theory of his defense. (Aff Edgar Steele, ¶ 27(c) and 42.) Each of these witness should have been allowed to tell their story so that Defendant's theory of defense would have been developed. The witnesses are: Cyndi Steele, Dr. Bob Stoll, Dr. Allen Banks, and Billie Cochran whose affidavits have been filed with this Motion for New Trial and which are incorporated by reference as if fully set forth herein.

An example is the testimony of Dr. Robert Stoll with regard to Defendant's state of mind on Thursday, June 10, 2010, only a few hours before the second informant-recording allegedly occurred when Defendant was supposedly of the mind set that he wanted his wife and mother-in-law killed, Dr. Stoll tells quite a different story. In fact, because he is a veterinarian with a medical science background and substantial life experience and interested in health issues, he spent considerable time with Mr. Steele that afternoon discussing the Defendant's miraculous recovery from successive aortic and sinus cavity aneurisms. Here is an instance where the Court refused to allow a witness to say anything good about the Defendant. According to the Affidavit of Dr. Stoll, on the afternoon of Thursday, June 10, 2010, Mr. Steele's mind was filled with gratitude for his life, love for his wife and family and focused on the Bible which Steele mentioned he had read cover-to-cover. Certainly, such evidence was relevant and material to Defendant's state of mind given the accusation that he supposedly was plotting to murder his wife shortly thereafter. (Aff Robert Stoll ¶3.)

The Affidavit of Dr. Robert Stoll provides a unique window into the mental state of Edgar Steele on one of the days that the Government claims he was plotting to murder his wife. Dr. Stoll states that because of the conversation he had with Mr. Steele about his near death experience and his family, that: "…the manner of Edgar's tender affection for his wife and family, I believe that this man's intent on June 10, 2010 when I visited with him was not to kill anyone, especially his wife." (Affidavit of Robert Stoll, ¶ 4). Since intent is an element of the crime with which Mr. Steele was charged and convicted, such evidence was both relevant and admissible, but the Government objected and the Court cut off Mr. McAllister's questioning so that it was not introduced. Then, Mr. McAllister failed to make an offer of proof.

As a further example of a witness who should have been allowed to testify, Dr. Allen Banks was present at the Steele residence during the hours of his arrest. His testimony was that the recording of the conversation between Mr. Steele and the law enforcement officers as reported on the transcript was at least one hour less than the time it took for those events to occur. This created the specter of a missing hour from the recording and was additional evidence of government bad faith in losing or destroying a significant item of exculpatory evidence. (Aff Dr. Banks, ¶6.)

Cyndi Steele planned on testifying that Agent Sotka repeatedly lied to her. That testimony was cut off by trial court rulings that prevented Defendant from presenting the evidence of bad faith and government misconduct that supported Mr. Steele's case. (TR 755; Aff Cyndi Steele.)

During the examination of Agent Sotka and Fairfax, defense counsel was not permitted by the Court to bring up any information negative to the government (TR 388, 411, 1404, 1434, 1435, & 1436); Defendant was also disallowed to bring up matters relative to his life that were positive and would have corrected the negative impression fostered by the Government. Thus, Defendant had no opportunity to develop the theory of his case. Since Agent Sotka was being asked about matters within the scope of his employment with the Plaintiff, his examination on these points by

the defense was properly directed at eliciting an admission against interest, specifically permitted by F.R.E. Rule 802(d)(2), and should not have been excluded.

The court should grant Defendant a new trial so that he may have the opportunity to develop his theory of defense by examining and cross examining witnesses as to prior admissions against the interests of the Government in order to develop his theory of government misconduct as guaranteed by law. *Groseclose v. Bell,* 130 F.3d 1161, 1166 (6th Cir. 1997).

d). **Rushing Defendant through trial.** The trial court pushed hard to compress the trial time of this case in what might be called a "rush job". (Daubert Hrg. 04-20/21-11, at 241; TR: 284:1-3 time spent on case, TR 1370, time pressure to end trial; TR 1376 Court unavailable next week case "has" to be finished; TR 1364, counsel made to assure date trial would be over on Court's time schedule.) The Court announced that it had another commitment the following week and the case must be finished by Friday May 6, 2011. The Government had leeway to try its case over a four-plus day period; however, when it came time for the Defendant to present his evidence, the Court was not so generous. Defendant had easily a weeks worth of testimony (see attached affidavits). But, because of the rulings, Defendant's case was truncated and presented in less than one day, in a much abridged fashion that deprived Defendant of his Constitutional due process right to a fair trial. When a trial court puts pressure on the Defendant to compress the trial time, such pressure violates due process rights and is reversible error. *Williams v. Taylor,* 529 U.S. 362, 375 (2000); *U.S. v. Tory,* 52 F.3rd 207 (9th Cir 1995); *Thomas v. Calderon* 120 F.3rd 1045 (9th Cir 1997); *Wilson v. Mintzes* 761 F.2nd 275 (6th Cir 1985). A new trial should be granted.

7) **Denial of a public trial**. A new trial is required if the Court denies a defendant a public trial. Numerous sealed pleadings, almost a dozen secret hearings and twenty-six sidebar conferences kept the public from knowing and understanding anything about this trial, except

what was presented from the Government perspective. The verdict must be reversed when a defendant is denied a public trial. In Re Oliver, 333 U.S. 257, 266, 273, 278 (1948).

The Court's closure of pretrial hearing closures and excessive trial sidebar conferences is reversible error (*Bell v. Jarvis*, 198 F.3d 432, 438 (4th Cir 1999)) and the trial court had a *sua sponte* obligation to guarantee Defendant an open and public trial. Under the Local Rules, no motion was filed or hearing held regarding denying Defendant a public trial and thus no parameters were set. The Sixth Amendment establishes a strong presumption in favor of a public criminal trial. This right, however, is not absolute. *Globe Newspaper Co.*, 457 U.S. 596, 606: "…the right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." *Waller v. Georgia*, 467 U.S. 39, 45 (1984). In *Press-Enterprise I*, the Court stated that the strong presumption in favor of openness may be overcome "only by an overriding interest based on findings that closure is essential." *Press-Enterprise Co.* v. *Superior Court*, 464 U.S. 501, 510 (1984). But, closure in not the usual case as "[s]uch circumstances will be rare." *Waller*, 467 U.S. at 45.

> Before a trial court may close a courtroom, four conditions must be satisfied: (1) the party seeking closure must advance an overriding interest likely to be prejudiced if the courtroom remains open; (2) closure must be no broader than necessary to meet that interest; (3) the trial court must consider reasonable alternatives to closure; and (4) the court must make "findings adequate to support the closure." *Waller*, at 48.

II. FACTS AND ARGUMENT

2.1 ***Background.*** This case stems from Defendant's June 11, 2010 arrest. Defendant is a lawyer who often handled cases involving First Amendment issues and has been outspoken on nationally prominent political issues. Defendant was initially charged by Complaint with solicitation for murder. (Dkt #1) After a jury trial in Boise, Idaho ending May 5, 2011, Defendant was convicted (Dkt #230) of all four counts of the Superseding Indictment (Dkt #25). The first

three counts were related to an alleged plot to murder Defendant's wife, Cyndi Steele and her mother, Oregon resident, Mrs. Kunzman. (Id.) The fourth count, a witness tampering charge, arose out of a telephone conversation between Defendant and his wife of June 13, 2010. (Id.)

2.2 ***Defendant maintains his innocence.*** From the moment of his arrest Defendant has consistently maintained his innocence. Mr. Steele claims he was set up for prosecution by his handyman, Larry Fairfax ("Informant") who stole $45,000.00 in silver coins from the Steele family savings then framed him with false murder-for-hire allegations so that he, Fairfax could mask the theft behind those grotesque allegations and keep the money in the wake of the furor created over the criminal charges against Defendant.

2.3 ***NGOs pressured Government to prosecute.*** Additionally, Defendant asserted that the FBI was under pressure from one or more non-governmental organizations ("NGOs") that were exerting improper influence on the FBI to prosecute Mr. Steele. The NGOs which had previously threatened Mr. Steele and his family were the Anti-Defamation League ("ADL"), the Jewish Defense League ("JDL") and the Southern Poverty Law Center ("SPLC"). Each of these NGOs had, as a part of their agenda, the silencing Mr. Steele for political reasons. The ADL and SPLC were on the new media scene immediately after Mr. Steele's June 11, 2010 arrest with smear campaign articles and TV News appearances, in an effort to foment public hatred toward Defendant; with the added effect of poisoning the minds of the prospective jury pool in the Coeur d'Alene area. (Aff Cyndi Steele, ¶7d; and NGO articles attached) Prior Death threats had been received by the Steele family members which the FBI traced back to the ADL and JDL, but refused to prosecute because of a political alliance with those organizations. The SPLC had targeted Mr. Steele on their list of "Radical Right" persons they wanted silenced ever since he represented the opposition in an SPLC lawsuit against Richard Butler of the Aryan Nation, in 2000. These NGOs have interlocking relationships and one of their members sits on the

Department of Homeland Security Committee along with a member of the FBI, giving them access. The network formed was capable of plotting Mr. Steele's false arrest, prosecution and trial. Part of the government misconduct was that the FBI had allowed itself to be pressured into prosecuting Mr. Steele for political reasons in order to please those in power at said NGOs.

2.4 ***Silencing Edgar Steele was the objective of this prosecution.*** Neither the Government nor these NGOs approved of the manner in which Mr. Steele exercised his freedom of speech and press (the attached articles attack him for his statements, see Ex. L) nor did they approve of his representation of any person that they considered to be "politically incorrect" such as Mr. Butler of the Aryan Nation. In fact, Mr. Steele referred to himself as the "attorney for the damned" because he represented presumptively innocent people, when their politics were not approved by the Government and its NGO affiliates. (Aff Edgar Steele ¶ 42(b); and Aff Cyndi Steele, ¶ 7(d); and see Spokane Review article quoting representatives of the ADL and SPLC at the time of Mr. Steele's arrest in Ex. L.)

2.5 ***Politically motivated prosecution.*** Clearly, this prosecution was politically motivated as shown by the extensive publicity campaign against Mr. Steele that daily, if not weekly reporting carried repeated 'hot button' words such as: "White Supremacist" and "Aryan Nation" etc. A representative from the SPLC, Mark Potok was given "face time" to speak on the local Spokane/Coeur d'Alene TV News immediately after Defendant's arrest (Aff Cyndi Steele, ¶9) indicating that the NGOs were working behind the scenes, ready to pounce as soon as he was arrested, to create as much animosity toward Mr. Steele as possible. In this politically charged environment, prosecutorial misconduct has arisen, possibly as a reflection of the extensive media attention and the public interest it generated against Mr. Steele.

2.7 ***Prejudice resulted from prosecutorial snooping.*** Prosecutorial eavesdropping was prejudicial to Defendant who was not able to have full, open and robust commutation with this

attorney (see Aff Edgar Steele, ¶12, 13, 14, 15, 16; and see Dkt #90 where the Court's findings confirm that such intrusion was still occurring as of February 11, 2011, four months later). The Court denied the motion to disqualify AUSA Whelan in Defendant's February 8, 2011 Reply for listening to Defendant's attorney/client telephone communications, then ruled that Defendant was deemed to have "waived" his attorney/client privilege. Although the Court had a duty and significant opportunity to regulate an out-of-control prosecutor who engaged in an ongoing campaign of listening to Defendant's attorney/client communications, no action was taken to stop the aberrant conduct. Considering that the Court had supervisory responsibilities to prevent this from happening and faced with a blatant admission by the prosecutor, in a showing of remarkable bias toward the Government, the Court neglected to inquire of the prosecutor as to the extent of such governmental eavesdropping, which, at that point included the interception of Defendant's legal mail, an issue not raised by the prosecution in its February 4, 2011 Motion (Dkt #71) (see Aff Edgar Steele, ¶ 13) and probably included recording of Defendant's attorney interviews at in-custody booth conferences. (Id., at ¶ 16_).

2.8 ***Deemed privilege "waiver" was not based on legal standard.*** Under Dkt #90, Defendant was deemed to have "waived" his attorney/client privilege while on the only jail phone available to federal detainees, such as himself, as he pushed a telephone "button," supposedly indicating his acceptance of the recording of said call, which button pushing the Court deemed to be a "waiver" of the attorney/client privilege. Said ruling was made without making findings as to the legal standard whether said "waiver" was either knowing or voluntary. The waiver inquiry "has two distinct dimensions": waiver must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran* v. *Burbine*, 475 U. S. 412, 421 and 427 (1986). The conditions listed in Moran

were not met here because Mr. Steele was being actively deceived by the Sergeant of the Correction Officers at the Spokane County Jail where he was housed (Aff Edgar Steele ¶13(c)) and coercion was in play from the fact that through his incarceration, the jail refused to allow him to use any phone but one that messaged the call "may be recorded." In *Johnson* v. *Zerbst*, 304 U.S. 458 (1938) the court held: we should "…indulge every reasonable presumption against waiver of fundamental constitutional rights." *Id.*, at 464. For that reason, it is the State that has the burden of establishing a valid waiver. *Brewer* v. *Williams*, 430 U.S. 387, 404 (1977). Doubts must be resolved in favor of protecting the constitutional claim. *Michigan* v. *Jackson*, 475 U. S. 625, 633 (1986). In a more recent case, the U.S. Supreme Court held: "Our precedents also place beyond doubt that the Sixth Amendment right to counsel may be waived by a defendant, so long as relinquishment of the right is voluntary, knowing, and intelligent." *Montejo v. Louisiana*, 07-1529 at pg. 7, 129 S.Ct. 1079, 1085 (U.S. 5-26-2009) holding that involuntary waivers of the attorney/ client privilege are "invalid."

2.10 ***Brady violations.*** A new trial should be granted because the prosecution violated the Brady doctrine at least four (4) times by failing to make a timely disclosure of exculpatory evidence to the Defense in the form of: 1) the Fairfax Book (TR 1346:1-11); 2) the failure to transcribe the full text of Defendant's arrest on June 11, 2010, with over one hour of exculpatory conversation missing (Aff Dr. Allen Banks ¶6,); 3) failure to produce a recording of the June 11, 2010 arrest, which recording Agent Sotka repeatedly promised to play for Cyndi Steele, but on June 21, 2011 Agent Sotka informed Ms. Steele that said recording was "not ready yet" (see Aff Cyndi Steele, ¶7(c)(2)) and 4) failure to produce the Buck report used in the May 11, 2011 sentencing of Larry Fairfax showing that Defendant was not guilty of the explosives charge because the device attached to Mrs. Steele's vehicle could not explode (see Ex M);

2.11 ***Mr. Steele was denied effective assistance of counsel by all attorneys***. Both sets of attorneys, first, from the Federal Defender's Office, and second, from private counsel, each were ineffective in their attempts to provide assistance to Defendant as shown below.

2.12 ***Specific acts/omissions showing ineffectiveness of counsel: Roger Peven***. Neither attorney Roger Peven of the Federal Defender's office nor the team of Robert McAllister and Gary Amendola were effective in assisting Defendant as trial counsel in his case. In chronological order, the ineffective assistance of Mr. Peven is dealt with first then that of trial counsel will be second. Mr. Peven, because of longstanding personal problems was unable to effectively manage his office and cases (Aff Edgar Steele, ¶4). Further, as he was appointed to represent Mr. Steele, he was embroiled in a dispute over his ability to competently serve as the Federal Defender (Aff Edgar Steele, ¶4). Moreover, as Mr. Steele reached out to qualified local attorneys, such as Mr. Steve Hormel, for reasons that can only be described as retribution arising from their internecine dispute, Mr. Peven strongly recommended against him and refused to allow Mr. Hormel to review Mr. Steele's file. In fact, Mr. Peven told Mr. Steele not to have anything to do with him. Any attorney seeking to be effective in Mr. Steele's case would have been in the process of preparing to defend the case for trial; but not Mr. Peven, he was insisting that Mr. Steele plead guilty to at least some of the charges (Aff Edgar Steele, ¶5). Mr. Peven failed to take the following action: 1) investigate the case; 2) hire knowledgeable experts; 3) file pretrial motions asserting Mr. Steele's defenses. Rather than preparing to defend Mr. Steele, attorney Peven was pressuring him to plead guilty (Aff Edgar Steele, ¶6) so that Mr. Peven would not have to perform any work on this case. It is quite clearly strong evidence of ineffectiveness that, at a time many months before trial, Mr. Peven failed to avail himself of the opportunity to prepare a defense or assert that Mr. Steele's rights, which were being harmed by prosecutorial misconduct, should be protected. Mr. Peven's failures in those early months, made it very difficult for his subsequent counsel to effectively assert and

protect these rights because the damage was already done, the proverbial "cat" was let out of the "bag". Timeliness in asserting such rights was essential to Mr. Steele's defenses.

(1) ***Peven's failure to investigate***. Attorney Peven did not conduct a proper investigation of exculpatory facts in a timely manner. Information was supplied to him that there was another person, beside Darrel Hollingsworth, to whom Larry Fairfax stated that it was the FBI who asked him to set up Mr. Steele. Mr. Peven failed to make reasonable attempts to locate that witness even though he was notified of her existence in early September 2010. Neither did Mr. Peven have his investigator follow up on the statements in the message from an anonymous phone caller stating that James Maher, cousin of Larry Fairfax, had bragged that both he and Fairfax informed the FBI about a bomb before it was discovered June 15, 2010; and, as a result, the caller claimed that Maher and Fairfax bragged to him that they "had something on the FBI." Reasonable efforts were not made by Mr. Peven to locate or obtain a statement from such anonymous caller (Aff Cyndi Steele, ¶22).

(2) ***Peven's failure to hire knowledgeable experts***. Attorney Peven did not hire knowledgeable experts who could: (a) analyze Mr. Steele's mental state at the time he made the phone call to his wife on June 13, 2010; (b) analyze the component configuration of the alleged pipe bomb to determine if it could explode; and (c) failure to hire a knowledgeable expert regarding audio recordings to show the same were fabricated. The failure of Mr. Peven to hire such experts in a timely way delayed the acquisition of information necessary to defend Mr. Steele's case and contributed to the fact that no expert testified on his behalf at trial.

(a) **Mental State Expert Needed**. Defendant's mental state was compromised by his arrest, solitary confinement and sudden withdrawal of prescription pain medications any one of which can materially affect a person's mental state, and a combination of all three (Ex. J, Report of Dr. Jonathan Woodcock) and all three of which likely was the cause of

his diminished mental capacity on June 13, 2010, since the time of his arrest, related to the phone call to his wife Cyndi Steele. Mr. Peven had months to apply his knowledge and skill as a criminal defense attorney to the subject of Mr. Steele's mental capacity at the time he committed the alleged witness tampering offense, but attorney Peven failed to do so. Failure by Mr. Peven, set up Mr. McAllister for failure when he submitted his Motion for Severance.

(b) **Explosives Expert Needed**. Counsel for Larry Fairfax hired ballistics expert Buck to perform an analysis of the components of the so-called "pipe bomb" found on Cyndi Steele's vehicle on June 15, 2010 at the oil change garage. That analysis was presented, without objection by the Government at the Fairfax sentencing hearing of May 11, 2011 and showed that said "pipe bomb" was not an explosive device (the Court should take judicial notice of its own files and review the Buck Report and video presented at the sentencing hearing in the case against Mr. Fairfax, (Case No. CR 10-183-BLW). Again, attorney Peven failed to hire a knowledgeable expert to analyze the pipe bomb evidence to show it was not an explosive device;

(c) **Audio recording expert needed**. It was incomprehensible that attorney Peven would not engage a knowledgeable expert who could opine on the subject of the authenticity of the audio recordings. As it turns out, the originals of these recordings were destroyed by FBI Agent Sotka. (TR 360:3-7 & 391.) A knowledgeable expert in the field of forensic examination of audio recordings would have looked into the origins of these recordings, the chain of custody as other generation recordings were made and discovered early in the case that the original was destroyed which would have effectively assisted Defendant in developing the defense of spoliation of evidence; the issue that was raised at trial by implication from the testimony of the Government's witness. Attached is the Declaration of Herbert Joe, regarding the elements of a forensic examination that would be needed in light of the testimony of Agent Sotka as to the manner in which he handled the recording device, "downloaded" the recording, utilized

proprietary software, destroyed the recordings, created wav files, and transmitted the device and CDs containing the alleged recordings to the FBI Lab at Quantico, VA. (See attached Ex. I, Declaration of Herbert Joe, dated August 8, 2011.)

(3) ***Peven's failure to make pretrial motions.*** Attorney Peven failed to timely make the following pretrial motions which would have protected Mr. Steele's due process rights as a defendant:

(a) **Failure to timely seek an order protecting Mr. Steele's attorney/client privilege**. A new trial must be granted because Mr. Peven did not provide effective assistance of counsel to remedy an untenable situation, which caused extreme prejudice to Mr. Steele's defense. For at least four (4) months, from October 2010 through January 2011, when he knew of the prosecutor's intrusion, Mr. Peven failed to make a motion seeking a protective order prohibiting the prosecutor from intruding into Mr. Steele's Sixth Amendment, Constitutionally protected attorney/client communications, which means that the prosecutor had complete access to all of Defendant's strategic decision. The prosecutorial misconduct of intruding into attorney/client communications was prejudicial to Mr. Steele's case, and includes:

(i) **"LEGAL MAIL" VIOLATED**. The prosecutor opened and read Mr. Steele's letter of August 12, 2010 to attorney David Basker (Aff Edgar Steele, ¶ 13(a)-(h)). Mr. Peven knew that said letter was plucked from the inmate mail and opened by the Government because it had become part of the prosecutors discovery (Id., at ¶ 13(d)) yet, Mr. Peven took no action to seek a protective order from ongoing prosecutorial misconduct;

(ii) **ATTORNEY PHONE CALLS VIOLATED**. Mr. Peven learned on October 7, 2010, that Mr. Steele's calls to private counsel were recorded and listened to by the prosecutor. He did not move for a protective order which would have flushed out the US Marshal's policy that prohibited him from speaking on unrecorded lines to private attorneys. That policy by the

Marshal's Service only allowed a federal detainee to be considered the "attorney of record" if that lawyer had been approved by the Judge (TR Hearing July 6, 2011, pgs. 30-36.) Said policy unconstitutionally denied Mr. Steele the right to freely retain and consult with counsel and violated Rules 5 F.R.C.P., which includes the right to "consult" with counsel according to Rule 5(d)(1)(B), F.R.C.P., and the right to "retain" counsel under Rule 5(d)(2). Mr. Peven's knowledge of this matter stems from two separate facts: first, he was in attendance at the hearing of October 7th where he was ordered by the Court to obtain from the prosecutor the recordings of Mr. Steele with private counsel, review them and report any irregularities to the Court. He later said that he accomplished that task and reported it to the Court that there were no irregularities. Secondly, in January 2011, he informed Mr. McAllister, Defendant's wife and Defendant, that he, Mr. Peven, had been informed by AUSA Whelan that she had been listening to recordings of Mr. Steele's conversations with private counsel all along and that she was aware that his defense strategies included: 1) attorney McAllister entering an appearance on February 7, 2011 and request a continuance; and 2) attorney McAllister raising the diminished mental capacity defense. Mr. Peven made the following statement to all three individuals (paraphrasing:) "You might as well call Traci Whelan first and tell her Edgar's defense strategies, because she gets that information before I do." (See Affs Edgar Steele, ¶16(b); and Cyndi Steele, ¶3). Of significance is the fact that AUSA Whelan used the strategic information she gleaned from Mr. Steele's attorney/client communications with attorney McAllister to formulate her tactics. E.g., there was no procedural basis for the prosecutor to file the motion to determine that Defendant had "waived" the attorney/client privilege (Dkt #71 of February 4, 2011) except as a pretext to protect herself from discipline or disqualification as a result of Mr. Steele's claims of misconduct. Said motion was filed only a few days after Mr. Steele was told that AUSA Whelan had been listening to his calls with attorney McAllister. When he was informed of that intrusion by AUSA Whelan, Mr. Steele immediately stated that he intended to file an ethics violation complaint with the Idaho State

Bar which was a significant motivator to AUSA Whelan to seek the Court's authorization and ratification of her ongoing campaign of intrusion into Mr. Steele's attorney/client phone calls.

(iii) **ATTORNEY-BOOTH COMMUNICATIONS VIOLATED**. In addition to the intrusion into his legal mail and jail phone calls, AUSA Whelan intruding into Mr. Steele's attorney/client communications conducted in the jail, attorney-conference booth. Said jail booth was supposed to be for unrecorded consultations with attorneys. The reason that Mr. Steele knows that AUSA Whelan was listening to the booth conferences as well as the phone calls with his attorney is that he did not, over the phone, discuss with Mr. McAllister's the plan to enter his appearance and then request a continuance, only in the jail provided attorney-conference booth in the Spokane County Jail. (Aff Edgar Steele, ¶15.) The attorney-conference booth provided at the Federal courthouse in Boise is also tapped so that the US Marshal can listen, as demonstrated by the Court in the May 3, 2011 proceeding (Dkt #272, pgs 3-5; and Aff Edgar Steele, ¶16(c)).

(b) **Peven's failure to timely move for severance**. This topic is covered above, under heading: "Mental State Expert Needed" and under heading: "Peven's failure to assert severance for diminished capacity defense."

(4) ***Peven's failure to timely assert defenses***. A new trial should be granted based on Mr. Peven's ineffective assistance while acting as Mr. Steele's counsel as a result of failing to timely assert defenses, as follows:

(a) **Peven's failure to timely assert governmental misconduct**. Although Mr. Peven was fully aware that governmental misconduct was Mr. Steele's key defense, yet, he refused to officially alert the Court that Defendant intended to offer the following evidence thereof as a part of his defense at trial:

i) **FABRICATED RECORDINGS NOT ASSERTED**. fabrication of recordings (it was unknown at the time that the original recordings were destroyed and that Agent

Sotka failed to listen to the originals before they were destroyed, two key facts setting the stage for fabrication; however, it Mr. Peven would have pursued this avenue with a notice of intent such as a so-called "Reverse 404(b)" motion, it would have been revealed earlier in the case; that is, if Mr. Peven had been effective in doing his job in obtaining an expert to properly examine the recordings, who likely would have determined early in such examination that original recordings of June 9th and 10th, 2010 were not available because they had been destroyed;

ii) **GOVERNMENT AND PROSECUTORIAL MISCONDUCT NOT ASSERTED**. Mr. Peven needed to timely seek protection from intrusion into Mr. Steele's attorney/client privilege by agents of the U.S. Marshal's Service, who were supplying that information to the U.S. Attorney to stop the invasion into what should have been Mr. Steele's confidential communications with private attorneys (see Aff Wesley W. Hoyt, attached to Dkt #88 regarding the October 7, 2010 *in camera* hearing, marked as Ex. G and attached hereto, regarding the statements of AUSA Whelan receiving recordings of Edgar Steele's lawyer calls from the Spokane County Jail from the US Marshal; see also the admission by AUSA Whelan as contained in Dkt #71, and see the information supplied to the Court by the U.S. Marshal on May 3, 2011, Dkt #272, pgs. 3-5, from the Government's own attorney booth in the Court House which, with the door closed, could only have been obtained by a hidden electronic snooping device in a booth that supposedly was not monitored or recorded. (See also Aff Edgar Steele, ¶35);

iii) **NON-EXPLOSIVE "PIPE BOMB" NOT ASSERTED**. Failure to assert that the so-called "pipe bomb" was not an explosive device, by failing to timely obtain the report of a knowledgeable expert, as above.

(b) **Peven's failure to assert severance for diminished capacity defense**. A new trial must be granted because of attorney Peven's failure to properly assert severance of the witness tampering count, based on Mr. Steele's sudden status change at the time of his arrest of

June 11, 2010 and the resulting diminished mental capacity at the time he made the June 13, 2010 phone call to his wife, Cyndi. (Aff Edgar Steele, ¶33; and Report of Dr. Jonathan Woodcock, attached and marked as Ex. J.) It was ineffective for attorney Peven not to assert severance which arises under the case law that requires a separate trial when antagonistic defenses are asserted as to one count but not to another. Although *Zafiro v. U.S.,* 506 U.S. 534, 539 (1993) deals with severance of joined defendants under F.R.C.P. 14, but the principle announced is applicable to severance of claims as well:

> [A] district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right… or prevent the jury from making a reliable judgment about guilt or innocence. Such a risk might occur when evidence that the jury should not consider against a defendant…. [text deletions as to co-defendant references to avoid confusion].

The antagonistic defense of diminished mental capacity, as it applied only to the charge of witness tampering would not be applicable to the solicitation and explosives related charges, because to apply it would mean that Defendant intended to admit culpability, then deny responsibility based on his mental state. Note that, the severance that Mr. McAllister argued for previously (Dkt #_) did not assert the diminished capacity defense solely related to severing the witness tampering charge. Under *Zafiro*, Defendant's *specific trial right* to be protected is the Fifth Amendment right not to testify against himself in the solicitation case, but to be able to testify and explain what he was going through when he made the phone call to his wife in the witness tampering case, at a time when his mental capacity had been diminished. Such presents a compelling basis for a severance in Mr. Steele's case missed by both Mr. Peven and Mr. McAllister. Thus, Mr. Peven was not being effective in representing Mr. Steele; if he had been effective he would have perceived that a obvious mental status change had taken place from day of his arrested on June 11, 2010 to the time of the phone call in question on June 13, 2010. That change is based on: 1) a sudden and complete withdrawal from medication; and 2) the stress of a first-time incarceration with

solitary confinement, complete with lock down in a high security setting leaving him mentally devastated. Further, if Mr. Peven would have perceived that a separate trial was necessary because the correct defense to the witness tampering count was diminished capacity, then he would have realized that such a defense had no application, and, in fact, was antagonistic to the defense to the other counts. Failure to have an analysis performed as to Mr. Steele's mental state from the moment of his arrest on June 11, 2010 up to and including the time he made the phone call to his wife on June 13, 2010 when his mental capacity to remember, to think, to know right from wrong, to exercise good judgment and to make rational choices was severely diminished by said conditions (see Dr. Woodcock Report, Ex. J) and two new trials with severed counts is warranted. *United States v. Breinig*, 70 F.3d 850, 852-853 (6th Cir. 1995) (Severance should have been granted where the codefendant's defense included prejudicial character evidence regarding the defendant). *United States v. Jordan*, 112 F.3d 14, 17 (1st Cir.), cert. denied, 523 U.S. 1041 (1998) (Charges should have been severed when a defendant wanted to testify regarding one count, but not others). In this case, Mr. Steele would have testified about the witness tampering charge but, elected not to testify as to the solicitation charges. The jury verdict should be overturned based on the failure to sever.

The withdrawal from the drugs without a slow and staged reduction, together with the stress of arrest, being falsely accused of a crime he did not commit and being locked away from human contact caused him to suffer a "fugue" or temporary loss of his rational self and disassociate into a delusional state, such that he had a diminished capacity to function mentally. The phone call itself is evidence of this state of a diminished capacity of mind from the fact that he did not recognize the reality of his circumstances being in jail, acting like he was a CEO in charge. That kind of grandiosity is indicative of the loss of touch with reality and presents an issue for the jury, which is separate and apart from the issues in the solicitation case and Defendant should have

been allowed a separate trial because of the disparity of defenses to be applied in the solicitation case. Certainly, a defendant may assert inconsistent defenses, "[i]t is well established that a defendant in a criminal prosecution may assert inconsistent defenses. The rule in favor of inconsistent defenses reflects the belief of modern criminal jurisprudence that a criminal defendant should be accorded every reasonable protection in defending himself against governmental prosecution, *United States v. Demma*, 523 F.2d 981, 985 (9th Cir. 1975) (citing *United States v. Harrell*, 436 F.2d 606, 611-12 (5th Cir. 1970) (denial of conspiracy and claim of entrapment); *Johnson v. United States*, 426 F.2d 651, 656 (D.C. Cir. 1969) (denial of sexual intercourse and claim of consent); *Hansford v. United States*, 303 F.2d 219, 221 (3rd Cir. 1962) (denial of drug transaction and claim of entrapment); *Whittaker v. United States*, 281 F.2d 631, 632 (D.C. Cir. 1960) (denial of underlying acts and claim of insanity); *See also United States v. Harbin* 377 F.2d 78, 80 (4th Cir. 1967); *People v. Perez*, 401 P.2d 934 (Cal. App. 1965). "Under the law of this circuit . . . an accused may present inconsistent defenses." *United States v. Lopez*, 142 F3d 446 (9th Cir. 1998)). "Alternative defenses, of course, are proper, even if inconsistent." *United States v. King*, 587 F.2d 956, 965 (9th Cir. 1978); "[t]he essence or core of the defenses must be in conflict such that the jury, in order to believe the core of one defense, must necessarily disbelieve the core of the other." *United States v. Sherlock*, 962 F.2d 1349, 1363 (9th Cir. 1989) (quoting *United States v. Romanello*, 726 F.2d 173, 177 (5th Cir. 1984)). But, as here, when parties present antagonistic defenses severance pursuant to FRCP Rule 14 is appropriate. *United States v. Ogelby* 764 F.2d 1203 (7th Cir. 1985).

2.13 ***Specific acts/omissions showing ineffectiveness of counsel: Robert McAllister.*** the team of Robert McAllister and Gary Amendola was not effective in assisting Defendant as trial counsel in his case see Affidavits of McAllister and Amendola, attached.

(1) ***McAllister failure to investigate or prepare for trial.*** Even though he entered his appearance late in the proceedings, Mr. McAllister still had an obligation to conduct a thorough investigation and the same facts and arguments apply to him as well as to Mr. Peven.

(2) ***McAllister failure to hire knowledgeable experts.*** The same facts and arguments apply to Mr. McAllister as well as to Mr. Peven, with the following differences:

(a) **<u>Mental State Expert Needed</u>**. Same facts and arguments apply.

(b) **<u>Explosives Expert Needed</u>**. Same facts and arguments apply.

(c) **<u>Audio Recording Expert Needed</u>**. Same facts and arguments apply, with the following caveat. Mr. McAllister did hire a renown expert in this field, Dr. George Papcun. What Mr. McAllister did not do was to secure Dr. Papcun's testimony with a subpoena. Also, Mr. McAllister, having been told by his client, orally and in writing, to subpoena Dr. Papcun but also to ask his supporters to pay a reimbursement for Dr. Papcun's Polynesian vacation that had been pre-paid and was non-refundable and was due to commence two days after trial started, on April 28, 2011 (see Aff Dr. Papcun.) Mr. McAllister's excuse for not sending a subpoena to Dr. Papcun was that he was afraid he would have a hostile witness if he did. However, is it better to have no witness, when a man's life is at stake than to have a hostile witness? Additionally, Dr. Papcun only wanted to be compensated for his loss of a pre-paid vacation and was not hostile. Since Mr. Steele had expressed his desire to have Dr. Papcun testify and "buy out" his vacation, therefore, when Mr. McAllister was dead wrong when he said that Mr. Steele did not want Dr. Papcun to be subpoenaed and when he said that Mr. Steele did not want to have anyone pay to "buy out" Dr. Papcun's vacation. Thus, this was at the very least a colossal misunderstanding or worse, a deliberate attempt to prevent Mr. Steele from defending the charges against him. While it may never be known which was the case, Mr. McAllister's Affidavit has shed significant light on the subject and explained that he was severely distracted with his personal problems. Thus, in all

events, Mr. McAllister was totally ineffective in assisting Mr. Steele present a defense at trial.

(3) ***McAllister failure to make trial objections, motions, proffers, jury instructions.***

(a) **Failure to Properly Handle Witnesses**. The record is replete with examples of Mr. McAllister silently allowing the prosecution, without objection: 1) effectively examine witnesses, by at least asking the questions on the sheets in front of him, in fact, in one case, he read, as if it was a question, the answer to one of the many questions which had been prepared, but which he failed to ask; 2) to allow the prosecution, without objection, to lead her own witnesses as to matters of substance as she would substitute her words for theirs, basically testifying; 3) to allow the prosecution, without objection, to ask compound questions that assumed matters not in evidence; 4) to allow the Government, without objection, to submit evidence that did not have a proper foundation, such as the recordings of June 9th and 10th, which it was not shown what generation of recording these were and what was the chain of custody (see Declaration of Herbert Joe, attached as Ex. I.) Other examples are listed in the attached affidavits and in the Transcript of the Trial Record which is incorporated herein by reference. This list is not by any means comprehensive, but illustrative of the mistakes made by Mr. McAllister, demonstrative of his ineffective assistance of counsel.

(b) **Failure to Make Trial Motions**. The record is replete with examples of Mr. McAllister silently allowing the prosecution, without objection: 1) to put on faulty evidence and when he did make an objection, he did not follow up with Motion to Strike; 2) to fail to move for a mistrial when the Government made such outrageous declarations, such as when Agent Sotka stated that he had deleted the original recordings on the device allegedly carried by Fairfax to the meetings with Mr. Steele of June 9th and 10th; 3) to fail to move to exclude the recordings when Agent Sotka stated that he had not listened to the recordings as they were on the recording device; 4) to move to dismiss when Agent Sotka testified that the microphone of the recorder that

supposedly was recording Mr. Steele's arrest on June 11, 2010, when it was revealed that there was a about an hour of the two hour recording missing and that hour had exculpatory evidence in it that would have shown that Mr. Steele did not "try to cry" nor did he "defecate himself" as alleged by the Government; 5) failed to file pretrial suppression motions as to known prosecution evidence that was faulty, such as the recordings of June 9th and 10th; 6) failed to file a motion to dismiss for lack of jurisdiction, as set forth at the beginning of this pleading; and 7) failed to move for a jury instruction on the defendant's theory of defense, apparently because he had none.

(c) **Failure to Make Offers of Proof and Argument**. The record is replete with examples of Mr. McAllister silently allowing the Court to exclude evidence that was relevant, material and exculpatory (see Affs Cyndi Steele, Edgar Steele, Dr. Allen Banks, Dr. Robert Stoll, Billie Cochran), without making an offer of proof, preserving what each witness would have presented in testimony. It was almost as if Mr. McAllister was in a daze and could not function well enough to realize that his client's case was disappearing before his very eyes and he was doing nothing to stop it. After the Court indicated that it would not allow the Defendant to present any negative information about the Government, the following items should have proffered, which are included in the affidavits just mentioned, and a few examples are: 1) with reference to the testimony of Cyndi Steele's and in her Affidavit at ¶ 7(c) she reveals that she was prepared to testify regarding the pattern of lying by FBI Agent Sotka, who also unlawfully advised her, as a crime victim, not to hire a lawyer. The purpose for Mrs. Steele's testimony would have been to impeach Agent Sotka with statements that constitute admissions against interest of the Government. Although she was prepared to testify, she was not asked the questions by Attorney McAllister who apparently was unable to read from a list of questions. If those questions had been asked and an objection made and sustained, Mr. McAllister should have made an offer of proof as to each question and answer in order to preserve the record on appeal. However, the trial record

indicates he made not one proffer. Nor did he make even one motion for mistrial. Rather he capitulated to every whim of the Government and the Court. Incorporated herein is the information from paragraph 7(c) of the Affidavit of Cyndi Steele which shows Agent Sotka to be a repeated liar and would have shed serious doubt on his credibility as to the other aspects of the case and would have helped establish Mr. Steele's defense of FBI Bad Faith and governmental misconduct.

In fact, in a spoliation case, it is necessary to show that the agent destroyed the evidence in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 55 (1988).

> Bad faith is shown where the police conduct indicates that the evidence could form a basis for exonerating the defendant. U*nited States v. Heffington*, 952 F.2d 275, 277 (9th Cir.'91)
>
> When criminal evidence is lost or destroyed, the court's principal concern is whether the defendant can have a fair trial even though he is not able to examine all the relevant evidence. U*nited States v. Loud Hawk*, 628 F.2d 1139, 1151 (9th Cir. 1979).

A balancing approach is used to make that determination. While the investigation of Maria Lopez's murder was in progress in *Loud Hawk*, the Government destroyed some relevant evidence in the case: the latch and rivets on the FPO guard booth and certain semen stains on the victim's panties and slip. The Court held: "[t]o determine whether we are required to set aside the conviction on this ground, we must weigh the extent of the Government's culpability and the degree of prejudice to the appellant. (Id., at 1151-54 (en banc), cert. denied, 445 U.S. 917, 100 S.Ct. 1279, 63 L.Ed.2d 602 (1980)).

Defendant submits that all of the following items of material evidence, if preserved, would have been exculpatory and should have been preserved and provided to him under *Brady v. Maryland*, 373 U.S. 86 (1963): 1) The sound recorded on the device June 9th and 10th were deleted and thus destroyed by Agent Sotka (TR Pg. 360, ln 1-10); 2) the fingerprints on the pipe taken from under Mrs. Steele's vehicle on June 15, 2010; 3) Mr. Steele's file marked "Gold" the jacket of which file jacket appeared in the Government's discovery and taken in the raid on his home, but

the contents of which were missing and not produced in discovery by the Government and the contents showed the records of the silver that was sold by Mr. Steele and would have rebutted the prosecution's assertion that the stolen $45,000 in silver was a part of the $50,000 in silver that was cashed; 4) The transcript of the recording from the day of Mr. Steele's arrest shows that one hour is missing and unaccounted for (Affidavit of Dr. Allen Banks).

Spoliation of evidence is the basis for reversal of a conviction if the missing evidence is both material and exculpatory. It is necessary for the defendant to show it was prejudiced by plaintiff's destruction of evidence in order for the spoliation doctrine to apply. *Eli Lilly and Co. v. Air Exp. Intern. USA, Inc.*, 615 F.3d 1305, 1318 (11th Cir. Aug. 23, 2010) (No. 09-12725). Clearly, the loss of such evidence was prejudical to Mr. Steele's defense in this case because the Government has maintained that the recording played for the jury was unedited and claimed the defense audio expert's analysis was ineffectual because they had not analyzed the recording in its "native format" when the Government was responsible for the destruction of the native format. Since the Government by Agent Sotka destroyed the ultimate version of the native format, the sound recording on the device, then it is using its own bad faith destruction as the basis for attacking the defense opinions. Here, the Defendant never had the opportunity to evaluate the actual original because the Government eliminated it before anyone, except FBI Agent Sotka, who was operating alone and against FBI regulation, when he obtained, copied and destroyed said original. One limitation on the spoliation doctrine is that evidence that is destroyed be relevant to the litigation. *See, e.g.*, *United States ex rel. Aflatooni v. Kitsap Physicians Service*, 314 F3d 995, 1001 (9th Cir. 2002) (in the absence of awareness that the destroyed evidence was relevant to the litigation, a finding of spoliation is not justified). Here, Agent Sotka well knew of the relevance of the recordings he destroyed.

Thus, to meet his burden to establish spoliation of the sound recordings on the device

carried by Informant Larry Fairfax on June 9th and 10th, it was necessary for Mrs. Steele to chronicle the details of Agent Sotka's lies in this case, which necessarily shows by implication his bad faith. The argument is that if he has no regard for the truth in dealing with the victim, then, why should he have any regard for integrity when it came to destroying the only item of true original evidence that could possibly prove Defendant innocent.

(d) **Failure to Offer Defendant's Theory of Defense in Jury Instruction**. Mr. McAllister had an obligation to offer a jury instruction containing the defendant's theory of defense. That instruction was never offered because Mr. McAllister apparently did not understand that it was by government misconduct that Mr. Steele was investigated, charged and prosecuted.

(4) ***McAllister's closing was pathetic***. Mr. McAllister's closing argument was utterly deficient and pathetic, as Mr. Amendola said in his Affidavit at ¶ 13, McAllister's closing was "terrible;" and it was terrible because McAllister had been so ineffective in assisting Mr. Steele that he had not introduced any evidence in the trial on which to base a theory of defense, which would then allow him to make a cogent argument; and 3) In looking at the record it appears that Mr. McAllister systematically ignored the opportunity to present evidence that favored Defendant, missing opportunity after opportunity to "prove Defendant's innocence;"

2.15 ***Informant contributed to cabal***. In an attempt to absolve himself of responsibility, the Informant eventually told the FBI about the "car bomb," but only after it had been found on June 15th. In fact, the jury was told that the Informant and his cousin, James Maher, had traveled to Oregon 15 days before the "car bomb" was found (that is on May 31, 2010) to examine Mrs. Steele's vehicle to see if the pipe bomb was still attached to her car. The cousin, James Maher, an uncharged accomplice, stated that he had looked under Mrs. Steele's car and did not see a bomb, casting doubt on whether a bomb had ever been transported in interstate commerce in the first place and raising the question as to when and how the bomb got there that eventually was found

on June 15, 2010 at oil change garage. All of this information could have been gleaned from the Informant on June 10th once the words "car bomb" had been heard during the morning meeting with two FBI Agents and an assistant US Attorney.

2.14 ***FBI irresponsible not to arrest Fairfax***. Because Mr. Fairfax was still at large and not incarcerated on June 13, 14 or 15th as Mrs. Steele returned to Idaho, the Informant was free to install another "car bombs" on Mrs. Steele's vehicle. The fact that no bomb was seen on May 31st and then one was found on June 15th raises a fair inference that it was attached just prior to June 15th just after Mrs. Steele returned to Idaho on June 13th. Certainly, Fairfax the bomb manufacture was on the loose and he knew her vehicle and had the opportunity to install the bomb on her car. Unless there was proof that the bomb actually traveled from Idaho to Oregon on May 27, 2010 after it allegedly was installed, then there is no interstate commerce jurisdiction for this count either. Either Mr. Peven or Mr. McAllister could have raised this argument earlier, but failed, because they both were ineffective.

2.19 ***Prosecutorial eavesdropping made privilege unpredictable***. Following this incident, AUSA Whalen engaged in eavesdropping on telephone calls between Mr. Steele and private lawyers he was interviewing to represent him. While the Court erroneously ruled (Dkt #90) that Mr. Steele had "waived" the attorney/client privilege by proceeding to speak with private attorneys on a phone line after a recording announced that the call "may be monitored or recorded." The Court was never asked to reconsider its ruling based on the fact that the so-called "waiver" was not either knowing or voluntary. The Government was relying upon an unconstitutional, unwritten policy of the US Marshal's Service for the District of Idaho as the party responsible for the custody of Mr. Steele. It was the US Marshal who had decreed that the only lawyer with whom Mr. Steele (and other federal detainees) could have a confidential call on a "private" line was the lawyer who had been first approved by the Court and entered an appearance

in Court as Defendant's "attorney of record." (See statement to the Court of US Marshal Glen Morgan, July 6, 2011 and Affidavit of Edgar Steele, ¶16(d).) The case of *Jaffee v. Redmond*, 518 U.S. 1, 18 holds that in order for the attorney client privilege to be effective, it must be predictable. Nothing is predicted about an unwritten policy in the US Marshal's office.

2.20 ***Non-voluntary waiver***. The ruling was erroneous because the supposed "waiver" was not voluntary as it was the only phone line on which the U.S. Marshal's Office allowed Mr. Steele to make calls to anyone, including private lawyers with whom he discussed the possibility of representation; thus Mr. Steele was forced to use the recorded line, which was an involuntary use of said line when calling private lawyers. Involuntary waivers have been held invalid. *Montejo v. Louisiana*, 07-1529, pg. 7, _ US _, 129 S.Ct. 2079, _ (2009); *Michigan* v. *Jackson*, 475 U. S. 625, 633; *Patterson v. Illinois,* 487 U.S. 285, 292, at n. 4 (1988). "A waiver of constitutional rights is voluntary if, under the totality of the circumstances, it was the product of a free and deliberate choice rather than coercion or improper inducement." *Comer v. Schriro*, 480 F.3d 960, 965 (9th Cir. 2007) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 165 (1990); accord, *Berghuis, Warden v. Thompkins*, _ US _, 08-1470 (U.S. 6-1-2010) 130 S.Ct. 2250, _). Here should be is a presumption of non-voluntariness from his restricted movement due to incarceration and from the lack of other phone line choices for him as a Federal detainee.

2.23 ***Enabling improper conduct is bad faith***. The informant, Fairfax, was enabled to conduct his recorded conversation with Mr. Steele with out surveillance because of FBI Agent Sotka would not follow the rules. , acting without the aid of another FBI agents according to the testimony of Agent Sotka; which is a violation of FBI regulations for handling such matters. No evidence as to the existence of those regulations and what requirements they placed on Agent Sotka was introduced in evidence at trial because of the IAC of defense attorneys.

2.24 ***Government opened the door***. Since the jury heard the tape recorded phone calls to family members by Mr. Steele on June 13, 2010, stating that he believed the recordings were fabricated, the subject of governmental misconduct was introduced by the Government; which raised the issue. Preventing Defendant from pursuing questions on this topic was erroneous and a new trial should be granted.

a. **Non-Disclosure of destruction of original recording in bad faith mandates new trial be granted**. In his testimony at trial, FBI Special Agent Sotka disclosed for the first time that he destroyed the recorded information on the device (TR 360:3-7) of the recordings of June 9th and 10th, 2010 (see Trial Exhibits 21 and 22, purportedly exact copies of another copy of the original). It was prosecutorial misconduct not to disclose the destruction of the recorded sound on the device until Defendant had an adequate opportunity to prepare effectively for that hearing. Instead, the prosecution conducted a charade pretending that the it still had the recording in its "Native Format." At trial, Agent Stoka stated that the copy he down loaded to the CD was the original, when clearly, the actual original was on the media in the device, which was deleted by him. The second generation copy was the hard drive on his dedicated computer with proprietary software. The Third generation copy was the copy on the CD that he had mad, which was twice removed from the actual original. This charade misdirected the Defendant as to the source of the Government's recording, which all believed was the original. Since it was not until trial that Defendant learned from Agent Sotka that the original recordings were destroyed, again, Defendant was ill prepared to defend this case. Further, Agent Stoka disclosed for the first time at trial that he did not independently verify that the original recordings were exactly, bit-for-bit, the same as the copies he made on his computer with the proprietary software. There are tools that can make the comparison, but apparently he did nothing to check to see that what was on the recording device was transferred.

b. ***No proof of authenticity-Government does not sustain its burden***. The prosecution represented in trial that the copies it played for the jury were exactly identical to what was recorded on the device carried by Fairfax, but that was without verification and the prosecution had the burden of proof, having not met that burden, a new trial must be granted.

c. ***Assumption does not provide sufficient evidence of guilt***. It turned out that this was an assumption based on representations by Agent Sotka's who supposedly downloaded the recording to his computer without verification. Because there was no verification that the copy was identical to the original recording, the best interpretation of Agent Sotka's testimony is that he assumed that they were identical. Convicting a person on an assumption is offensive to fundamental Constitutional principals of fair trial under the Sixth Amendment. In the universe of criminal law, where the standard is Beyond a Reasonable Doubt, assumptions, especially false assumption cannot be the basis of any action. *Townsend v. Burke*, 334 U.S. 736, 741 (1948).

d. ***Government's Burden of Proof***. However, neither Agent Sotka nor the Government offered any proof that the recordings on his computer, from which copies supposedly were generated, were an exact duplicate of the sound on the device. (See Disclosure of Herbert Joe, Ex. I) The entirety of the prosecution's case depended upon its representation that they were authentic. Without the recordings, the prosecution had no case. In fact, the only evidence offered by Agent Sotka was that he did not compare the accuracy of what was on his computer with the recording on the device before he destroyed it. Because he could not testify that he was able to verify that the recording on his computer was an exact clone and identical to the recording on the device carried by Larry Fairfax before that recording was destroyed, there is a gap in the evidence and a missing link in the chain of proof. Thus, this case must be dismissed for lack of sufficiency of proof that the recording played for the jury was an exact duplicate of the original recordings allegedly made June 9th and 10th, 2010 as represented by the prosecution.

Additional References:

Cyndi knew Ed's voice (Aff Cyndi Steele, ¶ 7(b)). Cyndi would have testified about Ed's health and the impossibility for him to engage in plotting against anyone (Aff Cyndi Steele, ¶ 8(a)). Cyndi comments on the 10 year old divorce information (Aff Cyndi Steele, ¶ 10, 7(e)); Cyndi there was no word "car" in the recording she listened to on June 21, 2010, only the word "bomb" ¶12(c); Cyndi was cut off and was not able to explain to the jury about the barn noises, train, bird noises and the significance of each ¶ 12(b); Cyndi, Mr. McAllister started reading the answer to the question he was supposed to ask ¶ 11; Cyndi Stable marriage after 2000 divorce was resolved ¶ 10; Cyndi, Mr. McAllister was not truthful when he said Edgar did not want subpoena and paying to buyout the vacation of Dr. Papcun ¶ 13; Cyndi could have impeached Mr. Fairfax, about leaving the door open on 05-27-10 if she had been allowed to testify ¶12(a); Cyndi did cooperate with FBI in Oregon, refuted testimony of Agent Sotka ¶ 9(c)&(d); Cyndi personally cooperate with the Government, but decided to hire attorney when the FBI said they would refused to protect her on 06-15-10 ¶ 9(a); Cyndi was ready to listen to recordings from the first moment she heard about them ¶ 8(b); Cyndi knew nothing of Mr. McAllister's problems, he not take steps to withdraw ¶ 5.

WHEREFORE, Defendant moves this Honorable Court for a new trial on all issues.

Respectfully submitted this 15th day of July, 2011.

LAW OFFICES OF WESLEY W. HOYT
By:

/s/ Wesley W. Hoyt
Attorney for Defendant, Edgar J. Steele

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this __ day of July, 2011 by the following method:

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_____/s/Wesley W. Hoyt_____

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff,	:	Case No. 10-00148-N-BLW
	:	**MOTION HEARING**
vs.	:	
EDGAR J. STEELE, Defendant.	:	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

July 6, 2011

Pages 1 to 38

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Idaho Certified Shorthand Reporter No. 619
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perhaps most critical factor is that we have -- we are in a posttrial setting. What remains to be done would be the sentencing and posttrial motions. And I think that's where we are.

Mr. Steele, I don't know that I'm even going to inquire of you but give you an opportunity to say anything you want to at this time or allow you to voice any concerns you have with this decision. I have given you a clear indication of where I'm leaning or what my decision would be, but if you wish to address the court in any way, I'll give you that opportunity.

And, Mr. Amendola, you, as well, if there is anything you want to add.

Mr. Steele?

THE DEFENDANT: Thank you, Judge. I understand my rights. I understand my responsibilities even that continue to this day. And I want Mr. Hoyt to represent me. I well recognize that he previously represented my wife. I don't feel that there is a conflict between my wife and myself, but she and I both have executed affidavits waiving that conflict. We do it genuinely and knowing what we're doing. It's what we want, Judge.

THE COURT: All right. Mr. Amendola, is there anything you want to add?

MR. AMENDOLA: Your Honor, under the rules for substitution of counsel, it actually requires that the document contain an approval by Mr. Steele. The original one that was filed did not. I now have one that has his signature on it. I don't know if the court would want that tendered now or --

THE COURT: Well, it needs to be docketed.

MR. AMENDOLA: -- or later, but I want you to know that that particular part of the rule has now been complied with.

THE COURT: Okay. Nothing else you wanted to add?

MR. AMENDOLA: There is a lot I would like to say, Your Honor, but not now.

THE COURT: All right. All right.

Well, it's unfortunate what occurred with Mr. McAllister. His conduct here -- I had no concerns or qualms about any ethical lapses, and I hope and trust that it was a confined, unique circumstance that occurred in Colorado. But certainly nothing was brought to my attention during the course of the trial that would have

suggested that that should have been a concern for the court. But, again, I only see what I see here in the courtroom, but certainly nothing that occurred in the courtroom gave me any pause or concern in that regard.

And likewise, Mr. Amendola, I think your representation was zealous and appropriate as it should have been, and what has led to this change is really not relevant to the court. I'm not going to allow it to be of any further concern.

Mr. Haws, do you have anything else that you want to take up?

MR. HAWS: I do briefly, Your Honor.

The court a moment ago spoke to the potential -- what area of potential conflict there might be for Mr. Hoyt to now represent the defendant. And I would just like to add one other potential wrinkle.

I have been practicing as a prosecutor for many years, and I have seen how what appears to be a certainty today in terms of people's emotions, in terms of what their interests are, and in terms of how they see the world, can radically change five years from now or ten years

from now, and consequently we find ourselves trying to defend the integrity of court proceedings in postconviction relief settings or in habeas corpus settings, in cases that occurred 20 years ago. And so while it may appear today that everybody's interests are very well set and very established, that may not be the case in the future.

So one of the potential conflicts that I see is that -- besides the one alluded to by the court -- is that it is possible that Mr. Hoyt -- pardon me -- that Mr. Steele may at some time become disenchanted with the representation offered by Mr. Hoyt and then question his loyalty on account of the fact that Mr. Hoyt once represented the victim. In other words, if the interests of the defendant and the interests of the victim in this case should diverge in the future, it would be a natural thing for the defendant to question whether he had loyal representation from the person who once represented the victim who is now adverse to the defendant.

So, having said that, Your Honor, the government's interest here is not to interfere in

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. EDGAR J. STEELE, Defendant.	CASE NO. 10-CR-148-N-BLW **DEFENDANT'S MOTION FOR A NEW TRIAL PURSUANT TO RULE 33 F.R.C.P.**

Now comes Edgar Steele by his undersigned counsel and requests that the Court grant a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. In support thereof, the Defendant states as follows:

1. Rule 33 of the Federal Rules of Criminal Procedure provides that "...the Court may vacate any judgment and grant a new trial if the interest of justice so requires" or based upon newly discovered evidence.

2. On March 11, 2011 the Defense learned for the first time that the device designed and built by Larry Fairfax could not explode using a fuse attached to a car muffler. At the Larry Fairfax sentencing the Court received the report of Jeff Buck which through independent testing, established that the device could and would not ignite or explode. The government did not contradict or challenge this evidence. It is undisputed that Larry Fairfax did not attach "an explosive device" to Cyndi Steele's Mitsubishi Endeavor. The Jeff Buck report is attached as Exhibit A.

3. FBI agent Michael Sotka testified at trial that he placed a recording device on government informant Larry Fairfax which allegedly recorded conversations between Larry Fairfax and Defendant Edgar Steele on June 9 and 10, 2010. These recordings are inaccurate and unreliable. The government used those recordings in their case in chief against Edgar Steele.

4. There are gaps and irregularities in the recordings. Dr. George Papcun testified that the recordings are unreliable and that they do not accurately represent what was actually said during the conversations. He also can testify that the recordings show signs of "dubbing" (duplicating and splicing with other recordings) and that they have "discontinuities" or gaps that do not accurately record the actual conversation.

5. When alterations and gaps appear in surreptitiously recorded tapes, a jury must be

able to evaluate them with other admissible evidence. *People v. Clark*, 118 A.D.2d 718, 499 N.Y.S. 2d 982 (19986). When recordings are unreliable, and filled with gaps, then the jury may reject the recordings because they are unreliable. *United States v. Zambrana* 841 F.2d 1320 (7th Cir. 1987). *Starter course v. Converse Inc.*, 170 P.3d 286 at 296-97 (2nd Cir 1999).

6. In this case Defendant Edgar Steele presented substantial evidence to challenge the authenticity of the recordings. The government at trial failed to provide any reason for the numerous anomalies in the recordings. The government authenticated the tapes through Larry Fairfax who admitted lying about his involvement in this case.

7. The Court did rule the jury could hear and consider the testimony of Dr. George Papcun but later the Court did not allow a sufficient time for Dr. Papcun to appear and testify at trial. Dr. Papcun testified under oath prior to trial that the recordings had substantial transients, electronic signatures, and gaps. (Dr. Papcun's opinion is attached as Exhibit B)

8. Prior to trial the Defendant presented the testimony of Dennis Walsh, an expert in the field of examination of audio recordings. The Court prohibited the presentation of the Walsh testimony to the jury despite his substantial 20 years of work in the science of audio recordings.

9. The Defendant submits that the Court should have permitted the Walsh testimony to be considered by the jurors at trial. The jury should have been allowed to determine what weight should be given to the evidence. Instead, the jury was not permitted to consider his opinion that the tapes were edited or altered and did not accurately reflect what was spoken on June 9 and 10, 2010. (The Walsh opinion in attached as Exhibit C)

10. Pursuant to Rule 33, the question, of course, is not whether the trial court would have rendered the same verdict, drawn the same inferences, or found the same facts. The court should not substitute its view of the evidence for the jury's view, or substitute its determinations as to the credibility or weight of the evidence, or the inferences to be drawn from the evidence. *See United States v. Mariani,* 725 F.2d 862, 865 (2d Cir. 1984); *United States v. Varkonyi,* 611 F.2d 84,85 (5th Cir. 1980), *cert. denied*, 446 U.S. 945 (1980). As stated in *United States v. Hemphill, supra,* 544 F.2d at 344:

> In passing upon the defendant's post-trial motion for judgment of acquittal notwithstanding the jury's verdict, it was not the prerogative of the district court to resolve conflicts in the testimony, or to pass upon the credibility of witnesses, or the weight to be given their testimony; those were jury functions; and the district court was not at liberty to set aside the verdict of the jury simply because the trial judge may have thought that the jury reached the wrong result. The district court was required, to view the evidence in the light most favorable to the government, and to give to the government the benefit of all favorable inferences reasonably to be drawn from the evidence.

11. The legal standard for a Motion for a New Trial is if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979) The government's evidence must be sufficient to rebut the defense theory, *United States v. Hooks,* 780 F.2d 1526, 1530 (10th Cir. 1986), *cert. denied.* 106 S.Ct. 1657 (1986), "the reasonable test is not whether the evidence excludes every reasonable hypothesis other than that of guilt, but whether reasonable minds could conclude that the evidence is inconsistent with the hypothesis of innocence." *United States v. Prout, supra,* 526 F.2d at 384. If the evidence, viewed in the light most favorable to the government, is such that reasonable minds "might differ," then the question is one of fact, not law, and is solely for jury's

determination. See *United States v. Wyant*, 576 F.2d 1312, 1315 (5th Cir. 1978). However, in this case the jury was not allowed to hear the evidence that the facts demonstrated that the recordings were not authentic. If the jury was allowed to consider the testimony of Dr. Papcun and Dennis Walsh, they would have legitimate scientific explanations for the anomalies in the recordings. The jury would not have relied on the recordings in reaching its verdicts.

12. The Court has the authority to grant a Motion for New Trial. *See United States v. Troutman*, 814 F.2d 1428, 1455 (10th Cir. 1987); *United States v. Perea*, 458 F.2d 535, 536 (10th Cir. `1972); *United States v. Gleeson*, 411 F.2d 1091, 1093 (10th Cir. 1969). The granting of the motion is within the trial court's discretion, *United States v. Allen*, 554 F.2d 398, 403 (10th Cir.), *cert. denied*, 434 U.S. 836 (1977). In this case a new trial is required because the jury did not hear or consider the exculpatory evidence that would have been provided by expert witnesses Dennis Walsh, Dr. George Papcun and Jeff Buck.

13. The case was personally prosecuted by AUSA Traci Whelan. Prior to trial AUSA Whelan reviewed transcripts of attorney-client communications. The Due Process Clause of the United States Constitution was violated when the government, using privileged recordings, learned of the defense strategies in the case. The Spokane County jail written policy states that there will be no monitoring of attorney/client conversations. The case law also states such conversations are privileged. *State v. Townsend*, 147 Wash. 2d 666, 57 P.3d 255 (2002); *State v. Modica,* 186 P.3d 1062 (Was. 2008)

14. In *U.S. v. Orman*, F. Supp. 1127 (1976), 1133: The Court stated as follows:

> "One class of cases in which the courts have had little difficulty in trying to strike a balance between liberty and authority involves 'eavesdropping' on client-counsel conversations, either by electronic devices installed in conference rooms or by means of paid informers who gain access to the privileged communications of the defense. In such instances, courts have not hesitated to rule as unconstitutional and in violation of the attorney-client privilege such underhanded methods of the prosecution."

15. The Defense was also severely prejudiced by AUSA Whelan's refusal to release to the Defense the 254 pages written by Larry Fairfax. AUSA Whelan refused to produce these documents and apparently was aware of the existence of the documents prior to trial. In the so-called "fictional book", Larry Fairfax portrays himself as a hero. The book was ordered produced by the Court in a redacted form during trial. However, the Court erred in sustaining the Government's objections when the Defense re-called Fairfax as a witness at trial. The book should have been disclosed in discovery prior to trial. The government's conduct in withholding exculpatory evidence violates the Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 86 (1963) and in itself is a basis for a new trial.

16. In *Orman*, the facts were similar to facts of this case. The principal remains the same – "where there is surveillance of attorney-client conferences, prejudice must be presumed." *Orman*, p. 1133. Additionally, while the facts of *Orman* were egregious, this is also a major distinguishing factor – in *Orman,* the prosecuting attorney not only denied any knowledge and participation in the invasion, but also immediately reported interception to the Court. In this case the government was apparently monitoring attorney-client conversations for a number of months before disclosing the fact to the Court.

17. The reasoning of elevating the severity of violation is found not just in the case quotes previously given, but also in the ABA standards for Criminal Justice. ABA Standard 1-3, 1(b) provides that it is unprofessional conduct for a prosecutor knowingly to use illegal means to obtain evidence or to employ or instruct or encourage others to use such means. The comments thereon provide that prosecution, as representatives of the people in upholding the law, should take the lead in assuming that investigations of criminal activities are conducted in accordance with the safeguards of the Bill of Rights as implemented by legislation and the decisions of the courts. *American Bar Association Justice* (2nd Ed. 1980).

18. The Defense seeks a new trial based upon new evidence and the government's intrusion into the attorney-client privilege. The Tenth Circuit has held that it may be used to "insure proper standards of conduct by the prosecution." *U.S. v. Pino*, 708 F.2d 523, 530 (10th Cir. 1983). Clearly, this Court is empowered to grant a new trial because of inherent supervisory powers which protect the integrity of the judicial system. *Pino,* 708 F.2d at 531.

19. The Defense anticipates that the government's response to this motion is an admission of the acts and assertion that there is no demonstrable prejudice. The defense points to *Coplon v. U.S.*, 1950, 89 U.S. App. D.C. 103, 191 F.2d 749. In that case the Court held that where the defendant's telephone conversations with her lawyer were monitored, the Fifth and Sixth Amendments unqualifiedly guard the right to assistance of counsel, without making the vindication of the right depend upon whether its demand resulted in demonstrable prejudice."

20. In *Caldwell v. U.S.*, (1953) 92 U.S. App. D.C. 355, 205 F.2d 879, the government

planted a stool pigeon in the conferences the defendant had with his lawyer. Citing *Coplon*, the Court held again that "the prosecutor is not entitled to have a representative present to hear the conversations of accused and counsel." Finally, in U.S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2391, 49 L. Ed. 2d 342, the United States Supreme Court stated:

> "For though the attorney for the sovereign must prosecute the accused with earnestness and vigor, he must always be faithful to his clients overriding interest "that justice shall be done."

21. During the trial of this case, the Government called Cyndi Steele as a witness in their case-in-chief. Upon the request of the Government, the Court permitted her to be treated as an adverse witness and cross-examined her about a petition for divorce that was filed 10 years prior to the trial. The Court erred in allowing the jury to hear the details set forth in the divorce petition. This is especially true since the marriage of the Defendant and Cyndi Steele never ended in a divorce.

22. The Court erred in allowing the jury to hear and observe the video deposition of Tatyana Loginova. The Government failed to meet the requirements of Rule 15 of the Federal Rules of Criminal Procedure. The witness provided an affidavit indicating her willingness to travel to the Court which would have allowed a proper cross-examination by Defense counsel.

23. The Court sustained objections made by the government that prohibited the jury from hearing testimony about the state of mind of the Defendant on June 9, 10, and 13, the dates alleged in the indictment. Specifically, Dr. Bob Stoll was not allowed to testify about his conversation with the Defendant on June 10, 2010. In addition Cyndi Steele was not permitted to

testify that F.B.I. agent Mike Sotka lied to her about the content of the recordings.

24. The Court erred in sustaining Government objections and severely restricting the cross-examination of Larry Fairfax. The Court specifically ordered Defense counsel not to examine Fairfax in any way that "would attack the F.B.I. or the U.S. Attorney's office." In fact, AUSA Traci Whelan personally interjected herself into the case by making a "deal" with Fairfax. According to Fairfax, AUSA Whelan lied to him and broke the deal. The Court should have permitted the Defense to cross-examine Fairfax about any "deal" he made with the Government.

25. The Court erred in responding to question No. 2 submitted by the jury during their deliberations. The Court's answer changed the standard of proof "beyond a reasonable doubt". Instead the Court used a "but for" civil tort standard in defining the word "caused". The Court should have instructed the jury to rely upon all of the instructions. *U.S. v. Ramsey*, 537 F.3d, 1075 (9th Cir. 2008); *U.S. v. Alvarez-Valenzula,* 231 F.3d 198. 1202 (9th Cir. 2000); *U.S. v. Parez*, 116 F.3d 840, 844-5 (9th Cir. 1997).

26. A new trial should be granted pursuant to Rule 33 of the Federal Rules of Criminal Procedure due to the fact that there is newly discovered evidence in this case. In addition, the Court should have granted the Rule 29 Motion for Judgment of Acquittal, *U.S. v. Parrott*, 434 F.2d 294, 297 (10th Cir. 1979); *Maguire v. U.S.*, 358 F.2d 442, 444 (10th Cir. 1966)..

Accordingly, the Defendant Edgar Steele respectfully requests that the Court grant this Motion for a New Trial timely submitted pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

DATED May 12, 2011.

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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/S/ Gary I. Amendola
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EXHIBIT A

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Attorney for Defendant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. LARRY FAIRFAX, Defendant.	**CRIMINAL NO. 10-183-M-BLW** **AFFIDAVIT OF JEFF BUCK**

STATE OF CALIFORNIA)
: ss.
County of SHASTA)

JEFF BUCK, being first duly sworn on oath deposes and states:

1. I have personal knowledge of the information contained herein. If called upon as a witness, I could and would competently testify to the facts herein set forth as the same are within my personal knowledge.

2. Attached hereto as Exhibit "1" is a copy of my resume. As noted therein, I am the holder of an ATF User of High Explosives Permit and have worked with explosives for over 20 years.

3. I have conducted testing of like materials as compared to the actual destructive device in this matter after inspection of this device at the office of AUSA Whelan in Coeur d'Alene, ID. A true and correct copy of my report of my inspection and testing is attached hereto as Exhibit "2".

4. I, or at my direction, video recorded my testing. True and correct CD/DVD discs of this recording were supplied to Mr. Miller by me for display to the Court. These recordings accurately depict my tests.

///

5. As reflected in my report, it is my opinion that the type of fuse used in this case would not have ignited from the heat generated by the exhaust system components on the vehicle in question and thus detonation of the device would not occur absent a different ignition source.

DATED this 6th day of May 2011.

JEFF BUCK

SUBSCRIBED AND SWORN to before me this 6th day of May, 2011.

See attached

Notary Public for the State of California
Residing:
My Commission Expires: _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Shasta

On 5-6-11 before me, Sabrina Gooden
(Here insert name and title of the officer)

personally appeared Jeff Buck

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sabrina Gooden
Signature of Notary Public

(Notary Seal)

SABRINA GOODEN
COMM. # 1922035
NOTARY PUBLIC - CALIFORNIA
SHASTA COUNTY
COMM. EXPIRES JAN. 24, 2015

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, - is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

2008 Version CAPA v12.10.07 800-873-9865 www.NotaryClasses.com

[redacted]
Sandpoint, Idaho 83864

Phone: [redacted]
Email: [redacted]

Jeffrey T. Buck

Employment

1991-Current Buck's Construction (LLC) Sandpoint, Idaho

Owner, Managing Member, Blaster

- I went into business in 1991 for myself, taking over the business from my grandfather. During this time, I did blasting for a variety of different things, including quarry blasting, demolition blasting (construction industry), and stump blasting, as well as smaller, specialized blasting (rock breaking in graves being dug), in addition to pyrotechnic displays (display fireworks). I have done large fireworks displays for Silverwood Theme Park (2005-2007), and for the community of Athol, Idaho (2007, 2008, 2009, 2010). I have also done smaller private shows many times over the past twenty years.

1982-1991 Buck's Construction Spokane, Washington

Apprentice Blaster

- I apprenticed under my grandfather, Ivan H. Buck, to learn road construction and blasting technique.

Education

1982-Current Buck's Construction Spokane, WA & Sandpoint, Idaho

- My education was on-the-job training.

Licenses

ATF User of High Explosives Permit– November 2003 to Current (No License was required prior to this, so none was held)

Ex "1"

BUCK'S CONSTRUCTION, LLC
JEFF BUCK
[redacted]
SANDPOINT, IDAHO 83864
[redacted]

PURPOSE OF REPORT:

I was retained by defense counsel, John E. Miller, Esq., in the matter U.S. v Larry Fairfax, Case No.: CR 10-183 N BLW for the purpose of a review of the evidence provided by the US Attorney's Office and its investigators related to the explosive device materials gathered by the prosecution's investigators in this case. I was instructed by counsel to verify the type of materials used in the construction of the actual device, and to then obtain like materials for testing of the potential of ignition capability of the fusing given the information available both from the government and from the defense.

TESTING:

I met with Mr. Miller at the US Attorney's office for inspection of the materials. Having satisfied myself of the type of materials used I then obtained like materials for a steel pipe, an end cap, electrical tape, and fusing. I also obtained heat shrink tubing (not viewed at the US Attorney's office) but such material was noted as used by Mr. Fairfax on the ends of the fusing on the actual device. No explosive powder was obtained or used in any of my testing. It was assumed that if an ignition of the fusing in my testing occurred and the fuse burned into the end cap, then it would be sufficient to ignite an enclosed explosive material. The tests conducted were video recorded.

The following is a breakdown of the steps I used in the tests that I ran, as well as the breakdown of the materials used.

Materials and equipment used:

a. 25,090 BTU propane weed-burner
b. Snap-On brand infrared thermometer (max temp 888 degrees F)
c. 6" x 2" diameter threaded steel pipe
d. 2" steel pipe cap, into which I drilled a 1/4 inch hole
e. Electrical tape, purchased at Home Depot
f. Electrical tape provided to us by Carla Fairfax from the defendant's home believed to be the exact type used in the actual device
g. 2 mm. water resistant black powder cannon fuse sometimes referred to as "hobby fuse"
h. General muffler and exhaust system parts
i. Heat shrink tubing (used on fuse during one test, according to Mr. Fairfax, he used such on the fuse ends)
j. Assembly of common iron for direct heating with the weed-burner to red-hot status.

Test one (several attempts) was to determine the flame retarding capability of the two types of electrical tape (e. and f. above). We needed to establish if it was possible to prevent the

Ex "2"

continuation of a burning fuse by wrapping it tightly with electrical tape. The fuse was knotted as it appeared that it had been knotted on the original device. It was then inserted into the drilled hole on the end cap with the knot against the outside edge of the end cap, and then wrapped tightly with multiple layers of electrical tape. The fuse was then ignited with a flame source. The result of this test was that the multiple wraps of electrical tape did not extinguish the burning fuse and did not prevent the fuse from continuing to burn. The entire fuse did burn past the end cap. The electrical tape-wrapped fuse test was repeated several times, with more layers of tape, and the end result was the same. It is my opinion that wrapping this type of fuse with electrical tape will not stop an ignited fuse.

The next tests involved covering the fuse ends with heat-shrink tubing (Mr. Fairfax stated that the fuse used had heat shrink tubing on the fuse ends where they were attached to the vehicle's exhaust system) and wiring them to the above mentioned assembled exhaust system parts. The exhaust system parts were then heated to a temperature in excess of 700 degree F. at the contact point by inserting the ignited weed burner at one end of the assemble parts. The result of this test was that the heat shrink tubing and fuse were discolored at the contact area, but did not ignite. It should also be noted that the same result (discolored without igniting) occurred on a fuse without the shrink wrap.

The next tests involved heating a piece of iron to more than eight hundred degrees, red glowing hot, with the weed-burner, to determine what temperature would ignite the cannon fuse without an open flame. The result of this series of testing was that the fuse would ignite immediately on contact with the red hot glowing iron, and would ignite from prolonged direct contact with the hot iron once the iron temperature exceeded 758 degrees F. At all temperatures below 758 degrees F, the fusing simply discolored but would not ignite no matter the length of time the fuse was in contact with the heated iron.

The next testing involved "breaking" (bending the fuse multiple times until the black powder core was damaged) the fuse in several places and wrapping it tightly under electrical tape, as was stated to have been done with the original device. In more than 50% of the tests, the fuse burned into the cap, despite the breaks and tape.

The last testing performed were temperature tests involving a representative Mitsubishi Endeavor SUV, at Appleway Mitsubishi in Spokane, Washington. The vehicle was started and the engine run for one hour. Temperature readings were taken at 20 minutes of operation at engine idle speed, then again after a prolonged period of running the engine at between 1500 and 2000 RPMs (typical engine RPM range during driving). The result of these tests was: At no time did the exhaust temperatures exceed 450 degree F.

Based upon my research into the normal operating temperatures of this vehicle make and model, combined with the actual testing and temperature readings taken on the like vehicle, and in conjunction with the ignition testing of the type of fuse, it is my opinion that the operating temperatures of the exhaust system on the Mitsubishi Endeavor SUV are too low, and will not ignite the type of fuse used in this matter.

I have provided to Mr. Miller the recorded video of my testing on CD or DVD discs for use, as needed, to display these findings in court.

By signing this document, I certify that I performed these tests myself, with some assistance from immediate family, and that at no time did I rely on information from tests performed by anyone else. The CD or DVD content is of the actual testing and was not modified, altered or enhanced in any way. Similarly, the materials used were in no way altered or modified to skew results.

Jeff Buck

EXHIBIT B

George Papcun, Ph.D.
17 Goodnight Trail
Santa Fe, New Mexico 87506
Phone: 505-986-9636

February 28, 2011

Mr. Robert T. McAllister
Robert T. McAllister, P.C.
2950 S. Umatilla Street
Englewood, Colorado 80110

Re: US vs. Edgar Steele – Analysis Of Two CDs With Recorded Conversations

Dear Mr. McAllister:

Transmitted to me via FEDEX were two Compact Discs labeled as follows:

1. 166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka; and

2. 166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka.

I have been asked to evaluate these recordings for authenticity as to the audio recordings contained thereon.

I have listened to these recordings and analyzed them with waveform analysis, time-varying spectral analysis and fundamental frequency analysis.

On the basis of my analyses, I have made the following observations:

Both recordings contain numerous instances of electronic signatures (See graph attached.) such as would be caused by dubbing between recordings and/or editing of recordings.

Both recordings contain gaps that indicate discontinuities. (See graphs attached.) There is no way to know the length of the reality that occurred during the time of the gap.

Both recordings are of poor quality. They have DC bias (See graph attached.), which limits and distorts the amplitude variation in the recorded sounds. The voices are recorded at an extremely low level, with the recording volume at a very low level, which would conceal irregularities and defects in the recordings.

On the recording labeled "166C-SU-66878 Unclassified Interceptees: Larry Fairfax, Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," there are discrepancies in the relative volumes of the speakers.

On the recording labeled "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka," there appears an extraneous voice.

From my observations, I conclude, within a reasonable degree of scientific probablility that the recordings on "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," and "166C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka" do not represent a true and valid representation of reality and they are unreliable. They do not accurately reflect the sounds and conversations that actually occurred.

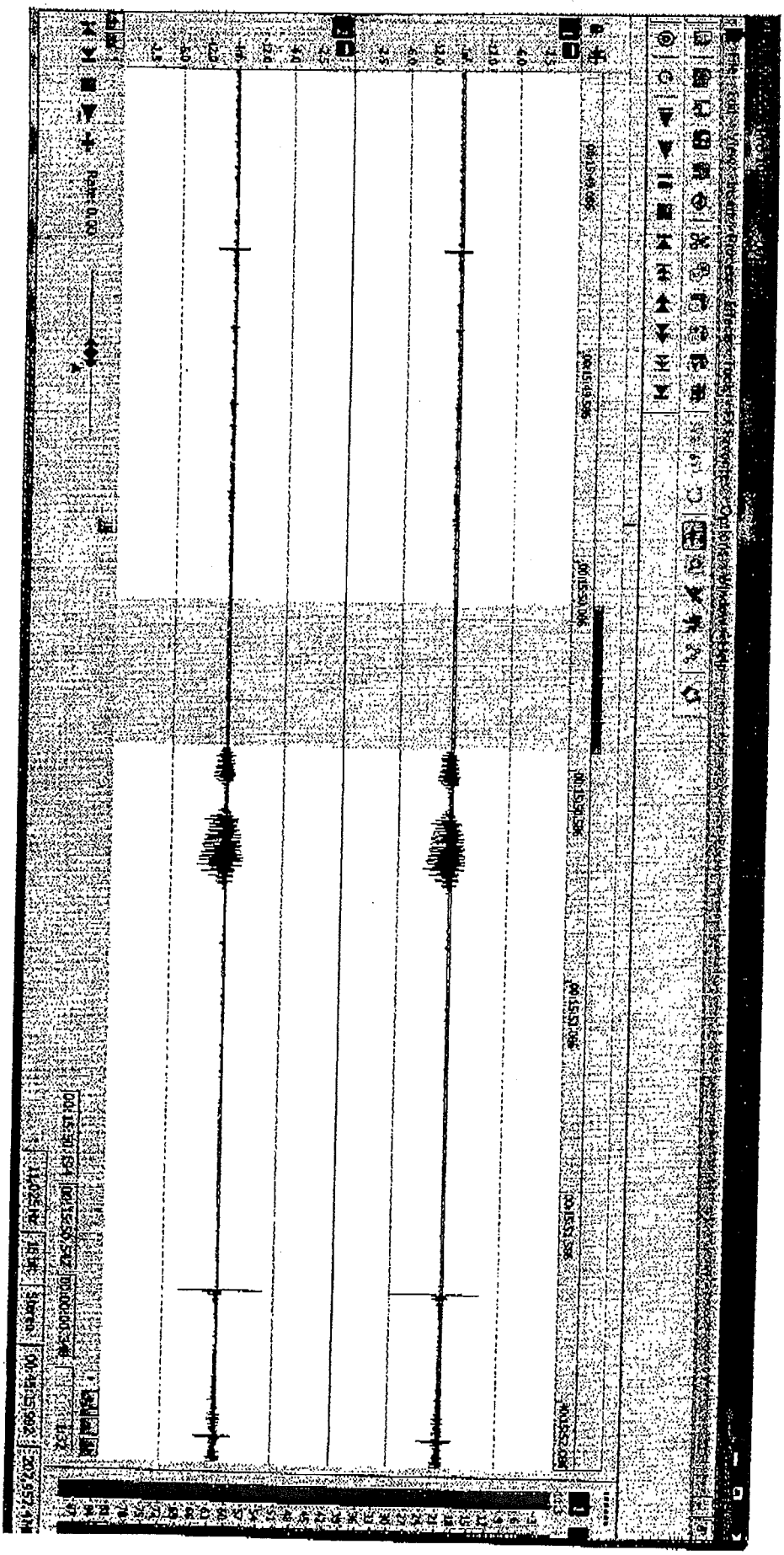
In addition, on the basis of my expertise and experience, I represent that there are methods of editing recordings and voice morphing that would make it possible to modify recordings to change the content of conversations. With commonly available methods, it is possible to remove material, insert material, and alter the meaning of conversations. Software for such analysis and manipulation is commonly available. For example:

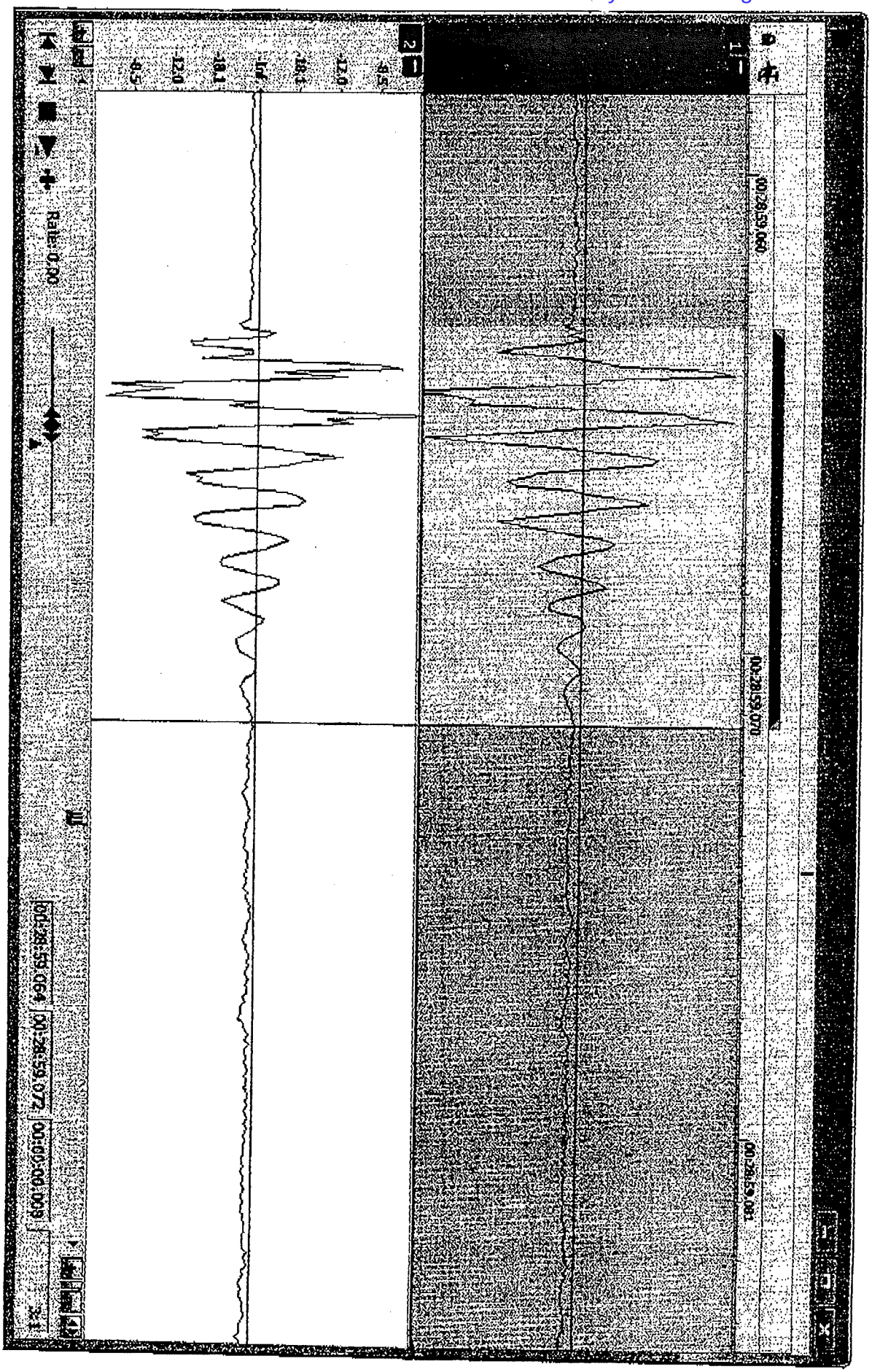
Wikipedia in www.wikipedia.org/wiki/List_of_free_software_for_audio lists over 30 such programs with a great variety of pertinent capabilities.

Sincerely,

George Papcun

George Papcun, Ph.D.

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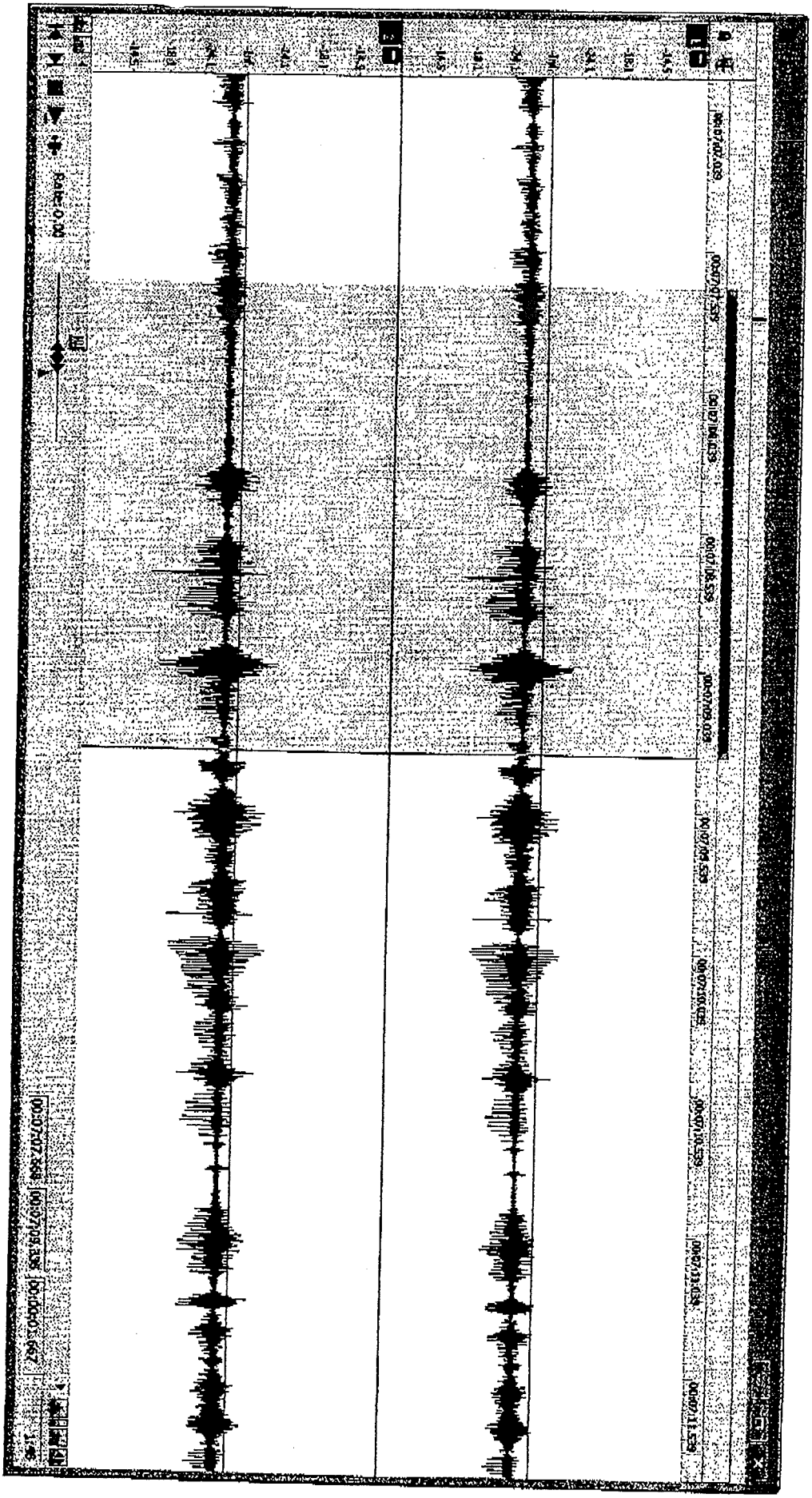


EXHIBIT C

Dennis Walsh
Sorcha Audio & Video
19 Anderson Street, Suite #15
New Rochelle, NY 10801
914 774 8410

Confidential Report

Attorneys of record:

Mr. Robert T. McAllister
Robert T. McAllister, P.C.
2950 South Umatilla St.
Englewood, CO 80110

Mr. Gary I. Amendola
Amendola & Doty, PLLC
702 N. 4th Street
Coeur d'Alene, ID 83814

Original Report 3-16-2010-SB 3-16-11
Revised as of 4/1/2011

Re: US vs. Edgar Steele – Analysis Of Two CDs Recorded With ADS Device

Gentlemen:

Transmitted to me March 15, 2011 via FEDEX were two Compact Discs labeled as follows:

1. 1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR. SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka; and

2. 1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA. Michael Sotka.

I have been asked to evaluate these recordings for authenticity as to the audio recordings contained thereon.

Also, I have been asked to perform Voice Elimination analysis.

I have listened to these recordings and analyzed them with waveform analysis, background harmonics, phase analysis, time-varying spectral analysis and fundamental frequency analysis, and aural analysis.

OPINION NUMBER ONE:

From my observations, I conclude, within a reasonable degree of scientific probability that the recordings on "1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," and "1660-SU-66878 Unclassified Interceptees: do not represent a true and valid representation of reality and they are unreliable. They do not accurately reflect the sounds and conversations that actually occurred.

OPINON NUMBER TWO:

From my observations and analysis I conclude, within a reasonable degree of scientific probability that the recordings on "1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," and "1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka" contain different speakers purported to be that of Edgar Steele. I have annotated audio clips from relevant transcripts.

Both recordings contain numerous instances of electronic signatures (See graph attached.) such as would be caused by dubbing between recordings and/or editing of recordings.

Both recordings contain gaps that indicate discontinuities. (See graphs attached.) There is no way to know the length of the reality that occurred during the time of the gap.

Both recordings are of poor quality. They have distortions and (See graph attached.), which limits and distorts the amplitude variation in the recorded sounds. The voices are recorded at an extremely low level, with the recording volume at a very low level, which would conceal irregularities and defects in the recordings. I utilized Diamond Cut 7.5 to analyze gain stage anomalies and transients of which there are approximately 300. The gain stages at the beginning and ending of each audio recording are set high enough to hear the speaker without extraordinary amplification which is in contrast to the balance of the recording set at an extremely low level, creating a cloak effect, that hides the transients during the purported continuous conversation.

On the recording labeled "I66C-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka," there are discrepancies in the relative volumes of the speakers.

On the recording labeled "1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#I204T2 Copy CD-Wave Date: 6/10/10 SA Michael Sotka," there appears an extraneous voice.

Soliloquy:

This case involves two CD's recorded by a confidential informant. The two recording in question were purportedly recorded on consecutive days and each supposedly was a product of a continuous conversation. No other recordings were made available.

In addition, on the basis of my expertise and experience, I represent that there are methods of editing recordings and voice morphing that would make it possible to modify recordings to change the content of conversations. With commonly available methods, it is possible to remove material, insert material, and alter the meaning of conversations. Software for such analysis and manipulation is commonly available.

Finally, I have reviewed analysis rendered by Dr. George Papcun and I concur with his determinations.

In light of a further inquiry as to methodology, I have reviewed the plaintiff's motion entitle "UNITED STATE'S MOTION TO STRIKE, OR IN THE ALTERNATIVE MOTION TO COMPEL" dated 3/25/2011 and provide the following:

Methodology of Analysis

On March 15, 2011 via FEDEX were two Compact Discs labeled as follows:

1. 1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR. SUCM#1204T1 Copy CD-Wave Date: 6/9/10 SA Michael Sotka; and

2, 1660-SU-66878 Unclassified Interceptees: Larry Fairfax; Edgar Steele BR SUCM#1204T2 Copy CD-Wave Date: 6/10/10 SA. Michael Sotka.

I have received these two evidentiary CD's from plaintiff containing data in the form ordinary and reasonably useable and that they were represented to be bit perfect to the native format by the U.S. Government and it has been analyzed in wav format.

I used the software Player.ICO software provided and duplicated both CD's

I extracted hash codes of both CD's.

I examined transcripts of both recordings.

I utilized Diamond Cut 7.5 Forensic Software; repeat listening and critical listening. Also, I performed spectrographic analysis

I utilized Diamond Cut 7.5 forensic software to analyze apparent gain stage changes.

I utilized Spectrograph-Plus Forensic software to performed spectrographic analysis of both CD's

I utilized Kay Pentax Multi Speech forensic software to perform wav form and spectrographic analysis of both CD's

I utilized Pro-Tools software to perform wav form analysis

I Utilized SIS - Edit Tracker to perform analysis of both CD's. Including, and not limited to Evidence of previous digitization; spectrum estimation; phase scanning, background scanning, auditory analysis.

I utilized formant analysis and spectrographic analysis to perform voice elimination.

I utilized the "Patriotism Speech" given by Edgar at Jekyll Island before the Constitutional Convention on May 21 or 22, 2009 to conduct voice elimination, which was down loaded from: http://vimeo.com/5318242 My comments were annotated on a written copy of said speech previously provided.

Neither the 6/09/10 nor the 6/10/10 CD under the control of S.A. Michael Sotka contain a "out-heading" at the conclusion of the recording. Further, only one agent is indicated accountable to maintain integrity protocol.

I utilized Edit Tracker, background noise analysis and prepared a graphic depicting phase anomalies at approximately 17 minutes and 30 seconds which corresponds to the Transcript of Audio 6-9-2010, page 2, line 16. I found numerous transients in close proximity to each other and phase anomalies indicating that the flow of electrons has been interrupted. The context of the purported conversation under auditory analysis at this page and line reveals a disconnect that is consistent with editing.

I utilized Edit Tracker to analyze phase anomalies.

Sincerely,

Dennis Walsh

Haines, Stephanie (USAID)

From: ecf@id.uscourts.gov
Sent: Thursday, May 12, 2011 4:29 PM
To: CourtMail@idd.uscourts.gov
Subject: Activity in Case 2:10-cr-00148-BLW USA v. Steele Sealed Motion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

District of Idaho (LIVE Database)Version 4.0.3

Notice of Electronic Filing

The following transaction was entered by Amendola, Gary on 5/12/2011 at 5:28 PM MDT and filed on 5/12/2011
Case Name: USA v. Steele
Case Number: 2:10-cr-00148-BLW
Filer: Dft No. 1 - Edgar J Steele
Document Number: 234

Docket Text:
SEALED MOTION *For a New Trial Pursuant to Rule 33 F.R.C.P.* by Edgar J Steele. (Amendola, Gary)

2:10-cr-00148-BLW-1 Notice has been electronically mailed to:

D Marc Haws Marc.Haws@usdoj.gov, maria.wahl@usdoj.gov, USAID.ECFNOTICE@USDOJ.GOV

Gary I Amendola gary@aadlawoffice.com, pat@aadlawoffice.com, susan@aadlawoffice.com

Robert T McAllister rtmcallister@comcast.net

Traci Jo Whelan Traci.Whelan@usdoj.gov, Peggy.Johnson@usdoj.gov, Stephanie.Haines2@usdoj.gov, USAID.ECFNOTICE@USDOJ.GOV

Wesley W Hoyt hoytlegal@gmail.com

2:10-cr-00148-BLW-1 Notice will be served by other means to:

The following document(s) are associated with this transaction:

FD-302a (Rev. 10-6-95)

166C-SU-66878

Continuation of FD-302 of Transcription , On 06/13/2010 , Page 2

Unknown Female: You have seven dollars and four cents remaining on your account.

Unknown Male 1: This call is subjected to monitor and recording.

Unknown Male 2: Based on the number dialed...

Unknown Female 2: You have twenty-four minutes and forty-four seconds remaining on your card. Thank you for using Evercom. The number is now being dialed.

(Music Playing)

(Phone ringing)

Edgar: Answer the phone. Answer the phone.

(Phone ringing)

Unknown Female: Your call has been accepted.

Edgar: Thank God.

Cyndi: Hello.

Edgar: Hi sweetie.

Cyndi: Hi. Sorry I missed your call earlier.

Edgar: That's okay. I just got off the phone with Rex. This, as I told him, this is probably the most important phone call I've made in my life. An hour after I got, and you have no idea what I had to go through to get them to let me make this call. An hour ago, it finally struck me, based upon two or three things that you said to me in our conversation two hours ago. I now understand, let me give you the punch line and then let me explain. After you hear this tape tomorrow, no matter what you hear, no matter what you think, no matter what you feel, you have to say the following, "No,

that is not my husband's voice." And then like a rhinoceros in the road, you have to stand your ground and refuse to say anything but that. Okay. You heard me, right?

Cyndi: Yes.

Edgar: Sweetie? Okay, good, you're still there. In case we get cut off, I wanted you to know, to hear that. Now, here's why. I didn't figure this out until you told me it was the Attorney General's office handling it. Until you told me that they opened up that box and left the teddy bear sitting on top for you to see. Until you told me a couple of other things; told me how scared you were about staying at the house. And incidently, I don't want you to stay at the house, because now that I realize what a high level this is coming from, you may well be in danger. But you're not in danger from me; you'd be in danger from them doing something to ya to make it look like me. So, I don't wanna know where you're at, I don't want you stayin' alone at the house. 'Kay? Are you still there?

Cyndi: No problem. I'm still here.

Edgar: Are you still, okay good. Now, because it's the Attorney General's office handling this, which is extraordinary. Let me tell you, they pulled out all the stops, this is coming from the very top level and they are after me. They are not gonna settle for anything less than putting me in prison for twenty to twenty-five years. I guarantee you that. This is gonna be just like the Matt Hale case. Exactly. And he's in there on twenty-five years right now. And they are gonna use your te...they think they're gonna use your testimony to do it with. That's why they're playing the tape for you in the morning when my hearing is in the afternoon. They wanna know that you have authenticated the tape for

'em. 'Member I told you that I didn't know how they were gonna get this tape brought to them put into evidence, because they couldn't authenticate it? 'Member that? Hello?!

Cyndi: Yeah. Yes!

Edgar: It didn't occur to me until after I spoke to you, they plan on authenticating it with you. They plan on your testimony getting it into evidence. And if that happens, it doesn't matter what you then testify to later, they will impeach you with what you say on the phone tomorrow 'cause they're gonna record it. And they will convict me with a jury based on this tape which I am now convinced I have, I am entitled to be very scared of. This is gonna be a Mission Impossible, world class level production. It probably is gonna be multiple recordings put together, from me into something highly improbable and you're gonna be convinced it's me talking. Saying these, I guarantee you it isn't, sweetheart. I love ya dearly. I would never hire, I would never be so stupid as to hire somebody else to kill anybody for Christ's sake. Least of all you. Please, please, please, my life is in your hands right now. And this phone call is protected by the husband-wife privilege. Even if they're recording it, they can't use it for any purpose. So if they threaten you with it, you just, like the rhinoceros in the road, say, "That is not my husband's voice on that tape." You've gotta do this, otherwise, you're gonna wake up every morning for the rest of your life and I'm not gonna be next to ya. You're gonna be dealin' with our kids and explaining to them how your testimony put me in prison. Because it will be your testimony that authenticates this tape. That's the only way they're gonna get me, 'cause they've got nothing else. I'm convinced now that they've got a very potent tape concocted that they gave to Larry Fairfax. (Sighs) Thank God I reached you.

Rex is gonna call you and he's gonna tell you all this again. Do you see why this is, why I said this is the most important phone call I've ever made?

Cyndi: How do I, how do I guarantee that small doubt that I have?

Edgar: How do you what?

Cyndi: How do I guarantee that small (UI) that I do have?

Edgar: I don't know sweetie. I just, twenty-five years...

Cyndi: (UI)

Edgar: ...of marriage and you knowing me. That's how you guarantee it. Let me spend the next twenty-five years proving it to you. Please. I will take you in my arms every day and tell you I love you and tell you once again that you made the right...I don't care what you need, I will do it. But twenty-five years with me you've gotta know me better than this. You've got to know me better than this. I'm convinced that this tape is going to be very convincing now. I'm, I, I, I had no idea until you told me the Attorney General's office and what they've been doin', (UI) was goin' on. But I have not yet, it has all fallen together for me, I now understand it. And I understand that they intend to use you to put me in prison. They intend to use your testimony because they can't use Larry. Why? Because he's a liar and a thief and a burglar and he doesn't have any credibility. And there's a reason you have to authenticate something like this. The FBI didn't do this tape, somebody else did, and so they have to authenticate it in order to get it into evidence, in order to have it played for the jury and they're gonna use you to do that. Or so they think and

that's why they want you to hear it in the morning of the day that they have me charged in court in the afternoon. They wanna know that you have, they have you in their pocket when they get me to stand up in court and they charge me.

Cyndi: (UI) They weren't the ones insisting that I listen to the tape. I asked to hear the tape, it is my choice whether I wanna hear 'em or not.

Edgar: Alright, go ahead and hear it. But they're the ones who have been scaring you to death. They're the ones who have told you how guilty I am. They're the ones that lied to you and said they had a confession at first. They're the ones who have been trotting out all this bullshit. You remember all that when you're listening to this tape and you're, and you wanna be convinced and you wanna break down crying and you wanna be assured that I was tryin' to k...sweetie, I love you. I love you. You've got to believe me. If I wanted...

Cyndi: (UI)

Edgar: ...to get rid of you I would just walk away from you. I would never hurt you. Twenty-five years we've spent together, you should know that by now. Please do not let yourself be used like this. Please do not be the one that puts me in prison.

Cyndi: Well the difficulty is that, there's things that I need to talk to you about that I can't talk to you about.

Edgar: Well, you can talk, the husband-wife privilege is absolute and anything you say to me on this phone call, even though it's being recorded, cannot be used in court.

Cyndi: You know why I have doubts?

Edgar: I don't know why, no.

Cyndi: Because you have not been, for, except for the last month or so, you, there are things that you have not been yourself and you told me to get out of your life and out of your way.

Edgar: Oh, Sweetheart, that's when I was in the hospital on all those fucking drugs, and I've had four surgeries in the last six months and that's why I haven't been myself. And every time I start to get myself, I get something else again. I'm pretty close to myself right now and I'm under effect of nothing. And the last time you were home, do you recall that?

Cyndi: Yes.

Edgar: The last night, no was it the last night or the night before, that we made love.

Cyndi: I know that.

Edgar: First time in months. I mean, God! Measure me by that, your most recent experience of me. I mean, if what they're saying is true, would we have made love, for God's sake?

Cyndi: I don't know. It, it, is your (UI), ohhh.

Edgar: I love you to pieces, I love you to piece...it's been a great twenty-five years. I've got to admit, the last few months you've seemed distant. You've sure not been around and I've missed ya terribly and yes, I've wondered if maybe you didn't have somebody else, but it never rose to the level of me having you followed. I never did that. They don't have pictures that I had taken, I guarantee ya that. I wouldn't do that...

Cyndi: Well...

Edgar: ...I'd ask you first, if I'd do anything. You know, I'm, I'm only suffering from lack of attention from you. I'm only suffering because I love you and I'm not getting enough of you. That's what my problem is. It's not that I'm getting too much of you; I'm not getting enough of you. Does that answer your question? Hello?

Cyndi: Well, I have, I have, I have been (sighs), you know, it's not that I'm not thinking of all that, but there, you know, there's just, remember, I told you I was giving you six months and, and that was basically with the idea that I needed you to heal before we had any talk. And unfortunately this is being pressed to have this talk.

Edgar: I don't remember you telling me you were giving me six months. What was that all about?

Cyndi: Because I wouldn't talk about things and I wasn't willing to talk about 'em because I didn't wanna talk about 'em until I knew you were one hundred percent.

Edgar: Alright, I'm one hundred percent. Unfortunately, I don't have enough time on this calling card. Look, we'll talk it out. Whatever you want, I'll give you. If...I love you and I don't want to lose you. But if you want; just don't get rid of me by sending me to prison, please. (UI) If you want me out of your life, I will walk out of it willingly. But...

Cyndi: I have never said that.

Edgar: I know (UI)

Cyndi: I have never indicated that.

Edgar: I know you haven't, but you said what you just said. And I've got so little time, I

have to tell you what I'm willing to, willing to do that. I won't like it, I won't wanna do it, but if that's what you want that's what I'll give ya. I don't want that. I want to spend another twenty-five years with you. I thought I told you as much as that when we had that conversation the other day about how many good years I had left.

Cyndi: (Sighs) I understand that. And I, and some of the quotes that they have read to me that I know about, I know how they can be construed and put, and put together. I...

Edgar: (UI)

Cyndi: ...understand that.

Edgar: What quotes are you talkin', you mean from the tape that they have?

Cyndi: Yes.

Edgar: Oh God. Well, Okay, I, like I told ya, now that I know what I know I expect this to be a very high class production. I expect it to be very convincing and it's total fucking bullshit. I'm not...

Unknown Female: You have one minute left.

Edgar: I guarantee you that it's false. Guarantee you. I know that it's going to be very good though, now that I know the level of which it's coming from. This is going to be Mission Impossible level convincing. Please sweetheart.

Cyndi: Is it, is it possible that the local agents are just as oblivious?

Edgar: Yes. It's, it's, it's likely in fact. It's absolutely likely. Most of the FBI Agents are good people doing a good job. They're being used. They wouldn't know the

difference if they were handed this kind of a tape. Please remember, I love you and I need you and if I go to prison it'll only be because of what you tell 'em tomorrow.

Unknown Female: Thank you for using Evercom. Goodbye.

(End of Tape and Transcription)

GOVERNMENT EXHIBIT 2a
CARDELS 800-733-3599

FD-1004
Revised
9-16-2009

FEDERAL BUREAU OF INVESTIGATION

EVIDENCE CHAIN-OF-CUSTODY

Evidence Type: ☒ General ☐ Drug ☐ Firearm/Weapon ☐ CART ☐ Valuable ☐ Firearm/Other

Special Handling Instructions	Initial Receipt	Date and Time
☐ Batteries ☐ Biohazard ☐ FGJ ☐ HAZMAT ☐ Latents ☐ Refrigerate ☐ Req. Charging ☒ None ☐ Other _____	Signature: Brent A Smith Printed Name: Reason: **Collected**	3/3/2011 3:45pm

Relinquished Custody	Date and Time	Accepted Custody	Date and Time
Signature: Brent A Smith Printed Name: Brent A Smith Reason: Mailed to Field Office	9:15 Am 3/4/2011	Signature: Printed Name: Donald Robinson Reason: Accept	3/8/11 0914

Relinquished Custody	Date and Time	Accepted Custody	Date and Time
Signature: Printed Name: Donald Robinson Reason: Transfer Custody	4/26/11 6:30PM	Signature: Eric D Clemensen Printed Name: ERIC D. CLEMENSEN Reason: ACCEPT CUSTODY	4/26/11 1830

Relinquished Custody	Date and Time	Accepted Custody	Date and Time
Signature: Eric D Clemensen Printed Name: ERIC D. CLEMENSEN Reason: TRANSFER CUSTODY	4/27/2011 9:10AM	Signature: Dorothy A Boyles Printed Name: Dorothy A Boyles Reason: Provide as trial exhibit	4/27/2011 9:10Am

Relinquished Custody	Date and Time	Accepted Custody	Date and Time
Signature: Printed Name: Reason:		Signature: Printed Name: Reason:	

Relinquished Custody	Date and Time	Accepted Custody	Date and Time
Signature: Printed Name: Reason:		Signature: Printed Name: Reason:	

Firearms Certification:
Printed Name: _____ Signature: _____ Date: _____

Case ID: _____ 1B: _____ Barcode: _____

(1)

JUNE 23, 2010

MY DEAREST TANYA,

YOU MUST BE WORRIED. OR, DO YOU THINK I HAVE FORGOTTEN YOU? NO—I KNOW YOU WELL ENOUGH NOW TO KNOW THAT YOU ARE WORRIED ABOUT ME. I FEEL YOUR WORRY IN MY HEART, WHERE YOU ALWAYS ARE WITH ME NOW.

I AM IN VERY BIG TROUBLE HERE, MY LOVE. I CANNOT GET TO A COMPUTER TO EMAIL YOU. I CANNOT MAKE PHONE CALLS. I ASKED MY SON TO FIND YOUR ADDRESS ON MY DESK AT HOME AND TO MAIL IT TO ME. WHILE I WAIT FOR THAT, I WILL WRITE YOU THIS LETTER AND HOPE THAT IT GETS TO YOU SOON.

TWO WEEKS AGO, I WAS ARRESTED ON A PHONY CHARGE AND I NOW SIT IN JAIL, AWAITING MY "TRIAL," NOW SET FOR THE END OF AUGUST. THIS WILL BE THE TRIAL OF MY LIFE. I HOPE TO WIN IT, OF COURSE.

NEVER BEFORE HAVE I EVER BEEN IN JAIL, OR EVEN ARRESTED. THIS HAS BEEN A

(2)

HUGE SHOCK TO ME, BUT NOT REALLY A SURPRISE. THEY HAVE BEEN AFTER ME FOR A LONG TIME BECAUSE OF MY OUTSPOKEN CRITICISM OF US GOVERNMENT AND POWER BROKERS, BOTH IN MY WRITINGS AND IN MY PUBLIC SPEECHES. THIS IS A SIDE OF ME THAT I AM SURE YOU HAVE YET TO DISCOVER, MY LOVE. I WAS TO TELL YOU ALL ABOUT IT WHEN WE MET (MEET?) IN KIEV THIS YEAR, AND I STILL WILL!

IF YOU HAVE RECEIVED YOUR EDDIE BEAR, YOU ALSO HAVE SEEN MY BOOK. SOMEBODY WHO READS ENGLISH WELL ENOUGH WILL BE ABLE TO TELL YOU, JUST FROM SKIMMING THROUGH IT, THAT I AM VERY POLITICALLY INCORRECT. BEING POLITICALLY INCORRECT IS ONE OF THE WORST CRIMES IN AMERICA TODAY.

DO YOU SEE NOW, SWEETHEART, WHY I OFTEN SOUND ANTI-AMERICAN AND WANT TO LIVE ELSEWHERE FOR AT LEAST MOST OF EACH YEAR (PERHAPS UKRAINE!), AS YOU AND I ALREADY HAVE DISCUSSED?

(3)

THE CHARGES AGAINST ME IS FALSE, TANYA. HERE IS WHAT HAPPENED:

A MAN WHO WORKED FOR ME STOLE SILVER BULLION THAT I HAD HIDDEN ON MY PROPERTY (ABOUT US $45,000). HE TRIED TO KILL ME BEFORE I DISCOVERED THE THEFT, BUT FAILED. THEN HE WENT TO THE ADL, AN AMERICAN JEWISH ORGANIZATION THAT HAS HATED ME FOR MANY YEARS BECAUSE OF CASES I HAVE TRIED AS A LAWYER AND BECAUSE OF MY WRITINGS AND SPEECHES. THE ADL MANUFACTURED AUDIO TAPES, USING RECORDINGS THIS MAN SECRETLY HAD MADE OF ME TALKING AND ALSO USING SOME OF MANY THOUSANDS OF HOURS OF AUDIO OF MINE AVAILABLE OVER THE INTERNET. THE PHONY TAPES MAKE IT SOUND LIKE I TRIED TO HIRE THE MAN TO KILL MY EX-WIFE.

PLEASE BELIEVE IN ME, TANYA. I NEVER WOULD DO ANYTHING LIKE WHAT I NOW FACE TRIAL FOR. NEVER. I THINK YOU KNOW ME WELL ENOUGH ALREADY TO KNOW I COULD NOT DO THIS. DON'T GIVE UP ON ME!!!

(4)

I WILL BEAT THIS PRENUP CHARGE AND I WILL COME TO YOU THERE IN UKRAINE— JUST NOT IN AUGUST, AS WE PLANNED. IF I WIN THIS TRIAL, I PROBABLY CAN GET OVER THERE BY OCTOBER, THOUGH. PLEASE WAIT FOR ME, DARLING.

JUNE 24

HI, SWEETHEART—

I WILL ADD TO THIS EVERY DAY UNTIL I HAVE YOUR ADDRESS SO THAT I CAN MAIL IT.

PLEASE SEND ME SOME PHOTOS OF YOURSELF, MY LOVE. THE ONLY PICTURES I HAVE WITH ME NOW ARE THE ONES I CARRY IN MY MEMORY (THOUGH I DO LOOK THROUGH THOSE MANY, MANY TIMES EACH DAY).

AND WRITE SOMETHING TO ME IMMEDIATELY, TOO, TANYA. KEEP IT ALL IN ENGLISH, BECAUSE THEY OPEN ALL MY MAIL (BOTH DIRECTIONS). ANYTHING OTHER THAN ENGLISH GETS HELD WHILE THEY FIND A RUSSIAN TRANSLATOR.

REMEMBER — THIS IS ONLY FOR A LITTLE WHILE.

(5)

JUNE 25

HELLO AGAIN, MY LOVELY TANYA—

TODAY HAS BEEN JUST ANOTHER IN A SERIES OF GRAY, DISCOURAGING DAYS... EXCEPT WHEN I THINK OF YOU!

LIFE FOR ME RIGHT NOW IS LIKE AN OLD MOVIE DONE IN BLACK AND WHITE, EXCEPT WHEN ONE CHARACTER COMES INTO VIEW. THAT CHARACTER IS YOU, SWEET TANYA. WHENEVER I THINK OF YOU, COLOR COMES BACK TO THE THINGS AROUND ME AND I CAN ALMOST SMILE AGAIN. MORE THAN EVER, MY LOVE, THE THOUGHT OF YOU KEEPS ME GOING.

I MISS YOU SO MUCH, TANYA. I THINK ABOUT YOU ALL THE TIME NOW. I SEEM TO DREAM ABOUT YOU EVERY NIGHT. I FIND MYSELF DAYDREAMING ABOUT YOU BEING NEAR AND REACHING OUT TO TOUCH ME... TO HOLD ME... TO KISS ME. I SWEAR I CAN SMELL YOU AT TIMES!

IS IT JUST THE RESULT OF BEING IN THIS MISERABLE JAIL CELL FOR 2 WEEKS NOW, OR IS IT

(6)

REALLY BECOMING CLEAR TO ME THAT YOU ARE "THE ONE" FOR ME? ALL OTHERS HAVE DROPPED FROM MY THOUGHTS NOW, LEANING ONLY YOU, TANYA - MY SECOND HALF?

JUNE 26

DARLING,

EVERY DAY HERE, AT ABOUT 4 PM, I FIND MYSELF THINKING OF YOU LYING THERE IN YOUR BED AT 2AM, UKRAINE TIME. SURELY YOU ARE ASLEEP THEN. I LIKE TO TELL MYSELF THAT YOU ARE DREAMING OF ME JUST THEN AND TAPPING INTO THAT SPECIAL CONNECTION WE HAVE.

WHEN I GO TO BED HERE AT 11PM, I THINK OF YOU CLIMBING IN BESIDE ME AND WHAT IT WOULD BE LIKE TO HOLD YOU AND SEE YOU SMILE UP CLOSE... AND KISS ME, OF COURSE. DO YOU EVER FEEL MY KISS AT 9AM OVER THERE, MY LOVE?

JUNE 27

MY LOVELY TANYA,

YOU NEVER HAVE ASKED ME ABOUT MY

(7)

FINANCIAL CONDITION, WHICH I APPRECIATE, MY LOVE. FOR NOW, JUST BE ASSURED THAT, IF WE SETTLE DOWN TOGETHER, YOU NEVER IN YOUR LIFE WILL WANT FOR ANYTHING.

THIS TRIAL & INVESTIGATION I MUST RUN FROM A JAIL CELL WILL BE VERY EXPENSIVE (PROBABLY UPWARDS OF US$500,000), BUT IT WILL NOT LEAVE ME NOTHING WHEN IT IS OVER. FAR FROM IT, IN FACT. I STILL WILL HAVE ENOUGH THAT I NEED NEVER WORK AGAIN. BUT, WORK I WILL - WRITING BOOKS. I HAVE SEVERAL ALREADY OUTLINED AND/OR PARTIALLY WRITTEN.

I PICTURE YOU ASLEEP RIGHT NOW (5 AM UKR. TIME) AND IMAGINE SNUGGLING INTO YOUR WARMTH AND SOFTLY KISSING YOU ON YOUR CHEEK (DID YOU FEEL IT?) I CAN ALMOST SMELL YOU, SWEETHEART.

JUNE 28

DARLING TANYA,

IT IS 7PM HERE — 5AM YOUR TIME — AND AGAIN I GET A SMELL OF CLEAN SHEETS

(8)

AND WHAT I THINK MUST BE YOU. IS THIS COMING TO ME OVER OUR SPECIAL CONNECTION? IS THIS WHAT YOU SMELL LIKE? I WONDER...

THINKING OF YOU SO STRONGLY - DOES THIS CAUSE ME TO APPEAR IN YOUR DREAMS, MY LOVE? OR AM I THINKING OF YOU BECAUSE YOU ARE DREAMING OF ME?

NEEDLESS TO SAY, I MISS YOU SOME THING TERRIBLE. IT HAS BEEN NEARLY 3 WEEKS SINCE WE LAST SAW EACH OTHER VIA SKYPE. HAD I KNOWN THIS WOULD HAPPEN, I NEVER WOULD HAVE LET YOU GO THAT MORNING.

WE ARE TRYING EVERYTHING WE KNOW IN AN ATTEMPT TO GET THEM TO LET ME GO FREE UNTIL MY TRIAL IN AUGUST. IT WILL BE 2 WEEKS BEFORE OUR HEARING IN COURT. IF I GET RELEASED THEN, THE VERY FIRST THING I WILL DO WILL BE TO TRY TO CONTACT YOU!

DO NOT GIVE UP ON ME, TANYA. NO MATTER WHAT HAPPENS, I MAY NEED YOU MORE RIGHT NOW THAN I EVER AGAIN WILL NEED YOU.

(9)

JUNE 29

SWEETHEART,

ALREADY, THIS IS THE LONGEST LETTER I EVER HAVE WRITTEN. PROBABLY THE LONGEST YOU HAVE RECEIVED, TOO. AFTER NOTHING FROM ME FOR SO LONG, THEN THIS... SIGH. WELL, THERE IS NOTHING ELSE FOR IT.

I NEED TO FEEL YOU OUT THERE, CLOSE TO ME. THIS IS THE ONLY WAY I KNOW HOW TO DO IT RIGHT NOW. I KNOW YOU ARE READING THESE WORDS SOMETIME — I JUST DON'T KNOW WHEN.

IN AWAY, I SUPPOSE, THESE LETTERS ARE MORE FOR ME THAN YOU. IT IS LIKE THAT ELIZABETH BARETT BROWNING POEM I QUOTED YOU A MONTH AGO: "I LOVE YOU, NOT FOR WHAT YOU ARE, BUT FOR WHAT YOU MAKE OF ME." THINKING OF YOU AND KNOWING HOW YOU CARE FOR ME MAKES THESE LONG, DREARY DAYS IN A JAIL CELL TOLERABLE. I THINK ABOUT YOU SO MUCH, MY DARLING TANYA — AND THOSE THOUGHTS MAKE ME WARM AND BRING A SMILE TO MY LIPS.

I SO WISH MY SON WOULD FIND YOUR

(10)

ADDRESS FOR ME, SO THAT I COULD MAIL THIS TO YOU AND, HOPEFULLY, THEREBY SPEED YOUR REPLY. THE DAY A LETTER ARRIVES FROM YOU, MY SWEET, WILL BE A DAY I NEVER WILL FORGET, SO LONG AS I LIVE.

YOU THOUGHT I WAS ROMANTIC AND AFFECTIONATE BEFORE? JUST WAIT UNTIL I GET YOU ALONE!!! THIS TERRIBLE PERIOD NOW IN MY LIFE CAME JUST AS MY FEELINGS FOR YOU WERE REALLY GETTING GOING - JUST AS IT BECAME CLEAR TO ME THAT I NO LONGER COULD CONSIDER ANYBODY BUT YOU. NOW - TO BE DENIED YOU ALTOGETHER ... WELL, MY FEELINGS WILL NOT BE DENIED, THOUGH. THEY HAVE CONTINUED TO GROW - EVEN FASTER - IN YOUR ABSENCE FROM ME.

I NEED YOU SO MUCH NOW, TANYA. NO LONGER DO I WORRY ABOUT SCARING YOU AWAY BECAUSE MY FEELINGS ARE AHEAD OF YOUR OWN. I WILL FIX THAT WHEN WE FINALLY MEET. AM I FINALLY IN LOVE WITH YOU, TANYA? WHAT DO YOU THINK? COULD IT HAPPEN WITHOUT OUR MEETING YET? TELL ME OF YOUR FEELINGS, MY LOVE.

(11)

JUNE 30

WHAT TIME DO YOU GO TO BED, DARLING? IT NOW IS 1 PM HERE — 11 PM YOUR TIME — AND ONCE AGAIN YOU SWELLED UP IN MY CONSCIOUSNESS AND I GOT A FLASH OF YOUR HEAD ON A PILLOW, LOOKING TO THE SIDE WITH YOUR HAND NEAR TO YOUR FACE. THAT SMELL AGAIN — FRESH SHEETS AND... YOU?

I GET THIS IMAGE, OR ONE QUITE LIKE IT, ALMOST EVERY DAY BETWEEN 11 PM AND MIDNIGHT, UKRAINE TIME. I'M BETTING THAT IS YOUR NORMAL BEDTIME.

DO YOU EVER THINK OF ME AS YOU LIE THERE, WAITING FOR SLEEP TO FIND YOU?

WHEN I BEAT THIS PHONY CHARGE, IT WILL TAKE A COUPLE OF MONTHS TO ARRANGE MY FIRST TRIP TO UKRAINE (AND YOU, MILAHA MIA!). I STILL PLAN ON COMING FOR ABOUT 6 WEEKS. UNLESS YOU COME TO KIEV AND THEN REFUSE TO LEAVE MY SIDE FOR THE NEXT MONTH, I INEVITABLY WILL MEET SEVERAL OTHER GIRLS I HAVE CORRESPONDED WITH, BUT YOU REALLY ARE WHY I AM COMING NOW: MY TANYA.

(12)

I KNOW THAT I AM SUPPOSED TO ACT AS THOUGH I AM GENUINELY INTERESTED IN OTHER GIRLS, TOO. I KNOW THAT I SHOULD PLAY HARD TO GET. I KNOW THAT I SHOULD ACT AS THOUGH I AM THE PRIZE HERE, NOT YOU. I DON'T WANT TO PLAY GAMES WITH YOU. ALWAYS, I HAVE TOLD YOU THE SIMPLE TRUTH ABOUT HOW I FEEL ABOUT YOU AND I PROMISE ALWAYS TO DO JUST THAT.

YOU WILL COME TO KIEV FOR A COUPLE OF DAYS AFTER I FIRST ARRIVE AND THEN, ALL TOO SOON, I WILL HAVE TO TAKE YOU TO THE AIRPORT FOR YOUR FLIGHT BACK TO LUGANSK. I KNOW THAT I WILL THEN BE EVEN MORE LOST WITHOUT YOU THAN I AM EVEN NOW. I WILL COME TO LUGANSK SOONER THAN I PLANNED AND FIND REASONS TO HANG AROUND. THINK SERIOUSLY ON COMING WITH ME ON A TOUR OF CRIMEA, SWEETHEART.

I DRIVE MYSELF CRAZY THINKING OF THESE THINGS AND OF YOU, TANYA. I SO LONG TO FINALLY BE AT YOUR SIDE AND HEAR THAT SPARKLING LAUGH & SEE YOUR BEAUTIFUL SMILE IN PERSON, MY LOVE.

(12)

July 1

DEAREST TANYA,

THE HAPPIEST MOMENTS OF MY DAY - THE ONLY HAPPY MOMENTS THESE DAYS - ARE WHEN I AM SITTING AND TALKING TO YOU, JUST LIKE THIS. I KNOW YOU WILL BE READING MY WORDS AND I LIKE TO IMAGINE YOUR SMILE FORMING AS I TALK TO YOU. YOU FEEL ESPECIALLY CLOSE TO ME AT THESE TIMES, MY LOVE.

I KNOW THAT YOU THINK I DON'T KNOW YOU WELL ENOUGH TO HAVE THESE FEELINGS FOR YOU, BUT YOU WOULD BE SURPRISED AT HOW WELL I ACTUALLY DO KNOW YOU. THE CONTRAST BETWEEN YOU AND OTHERS WHOM I KNOW IS REMARKABLE.

I LOVE YOUR RESERVE - HOW YOU CAREFULLY PICK YOUR WAY THROUGH LIFE - HOW YOU PROTECT YOURSELF AND YOUR HEART. AGAIN, I HAVE THE FEELING YOU HAVE BEEN HURT BEFORE. I ALSO THINK IT POSSIBLE, STILL, THAT YOU ARE IN AN UNSATISFACTORY RELATIONSHIP RIGHT NOW AND ARE WAITING TO SEE IF I PROVE MYSELF BEFORE LEAVING IT AND COMMITTING YOURSELF TO ME. AS I TOLD YOU, THAT IS OK, MY LOVE. I AM

(19)

NOT GOING ANYWHERE ANYAM FROM YOU EMOTIONALLY. WE WILL MEET. WE WILL FALL IN LOVE. YOU WILL SEE.

I LOVE YOUR BABY MANNER AND YOUR SO VERY CONSIDERATE NATURE. I LOVE HOW YOU ARE SO CAREFUL TO SPEAK YOUR THOUGHTS JUST SO. I LOVE YOUR MANNERLINESS AND YOUR DELICATE BEARING.

I LOVE YOUR SMILE AND YOUR LAUGHTER, WHICH I STILL HEAR IN MY HEART ANYTIME THAT I WANT (AND I SEEM TO WANT TO HEAR IT ALL THE TIME).

I LOVE HOW BEAUTIFUL YOU ARE, TANYA. YOU HEAR THAT ALL THE TIME FROM MEN, I KNOW, BUT IT IS DIFFERENT WITH ME. AS I HAVE GOTTEN TO KNOW YOU, YOU STOPPED BEING SIMPLY CUTE AND HAVE BECOME, I THINK, THE SINGLE MOST BEAUTIFUL WOMAN I EVER HAVE SEEN. HOW I FEEL ABOUT SOMEONE INSIDE IMPACTS HOW PHYSICALLY ATTRACTIVE SHE IS TO ME. YOU KNOW HOW MUCH I CARE FOR YOU NOW, OF COURSE.

(15)

I LOVE THE WISDOM YOU HAVE SHOWN ME - WISDOM THAT GOES WELL BEYOND YOUR YEARS AND, PERHAPS MORE THAN ANYTHING ELSE, MAKES ME SEE YOU AS A TRUE EQUAL AND PARTNER IN LIFE.

YET, THERE IS SO MUCH I DON'T KNOW ABOUT YOU, MY LOVE - MOSTLY FACTS AND DETAILS, BECAUSE I ALREADY HAVE LEARNED THE MOST IMPORTANT THINGS. TELL ME ABOUT YOUR YOUNGER BROTHER, DENNIS, AND THE OTHER MEMBERS OF YOUR FAMILY - THEIR NAMES AND WHAT THEY DO EACH DAY.

MY ACCOUNT WITH THE AGENCY LIKELY WILL GO INACTIVE ABOUT THE TIME THAT YOU RECEIVE THIS LETTER. DON'T WORRY, SWEETHEART. HEAVEN KNOWS THAT I'M NOT GOING ANYWHERE, AFTER ALL. WHEN I BEAT THIS PHONY CHARGE AND GET OUT, I WILL REACTIVATE IT SO THAT WE HAVE ACCESS TO THE TRANSLATORS AND SO THAT WE CAN TALK AGAIN VIA SKYPE AND PLAN OUR TIME TOGETHER LATER THIS YEAR.

I KEEP ASKING YOU TO TELL ME ABOUT

(16)

YOUR WORK, DARLING, BUT YOU KEEP BRUSHING IT OFF AS BORING AND UNIMPORTANT. NOT TO ME! PLEASE TELL ME. TELL ME WHAT YOU DID BEFORE THAT, TOO, AND ABOUT YOUR UNIVERSITY YEARS.

JULY 2

I'VE BEEN DOODLING WITH MONTHS AND COUNTRIES. I AM DETERMINED TO LIVE OUTSIDE AMERICA WHEN THIS IS ALL OVER. LISTEN, SWEETHEART, TO WHAT I ~~HAVE~~ HAVE COME UP WITH, AND TELL ME WHAT YOU THINK:

MAY – SEPTEMBER (5 MONTHS): UKRAINE
OCT – DECEMBER (3 MONTHS): USA
12/28 – 1/15 (1/2 MONTH): UKRAINE
JAN 15 – APRIL (3 1/2 MONTHS): PANAMA (OR?)

SO – WE SPEND WINTER SOMEPLACE WARM AND WE BOTH GET TO SPEND CHRISTMAS WITH OUR FAMILIES. UKRAINE WOULD BE OUR HOME BASE, WITH OUR PERMANENT FAMILY HOME THERE. WE WOULD RENT OR STAY IN HOTELS WHENEVER OUTSIDE UKRAINE.

(17)

I CAN WRITE ANYWHERE, OF COURSE, AND WOULD PLAN ON PRODUCING TWO BOOKS EACH YEAR. (EASY TO DO AND WILL PROVIDE US A VERY COMFORTABLE INCOME, TOO).

YOU COULD, PERHAPS, GO TO SCHOOL IN PANAMA, IF YOU LIKE (OR SUMMER SCHOOL IN UKRAINE). OR WE COULD FIND YOU SOMETHING TO DO ... WORK AT SOMETHING (LANGUAGE INSTRUCTION?)... TAKE CARE OF OUR BABIES ... MAKE LOVE TO ME ... WHATEVER WILL MAKE YOU HAPPY.

YOU GET TO BE NEAR FRIENDS & FAMILY FOR HALF OF EVERY YEAR. I GET THE SAME FOR 3 MONTHS EACH YEAR. WE BOTH GET TO BE WARM FOR THE WINTER (WHICH CAN BE LIKE A HUGE, EXTENDED VACATION EACH YEAR). OUR KIDS LEARN BOTH RUSSIAN AND ENGLISH AS THEY GROW UP.

IT SOUNDS GREAT TO ME. WHAT DO YOU THINK, MY LOVE?

JULY 3

I WISH MY SON WOULD COME BACK UP

(18)

FROM MOSCOW (IDAHO, USA) SO THAT HE COULD RETRIEVE YOUR ADDRESS FOR ME FROM MY STUDY DESK. I ASKED MY INVESTIGATOR TO EMAIL YOU AT TATITANYAL@RECLUSE.RU, BUT AM NOT SURE THAT I REMEMBERED YOUR EMAIL ADDRESS CORRECTLY. HE WAS TO EXPLAIN BRIEFLY AND ASK FOR YOUR MAILING ADDRESS FOR ME. SIGH...

MEANWHILE, THIS LETTER GROWS EVER LARGER. IT IS IMPORTANT TO ME THAT YOU KNOW HOW MUCH YOU HAVE BEEN ON MY MIND. IT IS IMPORTANT YOU KNOW THAT THIS LONG PERIOD OF SILENCE WAS IMPOSED UPON ME BY OTHERS. YOU ARE IMPORTANT TO ME, TANYA. MORE THAN ANYTHING OR ANYONE ELSE, I THINK.

I REMEMBER YOUR LAST WORDS TO ME AS WE PARTED ON THAT LAST SEMPE SESSION WE SHARED: "I HOPE YOU ARE SERIOUS." OH, YES, SWEETHEART — I AM VERY SERIOUS ABOUT YOU. I AM SURPRISED THAT YOU COULD NOT SEE IT THEN. I KNOW THAT YOU AND I WILL GET ALONG WONDERFULLY WHEN FINALLY WE ARE TOGETHER.. I KNOW THAT WE BOTH

(13)

WILL BE PLEASANTLY SURPRISED WHEN WE MEET AT CAST. EVEN NOW, IT IS ALL I CAN DO TO KEEP FROM BLURTING OUT, "I LOVE YOU!" BY THE TIME I ARRIVE IN KIEV, I AM SURE THAT I WILL HAVE MEMORIZED THE RUSSIAN FOR, "WILL YOU MARRY ME?" IS THAT SERIOUS ENOUGH, DARLING?

June 4

MY INVESTIGATOR HAS NOT YET SHOWN UP WITH YOUR ADDRESS. EITHER YOU HAVEN'T ANSWERED HIS EMAIL OR I MISREMEMBERED YOUR EMAIL ADDRESS. I NEED YOUR ADDRESS IN ORDER TO MAIL YOU THIS LETTER, SWEETIE.

TODAY IS THE 4th of JUNE, AMERICA'S INDEPENDENCE DAY. A JOKE, FROM WHERE I SIT. I KNOW UKRAINE HAS BEEN INDEPENDENT FOR ONLY A FEW YEARS, BUT I HONESTLY BELIEVE THE FUTURE of FREEDOM LIES WITH RUSSIA, ESPECIALLY, AND ALL THE BREAKAWAY REPUBLICS IN EASTERN EUROPE. AMERICA IS MOVING TO TOTAL TYRANNY AND OPRESSION AND MY CASE IS JUST ONE of SO MANY WHO ARE BEING ROUNDED UP, FALSELY CHARGED AND LOCKED UP. I'M GOING TO WIN AND GET OUT THOUGH — I KNOW A GOOD LAWYER.

(200)

AND THAT "GOOD LAWYER" HAS A BIRTHDAY TOMORROW. IT WAS DEPRESSING ENOUGH TO BE SEPARATED FROM MY CHILDREN ON FATHER'S DAY. NOW THIS SEPARATION FROM THEM AND YOU IS BECOMING REALLY UNBEARABLE, SWEETHEART. I WAS ALLOWED TO CALL TWO OF MY KIDS FOR THE FIRST TIME LATE THIS PAST WEEK. I STILL AM BEING DENIED VISITORS. I STILL AM BEING HELD VIRTUALLY INCOMMUNICADO AND IN SOLITARY CONFINEMENT.

I'M SO TIRED OF THIS. I DON'T WANT TO WRITE ABOUT POLITICS AND MORE. I JUST WANT TO SETTLE DOWN WITH A GIRL JUST LIKE YOU, MY LOVE, HAVE ANOTHER FAMILY AND LIVE OUT MY LIFE IN HER ARMS, WRITING ABOUT NON-CONTROVERSIAL THINGS — NOVELS, ESPECIALLY. I WANT TO BE ORDINARY AND LIVE AN ORDINARY LIFE FROM NOW ON. THIS FALSE CHARGE HAS CONVINCED ME. PROBLEM IS, I STAYED ON JUST A LITTLE TOO LONG. SIGH.

I HAVEN'T FELT YOU CLOSE THIS WEEKEND AT ALL. I'M BETING YOU ARE TIED UP WITH SOMETHING AND NOT THINKING OF ME. SIGH.

(21)

JULY 5

MY DARLING TANYA,

I KNOW THAT YOU HAVE REMEMBERED ME TODAY, PERHAPS EVEN SENDING ME ANOTHER LITTLE EMAIL THAT HAS YET TO BE OPENED, LIKE ALL YOUR OTHERS THIS PAST 3 WEEKS. HOW I WISH THAT I COULD SEE THEM! HOW I HUNGER FOR SOMETHING -ANYTHING- FROM YOU NOW.

I'M TRYING HARD NOT TO BE DEPRESSED TODAY, NOT BEING WITH SOMEONE SPECIAL. I MISS MY KIDS. I MISS YOU, SOME THERAPY. THIS IS THE WORST BIRTHDAY OF MY LIFE. EVER. WISH I WISH THIS WAS ALL OVER, SO THAT I COULD GET BACK TO YOU AND PLANNING OUR TIME TOGETHER LATER THIS YEAR!

IT IS EARLY 6PM ON JULY 5TH THERE IN GERMANY RIGHT NOW. I JUST HAD A SUDDEN FEELING OF YOU COME TO ME OVER OUR SPECIAL CONNECTION. JUST WISHFUL THINKING? I WONDER. WRITE AND TELL ME WHAT YOU DID AND, IF POSSIBLE, WHAT YOU WERE THINKING AND FEELING AT THE SAME TIME, TODAY. DID YOU FINALLY RECEIVE

(22)

EDDIE BAUER and Nordstrom? I feel more pressure right now to Steinbrueck. Macadamia? I think not.

ONCE AGAIN I never ABOUT myself. I have allowed myself to feel the pressure of not emotionally responsible, in spite of not HERMAN'S fear of being locked, not to mention the fear that I am not capable. Don't worry. My judgment and I trust. Punish me anyway the words on my business. I will make it! You will see.

Dear G

It is marvelous — about Jan's [illegible] time on Tuesday evening. (Dear G). Again, I propose Monday/Tuesday. Hugs, [illegible] Today has come as [illegible] and a [illegible] friends. Lord of the Dance [illegible] and [illegible] and the music of [illegible] I thought of you. Always. Always. Always. My heart. I keep going through your pictures and my words — all 6 of them — over and over. Now I'm [illegible] I'm me, and I'm [illegible] and [illegible] [illegible]

(23)

[illegible] I SENT A SHORT LETTER TO HIM THE OTHER [illegible], BUT I DOUBT YOU GOT IT. I CAN'T REMEMBER YOUR ADDRESS, SO SEND IT TO HIM AT [illegible] SHERMAN BLVD, AND HOPED THAT SOMEHOW IT FINDS ITS WAY TO YOU. NOW WHAT THEN ANSWERS AND I WANT TO HEAR YOUR HONEST ANSWERS! WELL, BYE...

June 8

DARLING,

THIS LETTER IS IN THE MAIL. [illegible] SPEED! I'M JUST SAYING WHAT MY HEART DICTATES! I MISS YOU!

June 12

SORRY THIS LETTER WAS DELAYED. I WENT FOR SEVERAL DAYS, WHICH I AM GETTING USED

DISCOURAGED ABOUT NOT BEING ABLE TO MAIL THIS LETTER. AGAIN, I APOLOGIZE I HAVE ABOUT TO GIVE UP AND JUST [illegible] AND I JUST [illegible] BUT TRUST! DON'T GIVE UP ON ME, SWEETHEART. I'VE [illegible] THE BEST OF OUR LIVES, DON'T FORGET IT

Jan 14

YOU ARE SO VERY SPECIAL TO ME, TAMIKA. I CAN'T EXPLAIN EXACTLY WHY OR HOW YOU CAME TO BE THAT WAY FOR ME, BUT I KNOW IT IS TRUE. I DON'T REMEMBER THE LAST TIME I FELT THIS WAY ABOUT A WOMAN... MAYBE NEVER.

I SPOKE WITH MY SON AT LAST ON PHONE. HE FOUND THE BRIDGE IN LIVING I KEEP YOUR ADDRESS AND WILL BE MAILING IT TO ME SOON, AS SOON AS I GET IT, I WILL MAIL THIS LETTER.

(25)

July 15

Hello, my love,

My youngest daughter, Kirsey, sent me some Russian language books. Now I can continue to improve my (very poor) Russian while in jail awaiting trial. We will be able to talk on the phone, but I hope (English) language lessons aren't over. If I could, I would buy you another real session, but that will have to wait for me to get out of here.

I have not yet received your drawing, I hope that is due because I haven't been writing as much, but I know that you've been so long without hearing from me. Have to have a bad attitude.

Write in there, sweetie. I need you so much right now. More, perhaps, than I ever will again, but we have you willingly forgive it.

AT LAST! MY INVESTIGATOR FOUND YOUR ADDRESS FOR ME SO THAT I CAN MAIL THIS.

PLEASE WRITE TO ME AS SOON AS POSSIBLE, SWEET—AT THIS ADDRESS:

EDDIE c/o TIM SCHWERINE
FED DEFENDERS
10 NORTH POST ST. #700
SPOKANE, WA 99201
USA

IF THIS WORKS, HE WILL BRING ME YOUR LETTER—UNOPENED, SO THAT YOU CAN TALK TO ME KNOWING THAT WHAT YOU SAW WILL BE SEEN BY ONLY ME.

I CAN HARDLY WAIT! DON'T FORGET TO INCLUDE THOSE PICTURES.

LOVE YOU!

EDDIE :)

SA Sotka: This is Special Agent Mike Sotka. The date is June 9th, 2010. The time is 6:02 p.m. We'll be going to Edgar Steele's residence in an attempt to make a consensually monitored phone call, actually a consensually monitored meet between a Confidential Source and Mr. Steele regarding a murder-for-hire case.

break approx 15:23

CHS: Hey boss. Does your water, does your water always smell like that?

Steele: Huh?

CHS: Does your water always smell like that?

Steele: The water? Probably oughtta be dumped out, it's been sitting there for so long.

CHS: Oh, I thought you just filled it up.

Steele: No, there was water in it but you can't just push it over, you...

CHS: Not now. Cause I just filled it up the rest of the way.

Steele: He's doing a lot better.

CHS: So what did the vet say, what was it, a cut?

Steele: Well, he thinks he got into a wire or something and scraped off the skin.

CHS: That's what it looked like.

Steele: Gave him some anti, an antibiotic shot, tetanus shot...

CHS: We'll have to put some gauze or something...

Steele: Cleaned it up, didn't wrap it said it'd be better just left like this. Keep him in here so he doesn't get messed up.

CHS: Yeah, he really wants to go outside.

Steele: Says it'll be about a month before he goes out there again.

CHS: He is not going to be a happy camper.

Steele: Well, he'll get over it. He's never been a happy camper. He used to be a stallion, then we gelded him. You can't, if you let them go stud first and then geld them, they're always a handful forever.

CHS: Uhm, any news? Everything the same? Okay.

Steele: Going to the doctor tomorrow. I thought you were calling me to tell me to go to the lumberyard or something.

CHS: Well, no, I just wanted to tell you what time, so on Friday morning, probably seven o'clock?

Steele: In the morning?

CHS: Well yeah, seven, eight o'clock. So, I'm gonna head out early.

Steele: Oh, that's when you're gonna leave you mean?

CHS: No, that's when I'll be there.

Steele: Okay, I don't know what time. It'll be catch as catch can, but it'll probably be in the morning.

CHS: 'Kay.

Steele: You know, obviously I can't...say, "Oh, and exactly what time will you be leaving on Friday?"

CHS: Right.

Steele: So...are you, are you going, you, you got a good plan? You're gonna get it handled?

CHS: Yeah. I think so.

Steele: Alright.

CHS: I'm pretty sure it'll work.

Steele: Involving the car?

CHS: Yeah. Ah, is there anything different on that? Or did you check into that and see what the, what the coverage was? Make sure we get specific or…?

Steele: Well, I don't know. I mean it, I described to you what triggers uninsured motorist's coverage.

CHS: 'Kay.

Steele: Um, and that's pretty much what it takes. My only question was, was gonna be if, if, uh, if a car bomb blew it up, would, would that trigger any coverage. Frankly I don't think it would.

CHS: 'Kay.

Steele: Uh, but if something else did, then it would.

CHS: Right.

Steele: And, um, we'll only know...

CHS: Afterwards.

Steele: ...once we get paid. And you know what, uh, the terms are.

CHS: Yeah.

Steele: What's going on. I mean, there's a potentia--, I mean there's a chance that, uh, you will, there's a chance that you won't. As long as you understand

that. 'Kay? But, um, if they, if they do, then, uh, you're gonna make out very handsomely on this one.

CHS: And I know I already asked you this before, but I, but I...

Steele: No.

CHS: ...really need some money.

Steele: No.

CHS: I can't...

Steele: Go get, get this job done Larry.

CHS: ...I know, but I couldn't scrape up ...

Steele: I, I...

CHS: ...enough to get down there. I gotta, like I said, you know, I gotta at least cover the rental car and stuff. This week with the stupid rain I couldn't go pick up anything. I was supposed to go get a bus maybe tomorrow, but you know, they've dropped the prices at the Pacific and.....I know.

Steele: You're making me crazy here.

CHS: I understand, and I, you know, if I didn't have to I wouldn't, you know, ask.

Steele: How much do you need, minimum? Maximum?

CHS: Um, probably four hundred bucks.

Steele: Fuck me.

CHS: 'Cause last time it ran me five, but, maybe we can cut a few corners.

Steele: Alright, I'm gonna give you a four hundred buck advance, but, uh, it's an advance, and, uh, by fucking god, um...I'll take it outta your fuckin' hide. I mean, you gotta get this job done, done. I mean seriously. I am coming up against a few things now. I mean there's a reason that when it occurred to me that there would be, that there might be a way to trigger some coverage here to get a payoff, there was a reason that I decided to, uh, offer a hundred, hundred K on there if I got at least that much.

CHS: Uhuh.

Steele: I mean, there's a reason for that, Larry. 'Kay?

CHS: I'm sure...

Steele: I wanted to give you a powerful incentive. Um, and if, um, I don't know, I'll go get four hundred bucks.

CHS: 'Kay. Did you want me to let 'em in all four pens out there, or just, uh, I let, I opened one.

Steele: Oh, you can just open 'em all up...

CHS: Okay.

Steele: ...and let 'em wander in and out.

CHS: 'Kay...

Steele: Uh...

CHS: ...I'll do that.

Steele: ...the only problem is that they're gonna see him in there and they're gonna go ape shit back and forth with each other, but, 'cause of the top doors being off, you see?

CHS: Right, they can see in through a couple of the top doors.

Steele: But that's just life. They can't, if they get, if they kick in the bottom door and get in the stall, they can't get...

CHS: Yeah.

Steele: ...through them anyway.

CHS: Right, It won't hurt 'em anyway. 'Kay, I'll open those up.

break approx 7:13 mins

CHS: They both went right in there.

Steele: That's what I was afraid of.

CHS: But they're getting used to it.

Steele: Shit. Makes me re-think this, you know, they're all like that, aren't they? They're all open.

CHS: Yeah. Most of 'em are all the way open. Now that door's all the way open, 'cause I think they knocked it off.

Steele: I think we ought to, uh, push 'em back outside and close up those outside stall doors. I guess we're gonna have a rodeo in here otherwise. And once they get in here then they're out, then they're gonna be on the road (UI)

CHS: So, on the off chance that for some reason they're not both together and I just get one?

Steele: Say it again?

CHS: If they're not both together, you know, and I just get, the wife?

Steele: They will be tomorrow.

CHS: So, it's a, let's say just in case they, you know, maybe she's just bullshitting you, and she's just gone to see her boyfriend.

Steele: Well then if that's the case, then, uh, you just get the one, and (UI)

CHS: Yep that.

Steele: And if it triggers the, uh, coverage like I told you...

CHS: MM-hm.

Steele: ...I'll stand good on the hundred.

CHS: 'Kay.

Steele: But it'll still be, um, well, in that case an extra five for goin' over there.

CHS: Okay.

Steele: So here's the four hundred you wanted to replace those two truck tires, Larry.

CHS: Okay.

Steele: I had to go in and get my wallet, I don't normally carry it around outside here. (UI let's see UI).

CHS: You seen how much rain we got today, didn't ya? Come on guys, get out. Come on. Come on. Yeah, they seem to like that grass a lot more than hay, for some reason.

Steele: Well it's, uh, pretty attractive to them. About the only way to get 'em out here is to pour some grain, have you already grained 'em?

CHS: Yeah. But I could probably draw 'em out again, it won't hurt 'em.

Steele: Why don't you grab some grain and we'll, uh, draw them out the back. See if I can't take them out. If I can..

CHS: Then I'll close it.

Steele: ...get the, uh, gate, will you?

CHS: Alright.

Steele: Good boy. Hey, good boy, come on, come on, come on.

CHS: Ah, there's only gonna be one way to do this.

Steele: Go on. (UI).

CHS: Come on, come on...

Steele: I'll come out tomorrow after they've eaten' the, after grass time (UI).

CHS: So, here comes the big one. Can I use truck tomorrow?

Steele: Say it again?

CHS: Can I use the truck and trailer tomorrow?

Steele: Can you use it? I thought I needed to use it.

CHS: Friday. I was wondering about that, yeah.

Steele: You said tomorrow.

CHS: I know, that's why I was wondering if I mixed up the days. I'm not leaving 'til tomorrow night, I'm leaving Friday morning.

Steele: Good thing you said that pal.

CHS: Thought so.

Steele: Otherwise I'd a had a great alibi for tomorrow and nothing for Friday.

CHS: Okay, yeah.

Steele: Friday.

CHS: Friday.

Steele: You're leaving yourself no wiggle room. Oh wait, that's right tomorrow there's nothing of course.

CHS: Right.

Steele: I mean if she, if that black thing leaves, I guarantee you she's driving it.

CHS: Alright.

Steele: 'Kay? Um, Friday morning I'm gonna arrange...so you want the truck and trailer tomorrow?

CHS: Yeah, so I can go get that bus.

Steele: So you can do what?

CHS: Go get a bus.

Steele: A bus.

CHS: Yeah, it won't fit on my trailer, it's too long.

Steele: Okay, I'll have to go get the key for you. Um, I'm trying to remember, did I put it back on my chain or did I hang it up? I'll go look.

CHS: Okay.

Steele: I'll have to go back in the house again. Um, so when you bring, bring it back, leave it hooked up.

CHS: Right. So you won't have to...

Steele: I'll arrange a, I, I'm gonna arrange for a friend to go with me first thing Friday morning on the lumber run.

CHS: Okay.

Steele: We'll make a couple stops, have lunch, and we'll be back in the early afternoon.

CHS: 'Kay.

Steele: Uhm, (UI)

CHS: Yep.

Steele: Larry I can count on you?

CHS: Oh yeah.

Steele: Accident?

CHS: I'm hoping.

Steele: It'll look like one?

CHS: Yeah, that was the plan.

Steele: Alright

CHS: You know, one way or another though, I'll take care of it.

Steele: Make sure it happens. You've been fucking with this to much. You've got a big payday riding on this one. I set it up that way on purpose. You want something to rescue your ass with? This'll do it. It won't be immediate. I mean if there's any fucking insurance company, if there's anything fishy, it'll take fucking forever. If and when it happens, you know me, I keep my word.

CHS: Yep. Yep. I'll see if I can try to make it look like an accident.

Steele: Move (UI). How can you be sure that its going to do the job?

CHS: I have an idea.

Steele: Alright, well I'll leave it up to you. I hope it works better than the last one.

break approx 56 secs

CHS: Crap.

break approx 19 secs

Steele: She did leave the key. Okay, she left her key.

CHS: To the truck? 'Kay. Alright.

Steele: Unless you ran diesel out of it, I filled up both the tanks the last time I used it...

CHS: Okay.

Steele: ...so it oughtta be full.

CHS: Yeah, I filled it up too.

Steele: Alright.

CHS: That's why I couldn't get very much in there, in the back tank, 'cause you probably already filled it up. Yeah, tried to keep it full too, when I returned it it had fuel in it.

Steele: Alright. When you bring it then, just park it on, in front of the, uh...

CHS: 'Kay.

Steele: ...big shed on the other side and Friday morning I'll just...

CHS: And if anything comes up, let me know.

Steele: If anything comes up...

CHS: I don't want no surprises.

Steele: ...couldn't be, these are all by appointment.

CHS: 'Cause I swear I seen her driving up the road, just a minute ago, go down Dufort. But there's no way, right?

Steele: No.

CHS: 'Kay.

Steele: There's another black Endeavor around here.

CHS: Oh.

Steele: Looks identical. I'd say it's fooled me a few times.

CHS: Okay, 'cause I mean, I was like, ya know.

Steele: Okay.

CHS: Alright, we'll get 'er done. I'll be over tomorrow.

Steele: Okay, I'm counting on it. I mean, Larry I am really up against it, it has to happen right now.

CHS: I know. 'Kay.

SA Sotka: This is Special Agent Mike Sotka. The date is June 10th, 2010. The time is 6:02 p.m. I'm with a Confidential Source and he'll be going to Edgar Steele's residence to discuss a murder-for-hire plot.
TFO O'Dell: Four eighty seven

break approx 1:36 mins

Steele: Hello.
CHS: Hey Edgar, Sorry.
Steele: Oh, don't worry.
CHS: Um, just about to your house to drop off the truck.
Steele: Say again?
CHS: I'm just about to your house to drop of the truck.
Steele: Oh, okay.
CHS: So.
Steele: Thanks. I'll step out and say hello.
CHS: Ok. I'll see you. Bye.

break approx 3:36 mins

Steele: You may have noticed that the fuel gauge does not work very well.

CHS: On the rear tank.

Steele: How empty is the...

CHS: Front tank?

Steele: Or either tank.

CHS: Well the front one's a little over half. It's between half and three-quarters.

Steele: Well according to the gauge, probably.

CHS: Right. Yeah.

Steele: You can't trust the gauge. You just have to, I mean, how much did you use?

CHS: Ah, I put in eighty bucks.

Steele: When?

CHS: This morning, when I got down to Coeur d'Alene. So you know...

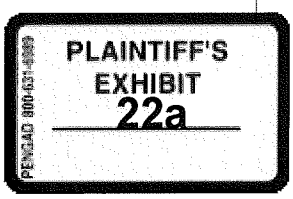
Steele: Jesus, you've been using a lot of fucking fuel.

CHS: Went clear down to Benewah, you know where that is? Below Plummer?

Steele: Fuck me! Do I still have all my tires?

CHS: Yeah (chuckles. Yeah, it didn't weight as much as I thought, but uh...

Steele: Alright, so, but my question still is, do I need to pull it back and fill up the tanks before I go to Spokane tomorrow?



CHS: Um, yeah, I would.

Steele: Alright.

CHS: Just to be safe. I wouldn't want to run out. Should have stopped back there for you.
Okay, I got, I got everything lined up, and if it doesn't go one way, it's going another way for sure.

Steele: I'm counting on you.

CHS: Yes, I guaran...

Steele: I'm gonna call tonight and, uh...

CHS: E, either way.

Steele: ...confirm and if there's any change I'll let you know.

CHS: Okay.

Steele: If you don't hear from me then...

CHS: Right, either way though, it's a done deal, I mean.

Steele: And I've got an excuse to call her tonight. She asked me to do something and I need to call her and confirm that I did it.

CHS: Okay.

Steele: Uh...

CHS: 'Cause if, uh, even if it doesn't go the one way, I'm just going right in an do it the way we talked about the first time. (UI) guns a-blazin'.

Steele: Well, you better not get your fucking ass caught. You get...

CHS: You just...

Steele: ...caught over there pulling something like this...
CHS: You just give...

Steele: ...the trail comes right back to me and there ain't, we'll be sharing a cell together.

CHS: Well lets just make sure that doesn't happen.

Steele: Forgive me for not being so trusting, but.

CHS: You...

Steele: You've got me a little worried about this one.

CHS: Okay, just want make sure you have no second thoughts or nothing.

Steele: No second, shit, have you seen a second thought...

CHS: No.

Steele: ...in me yet?

CHS: No, but I just want to make sure because…

Steele: Oh, Fuck me.

CHS: (UI)

Steele: The only second thoughts I have was ever talking to you about it.

CHS: Okay.

Steele: Fuck. You know my first rule is, do it yourself and never tell anybody. You know, (UI), I broke my first rule and I had a reason for it this time. (UI)

CHS: M'kay, did you already feed the horses?

Steele: I am, uh, no I did not.

CHS: I guess I'll do that.

Steele: I, ah.

CHS: So when I get home, I can pick that up right after I get home?

Steele: Say it again?

CHS: When I get home tomorrow can I pick that up? About, probably...

Steele: As soon as I get, as soon as I get confirmation...

CHS: Okay.

Steele: ...and I'm sure that I'm not really a suspect. Okay?

CHS: Okay, I just needed something...

Steele: I think, I think that's fair.

CHS: I just need something to satisfy...

Steele: And as soon as I know what happened. You know, somebody's gonna have to come and, I, I, it, it'll...

CHS: 'Kay.

Steele: The answer is, soon as I get confirmation and I know I'm not a suspect, then I'll probably, uh, end up storing uh, some of my silver out in the shed, the way that I have some years.

CHS: I just..You know I gotta answer to my (wife), so I just gotta make sure I got...

Steele: Well.

CHS: ...I know. I'm just telling you what I gotta, you know how it is. Actually, you don't, but…

Steele: Actually I don't. I wouldn't (UI find out UI). I gotta tell ya, You shoulda done a throw momma from the train on this one from what I'm (UI). (UI) shouldn't say that but... You know what I'm talking about, throw momma from the train?

CHS: The movie?

Steele: Yeah.

CHS: Oh, yeah, okay.

Steele: (UI)

CHS: Oh yeah, okay, yeah I know which one you're talking about.
So did he have light all day? Kinda didn't want him in the dark as much as he was. It's, I think it calmed him down.

Steele: Trust me they see so much better than we do. (UI) they can't even notice that.

CHS: Look he's not running around like crazy now.

Steele: (UI)

CHS: Let me go grab that. He thinks he's getting attention.

Steele: (UI) I've already, I'm already (UI) need to hear.

CHS: Something that I did? Something that I did?

Steele: A plan that I made, ah...

CHS: Oh.

Steele: (UI) I mean somehow or other get around it. (UI) remember I told you Larry. (UI)

CHS: I know, That's why tomorrow's it. You know?

Steele: That's why you uh, pushing it off like this has been such a problem.

break approx 1:22 mins

CHS: Jeez, you guys got enough (eating)?

break approx 1:30 mins

CHS: You see how much they ate out here? They (), just about cleaned out both those pens already. I think we can open up the, the other ones. 'Cause they...

Steele: Prob'ly, cause they've, they've settled down.

CHS: Yep, alright.

Steele: Are you doing this by yourself?

CHS: Basically, I'm still gonna, still gonna have somebody with me to pick me up and drop me off. But that's all, I don't wanna do nothing else.

Steele: She gonna see you?

CHS: Not if the first way goes down, no. But if the second way. they're both going to. 'Cause...

Steele: You know I was watching something on TV, a guys wife got into an auto accident, she was turned into a paraplegic and he was left to take care of her the rest of her life with the kid kinda pitying him that he was, that he's the one who had to do it. And I thought to myself that'd be awful. You know, 'cause if I abandoned her at that point my kids would hate me forever, you know, I couldn't do that. I mean, this could actually become a much worse situation than it currently is. Do not, do not leave me like that.

CHS: Okay. No, I'll make sure. Don't worry this is what (I get UI). If that happens there won't be nothing left.

Steele: If she, if they, I don't know, have you met her mother?

CHS: No.

Steele: She...

CHS: Oh yeah, I guess we kinda did that last winter but, that was when you had your heart attack and stuff, I wasn't really paying no attention.

Steele: She may or may not remember you. But Cyndi will recognize you.

CHS: Well, in, in a heartbeat, So...

Steele: Do not allow...

CHS: Well...

Steele: I mean I, I...

CHS: ...just do not answer your phone if she calls. Plain and simple. You don't wanna be tied into that.

Steele: You're gonna give her that much time?

CHS: Well hopefully not, but if I happen, you know, to walk up to the door and she sees me and if she jumps on the phone, you know, you can just let it go to voice mail and pick it up that way.

Steele: Alright, well they're gonna get in the car and they're gonna drive away.

CHS: Alright. Well that's the hopeful...

Steele: No, no, that's gonna happen, 'cause she's got the appointments and I'm gonna confirm that during my call tonight. I'm gonna conf… "How's your mother doin'?" And then she's gonna tell me about the appointments tomorrow, and then I'll know that she's going.

CHS: 'Kay.

Steele: 'Kay? And she doesn't go to teach at her studio until three or four in the afternoon, so it could be...it's almost certainly going to be in the morning.

CHS: Right, I'm thinking about 8:00 'cause…

Steele: I, I have no idea.

CHS: So I'm gonna try to get there like 7, you know, be there early.

Steele: Well you should do that because it might be at 8:00.

CHS: Did you...

Steele: But it might not be until noon, too.

CHS: ...'Kay. Do you still want me to call ya on one of those disposable phones when it's done?

Steele: No.

CHS: No, don't worry about that?

Steele: No.

CHS: Okay.

Steele: I wanna as, I wanna be able to assume, that you're delivering the freight this time.

CHS: Okay.

Steele: I wanna be able to assume, I've got myself set up...I'm, uh, picking up a buddy at 8:00.

CHS: 'Kay.

Steele: We're going to Spokane, we'll go to your lumber yard...

CHS: Take everything...

Steele: ...I'll get all that shit on that list.

CHS: 'Kay.

Steele: We're gonna go to lunch, come back around twelve, one o'clock.

CHS: 'Kay.

Steele: I'll drop him off. That would give me (UI). And I'm, and I'm, aside from the, and I'll make myself memorable at whatever restaurant we go to and...

CHS: 'Kay.

Steele: ...on the way I'm gonna go to the post office and I'm gonna mail something and I'll get a receipt for that. And um, and then in the afternoon I will come home and I will then go to town and, um, I'll do something at the bank, maybe, or at the post office, something that creates a record with a time stamp.

CHS: 'Kay.

Steele: And I'll, uh, say something memorable to the clerk. Um...

CHS: So they'll remember you.

Steele: Yea.

CHS: I'm sure you'll just have to be yourself, eh?

Steele: Alright, well, that's, that's, I always say memorable things.

CHS: Right.

Steele: They're used to it. I mean if I didn't say something memorable, that would be unusual.

CHS: Right.

Steele: 'Kay? Um, but I am prepared to do that, in the early to mid-afternoon if I haven't heard anything yet in order to guarantee that I got myself covered and nobody could claim that I had enough time to drive over and do anything.

CHS: So, what I gotta tell my old lady is you can't do nothing 'til like Monday. Is that what I am or the weekend maybe.

Steele: I'd say that's a fact, Jack, because, they're gonna have to figure out who the fuck she is. They're gonna have to track me down. They're not gonna do it by telephone.

CHS: Well if it's (UI)...

Steele: So when that, so when that black and white pulls into my driveway I hope to God I can answer the door and seem normal. Because I won't know whether they're ta, they're here to notify me or they're here to take me away, because you fucked up and got yourself fucking caught, and then it got pinned on me. 'Cause if Cindy takes one look at you she'll know exactly what the fuck's goin' on.

CHS: Think so?

Steele: Why else would you be over there doing something like that?

CHS: Well, hmm.

Steele: Gimme a break. Yeah, yeah, oh...

CHS: Well I'll just...

Steele: Listen. You get yourself caught, you don't say anything to anybody.

CHS: Well...

Steele: You know, you know the, you know how I'm gonna handle this, don't you?

CHS: Yep.

Steele: As the cops come to me and they say that they've got you in custody and that you attempted to kill her or you did kill her, and do I know anything about it, I'll say, "You gotta be shitting me. Yeah he knows who she is. Why would he be over there doing that? I have no goddamn idea; maybe he's a fucking lunatic and he was in love with her and, and couldn't get her to give him a tumble and got pissed off." Okay? I mean that's what I would do. And, sorry, but, uh, like in Mission Impossible, we will disavow your existence.

CHS: 'Kay.

Steele: And I will lie myself out of it. I will…you and I have discussed this before...

CHS: Right, right.

Steele: ...and I'll keep my word about what I said I would do in that situation.

CHS: 'Kay.

Steele: But you make sure you get the fucking job done. The worst thing you could do is not get the job done. Get your ass caught and you'll be fucking swinging out there...

CHS: Right.

Steele: ...and there won't be anything I can do, except the best, to throw you to the fucking wolves.

CHS: Well, I'm not...(UI)

Steele: 'Cause then, then she's gonna come to me and say, "What the fuck is this all about?" I say, "Fuck, I don't know. You're the one that been talking to him; what the fuck's been going on between the two of you and what the hell was he doing over there, what the fuck's going on, anyway? You and Larry? Are you serious? Did you have, did you have something going on with that, with that guy?" You know, that's the way I'm gonna play it.

CHS: Okay.

Steele: I, I just, just so you know.

CHS: I know, I know. I'm just (sighs).

Steele: And, and, and I will do my best to do what I can for your family. But I'll be in a real situation at that point.

CHS: I'll just, if something like that does happen; but I don't think it will. Just take care of the lawyers, um, (fix UI) somebody that'll take of the kids.

Steele: Fucking...if I can, then I'll hire your kids to work here and I will pay them handsomely. Okay?

CHS: 'Kay.

Steele: But you gotta make...in order to do that, I gotta have the money to do it. In order to have the money to do it, you gotta do it with the car and make it an accident to trigger the coverage.

CHS: 'Kay.

Steele: 'Kay? I, she'll be in the car, I guarantee you you'll be able to get her in the car sometime between 8:00 and 2:00. I guarantee you that. And nobody'll be driving it but her.

CHS: Well that's what I'm plannin on so, I'm plannin' on first thing in the morning. So...

Steele: So you can, you can count on that. And if I talk to her and she's all, "Oh, no, they're all, they can't..We're not goin' anywhere tomorrow", um, I'll, I'll let you know, but you still gotta know that at some point she's gonna go out and she's gonna get in that car and drive to the studio in order to teach.

CHS: 'Kay.

Steele: So she'll be in that car sometime tomorrow. Prob…, and she'll be in it with her mother almost certainly.

CHS: She takes her mother to teach too?

Steele: No.

CHS: So...

Steele: Probably not actually, but she might. Who knows?

CHS: Okay, okay. I shoulda...

Steele: I would, uh, I would like to see it happen. I mean...

CHS: 'Kay.

Steele: ...I'm not...

CHS: I know (UI) too much (UI)...

Steele: I'm pissed off, but, I don't want her to suffer and I don't want her to realize as the lights are going out what's happened. I'd like that not to happen.

CHS: Well...

Steele: I'd like it to be a mystery or a surprise, or better yet, happen so fast she, that she's not even aware of what's going on. That's the way I'd like it, okay?

CHS: Okay.

Steele: I mean...

CHS: Ah, I'll try...

Steele: The guy...

CHS: ...you know.

Steele: ...the guy, um, fuck, you can, uh, you can, you can lay him down and drive over him a few times. Ah, quite honest...

CHS: I thought you didn't want him touched.

Steele: Ah, I don't want him touched, I just, nah, I was just kinda making a joke, I was saying...

CHS: Okay, okay.

Steele: ...him, him, you know that, that son-of-a-bitch, you know, make it hurt, but, uh...

CHS: Okay.

Steele: ...with her, I, ah, I spent twenty-five years married to her and it wasn't all fun and games. But even so, I don't wanna go out of my way to see her suffer. But...

CHS: Alright.

Steele: ...I want, I want this over with.

CHS: 'Kay.

Steele: No, there ain't no second thoughts pal.

CHS: Okay I am going step down and grab the key so I got a key to her car cause if I have to do plan B I'm going to be in the back of her car.

Steele: So you got the keys to her car.

CHS: Yea, I stuck 'em in a building (UI).

Steele: Oh, okay.

CHS: So that way I can be in the back seat and then maybe she won't see me at all. That should work.

Steele: Alright.

CHS: Alright. I gotta get going.

Steele: Alright. (UI)

CHS: (UI)

Steele: I don't know, I mean, I don't wanna know.

CHS: I know.

Steele: I don't wanna know.

CHS: 'Kay.

Steele: Make it look like an accident involving the car and some other vehicle. 'Kay?

CHS: 'Kay.

Steele: Gotta do that...

CHS: I will.

Steele: ...to trigger the uninsured motorist. Otherwise you only get our basic agreement.

CHS: 'Kay.

Steele: (UI)

CHS: Alright. Let's assume that doesn't happen.

Steele: (You got that right.)

CHS: 'Kay. Alright. I'll see you.

break approx 1:10

CHS: I can't remember. Tossed 'em in here.

PLAINTIFF'S
EXHIBIT
27
PENGAD 800-631-6989

PLAINTIFF'S
EXHIBIT
35
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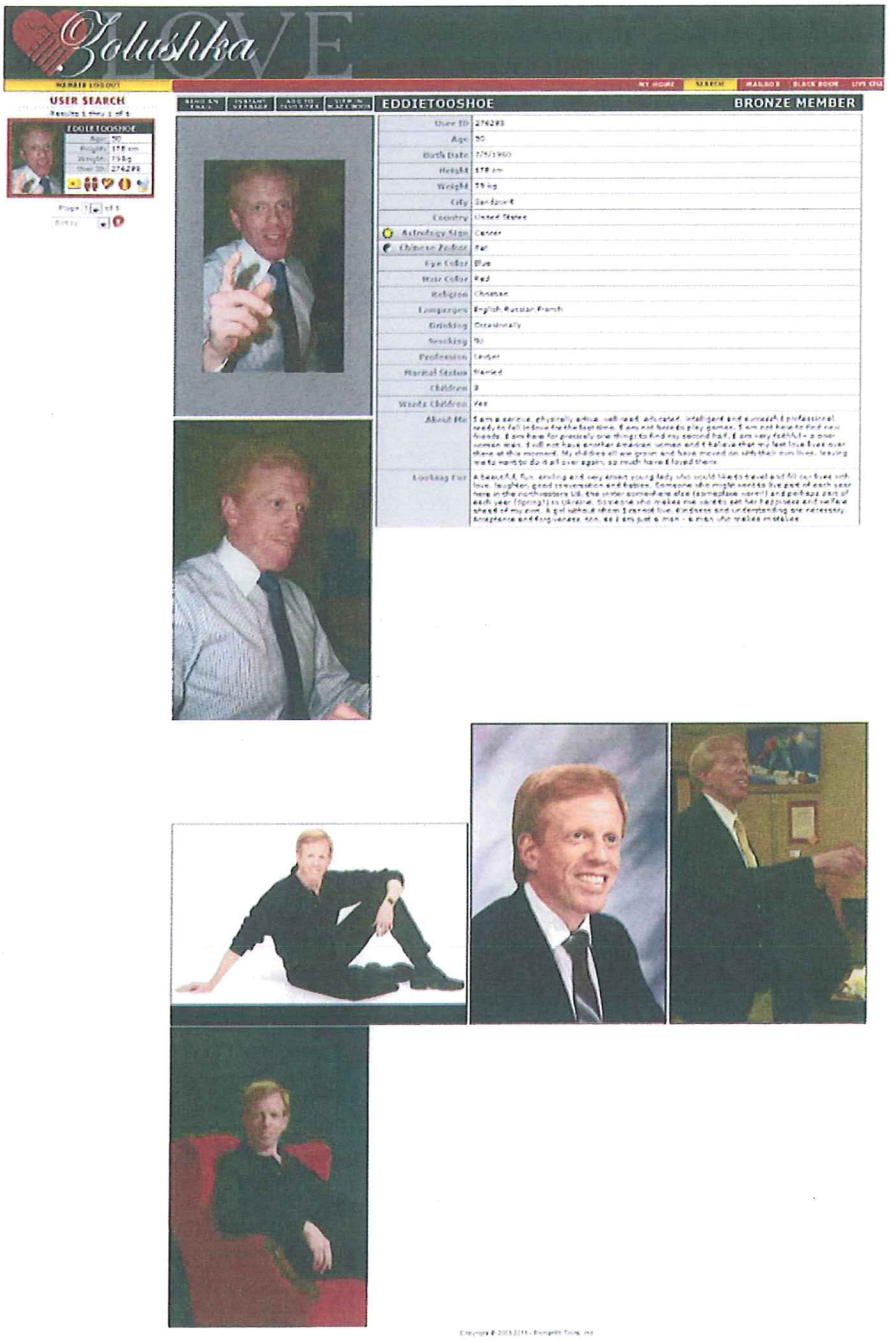
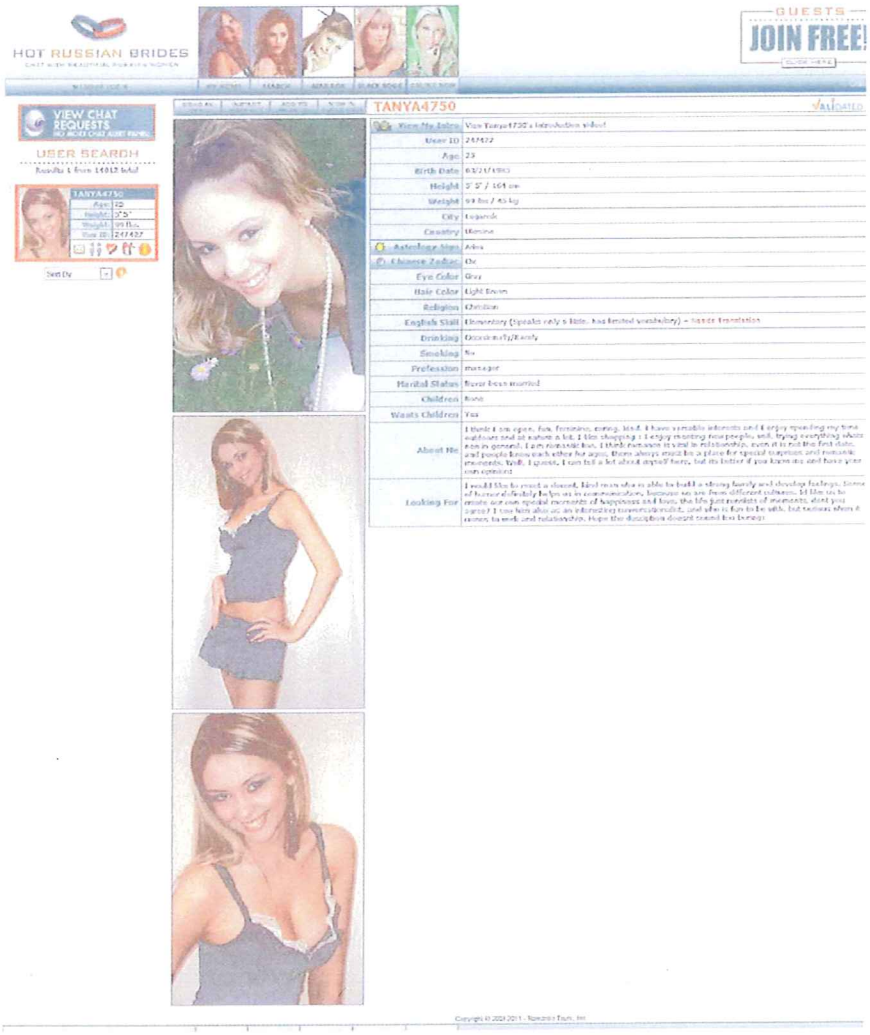


PLAINTIFF'S EXHIBIT 100

PENGAD 800-631-6989

Exhibit 100



PLAINTIFF'S EXHIBIT 101

PENCAD 800-631-6989

Exhibit 101

Cyndi Steele

From: "Steele, Edgar (E-mail)" <steele@pop.net>
To: "Cyndi Steele (E-mail)" <cyndisteele@hotmail.com>
Sent: Tuesday, June 13, 2000 11:34 AM
Subject: FW: The Allure of Marriage

Lovely, just lovely. After braying about how I do not believe in coincidence, just a few minutes later this arrives in my email.....again, I'm not sure as to the cosmic significance of this, but there must be some.....mind you, it need not be as bad as this depicts, since most of these guys had no lawyers.....but, then, neither do I, come to think of it.....

-----Original Message-----
From: NSNet [mailto:NSNet@worldnet.att.net]
Sent: Tuesday, June 13, 2000 11:17 AM
To: NSNet@worldnet.att.net
Subject: The Allure of Marriage

THE ALLURE OF MARRIAGE
by Fred On Everything

If I could offer a young man one
piece of sage advice, it would be this:

Don't get married.

Don't do it. Come the divorce, as come
it probably will, the courts will systematically shear
you of your children, your house, and huge
amounts of your income for twenty years.
Don't do it. It isn't worth it. Nothing is.

My saying this usually brings, from women,
cries that I'm an extremist or woman-hater.
No. The problem is not women, but the courts.
Men can behave every bit as reprehensibly as
women, though they go about it differently. But
the judicial system, which is politicized to the
gills, utterly favors women over men in divorce
cases, without remorse, decency, or
concern for children.

Should you doubt this, read, before you
pop the most foolish of questions, From Courtship

to Courthouse by the divorce lawyer Jed Abraham.*

Writes Abraham, "If you're like most men,
you're married, or you hope to marry some day.
You think you deserve to live happily ever after,
but if things don't work out that way, you'll get
a civilized divorce and move on. You'll stay
pals with your ex, and you'll see your kids
as often as you want.

"You have no idea what you're getting into."

And you don't. Not the faintest freaking clue.

A few facts from Abraham:

The odds are 50% that your marriage will
end in divorce. The odds are 70% that your divorce
will be filed by your wife. The odds are 80% that
your wife will get custody of your children-plus child
support, alimony, and/or a hefty chunk of your property.

That is how it is.

Yes, I know: You don't think this applies
to you. Cup Cake loves you. She would never
behave in such a way. Think again. You have no
conception of the hatred that divorce engenders.
Men are callous; women are mean. When a
family breaks up, when a life dreamed of
disappears in flames and emotions go limbic,
women are not the kinder sex, and certainly
not the more rational. And Cup Cake will have
the absolute upper hand, with the full power
of the state to help her express her
dissatisfaction with you.

Abraham: "If your wages are not withheld
and you fail to pay your child support, the State
will garnish your pay, slap liens on your property,
intercept your tax refunds, report you to credit
agencies, discontinue your driver's license,
suspend your professional and business permits,
hold you in contempt of court, put your face
on a wanted poster, throw you in jail, and
deny you food stamps. But if your ex doesn't
spend that very same support on the
children, the State will do. . . nothing."

It gets worse. There is, for example,

"imputed income." This means that your child support will be based not on what your children need, not on what you earn, but on what the court decides you could earn.

Don't do it.

If you love Cup Cake, live with her. Be kind to her. Be loyal to her. She may be as nice as you think she is. Many women are. Buy her roses. Just don't marry her, or have children with her. If the laws were even-handed, marriage would be an admirable institution. The laws aren't equal.

But it's the kids she'll use, should things get nasty, to tear your guts out. If you're sure that Cup Cake won't do this, you're crazy. True, she may not. Not all women do, or not to the same degree. But you won't know until it's too late. And the courts will do anything she wants.

Abraham: "Your ex will warm to calling all the shots. She may cancel your visitation now and then. If she's truly mean-spirited, she'll go much further. Under the cover of her court-appointed role as sole custodian, she'll systematically sever your relationship with the children. She'll badmouth you to them. She'll schedule their extracurricular activities during your visitation time. For good measure, she may accuse you of domestic violence and child abuse."

Think "joint custody" is the answer? The courts won't enforce it. What are you going to do-sue Mommy? The kids will hate you for it. Do you believe in pre-nups? The courts ignore them. Read Abraham. It's all there.

Then, says Abraham, there's the killer: "More efficiently, your ex may simply move with the children to a distant community, with the law's acquiescence."

Kids are the crunch, guys. They hurt. And she will know it, and use it. The courts will help her. At bottom, the position of the courts is that the children are her property, like furniture. Judges don't care about you at all.

Ever drive away from what used to be
your home, with your daughter of four streaking
across the parking lot, yelling, "Daddy!
Daddy! Please come back!"-and you can't?

Ever have your little girl of four say,
"Daddy, can I get my birthday present early?"

"Why, Pumpkin?"

"Well. . . after the divorce we might
move, and I won't see you again."

That's what you are in for, guys. Don't
do it. You'll be suicidally depressed, miss your
kids to the point of desperation, be almost
frantic-and the courts will make sure you
can do nothing about it. The ex will
probably enjoy it.

That's the reality. Don't believe it?
Talk to men who have been there.

Why do women do these things? Not
because they're evil. Cup Cake is probably a
perfectly decent woman in her dealing with the
rest of the earth. She'll do it because she hates
you, which is the normal outcome of a divorce.
She'll do it because she can. She's furious
because the marriage didn't work, which
will be entirely your fault.

And the law gives her every incentive:
She will get the house, the kids, the child support-
and she knows she will. If women knew they had
an even chance of not getting custody, of having
to pay child support, the divorce rate would
drop like a prom dress and joint custody
would suddenly mean joint custody.
Women love their children as much
as men do.

But that's not how it is. The courts
encourage divorce, and they rape men.
Get used to it.

Abraham: "The odds are it doesn't
pay for you to marry and have kids."

That's a fact, guys. Think about it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Idaho, and that on November 30, 2012, one copy of the foregoing **GOVERNMENT'S SUPPLEMENTAL EXCERTS OF RECORD, VOLUME I of II**, was mailed, postage prepaid, to the persons listed below:

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s/ Angela Nyland
Angela R. Nyland
Paralegal

U.S.C.A. No. 12-30005

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)
	)
Plaintiff/Appellee,	)
	)
vs.	)
	)
EDGAR J. STEELE,	)
	)
Defendant/Appellant.	)
	)

GOVERNMENT'S SUPPLEMENTAL EXCERPTS OF RECORD
VOL. II of II

On Appeal from the United States District Court
for the District of Idaho
District Court No. CR 10-00148-N-BLW

The Honorable B. Lynn Winmill, Chief District Court Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	:	Case No. 10-00148-N-BLW
Plaintiff,	:	**JURY TRIAL**
vs.	:	
EDGAR J. STEELE,	:	
Defendant.	:	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 7

May 4, 2011

Pages 1382 to 1562

Tamara I. Hohenleitner
Idaho Certified Shorthand Reporter No. 619
Registered Professional Reporter
Certified Realtime Reporter
Federal Certified Realtime Reporter

United States Courts, District of Idaho
550 West Fort Street, Boise, Idaho 83724 (208) 334-1500

THE COURT: Go ahead and be seated.
You may conduct your examination.
DIRECT EXAMINATION
BY MR. McALLISTER:
Q. Mr. Fairfax, you testified in this court before the judge and jury last Wednesday and Thursday; correct?
A. Yes.
Q. And during your testimony, you disclosed that, in fact, you were writing a book; correct?
A. Yes.
Q. And it is true that, in your own handwriting, you have written 258 pages of that book; correct?
A. Yes.
Q. And while you were under oath in this court, you told -- you stated that the book was fiction; correct, sir?
A. Yes. It's going to be fiction.
Q. Okay. And that statement by you, sir, was a lie, is it not?
A. No.
MS. WHELAN: I'm going to object. Form of the question and they're leading.

THE COURT: Well, I'm going to allow -- I'm going to allow leading questions. Rephrase the question, though.
BY MR. McALLISTER:
Q. What you said here about the book being fiction was not true?
A. No, that's not correct.
Q. Okay. So it is your 253 pages; correct?
A. Yes.
Q. From the date of your arrest through March 3rd, 2011; correct?
A. Yes.
Q. And in it, you talk about how you're going to describe it as fiction; correct?
A. I can't recall that. I'm sorry.
Q. All right. I'd like to have you look at your handwritten page 229 and see if this refreshes your recollection about what you wrote.
A. Yes, I see that.
Q. All right. And you stated -- you wrote, "So I've decided to call this" --
MS. WHELAN: Your Honor, I object to it being quoted from. The witness admitted that that's what he said. There is no impeachment.

THE COURT: Well, I think the inference is somewhat different from the testimony. I'm going to leave it to the jury to determine, and I will allow that portion to be read to the witness.
Ladies and gentleman, I'm allowing some testimony, including either paraphrasing or even quoting from Mr. Fairfax's prior written statements. It is to be considered by you only as it bears upon the witness's credibility and not for the truth of the matter asserted. Because it's a prior statement, it was not made under oath; and, therefore, it can only be considered as a prior inconsistent statement that may bear upon Mr. Fairfax's credibility.
So I'll allow you to go ahead, with that instruction.
BY MR. McALLISTER:
Q. Mr. Fairfax, you wrote, quote, "So I've decided to call this book fiction so as to eliminate any problems. It will have the usual disclaimer, any person or events that are the same are only coincidental. This book is fictional."
You wrote that, did you not?
A. Yes, I did.
Q. And that was not true; correct?

A. No. That's true. It's -- the book is going to be fictional when I write the book.
Q. Well, in these 253 pages, you write about yourself almost every day; correct?
A. Yes.
Q. You designed this book so that you would be the hero; correct?
A. No, sir.
Q. All right. Isn't it true in this book that the main character is you?
A. Yes, sir.
Q. It's all about you; right?
A. Yes, sir.
Q. And you, in this book, write about Mr. Steele; correct?
A. Yes, sir.
Q. And yourself?
A. Yes, sir.
Q. And then you write about what you eat every day, correct -- or most days?
A. Yes, sir.
Q. And you write about how you're feeling; correct?
A. Yes.
Q. And you actually describe yourself, do

you not, as the victim?
A. Yes. That's possible it's in there.
Q. And you make statements about how you should not be in jail?
A. Yes, sir.
Q. And you make statements about how you were going to save the life of Cyndi Steele; correct, sir?
MS. WHELAN: Objection. Improper impeachment.
THE COURT: Counsel, let's -- I'm going to sustain the objection. Counsel, as we discussed before the jury came in, I'm going to give some leeway, but it -- well, approach just for a moment.
(Sidebar commences as follows:)
THE COURT: Counsel, as I was trying -- as I indicated, I think it's fair impeachment to examine the witness about the book and his putting himself, making himself into a hero, because it does suggest that he may have had a reason to kind of color his testimony in terms of making himself more of a hero than he actually was. But I think getting into specifics beyond this, we're just getting far afield.

So I -- it's a tough area. I mean, impeachment can be a lot of things. It's basically anything that would cause the jury or cause any reasonable juror to question the defendant -- the witness's veracity.
And I -- as I indicated, I'm not going to allow examination about his animosity towards the government or Ms. Whelan or Mr. Haws or Mr. Sotka.
MR. McALLISTER: Judge, my next question is: Do you think that you were saving Cyndi Steele by putting that device on her car? I mean, it goes -- it's --
THE COURT: All right. I'll allow that. Again, I'm just going to have to call it as I see it as each question comes up. All right?
(Sidebar concluded.)
THE COURT: Proceed.
BY MR. McALLISTER:
Q. Mr. Fairfax, in your book, you make the statement that you would be the hero by saving Cyndi Steele's life; correct?
A. No, sir.
Q. Okay. You never made that statement?
A. No, sir.

Q. All right. Isn't it a fact that you have admitted that you were the person who put this explosive device on her vehicle?
A. Yes, sir.
Q. And you say that you told the FBI about it only after it was discovered; correct?
A. Yes, sir.
Q. And, in fact, you never made any efforts to take it off her car, did you, sir?
MS. WHELAN: Your Honor, objection as to impeachment. This isn't --
THE COURT: Sustained.
BY MR. McALLISTER:
Q. In this book, you describe how this explosive device never would have worked; correct, sir?
A. Yes, sir.
Q. And the actual title that you selected for your book is "Act of Defiance"; correct, sir?
A. Yes, sir.
Q. And you asked Daryl Hollingsworth to -- because he was an artist, to design the cover of your book, did you not, sir?
A. Yes, sir.
Q. You wanted the words on the cover to be

"Built on lies and deceit from the FBI"?
MS. WHELAN: Objection.
THE COURT: Sustained.
MS. WHELAN: Move to strike.
THE COURT: I'll strike the last question of counsel.
BY MR. McALLISTER:
Q. Well, I'll ask it this way: The title of your book was, in part, "Built on lies and deceit"; correct?
MS. WHELAN: Objection.
THE COURT: Sustained.
MS. WHELAN: Move to strike.
THE COURT: It's simply a question. The jury has been instructed previously that the questions of counsel are not evidence, so I don't think it needs to be stricken.
MS. WHELAN: Yes. Thank you, Your Honor. Sorry.
BY MR. McALLISTER:
Q. You told Daryl Hollingsworth how to draw the cover; correct?
A. No, sir.
Q. Did you tell him to put Edgar Steele's truck on the cover?

A. No, sir.
Q. Is it fair to say, in your 253 pages, Mr. Fairfax, you talked more about yourself than anyone else?
A. Yes, sir.
Q. And is it fair to say that very little of your book is about Edgar Steele?
A. Yes, sir.
Q. What exactly was the act of defiance --
MS. WHELAN: Objection.
BY MR. McALLISTER:
Q. -- that you used for your cover of your book?
THE COURT: Just a moment. There is an objection.
I'll allow it.
THE WITNESS: Can you repeat the question, please?
BY MR. McALLISTER:
Q. What exactly is the act of defiance?
A. Going against Edgar Steele and turning him in.
Q. Okay. And in the course of the book, you say, by your act of defiance, you became the victim in this case; correct, sir?

A. I don't understand your question.
Q. Don't you describe yourself as the victim in your book?
A. Yes, sir, I think I do.
Q. Okay. And don't you say that your view of the situation is that, to use your words, "They screwed me over"?
MS. WHELAN: Objection.
THE COURT: Sustained.
MS. WHELAN: Judge, I would ask for a sidebar.
THE COURT: Well, I'm just going to sustain the objection. I don't see a need for a sidebar. Counsel, the court's ruling, I think, is clear. I'm sustaining the objection.
BY MR. McALLISTER:
Q. In your book, you state that it's wrong for you to be in jail; correct?
A. Possibly, yes, sir.
Q. And the reason you say it's wrong is because the explosive device that you admit you built wasn't designed to go off; correct, sir?
A. That could be, yes, sir.
Q. Okay. And you go through some detail, correct, about how it wouldn't work?

MS. WHELAN: Objection. Improper impeachment.
THE COURT: I'll allow it. But I'm not suggesting I'm going to allow unlimited inquiry along this line. But for this limited question, I'm going to allow the witness to answer.
THE WITNESS: Can you repeat the question, please?
MR. McALLISTER: Yes, sir.
BY MR. McALLISTER:
Q. In this case, in your book, you repeatedly state that you're the victim because you designed the device so as not to go off; correct?
A. Yes, sir.
Q. And it's true, as Jim Maher testified, your cousin, that you've been making fireworks or explosive since you were a teenager?
MS. WHELAN: Judge, I'm going to object. First, it's about somebody else's testimony. Secondly --
THE COURT: Sustained.
MS. WHELAN: -- this isn't impeachment.
THE COURT: I'm going to sustain the objection.

BY MR. McALLISTER:
Q. Mr. Fairfax, you have been making explosive devices since you were a teenager; correct?
MS. WHELAN: Objection. This is not impeachment.
THE COURT: Well, we're now not talking about -- the witness can be called by the defense for other purposes other than just impeachment.
MS. WHELAN: Then we would object as cumulative because this is ground we have already gone over.
THE COURT: I don't recall that it was testified to. I'll allow it.
Just so we're clear, I mean, we have had extensive discussions about proper impeachment, what is not proper impeachment. That applies with regard to the book, as we have discussed, or the notes, but it doesn't apply to other questions relating to other topics. That we'll have to address separately.
MS. WHELAN: Yes, Your Honor.
THE COURT: So I'm going to overrule the objection. Proceed.
BY MR. McALLISTER:

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Q. Mr. Fairfax, you have been making explosive devices since you were a teenager; correct?

A. No, sir. Just fireworks.

Q. Okay. And the fireworks that you say you made were designed very similar to what you placed on Cyndi Steele's car; correct?

A. In format only, yes.

Q. Okay. The difference was, with Mrs. Steele's car, you used a steel pipe; correct?

A. Yes, sir.

Q. And it's what you referred to in your book as a "north Idaho firecracker"; correct?

A. I don't know if I referred to that in my book or not, sir.

Q. Okay. In your book, you proclaim your innocence; correct?

A. Yes, sir.

Q. In your book, you say, quote --

MS. WHELAN: Your Honor, we had --

THE COURT: Counsel, we need to know what -- I'm going to sustain the objection.

MS. WHELAN: Thank you.

BY MR. McALLISTER:

Q. Do you recall in your book, at page

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193, writing that your -- that this was a "waste of an innocent life," referring to yourself?

A. You'll have to show me that page.

Q. All right.

THE COURT: I'll note that the jury's screen is off, so only the witness can see what's being shown from Mr. Fairfax's notes.

BY MR. McALLISTER:

Q. Mr. Fairfax, I'd direct your attention to the highlighted paragraph that begins where I'm pointing. Could you read that to yourself, please.

A. (Witness complied.)
Yes, I read it.

Q. Does that refresh your recollection about what you wrote about yourself?

A. Yes, sir.

Q. And you wrote that you being jailed was such a "waste of innocent life"; correct?

A. Yes, sir.

Q. And you say that it's a waste of your innocent life because you "used a dummy device," "No ignition source, but everything else was legit. What's the dif?" Correct, sir?

A. Yes, sir.

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Q. Your book was designed to be your version of the truth, was it not, sir?

A. No, sir.

Q. Okay. Did you -- do you recall making the statement, "When I'm done, my book will tell it all."

A. Yes, sir.

Q. And you made that statement at page 223, did you not, of your book?

A. If you want to pull up the page, I can tell you.

Q. I believe it's at the bottom of the page, and the page number is 223; correct, sir?

THE COURT: You need to slide it up so the witness can see what you're referring to. You said it was the bottom of the page, I believe.

THE WITNESS: That's what it looks like it says. Part of it's cut off.

BY MR. McALLISTER:

Q. Do you recall you wrote, "When I'm done, my book will tell it all"?

A. Yes, I think so.

THE COURT: Counsel, that's consistent with the witness's testimony, not inconsistent. So I don't think that's proper impeachment.

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MR. McALLISTER: Well, I thought he said he didn't recall and he wanted to see the page.

THE COURT: But then you can show it to him, see if it refreshes his recollection, but I don't think he said he didn't recall. I think he confirmed that is what he recalls writing. So I'm going to, again -- proceed.

BY MR. McALLISTER:

Q. Isn't it true, Mr. Fairfax, that not only did you write this book about yourself, you wanted it to be made into an action movie?

A. Yes, sir.

Q. And in this movie, you would be the star; correct?

A. Not necessarily, sir.

Q. You were the one who engaged, to use your words, "in an act of defiance"?

A. Yes, sir.

Q. But you wouldn't be the star, in your mind?

A. No, sir.

MR. McALLISTER: That's all I have, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. WHELAN:
Q. Mr. Fairfax, are these notes that you took while you were in jail?
A. Yes.
Q. This is not the actual book, is it?
A. No.
Q. You intended to write a book at some point?
A. Yes.
Q. In these notes, you discuss things like your cellmates?
A. Yes, I do.
Q. Jail food?
A. Yes.
Q. Missing your family?
A. Yes.
Q. So this isn't your book, is it?
A. No, ma'am.
Q. Counsel asked you a question -- I just have a couple for you, actually. But when you write a book, you intend for it to be fictional?
A. Yes, I do.
Q. And you wrote about yourself and your situation while you were in jail to work out your frustrations, didn't you?

A. Yes, I did.
Q. And that's why counsel said a lot of this is about you, but this is about your experience in jail; right?
A. That's what it is, yes.
Q. And from your point of view, but for you telling law enforcement about the defendant's request that you kill his wife, they wouldn't know?
A. Can you say that again, please?
Q. From your perspective --
MR. McALLISTER: I'm going to object to the form of it at this point in time, Your Honor.
THE COURT: Well, I think counsel is rephrasing the question. Let's give her a chance to rephrase, and then you can interpose your objection.
Go ahead, Ms. Whelan.
BY MS. WHELAN:
Q. Counsel talked about you being the victim and that you were -- said some things in here. But, from your point of view, if you hadn't told law enforcement about the plot, nobody would have known that Edgar Steele asked you to kill his wife, would they?

A. No, they would not.
Q. Nobody would have been able to hear the recordings from the recorder the FBI gave you?
A. That's correct.
MS. WHELAN: Nothing else, Your Honor.
THE COURT: Redirect.
REDIRECT EXAMINATION
BY MR. McALLISTER:
Q. Mr. Fairfax, when you, with your lawyer, went into the meeting with FBI Agent Sotka, you left out the most important fact, did you not?
MS. WHELAN: Objection. Foundation. Form of the question. No time frame.
MR. McALLISTER: I established a time frame.
THE COURT: You did. I'm going to overrule the objection.
THE WITNESS: Can you repeat it, the question, please?
BY MR. McALLISTER:
Q. Yes, sir. When you went in with your lawyer to seek immunity and had a meeting with FBI Agent Sotka, you left out the most important fact of your story, did you not?
A. No, sir.

Q. You didn't tell them that, in fact, you had put an explosive device on Cyndi Steele's car; isn't that true, sir?
A. Yes, that is true, sir.
Q. And you discuss that in your book, do you not?
A. You would have to show me a reference, please.
Q. I'd direct your attention to page 253, and I'm pointing to the highlighted section. Are you able to read that?
MS. WHELAN: Judge, based upon what appears to be highlighted, it's outside what the court has allowed.
THE COURT: Well, I don't know. It doesn't appear to be impeaching in any way, but I don't know where counsel is going with it.
So you've reviewed it.
Let's put another question before the witness, Mr. McAllister.
BY MR. McALLISTER:
Q. Mr. Fairfax, did you not say that your method was unorthodox --
A. Yes, sir.
Q. -- in your book?

And it was unorthodox because of the fact that you wanted to hide your work in building this explosive device and putting it on Cyndi Steele's car?

A. No, sir.

Q. At no time in your book do you recount how you were taking a big risk in not telling them about the device?

A. You will have to show me a reference, sir.

Q. Mr. Fairfax, Ms. Whelan asked you about the book. And I believe your response was that it really wasn't a book; it was just your notes.

MS. WHELAN: Objection, Your Honor. That mischaracterizes the testimony.

MR. McALLISTER: I could rephrase it.

THE COURT: Counsel, I thought that was the testimony.

But if you disagree with -- that you don't think that is what you testified to, you can so indicate.

THE WITNESS: What's that? I'm sorry. Can you ask that question again?

BY MR. McALLISTER:

Q. Yes. As you testified here today in

response to Ms. Whelan's questions, you denied that this is a book; correct?

A. Correct.

Q. Then why, at page 229, did you make the statement, "So I have decided to call this book fiction so as to eliminate any problems"?

A. Because when I write the book, it is going to be fiction.

Q. But this wasn't fiction, what you wrote, was it, Mr. Fairfax?

A. No, sir.

MR. McALLISTER: That's all I have, Your Honor.

THE COURT: Anything else?

MS. WHELAN: No, Your Honor.

THE COURT: Mr. Fairfax, you may step down.

MS. WHELAN: May the witness be excused, Your Honor?

THE COURT: I assume so. Any objection to having the witness excused now?

MR. McALLISTER: Your Honor, yes, until the government --

THE COURT: All right. Because of the potential for surrebuttal, let's have him remain available.

Call your next witness, Mr. Amendola.

MR. AMENDOLA: Daryl Hollingsworth, Your Honor.

THE COURT: Who?

MR. AMENDOLA: Daryl Hollingsworth.

Your Honor, while we're waiting, could I get a document marked?

THE COURT: Yes. Ms. Gearhart, would you --

MR. AMENDOLA: Thank you.

THE COURT: Mr. Hollingsworth, I'm not sure if we released you previously. I'm going to have you resworn, as well. Go ahead and step to the witness stand, and then Ms. Gearhart will place you under oath.

DARYL HOLLINGSWORTH,

having been first duly sworn to tell the whole truth, testified as follows:

MS. WHELAN: Your Honor, prior to the commencement, I would ask to approach at sidebar.

THE COURT: Yes.

(Sidebar commences as follows:)

MS. WHELAN: Judge, it appears they're going to seek to use this. We have not seen it before. It contains language that the court did not allow

with the other witness. It's not been previously provided. And we would ask the court to deny it.

THE COURT: Well, Counsel, the whole thing about the FBI, "lies and deceit from the FBI," I'm not allowing it. It's -- I just don't see that -- now, again, what is the purpose?

Step to the microphone so that --

MR. AMENDOLA: Your Honor --

THE COURT: Let me rephrase my concern -- actually, rephrase the question. Why is it relevant that -- and I assume this was handwritten notes made by Mr. Fairfax or at least something like that?

MR. AMENDOLA: No.

THE COURT: All right. It was then made by Mr. Hollingsworth under the direction of Mr. Fairfax?

MR. AMENDOLA: Yes.

THE COURT: His animus towards the FBI, as I've said earlier, is simply not relevant. To me, it does absolutely nothing to show any bias against Mr. Steele if he feels like the FBI did not treat him fairly. And simply attacking the government in some broad way to indicate an individual does not like the FBI or thinks that

they're capable of lies and deceit, it's just not relevant, and it's not proper impeachment, and it has all kinds of Rule 403 potential.

So, now, explain to me why this is relevant to something.

MR. AMENDOLA: Your Honor, to the extent that it is a collateral attack on the government, I guess I can't do anything about that, but the fact is that Mr. Fairfax said that the name of the book is "An Act of Defiance." And this was drawn by Mr. Hollingsworth at Mr. Fairfax's direction. And this is the name of the book that he told him.

MR. McALLISTER: And, Judge, he wanted Edgar Steele's truck put on the book. And what could be more --

THE COURT: Okay. Now, I don't allow tag-team arguing. I'm sorry. I once in a while allow a brief ad lib. But, again, one attorney on each argument.

I didn't say -- I mean, you can certainly have him testify to that. I don't disagree that his -- the fact that he wanted to put Edgar Steele's pickup or something on the front of a book, that's fine, you can have at it. But this reference to the FBI is not coming in.

And, therefore, the exhibit itself can't come in unless somehow you can agree upon a redaction. And I don't know what the purpose is there.

MR. AMENDOLA: Are you telling me I can't ask him if he was told the name of the book and to identify the name of the book?

THE COURT: Not -- you already have -- you already have in evidence Mr. Fairfax's statement about "built on lies and deceit." And that's fine. You have that. The "from the FBI," that's what I'm not allowing.

And then it becomes cumulative. If you want to lead him and ask him whether or not the title included the phrase "Built on lies and deceit," you can do it, but no reference to the FBI. Okay?

MR. AMENDOLA: I got it.

THE COURT: The exhibit itself is not coming in.

MR. AMENDOLA: Gotcha. Yes, Your Honor.

(Sidebar concluded.)

THE COURT: Proceed. Where were we, actually? I think the witness has been sworn. Ms. Gearhart, we got that far?

THE CLERK: Yes, Your Honor.

THE COURT: All right. You may inquire of the witness.

DIRECT EXAMINATION

BY MR. AMENDOLA:

Q. Good morning, Mr. Hollingsworth.

A. Good morning.

Q. Mr. Hollingsworth, I have a few questions for you that relate to your stay in the Bonner County Jail when you were in the same cell area with Larry Fairfax. Okay? Do you remember that period of time?

A. Yes, I do.

Q. And you recall testifying last week in this court about some of the things that occurred while you were in that same cell with Larry Fairfax -- or same cell area?

A. Pretty much, yeah.

Q. Okay. You were aware that Mr. Fairfax was talking about writing a book?

A. Yes.

Q. Did you know that he had actually started writing it?

A. Yes.

Q. Okay.

A. He told me.

Q. Did you know how far along he was with the book?

A. Not really how far he was into it. Just that he was writing it.

Q. Okay. When he found out that you were -- had artistic talents, he asked you to help design a cover of the book?

A. Yes.

Q. Could you please describe what the cover -- as you understood it, what the cover of the book would look like?

THE COURT: Counsel, I indicated at sidebar you may want to lead the witness. The open-ended -- normally I wouldn't allow a leading question here, but I think here I'm going to require it to avoid the issue we discussed at sidebar.

MR. AMENDOLA: Fair enough, Your Honor.

BY MR. AMENDOLA:

Q. Mr. Hollingsworth, did you draw a road as a part of the cover of the book?

A. Yes.

Q. And at Mr. Fairfax's direction, did you write a part of a title on the book?

A. He made up the title. I just wrote it

on the book.
Q. Okay. Was the title "Built On Lies and Deceits"?
A. No.
Q. What was the title?
A. The title was "An Act of Defiance."
Q. Was not a part of the cover of the book to include the words "Built On Lies and Deceits"?
A. Yes.
Q. And did a part of the cover of the book include a picture of Edgar Steele's truck?
A. Not Edgar Steele's truck. It had a picture of Larry Fairfax's logging truck running over an Aryan Nation guy.
Q. Running over who?
A. An Aryan Nation member.
Q. And was it your understanding that was because it showed Larry Fairfax to be a hero?
MS. WHELAN: Your Honor -- well --
THE WITNESS: I don't know --
THE COURT: Is there an objection?
MS. WHELAN: Yes. It's speculative and --
THE COURT: Sustained.
BY MR. AMENDOLA:
Q. Do you know why Larry Fairfax wanted

you to show his logging truck running over the Aryan Nations?
THE COURT: Okay. Just yes or no. Do you know?
THE WITNESS: No.
BY MR. AMENDOLA:
Q. That's just something he told you to do, and you did it?
A. Yeah.
Q. Okay. Were there any other objects that he asked you to put on the cover of the book?
A. Yes. He asked me to -- you know how you see, like, mile markers on the side of the highway that say, like, 30 miles to Boise or whatever?
This one, the mile marker said "40" for "murder" and "30" for "conspiracy," you know, so-and-so on the mile marker sign. And then at the end of the road, it said -- had another sign that said "To Edgar's Graybar Hotel," which stood for a jail, and I drew that.
Q. And do you know why he asked you to put those objects on the cover?
A. Nope.
Q. Any other objects that you recall that

you drew on the proposed cover of his book?
A. Yeah. And a picture of an FBI guy stabbing Larry in the back.
MS. WHELAN: Your Honor, I object and move to strike.
THE COURT: Sustained. I'll instruct the jury to disregard the last response.
BY MR. AMENDOLA:
Q. Did Mr. Fairfax tell you whether he was being paid to set up Edgar Steele?
A. No.
Q. But he did tell you that he was asked to set up Edgar Steele by the FBI, did he not?
MS. WHELAN: Objection. Leading.
THE COURT: I'm going to sustain the objection.
MR. AMENDOLA: I have no further questions, Your Honor.
THE COURT: All right. Cross-examination.
CROSS-EXAMINATION
BY MS. WHELAN:
Q. Mr. Hollingsworth, you still have the three prior felony convictions, don't you?
MR. AMENDOLA: Objection. Beyond the scope.
THE COURT: Overruled. It's impeachment.

You may answer.
THE WITNESS: Yeah.
BY MS. WHELAN:
Q. One for aggravated assault?
A. Yep.
Q. One for forgery?
A. Yep.
Q. And one for malicious mischief?
A. Yep.
MS. WHELAN: Sir -- the jury projection is off; right, Judge?
THE COURT: Yes.
BY MS. WHELAN:
Q. Can you look at the screen in front of you. Do you see that?
A. Yeah.
Q. Is this something you provided to defense counsel?
A. No.
Q. It's not?
A. Actually, it might be part of it. I didn't get a chance to do a full picture because I only had so much time. But that was kind of an idea of what the book cover was going to be like.
Q. And nowhere on here --

A. Nothing that I drew for Larry is on that.

Q. This is just something you made for defense counsel?

A. Yes.

Q. Because they asked you to?

A. Yeah, to give an idea of what I drew.

Q. And nowhere on this picture do you show a Graybar Motel or anything like that, do you?

A. Not in that one.

MS. WHELAN: Nothing else, Your Honor.

THE COURT: Recross?

MR. AMENDOLA: No, Your Honor.

THE COURT: I mean, redirect.

All right. You may step down.

Call your next witness.

MR. McALLISTER: Your Honor, this would be a good break. I know it's a little early.

THE COURT: Ladies and gentleman, as we're getting closer to the end of the case -- of course, I'd better not say anything for sure, but I think there is at least some chance we'll have the evidence all submitted today. It becomes necessary to take various breaks for reasons that we need to discuss things with counsel and to give

counsel a chance to confer among themselves. So today will be kind of broken up in bits and pieces, so don't take anything from that.

I do want to again admonish you, however, not to discuss the case among yourselves or with anyone else and not to form or express any opinion about the case until it is submitted to you. And, as always, continue to follow the court's extended admonition concerning juror contact -- excuse me -- juror conduct.

We'll be in recess until -- well, for about 15 minutes.

(Recess.)

(Jury present.)

THE COURT: For the record, I'll note that the jurors are present.

Mr. McAllister?

MR. McALLISTER: The defense rests, Your Honor.

DEFENSE RESTS

THE COURT: Ms. Whelan, are you ready with any rebuttal?

MS. WHELAN: Your Honor, we have no other -- we have no --

THE COURT: No rebuttal evidence?

MS. WHELAN: Yes.

THE COURT: All right. Ladies and gentleman, the evidence now has been presented to you. I need to confer with counsel and see how quickly we can put together instructions. And we may still try to argue and instruct today. I think we probably will, but I'm going to confer with counsel.

So probably within a half an hour, maybe 15 minutes, we'll be in to visit with you and advise you as to our schedule. If there are a lot of issues we still have to address, it's possible we'll have you come back tomorrow morning.

But I think, more likely, it might be -- well, maybe I won't say at this point until I have a chance to confer with counsel.

You are still subject to the same admonition of the court not to discuss the case among yourselves or with anyone else and not to form or express any opinions about the case until it is submitted to you.

And, again, even though you've heard all the evidence, you have not had the benefit of my instructions as to the law, nor have you heard

the closing arguments of counsel.

Until the case is fully submitted to you and you're advised that you can begin your deliberations, you must continue to follow the court's admonition about not discussing the case among yourselves or with anyone else and not forming or expressing any opinions about the case until it has fully been submitted to you.

So we'll be in recess until further call.

(Jury absent.)

JURY INSTRUCTION CONFERENCE

THE COURT: For the record, this is the time for the instruction conference -- formal instruction conference.

I will note that the court provided counsel with a set of proposed instructions yesterday for their review and comment. We met informally here roughly an hour ago, maybe hour and a half ago, to go over instructions. I heard objections, made some changes at the request of counsel, those that I agreed with.

And this is -- Counsel, I would note this is your opportunity to state your objections for the record. Any objections that were stated

in commission of murder for hire in violation of 18 U.S. Code Section 1958, between on or about December 2009 and June 11th, 2010, the defendant is" -- and the jury's choices are either guilty or not guilty.

"Question 2: As to Count 2 of the indictment charging the defendant, Edgar J. Steele, with aiding and abetting use of explosive material to commit a federal felony, in violation of 18 U.S. Code Section 844(h), between on or about May 27th, 2010, and May 31st, 2010, the defendant is guilty or not guilty?

"Question 3: As to Count 3 of the indictment charging the defendant, Edgar J. Steele, with aiding and abetting possession of a destructive device in relation to a crime of violence, in violation of 18 U.S. Code Section 924(c)(1)(B)(ii), between on or about May 27th, 2010, and May 31st, 2010, the defendant is guilty or not guilty?

"Question 4: As to Count 4 of the indictment charging the defendant, Edgar J. Steele, with tampering with a victim, in violation of 18 U.S. Code Section 1512(b)(3), between on or about June 11th, 2010, and June 16th, 2010, the

defendant is guilty or not guilty?"

And then there is a date line and a signature line for the foreperson.

You will take this verdict form with you to the jury room. And when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the verdict form which sets forth the verdict upon which you agreed. You will then return with your verdict to the courtroom.

We will now hear the closing arguments of counsel, after which I will give you a few brief closing instructions.

Mr. Haws, are you ready to make your closing argument to the jury?

MR. HAWS: Thank you, Your Honor.

THE COURT: I would indicate, ladies and gentleman, that I permit counsel to get into the well area in front of you as long as they don't invade your space.

But I think, Mr. Haws, you're wired up with a lavaliere mic.

CLOSING ARGUMENT BY THE GOVERNMENT

MR. HAWS: Thank you, Your Honor.

Members of the jury, at the opening of

this trial, I told you this is a very simple case. This is the case of a man who wanted to murder his wife. He hired somebody else to do it. Fortunately, it failed.

Now that you've heard all of the evidence, you know the facts. Edgar Steele, the defendant, hired Larry Fairfax to build a bomb to kill his wife, Cyndi. Fortunately, it didn't succeed. When it didn't succeed the first time, then there was a backup plan.

But Larry Fairfax -- before the backup plan could be put into effect, Larry Fairfax had second thoughts. Because Larry Fairfax had second thoughts, he went to law enforcement, and he reported that the -- Edgar Steele was insisting that he go to Oregon to carry out this act.

Unfortunately, in one last effort to give Mr. Steele a chance to change his mind, in a conversation recorded on June the 10th, Thursday night, before the murder was to be committed on Friday, the 11th -- in a conversation that was recorded, Mr. Steele had an opportunity to change his mind.

And if you go to that tape, you will see his words. "There ain't no second thoughts,

pal."

"There ain't no second thoughts." That's where this case stood just prior to his arrest. "There ain't no second thoughts, pal."

Well, now that you have all the evidence and you've heard many, many witnesses, you're probably saying to yourself: "There is so much. We've heard so much. We've seen so much. Where do we begin?"

It's a natural question. If I could make, respectfully, one suggestion to you, it would be that you go to the judge's instructions. That's your guidance.

And, in particular, I would recommend that you go to Instruction No. 10, because that tells you specifically what you must find with regard to the first charge.

I recommend that you go to Instruction No. 11, which are the elements that must be proven for the second charge.

I recommend that you go to Instruction No. 13, because those are the elements for the Count 3.

And I recommend that you go to Instruction No. 16, because that's where the judge

sets out the elements that you must find with regard to the fourth count.

So start with those. Let me help you out.

The first count against Edgar Steele is contained in Instruction No. 10. "Use of interstate commerce facilities," what does that mean? It means use of the highways. Somebody got on the highway and traveled across state lines from Idaho to Oregon.

"Use of interstate commerce facilities in the commission of murder for hire." And then there are two parts to it. There are two parts to it. And it charges a date. There is some evidence going back even into the latter part of 2009 that there was talk between Mr. Fairfax and Mr. Steele about this crime. But, certainly, by June the 11th; that's when this crime was intended to be committed by the defendant.

And the second element that you must find is that murder for hire was in exchange for a promise to pay.

Now let's talk about the facts about this element. Do you remember when I made my opening statement, I said to you, "There are two

important dates here to circle"? One was May 27 and 28. Why? Because that's when the first attempt was to kill Cyndi Steele. And I said the second date was June the 11th, because that was the target date for the follow-up plan.

So let's go back to those -- those dates and those events, and let's talk about the evidence.

You know, it's interesting in this case, we have talked about people who are characters in this case. It almost feels like as though Cyndi Steele's little black 2004 Mitsubishi Endeavor that you have heard so much, it's almost like it has its own personality and is a character in this case.

Because on May the 27th -- on May the 27th, the defendant, Edgar Steele, pursuant to a plan with Larry Fairfax, took Cyndi with him and went away from Sagle to run some errands. Why? Larry Fairfax told you. So that Larry Fairfax would have access to their garage and their cars to put pipe bombs on the cars.

And so Mr. Fairfax placed a pipe bomb on Cyndi Steele's Mitsubishi on May the 27th.

Now, Mr. Steele knew exactly what was

going to happen on the 28th. Cyndi Steele was going to get up. Her plans were to drive to Oregon to be with her mother in Oregon City; and when she did, she would be carrying that pipe bomb along with her on the bottom of that Mitsubishi Endeavor.

The evidence is corroborated. The evidence is corroborated. Mr. Fairfax has testified about that. Nobody else has contradicted him. And so we rely upon the evidence of Mr. Fairfax, but his testimony is corroborated.

His Honor has rightfully instructed you that you should look at Mr. Fairfax's testimony with some skepticism. He was an accomplice to Mr. Steele. And, as an accomplice, you should look at his testimony with some skepticism and see whether it sounds real, whether it is real, whether it corresponds with the facts, whether there is corroboration for it.

Mr. Fairfax took the stand. He told you exactly how that happened. Mr. Steele gave him authorization to get into the house -- into garage and place that pipe bomb underneath Cyndi Steele's car.

Do you remember the testimony of the bomb experts? As they testified about Exhibit No. 80, the device that was placed under Cyndi Steele's car, they told you that this was a large pipe bomb. They have seen a lot of pipe bombs. This was a large one.

Do you remember Mike Kittilstved, who was in charge of the bomb squad? Do you remember what he said? He said this was the largest pipe bomb he had seen.

The intent with this pipe bomb was to commit murder. It was to -- a very destructive act. This wasn't an Idaho firecracker. This wasn't a joke. This was intended to do great damage to Cyndi Steele's car and kill her in the process.

Do you remember the other evidence? This end cap was blown off during the process of rendering it safe, but this was a fully loaded device. The testimony was that perhaps it was three-quarters full. Nobody knew exactly. You would have to have taken it apart. There is a lot of danger in that.

The testimony from Mr. Fairfax was that it was about three-quarters full. And the

testimony from the bomb squad as they -- as they used the robot to blow the end off and scattered powder -- some of that explosive powder around was that it was quite full and left a lot of powder in a pile on the ground. That explosive powder says "intent to kill."

Do you remember what the testimony was with regard to removing the pipe bomb from the car? Do you remember what it took? The lube technician had tied the two pieces of fuse to the emergency brake cable.

And the robot -- after Mark Fox risked his life to get under it and undo the wire and set it on the ground, the robot got into a tug of war with the car and the pipe bomb. This pipe bomb lifted off the ground trying to break the fuse. And the fuse broke.

Here are the two little pieces of fuse that were attached in the end cap, and the end cap had been wrapped with tape to hold the fuse in place.

I submit to you that every wrap of that tape was an intentional act that said "intent to kill."

Do you remember what the bomb expert

said? This device had redundancy. Redundancy means it had a backup plan. They intended it to go off because they had a fuse attached to the tailpipe, right behind the muffler. They had another fuse attached in front.

Two fuses. Why? To make sure it works. What does "make sure it works" mean? What does "redundancy" mean? It means intent to kill.

Do you remember Officer -- Corporal Fox climbed under the car? Leaning under the car, he undid the wires that held the pipe bomb on. Look at those wires. Some of the wires were helping to hold the pipe bomb in place along with that large magnet. Redundancy again, to make sure it doesn't fall off. And some of these wires were used to hold the fuses in place where they would get hot.

I submit to you that every twist of this wire was a knowing act. The person who put it on there and intended it to be put on there knew what they were doing. And that was an intentional act to say, "We intend to kill."

But think of the corroboration for Larry Fairfax. Larry Fairfax told you what happened here. Now, the pipe bomb wasn't discovered until it went to the Jiffy Lube. And

the first time Larry Fairfax went to law enforcement, he omitted that. He doesn't get a pass. He omitted that.

But I'll submit to you that when it was clear that he was responsible for that pipe bomb, do you remember what he did? He volunteered that he had built another one. He had built this one right here. He had volunteered it, and he went to his house, and he got the pieces.

And what's the corroboration that he is telling the truth? On that, you have black powder found in both of these devices, identical black powder. Not "black powder"; that's a misnomer. It's explosive powder. It's double-base powder. It's black in color, and sometimes we get in the habit of saying "black powder." But you remember the testimony? It was explosive powder, the same powder used in both.

Now, Mr. Fairfax has testified about these devices and about the intent. It doesn't really matter what Mr. Fairfax thought about those bombs and whether they were going to explode or not. They were intended to kill.

Today Mr. Fairfax kind of says, "Well, I didn't think it would go off."

Well, the bomb experts, you remember, have examined the fuses that were attached. Do you remember the discoloration on the fuses? The discoloration on the two fuses that extended from the pipe bomb on Cyndi's car to the tailpipe, they simply didn't get quite hot enough to actually ignite, but there is the discoloration. They were on the way.

All of this corroborates the fact that Edgar Steele had an intent to kill. Mr. Fairfax has testified about that.

Now, you may ask yourself -- because I'm sure you're going to hear in a moment Mr. Steele's fingerprints are not on these pipe bombs. His physical fingerprints are not on there, but his legal fingerprints are, because his own words talk about pipe bombs.

I'm going to ask Ms. Rocca to play clip No. 1. This is a part of Mr. Fairfax's and Mr. Steele's conversation on the 9th. So, Wednesday, the 9th. Listen carefully for the word "pipe bomb" out of this man's mouth.

(Audio clip published.)

MR. HAWS: Now do you understand why I say that Mr. Steele's legal fingerprints are all over

this? He was the instigator behind it.

Why would he even bring up the word "car bomb" in his conversation with Larry Fairfax on the 9th of June? They had already concluded the pipe bomb was gone; it had fallen off. Because it was the first failed attempt.

You will see other references when you listen to those tapes, those recordings, where Mr. Steele makes reference to the prior failures to kill Cyndi Steele, and the prior failures are the pipe bombs.

Where is the other -- where is the other corroboration? Corroboration; in other words, independent facts that corroborate Larry Fairfax. Let me show you some corroboration.

When FBI Agent Sotka sent Mr. Fairfax with a microphone to record a conversation with Edgar Steele on the 9th of June, remember what he said? He is the only one who could program in those -- the digits that would turn on that microphone, and he was the only one who could turn them off.

That microphone was running from the minute Larry Fairfax left Mr. Sotka until he went to meet with Mr. Steele and came back.

Do you remember what else they did? They searched him. Why? They want to know -- standard procedure -- what this person is taking into the interview.

He had no money on him. A half-hour later, when he returns from his talk with Mr. Steele and this conversation is recorded, four brand new $100 bills are found on Mr. Fairfax. This is corroboration. This says Mr. Fairfax was telling you the truth.

The pipe bomb failed. Let's go to the next one, the second event. Once it failed and they concluded erroneously it had fallen off, they concluded that it would be necessary for Mr. Fairfax to go down -- not "they" -- Mr. Steele concluded that it would be necessary for Mr. Fairfax to go down to Oregon and do the job himself.

Let's go back and talk about places. These conversations were taking place where? In Sagle, Idaho. Where did the black Mitsubishi go? Oregon City, Oregon, down by Portland.

Eventually, it would come back into the state of Idaho with a pipe bomb on it, and it would go to the Jiffy Lube. Did it cross state

lines? The vehicle crossed state lines.

Mr. Fairfax, he was told, "Go down and check on that pipe bomb." And Mr. Steele was insistent. On May the 31st: "Get down there. What happened? Why didn't it go off? Besides that, Cyndi is talking about having her car heater looked at. If she takes it into the shop, they discover that, our plot -- we are -- we're going to be suspects."

Mr. Fairfax made the trip down there. Where is the corroboration? May 31st, Thrifty Car Rental receipt, when he went down there and checked on the pipe bomb.

Now, you know, there has been some question about whether or not this pipe bomb was really on the car because -- because Jim Maher looked under there and couldn't see it.

Well, he looked under there from 25 or 30 feet away, and he looked under there without a good look. He couldn't see what he was looking for, and he said there was nothing hanging down.

Well, there wouldn't be anything hanging down, because this is the photo which was shot at the Jiffy Lube on June 15th. You wouldn't see that pipe bomb hanging down underneath the

car. It's attached to the frame of the vehicle. And from a distance, from 30 feet looking under it, you wouldn't see it.

There is the corroboration. There is corroboration for Larry Fairfax, his trip down there. The conclusion that was drawn was that the pipe bomb had fallen off, and so that required the second plan.

The second plan is a little bit amorphous. Mr. Steele is leaving it up to Larry Fairfax how to do it, but the options are -- you see it in the recordings -- guns ablazing, or else make it look like a car wreck that's an accident. Why? To be able to recover uninsured motorist coverage.

Let's have Mrs. Rocca play clip No. 3 for us.

(Audio clip published.)

MR. HAWS: "No, no second thoughts, pal." You notice the last comment on there, "Otherwise, you only get our basic agreement." That corroborates. Mr. Steele's recording corroborates what Larry Fairfax told you. The original agreement was $10,000 to kill Cyndi Steele, $10,000 to kill Mrs. Kunzman, and $5,000 to drive

down to Oregon to do it in Oregon, far away from Sagle, Idaho. "You only get your basic agreement. But if you can make it look like an uninsured motorist, there may be $100,000 in play there."

Who is the driving force behind this crime? Is it the man who sat up here with -- in the orange jumpsuit? Is it Larry Fairfax? No. The driving force behind this crime is Edgar Steele. It was his idea, and it was his direction and his authorization.

If you go to those recordings -- let me just -- let me just give you a couple of samples of his insistence. These are the words from Edgar Steele on June 9th: "Get this job done, Larry." Another one: "I want to give you a powerful incentive."

Who is driving this train? It's Mr. Steele. His legal fingerprints are on this case.

Another one: "Larry, can I count on you?" Another one: "Make sure it happens." Another one: "How can you be sure it's going to do the job?" In other words, it didn't do it last time. How can you sure that your plan is going to work this time?

"Okay. I'm counting on it." "I mean, Larry, I'm up against it. It has to happen right now." You just heard those words.

And on June the 10th, what words do we have from this man's mouth showing that he is the one who is instigating this and he is driving it? He says, "I am counting on you." "You've got me a little worried about this one."

Why worried about this one? Because the pipe bomb didn't go off, the first one didn't go off. "You've got me worried about this one."

Another one: "I want to be able to assume that you're delivering the freight this time." Why "this time"? Because the last time, it didn't deliver the freight; the bomb didn't go off.

And then he says, "I would like to see it happen."

Ladies and gentleman, look, we have just talked about the evidence there. This element has been proven beyond a reasonable doubt. He caused another person to travel to Oregon, across state lines, to check on that pipe bomb. And then -- that was on May 31st. And on June the 11th, it was his intention to send Mr. Fairfax

back to Portland to actually do the job, get it done. That's been shown.

What about "defendant intended the murder be committed as part of a murder for hire"? We have already talked about the $100,000 insurance policy. We have shown you the silver. Here is the money to go take the trip. This, ladies and gentleman, was a murder for hire.

Let's go to element No. -- Count No. 2, which is found in Instruction No. 11. And this one has to do with aiding and abetting Larry Fairfax in the use of an explosive to commit a federal felony.

The evidence that pertains to this -- let me write it up here -- is the pipe bomb on Edgar Steele's Cadillac.

This is a lesser count than Count 3. And why has it been charged that way? Because we don't know much about this bomb. We got it after it was disassembled. We never saw the end cap. We never saw the fuses.

We have the corroboration that there is explosive in here. We have Mr. Fairfax's testimony that he took that explosive, dumped it out on the ground and burned it, and that he put

it on Edgar Steele's car. But, unfortunately, we don't have a lot of other information about this one, and so it's been charged as a lesser crime of use. He procured Larry Fairfax to knowingly use an explosive.

This was an explosive device. It had the powder in it, the very same powder. It's an explosive device, and it was used on Mr. Steele's car.

Well, you might ask yourself, "Well, doesn't that point to Larry Fairfax, then, as the person who is behind all this?" No, it doesn't. What it points to is that Mr. Steele has thought this all out.

This pipe bomb right here that was placed on his car with his permission and encouragement and direction, this was just a decoy.

A decoy from what? Well, when Cyndi got killed and the pipe bomb explosion under her car, they would come and start asking questions. And if that pipe bomb was found under his car -- and he is not going to drive it -- found under his car, then law enforcement would say, "Ah, looks like some enemies of yours have targeted you."

It was a decoy. But was it used? Yes, this pipe bomb was used in order to work the plan.

So if Count 1 of the indictment that we have just talked about a moment ago that we just checked off, if that has been satisfied beyond a reasonable doubt, you just have to ask yourself the question whether the defendant knowingly and intentionally counseled, commanded, induced, or procured. He did all of those. He was the driving force behind this.

Ask yourself this question: What motive would Larry Fairfax have to kill Mrs. Steele? When he was cross-examined, not a single motive came up. Did you make note of that? No motive was shown as to why he would want to kill her. In fact, he said what? "She is a very nice lady."

Why did he do it? Well, I'm not going to defend Larry Fairfax. He was hurting for money. Is it despicable to exchange money -- to accept money to go kill somebody? Absolutely.

Is it more despicable to be the brains behind it, the one paying the money and directing that somebody go kill your wife? Yes, that's more despicable. That's the count Mr. Steele is

charged with. So the knowing use of this device for what purpose? To advance the plot of murdering Cyndi Steele.

So is this count -- this count is also satisfied. You find guilty on the first one that we talked about a moment ago, that's automatically taken care of.

And if the evidence satisfies you beyond a reasonable doubt that the defendant knowingly and intentionally counseled and procured it, directed it, you check that one, too. That's the pipe bomb on Edgar Steele's car.

Let's go to Count No. 3, the other bomb count found in Instruction No. 13 as given to you by His Honor. This is slightly different. It's a more serious charge. And the -- and this evidence, the evidence that pertains to Count 3, is the pipe bomb on Cyndi Steele's car, the little black Mitsubishi, the one that we have already been talking about.

So if you find that the crime of murder for hire using interstate transportation has been met, you check that one. And then you ask yourself the question: Well, what other knowledge do we have about the pipe bomb on Cyndi's car?

We already talked about this pipe bomb. This is the pipe bomb it charges. This is the one that was on Cyndi's car. This is the one that had the redundancy that says "intent to kill."

When Larry Fairfax possessed this bomb in furtherance of the plan to murder, of Edgar Steele's plan to murder, and Edgar Steele made the garage available for Mr. Fairfax to get underneath it and attach this pipe bomb, Mr. Fairfax had possession of this in furtherance of a felony crime, murder for hire.

When he possessed this with his knowledge and encouragement because he is the one who was directing this plot, when that was attached underneath Cyndi's car by Larry Fairfax, that crime was committed.

When it drove across state lines and then when Mr. Fairfax went across state lines to find out what happened to it, that crime is -- that crime is proven beyond a reasonable doubt as charged. Check that one off.

The fourth count in this indictment has to do with the intimidation of his wife. Right after Mr. Steele was arrested, it was very urgent for him to get in touch with his wife. He

couldn't get in touch with her, so he called his son.

And he said to his son -- I'm not going to play that recording for you, but the operative words he says to his son, Rex, he says, "Rex, listen. This may be the most -- the single most important call I've made in my life. I need you to call your mother. I need you to talk to her. She is going to be played the tape that supposedly I'm recorded on hiring the guy or something. She has to say the following, no matter what she hears -- she has to say the following when it's done, no matter what she thinks, no matter what she feels, no matter what she hears, she has to say, 'That is not my husband's voice.' Say it back to me so I know you heard me."

Mr. Steele didn't even know anything about these recordings from law enforcement. He knew about them because he was a participant in them. There is your corroboration. He knew all along what was happening. And that's why he knew it was urgent that he get in touch with his wife to keep her from cooperating with law enforcement during the investigation.

Those are pretty strong words. "No

matter what she thinks, no matter what she feels, no matter what she hears, she has to say --" that's a directive. Somebody is ordering somebody to do something. When you order somebody to give a testimony a certain way that affects you, you are trying to corruptly and wrongfully persuade that person. That's against the law. When he told his son that, Mr. Steele completed the crime of intimidation of a witness because Mr. -- because Rex went and told his mom.

But there is something better. Let's go to clip No. 3. Would you -- or clip No. 2, please. Would you play that for us, Ms. Rocca. The one from Cyndi Steele. Listen to this jailhouse recording.

(Audio clip published.)

MR. HAWS: You just heard a crime committed. You just heard a crime committed right there. "You have to say -- no matter what you think, no matter what you hear, no matter what you feel, you must say --"

What is a rhinoceros in the road? What does that image conjure to you? What does that image conjure up in your mind when somebody says, "You must stand like a rhinoceros in the road and

say nothing more"? It means be obstinate and get in the way and say nothing more.

He is telling her what to say. That crime -- that crime was committed in that one phone call.

You know what his intent was. It's clear there in his words. You know what he said. You know the -- you know who he was talking to. There is no dispute about that. You know who his voice is. That crime has been committed right there.

Ladies and gentleman of the jury, I want to comment on two other things before I close. Those are the elements. Go through the evidence, check them off.

But I want to comment on one other thing. In the recording of June the 9th between Mr. Fairfax and Mr. Steele -- that law enforcement recording that Mr. Fairfax couldn't turn on or couldn't turn off that arrived back and was downloaded immediately by Mr. Sotka -- that recording and the one on the 10th are the keys to this case. Those recordings are the keys to this case. Because everything necessary to convict this man of the crimes he has been charged with

are contained in that recording -- those recordings.

Mr. Sotka has testified about how that device worked. There is no evidence in this case that those recordings were in any way manipulated, changed, altered, affected in any way. There is no evidence to that effect.

Mr. Steele would like to have you think that that's happened; that somehow some "Mission Impossible" plot has been worked by the federal government to change things around and add words and so on.

So I ask you to listen carefully to the recordings themselves. The recordings themselves tell you that they are accurate and they have not been tampered with.

Why do I say that? Listen to the natural flow of the conversations. One answers the other. Listen to the context. They talk and reply in context.

Notice how you have background noises, like the train going by, the evening train. Notice how it carries through his statements and Mr. Fairfax's statements. These things have not been cobbled together from some kind of extraneous

conversation. The background noises themselves tell you this.

This is not a studio recording. You know, people are pretty careful in studio recordings to make sure that this person speaks and then this person speaks.

Listen to the overlap. That's how your conversations take place -- mine, too; everybody's conversations. I talk. You stall a little bit, just like I just did, and you jump in and finish my sentence because you think you know what I'm talking about.

It's that interruption back and forth, give and take that takes place in conversations; that's what you see in those recordings.

Do you find it interesting that those background noises are real? They are right there. They go along with the chores they're talking about.

So they're talking about the horses. You can hear the gates opening. You can hear the horses moving. They talk about the water, and you can hear the water running.

These are not fabricated tapes. These are law enforcement tapes that have not been in

any way altered. There is no evidence to that.

And that is all because a law enforcement officer from the FBI assured that a secure device that he, himself, couldn't alter has been programmed to turn on and programmed to turn off beginning when Mr. Sotka places the device on Mr. Fairfax and sends him on his way and when he returns.

Mr. Fairfax is never -- never out of sight of the investigators except the time that he is with Mr. Steele.

Imagine to yourself this man who came up here as a witness having the sophistication and the tools to be able to put together some kind of a recording like this and then bring it back all within a half an hour. That can't happen. That can't happen.

These recordings are true. You can rely upon them, and this case hinges upon those recordings because Mr. Steele's guilt is on those recordings.

In the recording of June 9th -- listen very carefully to it -- Mr. Steele says that if the trail comes back to him because Larry Fairfax messes up and gets caught -- if the trail comes

back to him, he says, quote, "I will lie myself out of it."

"I will lie myself out of it." That is what's happening in this case. I submit to you that the evidence in this case shows that that's exactly what Edgar Steele has been doing from clear back the end of May.

Let's talk about that. Why do I make that statement? His actions are lies.

First of all, notice he gets somebody else to do the job; right? So the trail doesn't come back to him. Notice that from the very beginning, in these tapes, at least -- that's the first time we have his audio beginnings of this -- he starts to make an alibi.

Why do you make an alibi? Why do you make an alibi? Because you want to be able to prove you're not involved.

And this is a false alibi. Notice what he says. He says that -- he tells you what his alibi is going to be. On this Friday morning, when this murder is supposed to be committed in Portland -- in Oregon City, Oregon, he is going to take his truck and trailer, which he tells Larry Fairfax to leave hitched up -- do you remember?

Which also corroborates the recordings -- tells him leave the truck and trailer hitched up on Friday night when he comes back because on Saturday -- pardon me -- on Thursday night, when he comes back. Because on Friday morning, when the murder is supposed to take place, he is going to take that truck and trailer, and he is going to go to Spokane to a lumberyard.

He tells you what his alibi is going to be. And, to make it even more believable, he is going to take a friend with him who can say, "Yeah, I was riding along with Mr. Steele at the time his wife was being murdered down in Oregon City."

It was Al Banks who came in here and testified, one of his friends. He was setting him up as a witness for his falsehood, his alibi.

And then he says he is going to go someplace, like to the post office or to the bank, to get a stamped receipt that shows time and place. What's that for? "To establish my alibi: I wasn't in Oregon City."

And then he says he is going to have lunch, and he is going to make himself memorable. Remember all of that? That's an alibi. That's

lying your way out of this. That's what it is. He was already lying his way out of this, or trying to.

Did you notice the evidence about the time of his arrest? The officers gave him a chance to show whether or not he was going to stand by his alibi.

That morning, he got up, and he went to pick up Al Banks. Al Banks said that. They had -- they were going to get together to go to the lumberyard. He got up, he got in his truck with his trailer, and he drove out to meet Al Banks. He didn't get very far before they asked him to come back. And they discussed his wife's death, pretended that his wife had died, been killed.

Did you notice what the officer said, the ISP officer, Idaho State Police officer, who gave him the death notification? He said he had a flat affect. It was not a natural reaction. He has handed out death notices. It was not a natural reaction. It was a falsehood. It was a lie.

He was more concerned about the time when he was arrested -- that's when he got

upset -- than he was about hearing about his wife dying. It's not natural, simply not natural.

If you listen to those recordings, in there he tells Larry Fairfax, "When the black and white comes into my yard and tells me," he's gone -- he says, "I'm going to say, 'You've got to be shitting me.'"

Excuse me for using that language.

Did you hear what the officers testified about what he said when they came and gave him the death notice? "You've got to be shitting me."

This is all a lie. This whole alibi is a lie. I would submit that his body reacted and told more truth than his mouth did.

This was a false alibi, ladies and gentleman. And let me tell you a little bit more about why it's false, why he was telling a lie: He was going to lie his way out of this.

It's possible that he was motivated by goodwill when he paid to bring his mother-in-law's home out of arrears, $2,800, something like that. Do you remember that testimony?

What a great cover. What a great cover. Just like it was used in court here today

or during this week: "Why would I do that? I just paid off her -- I just brought her arrears up. I mean, I'm a nice guy. I love my mother-in-law." Maybe he does, but maybe he is taking advantage of a great cover.

What about the Russian girlfriends? Can we talk about that for a second? That's another cover. Notice how he covers that up from his family. He says, "I'm working on a case."

Did we ever hear anything about a case? Did anybody give you a case name or a case number or where it was filed or anything else? A case? No, there was no case.

Then it's, "Well, I'm researching for a book." Did we ever hear anything about a book or a draft? Everybody said that because that's what he led them to believe, and it was all a lie.

The young Russian gal, Tatyana Loginova, she was the one that he was writing to. And here is the letter that he had taken out of the jail under the return address of the Federal Defender's Office as legal mail to send to her.

See the coverup? See the lies? Legal mail to send the love letters to Tatyana Loginova.

And what did he tell Tatyana Loginova,

this little Russian girl? "I'm divorced." "I'm divorced." That was a lie. He was covering up all the time.

He uses other people. He manipulates other people to do what he doesn't want done himself or to get them to do what he does want done. That's more evidence of it.

"Make sure the trail doesn't lead back to me," that's what he is saying.

Ladies and gentleman of the jury, the evidence here is overwhelming. It's way beyond a reasonable doubt as to what this man intended. It's way beyond a reasonable doubt as to his actions.

No, his fingerprints aren't on the bombs. His fingerprints aren't a lot of places because he uses other people to cover it up. But his legal fingerprints are. And those tapes from June 9th and June 10th are conclusive evidence of his involvement.

And his tape recording where he tells his wife she must lie for him -- because that's his voice on there. We all know it's his voice on there. And he says, "You must say it's not." When he tells his wife, "You must lie for me,"

that's a completed crime.

The evidence here has been shown beyond a reasonable doubt, and we will ask you to return a verdict of guilty as to all four charges.

Thank you very much.

THE COURT: Thank you, Mr. Haws.

Ladies and gentleman, as I advised you earlier, we're going to take a short break now, just to break up the afternoon, before you hear the closing arguments from the defense.

I'll again admonish you -- and it's, perhaps, even more important now -- that you keep an open mind and not form any opinions about the case. Because you have just heard the closing arguments of the U.S. attorneys and have not had -- have not heard the closing arguments of the defense. So it's critical that you keep an open mind and not form or express any opinions about the case until it is fully submitted to you. And do not discuss the case among yourselves.

We'll be in recess for 15 minutes.

(Recess.)

(Jury present.)

THE COURT: I'll note for the record that the jury is present.

Mr. McAllister, you may make your closing argument to the jury.

CLOSING ARGUMENT BY DEFENSE

MR. McALLISTER: May it please the court, counsel for the prosecution, ladies and gentleman of the jury.

Mr. Haws is an eloquent speaker and a fine lawyer. And he says to you: This is a very simple case about a man named Edgar Steele who is alleged to have hired a hit man named Larry Fairfax to kill his wife, his wife of 25 years.

He says it's simple. Is it?

The question is: Why would he do it? Why would he use somebody like Larry Fairfax, who has been sort of the worker at his home, a handyman to fix it up? Why? That's the interesting question in this case.

There is no doubt in this case that the government has evidence. This is evidence. These are disgusting. For whatever purpose Mr. Fairfax used them for, he put people -- not just Cyndi Steele, but people in harm's way.

But, you know, when Mr. Haws stands here and says every twist of the wire was an intentional act by Edgar Steele, there is no proof

of that.

The most amazing thing about this case is what's not here. What hasn't been proved is greater than what has.

Larry Fairfax is/was a criminal. And in this case, those devices are his "Act of Defiance," the title of his book, supposedly fiction but written all about himself.

And it's taking this physical evidence from this table and putting it over here. He says -- Mr. Haws said that Edgar Steele has legal fingerprints because there are no fingerprints of Edgar Steele on the explosive device. And there is no proof that Edgar Steele designed it, built it, touched it, put it on anyone's car. Every piece of evidence in this case comes back to Larry Fairfax and the recordings.

This is not so much about a case where the government has allegedly produced overwhelming evidence. It's about what has not been proved.

Instruction No. 3 that the court provided a copy to each juror, I believe, says, "Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required the government prove

guilt for all possible doubt. A reasonable doubt is doubt based on reason and common sense. It's not based purely on speculation. It may arise from careful and impartial consideration of all of the evidence and from the lack of evidence."

There is nothing to show in this case that Edgar Steele possessed any explosive device, used any explosive device, made any explosive device. The only connection comes from one man: Larry Fairfax.

Now, Mr. Haws says in his summation to you, "No one has contradicted Larry Fairfax." Is that accurate? Didn't he contradict himself before you? Didn't he misstate what he was really doing?

You know what the biggest lie of Larry Fairfax was? It was going into the FBI on June 9th and saying, "Oh, Edgar Steele hired me to kill his wife, and I want to be a confidential informant. I want immunity from prosecution, and I want you to use me to get Edgar Steele." And he gives them information.

But can you believe it? He doesn't tell them that on May 27th or 28th, he put a bomb on Cyndi Steele's car. Doesn't tell them. Why?

I guess, through his own answers, he wanted to be the hero. He wanted to go take it off the car. He wanted to save Cyndi Steele.

But do you know what would have happened if he told the truth and the whole truth on June 9th? Clearly, any law enforcement person would go to Cyndi Steele and say, "Let's check your car. Let's see if it's really there. Let's see if he is making this up. But, please, let's check the car, give her fair warning."

But they can't do it. The FBI doesn't know about it. It's the missing link. It's what this case is all about. It would never, ever be this serious or this difficult if there was no explosive device, if it was all talk, like around those recordings.

And, again, Mr. Haws played the recordings and the jury has them in evidence, and you have testimony specifically about them from Cyndi Steele, from Kelsie Steele, people who have known him for collectively, I guess, about 46 years.

And they asked from the very beginning -- Cyndi Steele -- "I want to listen to the recordings." And she did.

And her testimony is there are problems with the recordings. "It doesn't sound like the way my husband talks." There are breaks in the discussion. There are problems with what we call the "syntax." What is the meaning of this?

And, you know, there is one conclusion about those recordings: That they are nothing but talk. Nothing but talk. Because Edgar Steele and the FBI, no one knows that, in fact, this man, Larry Fairfax, has made an explosive device and attached it to Cyndi Steele's car.

No one knows that until June 15th, when it's found by Cyndi Steele taking her car in for an oil change. No one knows that except Larry Fairfax.

And why does he keep this secret? Why does he go back? Why does he go over to Oregon City? Well, according to him, Edgar told him to do everything. "Edgar told me to go and allegedly" -- and the ridiculousness of this stands out -- "He told me to go run her off the road, or I suggested I would run her off the road. I would hide in the back seat, and I would do something to her."

Ladies and gentleman, to say that

Mr. Fairfax's testimony is far-fetched is perhaps charitable. Those discussions, even if you believe that they are accurate and even if you believe it's Edgar Steele's voice, where is the proof of that? Where is the proof of that?

But even making the assumption, it's like fantasy. It is like reading a novel or listening to a novel being played to you. That's what's on those recordings.

Evidence in a criminal case can be direct or circumstantial. And is there any direct evidence whatsoever that Edgar Steele knew, approved, condoned, ordered Larry Fairfax to put a device on his wife's car? And the answer is no. No, there is not.

Because, as far as we know, Larry Fairfax didn't tell anybody what he was doing. There is no discussion, as Mr. Haws says, in those recordings or anyplace else about redundancy, double wrapping the tape, designing it to go off or to not go off. There is nothing there.

Mr. Haws told you that there is a reference to a "pipe bomb." That's not right, either. If you listen to the recording, there is a reference to a "car bomb."

And you say: Well, what difference does it make? A bomb is a bomb. And most people would say: Right.

But it doesn't say that Mr. Fairfax had actually done anything. It's fantasy talk. It's fiction. It's Larry Fairfax talking and trying to set up Edgar Steele.

But unfortunately, in real life, this is more than just trying to write a book. It's putting people's lives in danger. And not just Cyndi Steele. If you believe Edgar Steele -- excuse me. If you believe Larry Fairfax and his testimony in this case, "Well, the device fell off. Somehow, it didn't go off. And somehow, it fell off. So there is no problem."

Well, what if it did go off? And what if it did fall off and did go off and harmed other people? He had no concern whatsoever about that.

And, you know, there is a conflict in the evidence. Larry Fairfax says, "It won't go off. It didn't have an ignition. It wasn't designed to go off." And the government's witnesses say, "Oh, no. It was a real bomb, and it would have gone off. It's just the way he did it, the fuse didn't ignite. It didn't get hot

enough. It just got discolored."

We don't even know, based upon the evidence presented by the government, whether, in fact, he put the device on the car May 27th or whether he never did it then and he waited until after Edgar Steele was arrested on June 11th and put it on the vehicle then.

MR. HAWS: Objection. Assumes facts not in evidence.

THE COURT: Ladies and gentleman, counsel must restrict their arguments just to the evidence and inferences that can be drawn from the evidence. I'm assuming that counsel is simply suggesting an inference that can be drawn from the evidence, which is fair closing argument, but it has to be based upon evidence actually presented.

With that, I'll allow you to go ahead and proceed.

MR. McALLISTER: And I'm talking about evidence that was not presented here, evidence that doesn't exist. We -- the jury does not know when the device was placed on the car, whether it ever went to Oregon or not, whether it crossed state lines, whether it was used in interstate commerce, as the law requires in order to prove

guilt.

Now, this is a case where the defendant is presumed innocent, where the defendant does not have to present any evidence, where the defendant doesn't have to answer. The burden is on the government.

And, yet, throughout Mr. Haws' argument, he kept saying: "Where is this?" "Where is that?"

Why? Why would Edgar Steele do this? Because he was in love with a picture of a Russian girl that he saw in the Internet? Hard to believe that a man would hire somebody like Larry Fairfax, first of all; and, second of all, want his wife murdered when he could simply, if he really, truly was in love with some woman in Russia, walk away, go there.

You can read the evidence. You can read the letter that is in evidence. And you can decide whether this is the writings of a murderer or a man who would hire somebody to murder somebody; or whether, as it's been said here repeatedly, the whole Russian bride scam was, you know, a case or something to work on and something that his family laughed about because it was so

fake.

You know, they played -- they played the deposition testimony or the testimony of Tatyana from Russia. She didn't speak a word of English, not a word. And, of course, there is no proof and he does not speak Russian, Edgar Steele.

This is like, you know, computer cyberspace fantasy, writing letters that are interpret -- that go to an interpreter, who supposedly interprets them to the Russian woman, and then she sends something back.

It's fantasy on both sides. It's not a motive to commit murder. It's not a reason to commit murder.

Larry Fairfax, "An Act of Defiance," the title of his book. I suppose it's not a bad title, but it tells you a lot about Larry Fairfax. What was he doing here? What was he really doing besides building a bomb, which is undisputed? He wanted to be the hero, but now he claims he is the victim. He is surprised by the fact that he was arrested and put in jail when the device was found. Of course, he never told anybody about the device.

"I decided to call this book fiction so

as to eliminate any problems." Well, his 257 pages is a real problem for him. Because he admits that, in all of this, he wanted to set up Edgar Steele. He wanted to be the hero. He wanted to be somebody he wasn't.

The trip, the first trip to Portland with his cousin, Jim Maher, who testified here, Larry Fairfax says, "Yeah, I brought my cousin along. We went over there, and we were going to take -- I was going to take the device off or we were going to take the device off."

Does Larry Fairfax go to Cyndi Steele's car? No. The testimony is he tells Jim Maher to go take it off or go see if it's even on. And, in fact, Mr. Maher testified he never got out of the car. He never really looked. But do we -- do you know -- based upon this evidence, do you know whether or not it was even on the vehicle?

The second trip to Portland on the night and into early morning hours of June 11th, he again goes with Mr. Maher back to the Portland area. And the evidence is, as we lawyers like to say, undisputed. Nobody can test this.

Jim Maher says, "Well, this time we went back, and for sure I was going to take the

device off of Cyndi Steele's car when she was in a public -- when the car was in a public place and I could get to it without really being noticed."

That's undisputed testimony. That was the purpose in making the second trip. And what happens? They get there in the early morning, stop for breakfast. Larry Fairfax is sleeping in the truck, and Maher is in having breakfast. And as he said, someone from the feds -- didn't know if it was an FBI agent, a U.S. marshal -- tells him to go back home.

You know, if there was a device on the car, as Larry Fairfax said, at that point, Edgar Steele is under arrest. Why didn't they go check? Why didn't he let Mr. Maher remove the device? Because he didn't want to get caught. He didn't want anybody to know. That's why.

Everything that the government has in this case revolves around Larry Fairfax.

What do you really know about Edgar Steele in this case? We know that he was arrested on June 11th. And, in fact, at that time, there was a ruse prepared to tell him that, not only was his wife dead, that his mother-in-law had been shot, and to get him to confess that he was using

Larry Fairfax as a hit man to kill his mother -- kill his wife and mother-in-law.

And what happens on June 11th? Edgar Steele does not confess. Edgar Steele, when confronted, tells the truth. And he's nevertheless arrested.

What happens on June 15th when the device is found? Larry Fairfax confesses. And he said, "Yeah, I did it all. I made it. I put it on there. But I didn't think it would harm anybody. I didn't think it would work. I didn't think it would go off. I didn't think, based upon my first trip to Portland, it was even there, but I didn't do anything to warn anyone else."

He confesses. He admits his conduct in this case.

The evidence in this case about Edgar Steele's arrest shows his state of mind. He is in shock on getting this news, and then he is placed under arrest.

There are statements on the recordings that seem, at first blush, to be convincing. And there is an old phrase attributed to a lot of lawyers: "Talk is cheap, but where does the rubber meet the road?"

And in this particular case, we have some indications about Edgar Steele. What do we know about Edgar Steele?

We know, on June 10th, that he was visited by the old country veterinarian, Dr. Bob Stoll. We know from their conversation, which is undisputed, that they were talking about life and God and his recent surgery. Was this the talk of a man who was at that moment planning to murder his wife?

Now, I know the government will say, "Well, it's all a front." But, you know, you look at Exhibit No. 202, which is the May 20th, 2010, letter to Wachovia Mortgage. And it is -- the original was signed by Edgar Steele. It's on his stationary. And he said, "Also enclosed is a Wells Fargo cashier's check in the amount of $2,779.37.

Now, Mr. Haws says, "Oh, this was part of the plan. This was part of the alibi."

Why, on May 19th, would he spend his own money and his wife's money to help his mother-in-law? Why would somebody do that? If there is really a plot or a plan, do you go take that kind of money and give it to someone else who

you're supposedly going to kill? It doesn't make any sense.

We also know a lot about Edgar Steele from his cell phone records. You know, in this day and age, cell phones can tell you a lot. And you will have this in evidence, and you can examine it yourself. This copy is difficult to read, I admit it. But when you see it, you can look at what calls were made to Edgar Steele and what calls did he make on June the 10th. And it stands out above everything else that on the night before he was supposedly going to kill his wife or have a hit man kill his wife, he spends 43 minutes talking to Cyndi Steele.

And she was here, and she testified. And she said, "Yeah. We talked about my mom and her health problems and her money problems." Forty-three minutes? That tells you a lot about Edgar Steele's state of mind on the night before he is supposedly or allegedly was going to have Larry Fairfax harm her in some way.

Phone records don't lie. The telephone company doesn't make them up other than for the purpose to bill you. It's not an alibi. It's not something created. It's the fact that he did talk

to her. Why? Because the evidence in this case is that he loved Cyndi Steele, that he spent 25 years -- now 26 -- married to her with three children.

And the government, when Cyndi Steele testifies, wants to examine her about a divorce petition she filed some ten years previously, a complaint or a petition that was dismissed. There was no divorce. Yes, there was a separation. Yes, they were having problems ten years ago.

But what's the evidence before you? The evidence is, in the next ten years, they raised their family. They lived in north Idaho. They cared for each other.

You know, you can't just make up witnesses like Jeff Miller and Al Banks who came in here and said, "Well, I've known him for 40 years. I've known Cyndi for 26 years. I've known the children." Al Banks for a different period of time. And they said never, never did Edgar Steele ever show anything except love for his family; never, ever did he attempt to harm anyone.

That is the evidence in this record. That is the evidence that was presented at trial. And you just can't -- you can't just find somebody

out on the street. These are people that have known him for many, many years.

Cyndi Steele testified in this case, and she was asked about why she wanted to file a divorce petition, why she wanted money from Edgar Steele, why she wanted custody of the children. And none of that mattered because there was no divorce. But it was done in an attempt to convince, I guess, a jury that ten years ago he wanted to, quote, "get rid of his wife."

But, on the other hand, ten years went by. The testimony was that this type of act, of hiring somebody like Larry Fairfax to commit murder, was so out of character to be unbelievable.

And ladies and gentleman, in this case, you always get to bring your life's experiences and your common sense with you into deliberations.

Fairfax's story not only makes no sense, it defies common sense. And without Larry Fairfax, this case makes no sense because it's built around him. He is the person who made the bomb, who designed it, who attached it, who failed to retrieve it, who put not only Cyndi Steele but everyone else in harm's way.

The charges in this case have been presented by Mr. Haws. And you do have, I believe, copies of the actual instructions. And, as you will see, the law requires you to examine what we call the elements of the crime and see if they have been proven.

Mr. Haws says, you know, "Just check the box." Where, ladies and gentleman -- in the evidence before you, where is the evidence that Edgar Steele intended that the murder be committed for money? Where is that evidence? Larry Fairfax is the only one to present any of that evidence.

Where is the evidence that Edgar Steele caused another person to travel in interstate commerce for the purpose of murdering his wife? The evidence before you is that Mr. Fairfax and Mr. Maher went twice to the Portland area to do what? To remove the device that they couldn't find, because Larry Fairfax never really looked for it.

In this case, again, there must be proof beyond a reasonable doubt that the defendant knowingly and intentionally counseled, commanded, induced, or procured Larry Fairfax to possess a destructive device. And, you know, those are

legal words, and those are the elements. But is there evidence here that he intentionally commanded?

It goes back to the recordings. And when you look at those recordings, when you listen to them, you may just reach the conclusion none of this makes sense. This is talk, like somebody is writing a novel, like somebody is -- somebody is making it up for some other purpose.

Count 4 is what's called tampering with a victim. And there is no doubt in this case that Cyndi Steele is the victim.

And what is that evidence? It is one phone call on June 13th, 2010, that Mr. Haws said he never knew he was being recorded. And then they played the recording, and the voice that comes on says, "This call is being monitored and recorded," to Cyndi Steele and Edgar Steele. He knows it's being recorded. He talks about the fact that it's being recorded.

What does he ask his wife to do? He says -- and you can listen to it for yourself -- he says, "Stand like a rhinoceros in the road. Tell them it's not my voice on the tapes," which we all know are the recordings.

And he has never listened to the tapes. He doesn't know whether it's his voice or someone else's voice. But he believes, as he says in that conversation, "Larry Fairfax has set me up." But he doesn't even know -- they don't talk about what tapes or recordings.

And what does Cyndi Steele say that is important, that is so important? She says, "They" -- meaning the FBI or other government folks -- "They don't want me to listen to the tapes. I want to listen to the tapes." That's her response.

And Mr. Haws says that's a crime to ask for your wife's help about something he has never listened to. He says it's a crime.

Well, was Cyndi Steele induced in any way? Was she tampered with in any way? No. She goes and spends a month living with her friend Billie Cochran.

Why? Because she doesn't know the facts. Because she is in fear for her life and her safety. Yes, she doesn't believe her husband is trying to harm her, but she doesn't know about what Mr. Fairfax or what Mr. Maher or what other unknown person might want to do. All she knows is

a bomb is found under her car.

And she spends that month, afraid to live in her own home, investigating the facts of the case. She goes and listens to the recordings, and she makes her own determination about the facts of this case.

She says, "The recordings are difficult to understand. They don't sound like the way my husband talks. It may be his voice. It may be somebody's done something to them." She just doesn't know, but she doesn't believe it.

And then she investigates what Mr. Fairfax has been doing and saying. She does her own investigation. She looks at the records. She looks -- she finds the telephone records. She finds pieces of evidence. She is given everything that she's asked for, and she reaches the conclusion, which she tells you here, that her husband is not guilty.

Now, I'm sure the government will say, "She's in denial. She's wrong." But the fact is this is the victim of the offense coming before a jury and saying, "I don't believe it."

But, under our system of justice, it's not whether she believes it or doesn't believe it

or whether FBI Agent Sotka believes it or not; it's what can be proven beyond a reasonable doubt in a court of law. And in this case, what's been proven is all tied to Larry Fairfax, an admitted liar who writes a book. And maybe it's not a book. Maybe it's just his diary or his musings. Maybe it's his thoughts.

But there is 253 pages handwritten, both sides, with tremendous detail about himself and his life. Not about Edgar Steele, but about him. Where he says, "This was all designed -- I cooperated and set up Edgar Steele so I could be the hero."

That is what the evidence in this case consists of -- that and the recordings. And the recordings are subject to what we call "human interpretation." What did they really mean? What context was it said in?

And you've heard the evidence from people who know him well. He doesn't talk like that. He doesn't act like that.

You know, when you listen to the recordings, when you listen to June 9th, there are nine places where you can hear the whistle sound. And, interestingly enough, both recordings, Agent

Sotka comes on and says, "This is being made at 6:02 on June 9th," and sends in Larry Fairfax.

The agent can't see him anymore. No one can see him. Nobody knows. They're not listening to it at the time he is at the Steele residence.

And on June 10th, Agent Sotka comes on again on the recordings, and he says, "This recording is being made at 6:02 on June 10th."

Now, maybe it's a coincidence, maybe it's not. But it's in evidence. And, amazingly, on June 9th, you hear the train whistle nine times. And on June 10th, you don't hear it at all.

That's the proof that's been presented here. That's what's being used. And maybe it's a small point, but then there is the birds singing, and that happens seven times. And the testimony is they're in a barn where, yes, Kelsie Steele said, "I grew up in, and there were birds occasionally in the barn." But you can't hear the train whistle in the barn, and you can't hear the birds singing at 6:02.

There are what can be described as anomalies, inconsistencies, issues with those

recordings. And that is, in part, why the government is required to produce for you more than just talk. Talk is cheap. Talk is what people do. In this case, the real proof all comes from Larry Fairfax, made by Larry Fairfax, through Larry Fairfax.

Ladies and gentleman, I have to represent my client to the best of my ability. I'm also, though, a part in a system of justice where it's my job to, in essence, challenge what the government is presenting.

And it's my job -- so that everyone understands, the burden of proof is on the government to prove it beyond a reasonable doubt. And you may, at this point -- you may be sick of hearing that, but that's what the law is, and that's what the law requires.

And why does it? Because in our history, there wasn't always a jury system. There has been in America since the Declaration of Independence and the writing of the Constitution, but before that, there was no such thing as a jury system.

There was a man in England in the 14th century named Sir Thomas More. He was the

archbishop of England, and he was basically the head of the Catholic church. As I'm told, he worked right there at Westminster Abbey -- which we all saw with the royal wedding; at some point or another, most people have seen it -- in that same building way back, hundreds of years ago.

And what happened to him was that the king of England, who he was loyal to, came to him and said, "Sir Thomas, I am married right now, but my wife is unable to provide me, to bear for me a son, a male heir to the throne. So I want a divorce. I want to marry a woman named Anne Boleyn."

And Sir Thomas More said to the king, to King Henry, "That is difficult for me because of the fact that, under my personal beliefs and my religious beliefs, we don't agree that you should divorce."

And King Henry thought, "Well, I'll get around this by putting out a proclamation and making everyone who was a subject in England, a citizen of England, pledge an allegiance to the king."

And it was written up and taken out to the people. And most people signed. Who cares?

The king is the king. I don't care what he does. But it came around to Thomas More. And they said, "Will you sign this and declare your loyalty to the king?" And he said, "No. I cannot do that."

And he was put in the dungeon. He was put under arrest. He was held there for quite a while. His friend, the Duke of Burberry, came to him one day with the scroll. And he said, "Thomas, look at all the people. Look at all the people who have signed this, including me. Look at all the people. Please sign it. It's the key to your freedom. Come along with the rest of us for fellowship. It doesn't really matter."

And Sir Thomas More said, "If I go along with you, will you come with me to hell if I'm damned for all eternity because I didn't follow my conscience?" And the duke realized this was a matter of principle. And Sir Thomas More was put to death for standing up for his beliefs.

Based upon that experience, we don't have kings decide anything in America. We have juries. We have people. We have our jury of our peers.

And in this particular case, it is important that -- if any one of you believes that

this case and each element of the case has not been proven beyond a reasonable doubt, it's very important for you to stand up for that, to stand up for that principle.

As you will see in the instructions, in order for a person in America to be found guilty of a criminal offense, it must be a majority. It must be every one of you.

If this case has not been proven beyond a reasonable doubt, don't go along for fellowship, don't go along with other people. Stand up, not for the defendant, not for me, but for our system of justice.

As I said at the outset, this is more a case about what has not been proven as opposed to what has been proven about Larry Fairfax.

Why would Edgar Steele do this? Where is the proof that he intended to do this? It's not in the recordings. The recordings are like fantasy, like fiction, like somebody writing a book, like Mr. Fairfax.

Ladies and gentleman, I ask you to return not guilty verdicts as to all four counts in this case because the evidence does not substantiate or prove the crime based upon what

the court has given to you as the elements in the written instructions. And because it hasn't been proven, I ask that you return those verdicts.

Thank you.

THE COURT: Thank you, Mr. McAllister.

Mr. Haws, your rebuttal argument?

REBUTTAL BY THE GOVERNMENT

MR. HAWS: Members of the jury, counsel just suggested that you might be getting tired of hearing the words "proof beyond a reasonable doubt." I hope you're not getting tired of hearing that.

Proof beyond a reasonable doubt is the cornerstone of our justice system. It's a heavy burden to come into court and prove all of the elements beyond a reasonable doubt. But I want to assure you that that is a burden which my co-counsel and I and the case agent here willingly accept.

We expect you to hold us to that burden. But I expect you not to hold us to the impossible burden of proof beyond all doubt. That is not required by law.

In order to find a doubt in this evidence, it must be a reasonable doubt. It must

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	:	Case No. 10-00148-N-BLW
Plaintiff,	:	**JURY TRIAL**
vs.	:	
EDGAR J. STEELE,	:	
Defendant.	:	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 5

May 2, 2011

Pages 1035 to 1321

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United States Courts, District of Idaho
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entitled to see it.
MR. McALLISTER: Judge, I disagree, obviously. And I think, had I known that 200-some pages existed, I would have issued a subpoena. And at that point, I assume his lawyer would have done exactly what was done here and given it to you, which is what I think he intended to do here and why he sent it under seal. But the government, apparently, has taken it, opened it, read it, reviewed it.
And at that point, I think, under fundamental fairness, I should get a chance to review it, at least, and then make the argument.
THE COURT: Well, cite your case and your argument, and we'll consider it.
All right. I think we're ready to proceed.
Ms. Whelan, did you have something else?
MS. WHELAN: No. Thank you, Your Honor.
THE COURT: Let's bring the jury in, and we'll proceed.
MS. WHELAN: Just for the record, I resealed it, and I gave it to the U.S. Attorney. So our office will keep it.

(Jury present.)
THE COURT: I'll note that all jurors are present. I believe we had --
MR. HAWS: Mr. Phillips was on the stand, Your Honor.
THE COURT: -- Mr. Phillips on the stand.
Sir, if you'll retake the witness stand. I'll remind you, you are still under oath.
BRENNAN SHERMAN PHILLIPS, having been previously sworn to tell the whole truth, testified as follows:
THE COURT: Mr. Haws, you may --
MR. HAWS: Your Honor, I had concluded my examination --
THE COURT: That's true.
MR. HAWS: -- of the witness.
THE COURT: All right. Mr. McAllister, cross.
CROSS-EXAMINATION
BY MR. McALLISTER:
Q. Mr. Phillips, I think on Friday you testified that this particular device had a fuse that was somehow near the muffler; correct?
A. Two pyrotechnic fuses running to the exhaust system, yes, sir.

Q. All right. And on one or both of the fuses, you detected or believed that the heat affected the fuse somehow; correct?
A. That's right.
Q. And have you ever seen a device like this before that had a muffler as the ignition?
A. I have not seen a pyrotechnic fuse tied to a muffler as a means of initiation. I have certainly seen pipe bombs strapped underneath vehicles but not this particular unique means of initiation.
Q. All right. So this was, in your view -- and you have seen many so-called devices -- this was unique?
A. They're all unique. They are improvised explosive devices. But this one was, yes, unique in its actual -- the way it was set up as a means of initiation.
Q. All right. And, obviously, we know today it did not initiate; correct?
A. Correct.
Q. And do you know if this device would have worked -- what has to happen is the fuse has to ignite or get hot enough to burn down and reach the pipe and the gunpowder; correct?

A. Right.
Q. And that didn't happen in this case?
A. Correct.
Q. And if, in fact, the fuse was properly designed or ignited, it would have happened as soon as the muffler got hot; correct?
A. I don't think we know that. You know, how much exposure, time, heat, I mean, those are all variables that we do not know.
Q. Okay. But we know that if a muffler got hot enough, it could have caused the device to do something?
A. It could have caused the fuse to ignite, yes.
Q. But, based upon your review of the evidence, that didn't happen. The heat just affected or discolored the fuse; correct?
A. Correct.
Q. And if, in fact, the -- the -- there was enough heat to ignite, that would have happened when the muffler reached its hottest point; correct?
A. It would have ignited at some point that it reached sufficient temperature to ignite the fuse, agreed.

Q. And in this particular case, you don't have any evidence to provide to us that, in fact, this device left the state of Idaho; correct?

A. It's my understanding, through review of the case, the device traveled from Idaho into Oregon.

Q. And when you say "from review of the case," that means that you believe Mr. Fairfax's testimony or statements that, in fact, he attached it in Idaho and that Cyndi Steele drove to the Portland, Oregon, area with the device; correct?

A. Based on the notes in the -- you know, the ATF investigative files, in a review of the reports of investigation, you know, that is my understanding.

Q. All right. But you don't have any proof of that besides Mr. Fairfax's word; correct?

A. As I said, as the technician that's, you know, examining the case, you know, I rely on the notes, the reports of investigation from the investigators. And that's what it indicates, is the item was attached, that it drove some distance. But, you know, do I know if it personally moved from Idaho to Oregon and back? No. I obviously didn't witness that.

Q. All right. And you don't know whether Mr. Fairfax attached the device to Cyndi Steele's vehicle on May the 27th or on June 15th or June 14th, do you?

A. As I said, you know, I'm the technician who, you know, is looking at the device from that perspective. So I'm probably not the right person to ask that question. Because I do not know, wouldn't know that, in that I'm not an investigator working on that aspect of the case.

Q. All right. So the answer is you don't know; correct?

A. I don't know.

Q. All right. And did you, in the laboratory or in any point, attempt to remove fingerprints from the pipe?

A. I did not. But, once again, that's not part of my scope of my duties. You know, fingerprint analysis is an entirely different discipline.

Q. Okay. Did anyone from the department of Alcohol, Tobacco and Firearms remove fingerprints from the pipe?

A. I do not know the answer to that question.

Q. Well, you've reviewed all the case notes, haven't you?

A. The reports of investigation. I haven't reviewed -- I did not see a set of fingerprint analysis in the notes that I was provided.

Q. And that's because no fingerprints analysis was done; correct?

A. I don't know.

Q. To the best of your knowledge, no one examined it for fingerprints; correct?

A. I do not know.

Q. And that's a regular practice, is it not, with the Alcohol, Tobacco and Firearms division?

A. Basically, the agents select -- case agents select from a list of things that they want done and write instructions. So there is no standard that every case that comes in is examined for prints or tool marks or any of the various disciplines that we have. It is responsibility of the case agent to make those selections.

Q. So it's at the discretion of the case agent; correct?

A. The investigators, yeah.

Q. And in this case, no fingerprints -- no one checked for fingerprints on the device; correct?

A. I don't know that.

Q. Okay. Did you find any evidence that anyone, in fact, checked for fingerprints?

A. I don't know. I mean, I simply didn't observe any notes on fingerprints.

MR. McALLISTER: Thank you, sir.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. HAWS:

Q. Good morning, Mr. Phillips.

A. Good morning, sir.

Q. This pipe bomb, referring to Exhibit No. 80, the one that was attached to Cyndi Steele's vehicle --

A. Yes.

Q. -- this was an improvised explosive device; is that correct?

A. That's correct.

Q. What does "IED," improvised explosive device, mean to you?

A. Well, improvised explosive device, as opposed to a military weapon or commercial

Q. When?
A. March 3rd, I believe.
Q. And where did it occur?
A. It was at a building that is part of the Embassy, U.S. Embassy facility in Kiev, Ukraine, called the Artyoma Business Center.
Q. Do you know, were all the parties in Kiev, Ukraine?
A. Yes.
Q. The defendant and his attorneys, were they in the courtroom?
A. As far as we could see on the video monitor, yes.
Q. So they weren't in Kiev. They were in Coeur d'Alene; is that right?
A. All the parties to -- of the Ukrainian parties were Kiev. The parties -- all parties to the deposition, no, they were not all in Kiev. I'm sorry. I misunderstood the question.
Q. It probably wasn't a very good question.
Were they in the courtroom in Coeur d'Alene?
A. They were in the courtroom. I'm assuming in Coeur d'Alene because that's where we

hooked up the video deposition to, the video link.
Q. Could you clearly see us during the deposition?
A. Yes.
Q. And could you clearly hear us during the deposition?
A. Yes.
Q. Were you asked during the deposition to provide certain exhibits to Ms. Loginova?
A. Yes.
Q. You have some exhibits in front of you. And I'm sorry, I need to --
MS. WHELAN: Your Honor, the presentation software is not up for the jury, is it?
THE COURT: Now it is not, but we need to switch it over. It's now on the evidence presenter.
MS. WHELAN: I'm sorry. I need Ms. Rocca to do it. This is just for me to look.
THE COURT: All right.
BY MS. WHELAN:
Q. Can you look at what has been marked as Government's Exhibit 100. It's on the screen in front of you.
A. Oh, okay. Yes, ma'am.

Q. And do you recognize it?
A. Yes, ma'am.
Q. What is it?
A. It appears to be a printout of a website that was used by Mr. Steele, I'm assuming, by what is written or what's there.
Q. Was it -- I'm sorry. Was it used during the deposition of Ms. Loginova?
A. Yes, ma'am.
Q. How do you know it was used during the deposition?
A. On the bottom right-hand corner, I wrote "Exhibit 100" on it, as instructed. And that appears to be my handwriting.
Q. Is it in the same condition as when you showed it to her?
A. Appears to be, yes.
MS. WHELAN: Your Honor, we would move for the admission of Exhibit 100.
THE COURT: Any objection?
MR. AMENDOLA: Yes, Your Honor, for all the reasons that we put in our written objection to the motion to enter the videotape into evidence. We also adopt those arguments regarding this particular exhibit to the deposition.

THE COURT: All right. Counsel, I think the problem is admitting it without the deposition in which further foundation would be laid. I think it's premature.
MS. WHELAN: Okay. Can we -- okay.
THE COURT: It's the cart before -- you know, chicken and egg, cart before the horse.
MS. WHELAN: Yes, Your Honor. I --
THE COURT: I think it's just a question of timing here.
MS. WHELAN: You know what? I can go in a different order, and that might help.
THE COURT: I think having this witness confirm that it was the same exhibit shown at the deposition is an important part of the foundation, but it's not a full foundation, if that makes sense.
MS. WHELAN: It does, Your Honor. I think, in order to save time, we'll show him the exhibits, ask him to identify them. And then at the conclusion, we'll move for the admission.
THE COURT: All right.
MS. WHELAN: Can you then -- Ms. Rocca, can you put up Exhibit 101.
BY MS. WHELAN:

Q. Again, Mr. Smith, it's the same questions: Are you able to recognize Exhibit 101?
A. Yes, ma'am.
Q. Was it used during the deposition of Ms. Loginova?
A. Yes, ma'am.
Q. And how do you know it was used during the deposition of Ms. Loginova?
A. Again, I was asked to mark what we used as Exhibit 101, and in the lower right-hand corner appears to be my handwriting -- or printing, actually. It says "Exhibit 101."
Q. Is it in the same condition as when you showed it to her?
A. Yes, ma'am.
Q. And did you cause that, then, after the deposition, to be sent to the FBI in Coeur d'Alene?
A. Yes, ma'am.
Q. And the same with Exhibit 100?
A. Yes, ma'am.
Q. Now, in front of you, because it's a larger exhibit, you have what's been marked as Government's Exhibit 2. I don't want you to show the jury. I just want you to look at it yourself.

Do you have it in front of you, sir?
A. Yes, ma'am.
Q. Do you recognize it?
A. Yes, ma'am.
Q. Was it used during the deposition of Ms. Loginova?
A. Yes, ma'am.
Q. And how do you know it was used during the deposition of Ms. Loginova?
A. Because of the evidence chain that I completed after the -- after providing it at the deposition.
Q. Is it in the same condition as when you showed it to her?
A. Yes, ma'am.
Q. And did you also cause that to be sent to the FBI in Coeur d'Alene once the deposition was over?
A. Yes, ma'am.
Q. Did Ms. Loginova bring anything with her to the deposition?
A. Yes, ma'am.
Q. What?
A. She brought copies -- or I mean -- sorry. She brought originals of letters that she

said she received from Mr. Steele.
Q. And did she provide those originals to you?
A. Yes.
Q. And what did you do with it?
A. I created an evidence chain and sent them, along with the other documents, to the FBI in Coeur d'Alene.
Q. Could you please look at what's been marked as United States Exhibit 2A, again, without showing it to anybody.
A. Yes, ma'am.
Q. Do you recognize it?
A. Yes, ma'am.
Q. Is it the original that Ms. Loginova provided you?
A. Yes, ma'am.
Q. How do you know that it is the original?
A. Because it's got my original chain of evidence form on top.
Q. Special Agent Smith, do you know if the deposition was recorded?
A. Yes, ma'am.
Q. And do you have in front of you

Exhibit 68?
A. Yes, ma'am.
Q. Do you recognize it?
A. Yes, ma'am.
Q. What is it?
A. Compact disk of what was the video -- or the recording of the video deposition.
Q. Did you review Exhibit 68?
A. Yes, ma'am.
Q. And did you make any marks on it?
A. Yes, ma'am. I put my initials and the date that I reviewed it.
Q. When you reviewed that, that disk, the copy of the deposition, was it the same as the deposition that occurred?
A. Yes, ma'am.
MS. WHELAN: Your Honor, I would move now for the admission of Exhibit 68 and permission to publish it to the jury.
THE COURT: All right. Other than the objections previously noted, are there any additional objections?
MR. AMENDOLA: No, Your Honor.
THE COURT: All right. Exhibit 68 will be admitted based upon the reasons the court

articulated in a signed order in this matter.
(Government's Exhibit 68 admitted.)
THE COURT: Do you intend to play it now?
MS. WHELAN: I do. Ms. Rocca needs just a moment, since I switched up the order.
THE COURT: Let me instruct the jury on this.
Ladies and gentlemen, the court has previously determined that Ms. Loginova was not available in the sense that she could not be compelled to attend trial in the United States.
When a person is unavailable to testify at trial, the deposition of that person may be used. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth, and lawyers for each party may then ask questions. The questions and answers are then recorded.
The deposition of Ms. Loginova is about to be presented to you. You should consider deposition testimony in the same way that you would consider the testimony of the witnesses who have appeared before you and testified in person.
So, with that, I'll allow the deposition to be played.

Are you ready?
MS. WHELAN: Yes, Your Honor. If we -- I have just a couple of questions to set the stage.
Your Honor, is it possible to -- well, sometimes -- can I move to see?
THE COURT: You may. But you'll need -- there is a microphone there at the end of the table if you need to --
MS. WHELAN: Judge, I'm just wondering if we can -- I don't know. It's difficult for me to say. I guess the jury can let you know if they can't see it very well.
THE COURT: Ladies and gentlemen, any of the jurors -- I know it's -- well, it is what it is. Are you able to see?
It appears the jurors are comfortable with what they're able to see.
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. Mr. Smith, before we start, I'd like to ask you a couple of questions. Can you show the jury where -- which one of the women is Ms. Loginova?
A. Ms. Loginova is the woman in the middle of the three women with a peach-sort-of-colored

top and black sweater on.
Q. And this woman right here, do you know who she is?
A. That should be Ms. Olga Evashachenko. She is a representative from the General Prosecutor's Office of Ukraine.
Q. And who is this fellow right here?
A. That would be me.
Q. And then the only other remaining woman, who is she?
A. She was a translator that we had come with the -- from the General Prosecutor's Office of Ukraine to protect Ms. Loginova's rights and so that she would have her own translator there in case there was a misunderstanding with the translator that was in Coeur d'Alene.
Q. And down here at the bottom, there is a little screen within the screen. Is that what you could see of the parties in Coeur d'Alene?
A. I believe so. On my screen here, there is a task bar that blocks out about half of that screen. So I can see the top half of that inset from my screen here.
Q. Okay.
A. But it looks to be the same thing.

MS. WHELAN: Your Honor, with that, would the court allow me to sit down while we play this?
THE COURT: Yes.
MS. WHELAN: Thank you.
THE COURT: And I assume counsel will waive reporting of the playing of the deposition.
MS. WHELAN: Yes, Your Honor.
MR. AMENDOLA: Yes, Your Honor.
THE COURT: Thank you.
(Government's Exhibit 68 published.)
MR. AMENDOLA: Your Honor, may we have a moment?
THE COURT: Stop the recording.
MR. AMENDOLA: Your Honor, may we have a short sidebar, please?
THE COURT: Yes.
(Sidebar commences as follows:)
THE COURT: Mr. Amendola, step to the mic.
MR. AMENDOLA: Your Honor, at this time, I'd ask that you reconsider whether to admit the deposition on this basis: That is, that it's clear that neither the interpreter in Kiev nor the prosecutor in Kiev were administered any oath. And I will represent to the court that both participate to some extent and talk with

do it. I closed the conversation with him saying that I would. And then, once we got to work, my wife changed my mind.

Q. What was your understanding of the Russian bride scam?

MS. WHELAN: Objection, Your Honor.

THE COURT: Sustained.

BY MR. McALLISTER:

Q. Did you research it at all, look at the websites?

A. No.

MR. McALLISTER: All right. Thank you, sir.

THE COURT: Anything else, Ms. Whelan?

MS. WHELAN: No, Your Honor. Thank you.

THE COURT: All right. You may step down. Thank you very much for being here.

May Mr. Miller be excused and released from any --

MR. McALLISTER: Yes, Your Honor.

MS. WHELAN: No objection, Your Honor.

THE COURT: All right. Thank you, sir.

Call your next witness.

MR. McALLISTER: James Maher.

MS. WHELAN: Your Honor, just as a housekeeping matter, defense counsel had no

objection to Mr. Smith being excused, so we went ahead and let him leave. I hope the court is okay with that.

THE COURT: That's fine.

I'm sorry. What was the next witness?

MR. McALLISTER: James Maher.

THE COURT: Mr. Maher, would you please step before the clerk and be sworn.

JAMES MAHER,

having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please state your complete name and spell your last name for the record.

THE WITNESS: James Maher, M-A-H-E-R.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MR. McALLISTER:

Q. Mr. Maher, where do you reside?

A. Sagle, Idaho.

Q. And how long have you lived there?

A. Thirteen years.

Q. Are you familiar with an individual known as Larry Fairfax?

A. Yes, I am.

Q. Where does he reside?

A. Sagle.

Q. And what is your relationship with Larry Fairfax?

A. He is my cousin.

Q. All right. How long have you known him?

A. Forty-seven years.

Q. All right. How old are you?

A. Forty-seven.

Q. All right. Have you maintained contact with him through the entire period?

A. No.

Q. All right. When did you reestablish your contact with him, Larry Fairfax?

A. '96, '97, somewhere in there.

Q. And since that period, have you both lived in the Sagle area?

A. Correct.

Q. And you've done things with him, I take it?

A. Yes, sir.

Q. All right. Do you know him well?

A. I think so.

Q. All right. Directing your attention, sir, to May the 31st of 2009. Did you travel with

him to the Portland area?

A. Yes, I did.

Q. During that time, did you discuss with him what it was he was going to do or you were going to do in the Portland area?

A. Well, at first, it was going to be checking on recycling prices.

Q. All right. Did you do that?

A. No.

Q. What happened?

A. Got to the Portland area and rented a car.

Q. All right. Who rented the car?

A. I did.

Q. And you've reviewed the rental receipts for that, have you not?

A. I have.

Q. And it's your signature?

A. It is.

Q. Why did you rent the car?

A. Because his credit card wouldn't work.

Q. All right. Did you know why you were renting a car after you drove over to the Portland area?

A. I did.

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Q. Why?
A. Because Larry didn't want his truck seen.
Q. All right. What did you do after renting the car?
A. Drove around for about four hours.
Q. All right. Where did you end up?
A. Oregon City.
Q. All right. Do you know -- did Mr. Fairfax indicate where you should go?
A. He had a really poor map.
Q. Okay. Did you find the location that Mr. Fairfax wanted to go to?
A. We did.
Q. All right. What was your understanding of who lived there or what was there?
A. Cyndi Steele's mother's house.
Q. All right. Did you see -- how close did you get to what you believed to be Cyndi Steele's mother's house?
A. Twenty-five, thirty feet.
Q. All right. Tell us what you did and what Mr. Fairfax did at Cyndi Steele's mother's house.
A. Mr. Fairfax did nothing there.

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Q. All right. Did he drive you there?
A. He did.
Q. And did you, at his direction, go out of the car?
A. I did.
Q. What did you do?
A. Walked up to the horse stable.
Q. All right. Can you describe the area that you were at?
A. A bunch of houses all clumped together at the end of a dirt road.
Q. All right. And what was your intention or purpose in going by the horse barn?
A. To see if the vehicle was there.
Q. Okay. What vehicle?
A. Cyndi Steele's black vehicle.
Q. Okay. A Mitsubishi?
A. I assume so.
Q. All right. Did you see that vehicle there?
A. I did.
Q. All right. And did you in any way attempt to inspect it?
A. A little bit.
Q. All right. When you say "a little bit," can you describe for the judge and jury exactly what you did.

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A. If something was hanging down from the car, I was to locate it. If I could, grab it and go.
Q. All right. And when you say "locate it" and "grab it," you were to take it off the vehicle?
A. I was.
Q. All right. What did you -- first of all, how close did you get to Cyndi Steele's car?
A. Twenty-five, thirty feet, maybe. I don't know.
Q. All right. Did you actually get underneath the car?
A. I did not.
Q. All right. Could you see anything hanging from the car --
A. I --
Q. -- below -- below the passenger's side?
A. Below the passenger's side, no.
Q. I'm sorry. From the driver's side?
A. No.
Q. All right. Did you remove anything from the car?

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A. I did not.
Q. Did you go back to Larry Fairfax's -- did you go back to the rental car and talk with Larry Fairfax?
A. I did.
Q. What did you tell him?
A. That I didn't see anything hanging down.
Q. All right. Did you tell him whether you actually went under the vehicle?
A. I did not.
Q. Did you tell him that you were nervous and concerned about what you were doing?
A. I had told him that I didn't get under the car because of all the neighbors watching me.
Q. All right. And that concerned you; right?
A. It did.
Q. You were concerned that you might get picked up or arrested?
A. That I would get in trouble.
Q. All right. And you've been in trouble before, have you not, Mr. Maher?
A. A time or two.
Q. All right. When you say "a time or

two," how many times?
A. Several.
Q. What for?
A. Different things in my past when I was younger.
Q. All right. And Mr. Fairfax knew all about that, did he not?
A. He did.
Q. All right. Now, when you got back in the rental vehicle, what exactly did you tell Mr. Fairfax?
A. "I saw nothing hanging down from the vehicle."
Q. All right. Why is it that you were willing to remove something from the vehicle?
A. Because I thought Cyndi Steele was a really nice lady.
Q. All right. And did you understand that what you might be removing or what you were going to remove was an explosive device?
A. Not to my understanding.
Q. What was your understanding?
A. Pretty much a north Idaho firework, something that wouldn't go off.
Q. All right. And what is a "north

Idaho firework"?
First of all, who do you use that expression with?
A. Friends and family.
Q. With Larry Fairfax?
A. I assume so.
Q. All right. When you say "I assume so," does that mean you actually have an experience making north Idaho firecrackers with him?
A. Yeah.
Q. And what is that experience? What did you do in the past?
A. Making loud booms for the 4th of July.
Q. All right. Did you use a pipe?
A. Not metal.
Q. All right. Plastic pipes?
A. Yes.
Q. All right. And you've built these with Mr. Fairfax in the past on the 4th of July?
A. I have never built them with Larry, no.
Q. All right. You just -- you just observed them going off?
A. Correct.
Q. And Mr. Fairfax set them off?
A. At times.

Q. All right. Now, going back to when you were near Cyndi Steele's car, I believe you said you were willing to take something off of there because it was a north Idaho firecracker; correct?
A. Correct.
Q. It wasn't your understanding that it was a car bomb designed to explode?
A. That was my understanding.
Q. And based upon what Mr. Fairfax told you, you weren't -- you didn't believe you were at any risk; correct?
A. I didn't believe I was in danger, no.
Q. All right. Did you return to the Spokane or Coeur d'Alene area after leaving Cyndi Steele's mother's house?
A. No.
Q. All right. Where did you go?
A. Home.
Q. Okay. To Sagle -- I'm sorry -- correct? The Sagle area?
A. Correct.
Q. On the way home, you talked with Larry Fairfax; correct?
A. Yes.
Q. And you talked about the fact that he

wanted to be on the "Oprah" show; correct?
A. No.
MS. WHELAN: Objection, Your Honor. Hearsay.
MR. McALLISTER: Well, I asked if he talked about it.
THE COURT: Sustained. Counsel --
THE WITNESS: No.
THE COURT: -- rephrase the question.
MR. McALLISTER: I will, Your Honor.
BY MR. McALLISTER:
Q. What did you talk about?
MS. WHELAN: Objection. I think it's too broad. It needs to be specifically with this witness.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. What did you say to Larry Fairfax?
A. In regards to?
THE COURT: Just refer to what you told him.
BY MR. McALLISTER:
Q. In regards to your going to Cyndi Steele's mother's house and attempting -- or anything you did at Cyndi Steele's house, what did you say to him?

A. I told him I didn't see anything under the car and that I wouldn't even go back to the car if it was at her mother's house.

Q. All right. Why not?

A. Because of all the neighbors watching me.

Q. All right. Did you discuss with him at any time -- did you say anything about the "Oprah" show?

A. On the first trip, no.

Q. All right. How about -- well, let me -- let me put this in context. Did you make a second trip to the Portland area?

A. I did.

Q. And did you do that on the night of June 10th and the early-morning hours of June 11th?

A. I believe so.

Q. All right. And prior to going to the Portland area, did you see Mr. Fairfax meet with police officers?

A. I believe so.

Q. All right. Where was that at?

A. The Westmond Chevron.

Q. And did you see the police officers or

anyone give Mr. Fairfax $500?

A. I saw something handed, but I don't know what -- what it was.

Q. All right. From the policeman to Mr. Fairfax?

A. Correct.

Q. All right. Do you know what your instructions were at that point in time?

A. We were heading back to Portland.

Q. All right. Were you aware of the fact that your cousin, Mr. Fairfax, at that point in time was working with the FBI?

A. I learned that about a mile before the Westmond store.

Q. All right. And what was your purpose in going back to the Portland area again?

A. We were doing it in whatever deal that Larry had worked out with the feds.

Q. Okay. When you say "the feds," does that mean the FBI?

A. Whoever it was. I don't particularly know.

Q. All right. And in driving back, did you talk to him about the "Oprah" show?

A. On the second trip?

Q. Yes.

A. Yes. After, yeah.

Q. What did you say?

THE COURT: Limit yourself just to what you said.

THE WITNESS: I'm not understanding.

THE COURT: What did you say to Mr. Fairfax?

THE WITNESS: About the "Oprah" show or --

BY MR. McALLISTER:

Q. Yes.

A. "Cool." I'm not understanding --

THE COURT: No. You're actually -- I'm only chuckling. You're doing fine. You're doing fine.

THE WITNESS: It was small talk.

THE COURT: I understand.

Mr. McAllister.

BY MR. McALLISTER:

Q. Without telling us what was said by Mr. Fairfax, was he bragging to you?

MS. WHELAN: Objection. Hearsay.

MR. McALLISTER: I'm asking about the context of the conversations, Judge, as opposed to --

THE COURT: Well, I'll allow that question but not the follow-up as to specifically what was

said. You may --

THE WITNESS: There was no braggatry involved.

BY MR. McALLISTER:

Q. Okay. Did you think he was serious?

A. About the "Oprah"? That was like an over-the-top thing. But, yeah, I thought he -- it might work out for him. I didn't know.

MS. WHELAN: Objection. Move to strike.

THE COURT: Counsel, I'm going to sustain the objection and strike the last response.

MR. McALLISTER: Judge, may we approach?

THE COURT: Or you can cite an exception under the hearsay rule.

MR. McALLISTER: That's what I intend to do.

THE COURT: Can you just, without a speaking --

MR. McALLISTER: Co-conspirator exception to the hearsay rule.

THE COURT: Approach.

(Sidebar commences as follows:)

THE COURT: The problem is it has to be in furtherance of the conspiracy. How does Mr. Steele -- Mr. Fairfax bragging about that he may be on the "Oprah" show, how does that further

the conspiracy?
MR. McALLISTER: The hearsay that has been objected to by the government is the fact that he said he was going to save Cyndi Steele and, at the same time, take money off of Edgar Steele, and it was a win-win situation. And that's why they were going there, because --
THE COURT: I think that's almost what Mr. Fairfax -- or Mr. -- yeah, Mr. Fairfax testified to.
So you're saying now that Mr. Maher is part of that conspiracy?
MR. McALLISTER: Absolutely, I am.
THE COURT: Well, was he participating in it? I mean, he indicated he didn't even know why he was there until after they had already arrived.
MR. McALLISTER: Yeah. But once he arrived, he -- Mr. --
THE COURT: Ms. Whelan, I'm not sure that statement is inconsistent with what Mr. Fairfax testified to, anyway.
MS. WHELAN: I don't know if it's inconsistent, but it's still hearsay.
THE COURT: Well, unless it's a co-conspirator statement.

MS. WHELAN: And the other issue is he just testified about that -- about a mile before they got to the Westmond store, that then he found out that Fairfax was working with the feds. Okay? And then this conversation occurs after that that they're talking about. There is no conspiracy.
THE COURT: How -- this doesn't tie together. If he was bragging to Mr. Maher about saving Cyndi Steele, "I'm going to get on the 'Oprah' show," but this statement is made after -- during the second visit to Portland --
MR. McALLISTER: That is correct.
THE COURT: -- and after Mr. Maher is aware that Mr. Fairfax is actually working with the government, how does that further any conspiracy?
MR. McALLISTER: Because I think it would lead the jury to believe that Mr. Fairfax wasn't really working with the government. He was taking money from them, and he was taking money from Edgar Steele, and he wanted to be the hero.
THE COURT: Well, even if he wanted to be the hero, unless this defendant was part of his trying to be a hero, then, I don't see how that's in furtherance of any conspiracy.
If anything, it's kind of contrary to

the conspiracy. Because he is, A, suggesting that he wasn't really serious in whatever it was they were doing on the earlier trip; and that this witness is not -- does not seem to be part of that.
I'll allow you to try to lay a further foundation as to his involvement in that conspiracy, but I think the statement is really outside the conspiracy. He is talking about things he was doing on his own.
Ms. Whelan, what --
MS. WHELAN: I'm trying to look at the --
THE COURT: It's 801(d)(2)(E).
MS. WHELAN: That's where I'm at.
MR. HAWS: It's in the course of and in furtherance of --
MS. WHELAN: The problem here is there's no showing that he's speaking on behalf of --
THE COURT: That's what I'm saying.
MS. WHELAN: -- Larry Fairfax.
THE COURT: He doesn't have to be, if he is making a statement in furtherance of a conspiracy and he is -- while he is a member of that conspiracy.
I just don't see that it's in

furtherance of a conspiracy. Now, if you want to take an effort -- you know, I've laid out what the grounds rules are. And this individual has to be part of that conspiracy in order for it to apply. All right?
(Sidebar concluded.)
THE COURT: Mr. McAllister, proceed.
MR. McALLISTER: Thank you, Your Honor.
BY MR. McALLISTER:
Q. Mr. Maher, is it fair to say, on your first trip on May 31st, that Larry Fairfax wanted you to help him do some things?
A. On May 31st, Larry wanted me to go on a trip with him to keep him company.
Q. All right. And then, once you got to the Portland area, he explained to you certain details; correct?
A. Very few.
Q. All right. And then later that day, you went to Cyndi Steele's mother's house; correct?
A. Correct.
Q. And he told you what it is he wanted you to do; correct?
A. Correct.

foundation, relevance.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. Well, did you observe her conducting her own investigation into the facts of this case?
A. I did. I was able to hear a couple of phone calls she made and then times she was spending on the Internet.
Q. All right. And this went on for some period of time; correct?
A. Correct.
Q. Has Cyndi ever, at any time, confided in you that she has been abused in any way by Edgar Steele?
A. Absolutely not.
Q. Has she ever said she has even been verbally assaulted or attacked by Edgar Steele?
A. Absolutely not.
MS. WHELAN: Objection. Hearsay. Move to strike. I think the witness --
THE COURT: Sustained. Instruct the jury to disregard the last response.
BY MR. McALLISTER:
Q. Have you observed them together --
A. I have.

Q. -- through the last ten years?
A. Yes.
Q. Have you ever seen them act out to each other?
A. No.
MR. McALLISTER: All right. Thank you, ma'am.
THE COURT: Cross, Ms. Whelan?
CROSS-EXAMINATION
BY MS. WHELAN:
Q. Ma'am, you were not at the Steele place on June 9th, 10th, or 11th, were you?
A. No, I was not.
Q. You were not a party to conversations between the defendant and Larry Fairfax, were you?
A. No, I was not.
MS. WHELAN: Nothing else, Your Honor. Thank you.
THE COURT: Anything else, Mr. McAllister?
MR. McALLISTER: No, Your Honor.
THE COURT: All right. You may step down, Ms. Cochran. Thank you for being here.
Is there any need to keep this witness?
MS. WHELAN: No objection.
THE COURT: All right. I'll leave it up to

counsel whether she is retained on subpoena or not.
Call your next witness.
MR. McALLISTER: Kelsie Steele.
THE COURT: Ms. Steele, would you please step before the clerk and be sworn.
KELSIE STEELE,
having been first duly sworn to tell the whole truth, testified as follows:
THE CLERK: Please state your complete name and spell your last name for the record.
THE WITNESS: Kelsie Marguerite Steele, S-T-E-E-L-E.
THE COURT: You may inquire, Mr. McAllister.
MR. McALLISTER: Thank you, Your Honor.
DIRECT EXAMINATION
BY MR. McALLISTER:
Q. Ms. Steele, it's not generally my practice to ask a lady her age, but would you tell us how old you are?
A. I'm 20 years old.
Q. All right. You are the daughter of Edgar and Cyndi Steele; correct?
A. That is correct.
Q. Did you grow up as a family in their

home?
A. Yes, with my brother and sister, my mom and dad. We grew up as a happy family.
Q. All right. And can you tell us today a little bit about yourself: what you're doing, where you reside, et cetera.
A. I currently, actually, just recently moved to Oregon City, Oregon. I moved in with my grandma. She is currently going through chemo with cancer. I moved in her to help her out through the chemo.
Q. If you could go just a little slower, it would be very helpful for our record.
A. All right. I got -- I've been -- I work full time in retail. I've been with a company for a year-and-a-half as an assistant manager. And I currently got myself back into school, enrolled at Clackamas Community College.
Q. All right. And have you been working with your mother since June 11, 2010?
A. You mean with the case?
Q. Yes.
A. I wouldn't say "working with." Definitely -- I can definitely testify she wanted to come with her own conclusion, her -- stand on

her own, come up with what she believed, what she knew as to be the truth. And same with my brother and sister and myself.

MS. WHELAN: I would object. It's vouching.

THE COURT: It's what?

MS. WHELAN: I believe it's vouching.

THE COURT: I don't know if it's vouching yet, but it -- well, I'm going to allow the witness's response to stand. Probably the concern may be over the subsequent questions, and you will reinterpose the objection at that time.

Mr. McAllister.

BY MR. McALLISTER:

Q. In the course of -- well, let me ask it this way, if I can: Have you listened to the recordings in this case?

A. Yes, I have.

Q. On how many occasions?

A. Several.

Q. And these are the recordings that you heard in the courtroom of June 9th and June 10th?

A. Yes.

Q. And you've heard them several times before, outside the courtroom, have you not?

A. Yes, I have.

Q. Based upon living with your father for the last 20 years, do you believe that it's his voice on the recordings?

MS. WHELAN: Objection. Foundation.

THE COURT: Well, approach.

(Sidebar commences as follows:)

THE COURT: Counsel, I think that it's actually Rule 901(5) indicates that -- it's 901(b)(5) -- "the identification of a voice, whether heard firsthand or through mechanic or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker."

I think that's classic what counsel is doing. I think the witness can testify, "It doesn't sound like my father's voice," period. That's about all she can say.

MS. WHELAN: And, Judge, my concern is that we are trying to somehow get into the Papcun evidence through Ms. Steele and --

THE COURT: I understand your concern. But if this witness is going to testify it doesn't sound like her father's voice, then, that's what she can testify to. I don't know how to preclude

that.

MS. WHELAN: And I have one other request. The gallery behind me is getting very verbal about objections and everything else.

THE COURT: I will instruct that if there is any further comments or outbursts, I will instruct the court security officer to remove anybody from the courtroom.

MS. WHELAN: Thank you.

MR. McALLISTER: Judge, I don't know that there has been any outbursts.

THE COURT: There hasn't been outbursts. But if they are making comments that are loud enough for counsel to hear, they may be loud enough to be heard by the jury.

(Sidebar concluded.)

THE COURT: I'm going to overrule the objection.

I would caution those in the gallery that it's extremely important that there not be any expressions -- in fact, there really shouldn't even be any discussion, even quiet whispering among yourselves. If you need to visit or want to make a comment, please step into the hallway to do so.

And if you cannot do so, then I will direct the court security officer to remove anyone who feels unwilling or unable to comply with the court's order in that regard.

Mr. McAllister, proceed.

BY MR. McALLISTER:

Q. Directing your attention back again to the recordings that you have listened to that have been identified as being made on June 9th and June 10th, do you recognize your father's voice on those recordings?

A. There is -- there are sounds of similarity, but the consistency of sentence structures and grammar and vocabulary is completely off.

MS. WHELAN: Judge, I would object as to foundation. This witness hasn't indicated any expertise in those areas.

THE COURT: Just a moment. I'm going to sustain the objection. I think the witness can testify as to the sounds. But unless there is some further foundation of background of -- I think we're getting into something more than what we discussed at sidebar.

So the witness can testify as to the

sounds and whether she recognizes the voice; but anything beyond that, I'll sustain the objection.
BY MR. McALLISTER:
Q. Same question, Ms. Steele: Do you recognize the sounds as your father's voice?
A. So I can properly answer the question, can you rephrase it for me?
Q. Sure. Does the voice on the recording sound like your father?
A. Honestly, most parts.
Q. Okay. But there are parts where it does not; correct?
A. No.
Q. Have you been in the barn on your family's property?
A. I grew up in that barn.
Q. All right. Can you hear birds chirping or singing in the barn?
A. Yeah. We had, actually, there up in the railing, ceiling of the barn, we had actually some birds' nests. And, you know, on occasion, maybe in the mornings, we would hear birds; maybe some throughout the day.
Q. You listened to the recordings of June 9th and June 10th, and there are some bird noises;

correct?
A. Yes.
Q. Do you think they're real?
MS. WHELAN: Objection. Foundation.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. In listening to the recordings, there is also sounds of a train whistle; correct?
A. Yes, there is.
Q. In your experience, can you hear any train whistle on your family's property?
A. I have never heard a train while I was within that barn.
Q. Okay. While you were growing up, did your father ever, in any way, threaten you?
A. Oh, goodness, no.
Q. Did he ever, in any way, physically harm you?
A. No.
Q. Did you observe him with your mother?
A. Yes.
Q. What did you observe about their relationship?
A. They love each other. Definitely what I look for -- what I want in a relationship with

somebody one day is -- I base off of their relationship.
Q. You've heard testimony here that your mother and father -- I'll restate that.
You heard testimony here that your mother actually filed for a divorce when you were about ten years old.
A. Yes. That's correct.
Q. Do you recall anything about that?
A. Yes, I do.
Q. What is that?
A. I do recall, yes, they had brought it up to myself, my brother, and my sister. Yes, I remember that day.
It was -- honestly, it was a brief period that -- you know, every relationship has its problems. And they fixed their problems, and they were stronger than ever.
And since that day, I have seen many acts of love from both of them: never forgetting anniversaries, birthdays, always telling each other they love each other, always talking on the phone when the other is gone.
MR. McALLISTER: Thank you, Ms. Steele.
THE COURT: Before -- Counsel, I did want to

clarify my prior ruling. And I'll refer you to the rule, and perhaps I'll allow Mr. McAllister to reopen.
But Rule 901(b)(4), I don't think the foundation was laid for that through this witness, although that may have been where counsel was going. If counsel were -- I'll leave it to that.
If you want to review the rule and if you want to talk about specific characteristics as opposed to just simply a general observation, I may well allow that line of inquiry into what, I think, speech patterns that Ms. Steele referred to.
MR. McALLISTER: Judge, I'll try to ask a few more questions and see if I'm in accordance with the rule.
THE COURT: All right.
BY MR. McALLISTER:
Q. When you were listening to these recordings, did you attempt to listen to them with a typed transcript?
A. Honestly, I listened to them with the transcript and without the transcript. That way, I could analyze not only what was written on the transcript, also just being able to listen,

listening to how things were said.
Q. All right. And I think you said in some parts, you thought it was your father's voice; and in other parts, you did not think it was your father's voice; correct?
A. True.
Q. All right. Were you listening for typical phrases that he uses?
A. I wasn't necessarily listening for typical phrases that he used. I mean, there were some things that came out that, yes, he says that; so do several other people say that -- that were said that I did notice. The main thing that I noticed throughout it is it's just not the way that he talks.
MR. McALLISTER: Thank you.
THE COURT: Ms. Whelan.
CROSS-EXAMINATION
BY MS. WHELAN:
Q. Ms. Steele, you were not living in Idaho on June 9th, 10th, or 11th, were you?
A. No, I was not.
Q. You were living in Texas?
A. That's correct.
Q. How long had you been living there?

A. I was living in Texas for, I believe, a year-and-a-half.
Q. Are you aware that, according to the BNSF Railroad, there is a train that goes in Sagle from 6:00 to 6:45 p.m. on June 10th?
A. One train --
Q. Okay. And it happens --
A. -- yes. Three miles -- approximately three miles away.
Q. And it happens at nighttime?
THE COURT: We need to go one at a time. Wait until Ms. Whelan has completed the question before you start to respond.
And, Ms. Whelan, wait for the response to be completed before you ask your next question.
Proceed.
BY MS. WHELAN:
Q. The train comes at night, doesn't it?
A. Within that time period of the recording, there is one train that goes by.
Q. Okay. And you know that because you checked, as well?
A. Yes, that's correct.
Q. And so I'd like you to look --
MS. WHELAN: The jury camera isn't on, is

it, Judge?
THE COURT: No, it is not.
BY MS. WHELAN:
Q. Looking at that document, that comports with what your investigation found, too, doesn't it?
A. Yes.
MS. WHELAN: Your Honor, we would move to admit Exhibit 25.
MR. McALLISTER: I object on hearsay grounds and lack of authentication. It also talks about --
THE COURT: It would appear to be hearsay, Counsel. I don't know if you want to offer an exception to the hearsay rule or --
MS. WHELAN: Well, I think I'll just ask a couple more questions, Judge.
BY MS. WHELAN:
Q. Trains pass by Sagle, Idaho, on -- excuse me. Your investigation confirmed that trains passed through Sagle, Idaho; and that on June 9th, it passed between 6:00 and 6:45? That was what your investigation showed; correct?
A. It was what was brought to my attention, yes.

Q. Okay. And on June 10th, it passed from 6:00 p.m. to 6:40 p.m.? That's consistent with your investigation, isn't it?
A. I'm going to be one hundred percent completely honest. It's what was directly brought to my attention. I'm not sure if those -- that exact time range. I think I actually had a broader time range.
Q. And when you listened to these recordings -- in fact, you had a conversation with your father and told him you didn't know if you were supposed to be listening to them, didn't you?
A. To the recordings?
Q. Mm-hmm.
A. Back then, at one point, you know, I kind of hesitated. I wasn't -- I wasn't sure. And then it was brought to my attention that I was. And then I kind of had a "Oh, wait," like -- but, you know, it was brought to my attention that it was okay.
Q. And you listened to those recordings at your mother's lawyer's office?
A. I was -- I listened to them with the lawyers, yes.
Q. Right. Now, you don't want to believe

that your dad would want your mother killed, do you?

A. I don't believe it.

Q. You wouldn't want to believe it, either, would you?

A. I don't believe it.

Q. I understand. My question is, Miss: You don't want to believe it?

A. Of course, I don't want to. And I don't. And it's not because I don't want to.

MS. WHELAN: Your Honor, I would move to strike the last part, please.

THE COURT: I'll strike the last comment.

The question was pretty direct. So if you would just answer counsel's question. Mr. McAllister will have a chance to allow you to explain your answer a little more fully, if you wish.

Ms. Whelan.

BY MS. WHELAN:

Q. You -- and your father asked you to do numerous things from jail, didn't he?

A. Well, yes, like send him books.

Q. You sent him books and magazines?

A. Yes, that's correct.

Q. Books on Russian?

A. Yes, that's correct.

Q. Where did the money come to send those?

A. Some of the money my mom did supply for me. I did pay for quite a bit of it at the beginning. And then, from there, yes, we did actually, at one point, started receiving donations from people who believed in my dad.

Q. And you used that money, didn't you?

A. To pay for books and magazines.

Q. And sometimes you sent the wrong magazines, didn't you?

A. What do you mean, sent the wrong ones?

Q. You sent magazines that your dad hadn't asked for, or he didn't want those, did he?

A. Well, I sent some that I thought he might be interested in, as well, to keep him occupied. He didn't have anything else to do.

Q. And even from jail, he called you and told you that those were the wrong ones and to take care of it, didn't he?

A. From there, I would try getting him the right books.

Q. Your father was very particular as to what he wanted, wasn't he?

A. Yes. And I did my best to get him the books that he wanted. Not all of them were available, though, in the paperback restrictive that the jail wanted.

Q. And if you sent your father the wrong book, he made sure and corrected you, didn't he?

A. He would let me know if I messed up.

Q. Did you ever hear your dad use the term "Mission Impossible"?

A. To be completely honest, I don't recall.

Q. And you -- what's your education background?

A. My education background is I -- I did a mixture of home school and public schooling. I attended Sandpoint High School specifically for music classes. Of course, I wanted to go to more music classes than I could with the academics at the high school. So, in my choice, I took up Internet courses so I could study more music at the local high school. And then, I mean, from there, I did go and obtain my GED.

Q. Okay. Any college degree?

A. No college degree. I had started at Spokane Falls Community College; though, due to

nobody would hire me because I was going to school -- I didn't have the free schedule -- and I needed to pay rent on the place I was living at somehow, I ended up having to get a job. And, unfortunately, I had to drop out.

And thankfully, finally, I have been able to financially be able to get myself back into school to be able to obtain a college degree.

Q. But you don't currently have a college degree; correct?

A. No. I don't think most 20-year-olds do.

MS. WHELAN: Your Honor, I'd move to strike. I'm just trying to establish a foundation.

THE WITNESS: I do not.

BY MS. WHELAN:

Q. You don't have a background in audio engineering?

A. No, I do not.

Q. You don't have a background in phonetics?

A. No.

Q. You aren't a speech therapist?

A. No.

Q. You have no specialty in speech

patterns or speech identification of anything, do you?

A. No, I do not.

MS. WHELAN: May I have just a moment, Your Honor?

THE COURT: Yes.

MS. WHELAN: Thank you. Nothing else, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. McALLISTER:

Q. Ms. Whelan asked you questions about Russian books. Do you recall that?

A. Yes.

Q. You were aware of the fact that your father was working a case involving a Russian bride scam; correct?

A. Yes, I was.

Q. Was your mother aware of it?

A. Yes, she was.

Q. What was your perception of it?

A. Again, to be completely honest with you, it was something that I didn't know a whole lot about. It was kind of -- honestly, my dad and I would talk some about his legal courses and so

forth. You know, it would kind of come up with, "Oh, what's new with you?" especially when I would come home to visit.

You know, he told me about it one day. And it tends to be -- honestly, with a lot of the legal courses, he would -- we would kind of wrestle around the conversation, and I would kind of back out just because it was -- it wasn't a huge interest for me. I was interested in what he was doing, which is why we got to the topic. But getting into more details, it was kind of not a huge common interest at the time.

Q. Was it also kind of a joke around your house?

A. Yes.

Q. All right. Ms. Whelan asked you -- well, I'll ask the question this way: Why don't you believe that your father would hire someone to kill your mother?

MS. WHELAN: Objection. Relevance, and I believe it's ultimate issue, 609.

THE COURT: Sustained.

BY MR. McALLISTER:

Q. When Ms. Whelan wouldn't let you answer the question, was there some reason that you

wanted to express?

MS. WHELAN: Your Honor, I object to the form of the question.

THE COURT: Counsel, I'm going to sustain the objection.

The witness can testify as to specific factors regarding -- you know, that may lead her to her belief, but her belief is not relevant. And I think that's where we're going, directly or indirectly, regardless.

So I'm going to sustain the objection.

BY MR. McALLISTER:

Q. Based upon your own investigation in listening to the tapes, you've reached your own personal conclusion, have you not?

A. Yes.

Q. And you're still supporting your father; correct?

A. Yes, 100 percent.

MR. McALLISTER: Thank you.

THE COURT: Anything else?

MS. WHELAN: No, Your Honor. Thank you.

THE COURT: You may step down. Thank you. Call your next witness.

MR. McALLISTER: The government [sic] would

recall Cyndi Steele.

THE COURT: Ms. Steele, would you please retake the witness stand. I don't think we released you; and, therefore, you're still under oath.

CYNDI STEELE,

having been previously sworn to tell the whole truth, testified as follows:

THE COURT: I'd just remind the witness, you are still under oath.

You may inquire of the witness.

DIRECT EXAMINATION

BY MR. McALLISTER:

Q. Ms. Steele, just for the record, you're the same Cyndi Steele that testified earlier in this trial; correct?

A. Yes.

Q. I've placed on the monitor Exhibit 2001. If you could review that, please.

A. I have.

Q. Are you familiar with this document?

A. Yes, I am.

Q. Did you assist in having your mother sign the document?

A. Yes, I did.

Q. Did you see her sign the document?
A. Yes.
Q. Was the document written as a letter of authorization to allow your mother's son-in-law, Edgar Steele, to serve as a power of attorney?
A. Yes, it was.
Q. And was it used in accordance with attempting to modify the loan on your mother's house?
A. It was -- well, modify -- it was -- we were -- it was an attempt to possibly get what they call a reverse mortgage, so that maybe she could stay in the home, which didn't work. So then it went into a modification. And then, eventually, it went into helping her because none of those were working, and her house was going to be foreclosed on. So all issues around her -- helping her with her house.
Q. All right. In other words, your mother gave your husband a power of attorney?
A. Yes, she did.
MR. McALLISTER: I would offer Exhibit 2001, Your Honor.
THE COURT: Any objection?
MR. HAWS: Relevance, Your Honor.

THE COURT: I'm not sure I see the relevance myself. Perhaps -- could you, through some further questions, perhaps tie it in? I'm --
MR. McALLISTER: Well --
THE COURT: Or, if not, we can discuss it at sidebar, but I prefer not to if we can just --
MR. McALLISTER: Judge, I think I best make the argument to you at sidebar.
THE COURT: All right. Approach.
(Sidebar commences as follows:)
THE COURT: Mr. McAllister, I may be getting dense. As I understand, it's a power of attorney issued by Mrs. Steele's mother granting Mr. Steele a power of attorney to represent her in doing some business with regard to a loan.
MR. McALLISTER: That's correct.
THE COURT: Now, why is that relevant?
MR. McALLISTER: Because they have charged him with attempting to kill her. And this is inconsistent with the charges. It's right on point, Judge. Why would --
THE COURT: Why is it inconsistent with the charges?
MR. McALLISTER: Because why would somebody spend their own money, why would somebody act as a

power of attorney if they intended in any way to harm her or kill her?
I think it goes to the heart of the charges. It's conduct inconsistent with the government's charges.
THE COURT: Conduct by who?
MR. McALLISTER: By Edgar Steele, by agreeing to do it. By -- and the next exhibit is the check he wrote.
THE COURT: So if you have a power of attorney for someone, that precludes you from developing the intent to kill them if you're -- have some interest in -- I'm just not seeing the connection.
MR. McALLISTER: Certainly does not preclude you from killing them, but it certainly is strong evidence of inconsistency of the fact that you had no intent to kill them.
If the government wants to say it was somehow a ruse, that's fine, but I'm just showing his conduct that's inconsistent with a man who is going to murder his mother-in-law.
THE COURT: Mr. Haws, do you want to weigh in?
MR. HAWS: Well, what these charges are

about, Your Honor --
THE COURT: Step to the mic.
MR. HAWS: What these charges are about is the defendant's intention to kill his mother-in-law and his -- and his wife. It has nothing to do with whether he was willing to do legal work for them back six months earlier. And it's just not relevant to what we're doing here.
Besides, this witness is really not in a position to testify as to the legal arrangement or speak for her mother or speak for the defendant, either one.
So I think we've got the wrong witness if we want to cover this in any event. It's not relevant, and there is certainly not sufficient foundation for it.
THE COURT: Well, Mr. McAllister, I just don't see the connection. I mean, if all it did is indicate that Mr. Steele was given a power of attorney by Ms. Kunzman -- now, I'm not suggesting that the motive here was financial or that Mr. Steele was in some way trying to obtain some financial benefit through, you know, murdering his mother-in-law, assuming the government's -- you know, accepting the government's allegations here.

But, even so, I just don't see the connection between the two. Now, maybe -- that's why I suggested maybe there is a next step that might tie this in and make it relevant. But at this point, I just don't see its relevance.

MR. McALLISTER: Well, the next exhibit, Judge, is the check that was used to pay the mother-in-law's mortgage. And I'm going to offer that, as well.

These were all -- the foundation has been laid for these through Cyndi Steele. She said it was his [sic] mother's signature. She said she was involved in working with her mother and her husband in getting this done.

MR. HAWS: If I may respond, Your Honor.

THE COURT: Yes.

MR. HAWS: Under the rule of relevance, it's whether or not this makes an issue in the case more or less likely. And these documents don't do that.

THE COURT: Well, the issue that Mr. McAllister is arguing is that he had -- it's inconsistent with an intent to murder the person from whom he had a power of attorney, but I -- I'm sorry. I just don't see the connection. I'll

sustain the objection.

MR. McALLISTER: And I take it --

THE COURT: You have a continuing objection. Let's just deal with that as to 2001.

MR. McALLISTER: I'm going to offer this -- the next two, as well, Judge, if you want to deal with those, as well.

THE COURT: Well, if you can do it now or just offer them, however you want. But I -- you know, if you want --

MR. McALLISTER: Well, it's -- individually, on the power of attorney, Judge, it -- it's my position that the issue that the government has to prove is that he intended to kill his mother-in-law and that these activities -- the power of attorney, the check, and the letter to Wachovia Mortgage -- all show a pattern of conduct, actual actions that he took that are relevant to the point of whether or not he formed an intent to kill her. That's why they're relevant.

THE COURT: And these were all in December of 2009?

MR. McALLISTER: No. It's May 20th, 2010. And it's --

THE COURT: Well, what's --

MR. HAWS: The power of attorney -- I'm sorry.

THE COURT: The power of attorney is in December of --

MR. McALLISTER: The power of attorney is in December, and the check and the letter are in May.

MR. HAWS: These letters don't say anything with regard to an intent, Your Honor. These letters don't say anything with regard to intent, the defendant's intent, which is relevant here.

MR. McALLISTER: It's the defendant's actions, what he did, that -- obviously, they don't talk about his intent, but they show his intent by his actions.

Why would he give her $2,779.37? Why would he take the trouble to write a letter to Wachovia Mortgage if he was going to kill her? That's the argument.

MR. HAWS: Well, the other side of the argument is that: Why wouldn't he do that? And that has nothing to do with his intent to commit murder. It's not necessarily inconsistent.

MR. McALLISTER: He would do it because he had no intention to kill his mother-in-law, and he

was trying to help her. That's why he did it. And the proof is in the funds that he spent.

THE COURT: Well, so it's funds he actually spent on her behalf?

MR. McALLISTER: That is it.

THE COURT: Or funds that he received through her power of attorney and then forwarded to her?

MR. McALLISTER: No, no. I don't think he received these funds through the power of attorney. I think that --

THE COURT: So the check comes from the bank?

MR. McALLISTER: Yes.

THE COURT: Okay. I'm still sustaining the objection. That's as to 2001.

What are the other exhibits, so that we don't -- unless you want to offer them in front of the jury. It's 2001 and -2 and -3?

MR. McALLISTER: Yes.

THE COURT: All right. That will be the court's ruling.

MR. McALLISTER: As to all three?

THE COURT: Except these are not marked properly. I think -- did I --

MR. HAWS: Those ones were brought up here, Your Honor.
THE COURT: Okay. Yeah. 2001, -2, and -3, I have an extra copy here. All right.
(Sidebar concluded.)
THE COURT: The objection is sustained.
BY MR. McALLISTER:
Q. Mrs. Steele, in May of 20 -- in May of 2000 -- May 19th, 2010, did you and your husband provide the funds necessary to basically save your mother's house from foreclosure?
MR. HAWS: Objection. Relevance.
THE COURT: Counsel, with that further explanation, which I don't think was provided at sidebar, I'll allow the witness to answer. And then I may reconsider on my prior ruling.
Go ahead. You may answer.
THE WITNESS: Please ask it again.
BY MR. McALLISTER:
Q. On May the 19th, 2010, did you and your husband provide a check in the amount of $2,779.37 to Wachovia Mortgage to save your mother's house from foreclosure?
A. I thought it was the 20th, but it could have been the 19th. I think the check was written

on the 19th, and it was mailed on the 20th. But, yes, we did, in that amount.
Q. All right. And did your mother get to keep her house?
A. No. But it was a decision -- because of her health and that, she decided to put it on short sale. She did get it sold -- oh, I can't -- things have been so mixed up, but a few months ago and has since moved. Because of her health continually decreasing, she just -- it became an issue of not -- her not being able to handle the place.
Q. All right. And it was put up for sale ultimately?
A. Yes, it was.
Q. All right.
MR. McALLISTER: Your Honor, I would offer 2001, 2002, and 2003.
THE COURT: Would you put them on the screen so I can look at them again?
MR. McALLISTER: That is 2001.
THE COURT: All right. Now 2002. And the 2003.
All right. I'm going to allow the exhibits. I'm going to reconsider and admit 2001,

2002, and 2003.
(Defendant's Exhibits 2001, 2002, and 2003 admitted.)
THE COURT: I don't -- do you want to show them to the jury?
MR. McALLISTER: Yes, Your Honor, briefly.
BY MR. McALLISTER:
Q. Mrs. Steele, do you recognize what's been marked as Exhibit 2003?
A. Yes, I do.
Q. And it's dated May 19th, 2010; correct?
A. Yes, it is.
Q. And it's a check in the amount of $2779.37, payable to Wachovia Mortgage; correct?
A. Yes.
Q. And underneath it, it says -- it says, "Re: J. Kunzman loan," and the number; correct?
A. Yes, it does.
Q. And that is your mother, is it not?
A. Yes, Jacquanette Kunzman.
Q. Where did these funds come from?
A. It came from -- well, it came out of our banking account, which was off of the silver that was -- that was being sold.
Q. All right. And did your husband

approve of this?
A. Actually, it was his offer to do that for my mom. And because she is my mom, I mean, I certainly agreed, but he made the offer to do that instead of allowing her to leave -- to lose her home, so that she could have a place to live longer until we could get the house -- or my mom could get the house sold.
Q. And if you could look at Exhibit 2002. That's a letter written on your husband's stationery addressed to the mortgage company telling them that the check is enclosed; correct?
A. Correct.
Q. All right. As I understand it, the first time you heard that your husband was accused of attempting to murder you was from FBI Agent Sotka or the other FBI agents when you were at your mother's house on June 11th; correct?
A. It was -- well, the first was the two agents; the one that testified the other day, and the other was a gal who I don't remember her name. That was the first time I had heard that.
And then -- and then Agent Sotka confirmed it by a phone conversation when the agents got him on the phone.

Q. All right. Did you ask to hear the recordings that were described to you in part by Agent Sotka originally on June 11th?

A. You know, I believe I asked for the tapes. I'm not sure I asked Sergeant Sotka at that time, because I was in such disbelief that -- but I do know that the next day, I was asking for them.

MR. HAWS: Object to the -- object to the rambling answer, which is nonresponsive. I also object to the fact that this has already been covered in prior examination of this witness.

THE COURT: Well, I'm not sure I would describe it as "rambling." If you want to say it's a narrative response, that's a little more polite way to put it, Mr. Haws. But I think that's the point you're making, and it is probably objectionable for that reason.

I'm also concerned, though, that we not replow the same ground that may have been covered on the cross-examination of Ms. Steele when she was called as a witness for the government.

So let's step back and ask a question of the witness and try to stay away from areas that have already been covered.

Proceed.

BY MR. McALLISTER:

Q. When were you first able to hear the recordings?

A. June 21st.

Q. And in the recordings -- or let me rephrase that question.

In a telephone conversation with your husband from the jail to you, you talked to him about some doubts you had; correct?

MR. HAWS: Objection. Foundation. And I believe that it's also been covered already.

THE COURT: I don't recall. I'm going to give the witness -- or counsel some leeway here because I frankly just don't recall.

Proceed.

BY MR. McALLISTER:

Q. In your phone call with your husband on June 13th, 2010, from the jail, did you make the statement: "Yes, I wouldn't be human if I didn't have doubts when the FBI is telling me that my husband wanted to kill me." Correct?

A. I don't know I said that, but I had -- I told him I had doubts. And I -- you know, I had doubts. I was examining everything. The FBI was

telling me I was going to be killed. I had to -- I wouldn't -- I wouldn't have been human --

Q. What did you --

A. -- if I hadn't questioned.

Q. Did anything help you resolve those doubts?

A. Mostly, once I listened to the tapes with an open mind -- because that was -- I had to decide, because my life was at stake, to make a true -- I don't want to say "analysis," but to listen to those tapes and know what the truth was, whether I liked it or not. Plus, putting things together that I was investigating that were either matching or a lot of times not matching what I knew was true.

Q. All right. Now, you used the word "tapes." And I used the word "recordings." So whenever you say "tapes," you really mean the recordings; correct?

A. Well, yes. I've heard both terms and know that there is a difference. And now I'm so confused which is the right technical word. So, yes.

Q. All right. In other words, you have never seen a tape-recording. You have seen disks

that contain a recording; correct?

A. Disks.

Q. All right. Now, on June 21st, when you were allowed to listen to the recordings, did that help resolve any doubts?

A. Absolutely.

Q. Why?

A. Well, actually, for many reasons.

Q. Let's take them one at a time, if we can.

A. Noise. Back -- you know, the background didn't match what I knew from the barn. Birds chirped in the morning. Trains I couldn't hear out at the barn. The tapes -- the recordings were both on --

MR. HAWS: Objection, Your Honor --

THE WITNESS: -- June 9th and 10th.

THE COURT: Excuse me. Just a moment. When there is an objection, please stop your answer so I can rule.

Now, what's the objection?

MR. HAWS: The objection is foundation for this person to be able to offer the opinions that she is offering.

THE COURT: Well, as I noted previously up

to this point, the witness can identify things on the recording compared to her own experience. But in terms of offering an opinion, that will be objectionable, and I will sustain the objection.

Mr. McAllister, let's put questions before the witness. I would even direct you to lead the witness somewhat to avoid kind of narrative responses that cannot be properly addressed by Mr. Haws.

So if you would, at least in terms of foundation and getting the witness focused, I would ask you to ask leading questions.

Proceed.

MR. McALLISTER: Thank you, Your Honor.

BY MR. McALLISTER:

Q. Mrs. Steele, in 26 years of marriage to Edgar Steele, you're pretty familiar with his voice; correct?

A. Yes, I am.

Q. And when you listened to these recordings, did you -- based upon your 26 years of listening to him, did you see some problems, hear some problems?

A. Throughout the tapes, I saw many inconsistencies and problems.

Q. Was there problems in how the words were spoken in terms of a flat affect or emphasis?

A. It was monotone.

MR. HAWS: Objection again, Your Honor, as to foundation of this witness to be able to testify as to the recordings.

THE COURT: Sustained. The witness can testify as to variations between what she heard and her experience in hearing Mr. Steele's voice, but I think we have to be careful of the terminology that's used, because the witness is not an expert.

BY MR. McALLISTER:

Q. Based upon your 26 years of speaking with your husband, did you think it was actually his voice?

A. Did I think it was actually his voice?

Q. Yes.

A. Not actually his voice, no.

Q. All right. Are you saying that about the entire recording or parts of it?

MR. HAWS: Objection. Same basis.

THE COURT: Just a minute.

Counsel, I think, for the witness to testify as to what she -- whether she thinks it

was or was not his voice, she can testify about specific characteristics that were not consistent, but I think the actual conclusion would necessarily call for expertise, if that's clear. I hope that's clear enough that we can proceed.

Go ahead.

BY MR. McALLISTER:

Q. What characteristics did you listen to that convinced you one way or another?

A. His intonation, his syntax, the way he takes breaks. He is very -- his intonation is very up and -- I mean, very up and down. He --

MR. HAWS: Objection, Your Honor. This calls -- the witness is expressing opinions that are in the province of an expert. She has not laid -- the foundation is not there.

MR. McALLISTER: Judge, I think she's --

THE COURT: Just a minute. I'm going to overrule the objection. I think what the witness is now describing is comparison between her experience and what she listened to on the tape, and it's limited just to that, because she is not qualified as an expert. But she is permitted to testify based upon her own experience in talking to Mr. Steele.

So the objection is overruled.

BY MR. McALLISTER:

Q. Based upon your 26 years of speaking and listening to your husband, you believed that the grammar was inconsistent with the way he spoke to you in those 26 years; correct?

A. Yes.

Q. And based upon your experience, you thought that the speech pattern was inconsistent; correct?

A. Yes.

Q. And based upon the intonation, you believed that there were inconsistencies; correct?

A. Yes, I did.

Q. Specifically, on the recordings, there is a discussion about someone remaining a paraplegic. Have you ever discussed that with your husband?

A. My husband and I -- well, my husband discussed that in years past. But primarily after his aortic aneurysm, he discussed that a lot and -- because they had told me he could have been a vegetable. And he would always talk about not wanting to be left like that.

And, you know, because of his state of

it being so important to his life, I can't be assured he didn't tell other people that. Because he told me he would not --

MR. HAWS: Objection, Your Honor.

THE WITNESS: -- want to be left as a --

THE COURT: Just a moment. There is an objection.

MR. HAWS: Objection. Narration, exceeding the scope of the question.

THE COURT: Sustained. The question was: Have you ever discussed that with your husband? And that could have been answered yes or no.

Mr. McAllister, could you put another --

Again, Ms. Steele, it's difficult. Mr. Haws has the right to object when a response he feels is not in keeping with the rules of evidence, but he can't interpose an objection if what you're testifying to is in a narrative form.

If you'll listen carefully to Mr. McAllister's questions, just answer them directly, I think that will facilitate our moving forward a little more efficiently.

Mr. McAllister.

BY MR. McALLISTER:

Q. In the recordings, Mrs. Steele, there is a discussion about life insurance; correct?

A. Please repeat that.

Q. In the recordings, there was a discussion about insurance; correct?

A. Yes.

Q. And isn't it true that you do not have a life insurance policy?

A. No. We canceled it.

MR. HAWS: Objection. Relevance.

THE COURT: Overruled.

BY MR. McALLISTER:

Q. Go ahead, Mrs. Steele.

A. We had canceled it a few years ago. Our children were grown, and we couldn't really afford it.

Q. All right. On the recordings, there is a discussion about you having a boyfriend. Do you recall that?

A. Yes.

Q. Did you ever have a boyfriend?

A. No.

Q. Did Agent Sotka question you about that?

A. Actually, told me that I had -- that

they had an investigator --

MR. HAWS: Objection.

THE WITNESS: -- and pictures.

THE COURT: Just a moment.

MR. HAWS: Objection, Your Honor. Hearsay.

MR. McALLISTER: I think it's --

THE COURT: Just a minute. Overruled. Well, I'm going to overrule the objection. It was a statement -- actually, there was a question about whether a question was asked by the FBI agent, who, I think, would -- under 801(d)(2)(D), would not be hearsay.

Rephrase the question, though, if you would.

BY MR. McALLISTER:

Q. Did Agent Sotka actually accuse you of having a boyfriend?

A. Yes.

MR. HAWS: Objection. Form of the question.

THE COURT: Sustained.

BY MR. McALLISTER:

Q. I'll ask the question this way: Agent Sotka raised the issue to you about whether or not you had a boyfriend; correct?

A. Yes.

Q. And you denied that to him, did you not?

A. Yes.

Q. And that was the truth?

A. Yes.

Q. In your investigation, did you frequently talk with Agent Sotka? And when I say "frequently," how many times did you talk to Agent Sotka?

A. I have never really counted, but between -- between June 11th until, oh, somewhere -- I don't know -- it might have been August, end of July. I mean, you know, several times.

Q. Did he ever tell you that Larry Fairfax had admitted to putting a bomb on your car before June the 15th, when it was discovered?

A. No.

Q. Okay. Did you find issues or problems with the information you received from FBI Agent Sotka?

A. Yes.

MR. HAWS: Objection. Relevance. Objection. Foundation.

THE COURT: Sustained.

BY MR. McALLISTER:
Q. Do you know who the individuals are that were mentioned by Larry Fairfax?
MR. HAWS: Objection. Foundation.
THE COURT: Counsel, I think the question is vague. I don't know -- in what context?
MR. McALLISTER: I'll ask it this way, Judge.
BY MR. McALLISTER:
Q. Are you familiar with an individual who represented Larry Fairfax named Michaud?
A. Yes, I am. Yes.
THE COURT: Just yes or no. Thank you.
BY MR. McALLISTER:
Q. Are you familiar with any other individuals that Larry Fairfax mentioned?
A. I was familiar with the name of James Maher -- Maher, Maher.
Q. Were you familiar with one of your neighbors' names that Larry Fairfax mentioned?
MR. HAWS: Objection. Form of the question, foundation.
THE COURT: Well, I -- if the witness can answer, you can answer. The question is --
THE WITNESS: Well, he mentioned Linscott

and neighbors. And so I'm not sure if you were after the neighbors' names or just Linscott.
BY MR. McALLISTER:
Q. I'm interested in knowing whether you know who Linscott is.
A. I'm aware of it. I met him on occasion, but I know who he is.
MR. HAWS: Objection. Relevance, Your Honor.
THE COURT: Well, I don't know yet. I'll give counsel some leeway, but you need to tie in the relevance pretty quickly, or I will sustain the objection.
BY MR. McALLISTER:
Q. Mr. Fairfax stated that your husband wanted to kill Mr. Linscott; correct?
A. That's what he stated.
Q. All right. And Mr. Linscott was in a dispute with your husband, was he not?
MR. HAWS: Objection. Objection. Relevance.
THE COURT: Overruled. I mean, if --
MR. HAWS: Objection. Foundation, as well.
THE COURT: The witness can testify as to what she observed. Overruled.

BY MR. McALLISTER:
Q. How long ago was the dispute between your husband and Mr. Linscott?
A. Well, it was 10, 15 years ago. It's been a long time. It was when we first had moved into the area.
Q. And was it over some work or some cement?
A. It was either cement or -- and/or gravel.
Q. Okay. Did it get resolved?
A. Yes.
Q. Did you ever hear your husband threaten him or talk about him in a negative way?
A. No. The dispute got settled, and we moved on.
Q. Mr. Fairfax said that your husband wanted to have Judge Michaud killed. Do you recall his testimony on that?
A. Yes.
Q. Who is Judge Michaud?
A. He is a judge that my husband had done a few cases or such in front of. And I learned later that he was also the -- well, retired judge that was representing Larry Fairfax.

Q. Are you aware -- did your husband ever express any hostility towards Judge Michaud in your presence?
A. No, because he always felt Michaud ruled in his favor.
MR. HAWS: Objection.
THE COURT: Just a moment. Just a moment.
MR. HAWS: Objection to the narrative answer.
THE COURT: Sustained. Sustained. Well -- sustained.
BY MR. McALLISTER:
Q. Without going into an explanation, you never heard your husband in any way say anything threatening or disparaging about Judge Michaud?
A. No.
Q. Do you believe that when you listened to the recordings, that you had an open mind?
A. Absolutely.
Q. And after listening to them, what was -- what was your state of mind?
MR. HAWS: Objection. Relevance.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. After listening to the recordings, it

didn't change your opinion, did it?
MR. HAWS: Objection.
THE COURT: Sustained.
MR. HAWS: Relevance.
BY MR. McALLISTER:
Q. The recordings did not do anything to assist you in believing that there was a murder plot to kill you by your husband?
MR. HAWS: Objection. Same objection, Your Honor.
THE COURT: Sustained. Counsel, the witness' personal beliefs are not relevant. I'll continue to sustain the objection if the questions are pointed towards that.
MR. McALLISTER: Thank you, Your Honor.
THE COURT: Cross-examination?
MR. HAWS: Yes, Your Honor.
CROSS-EXAMINATION
BY MR. HAWS:
Q. Good afternoon, Mrs. Steele.
A. Good afternoon.
Q. Let me ask you about the insurance issue. You were asked whether there was a life insurance policy, whether the Steeles had a life insurance policy. And I believe you answered that

you didn't have a life insurance policy; is that correct?
A. Did you say I was asked?
Q. I'm asking you --
A. Did you ask that if I was asked?
Q. Let me rephrase the question. Did you have a life insurance policy?
A. No.
Q. Did your husband have a life insurance policy?
A. No.
Q. Now, you had a black Mitsubishi Endeavor; correct?
A. Yes.
Q. That Endeavor was licensed in the state of Idaho?
A. Yes.
Q. And so in the state of Idaho, in order to operate that vehicle, you had automobile insurance on that vehicle, did you not?
A. Yes, auto.
Q. And you had -- included in that automobile insurance was an uninsured motorist provision and coverage, was it not?
A. Yes, it's uninsured motorists.

Q. That's a standard provision in most policies. And it was in your policy; isn't that correct?
A. Yes.
Q. Okay. At one point, your husband did have some concerns about your old friends, your old boyfriends over in the Oregon City area, didn't he?
A. No.
Q. Didn't you testify about that the other day, when -- on direct examination with Ms. Whelan? And that he might -- your husband might have had some concerns about your interaction with old friends?
A. No.
Q. Your testimony -- you don't recollect that testimony?
A. I don't recollect that. It seems -- your question seems out of context.
Q. Well, it's not out of context. I'm asking you whether you -- your husband expressed concerns about friends that you may have had in the Oregon City area?
A. He never had concerns about friends I had in Oregon City.

Q. Was that an issue back during the divorce in 2000?
A. That was never what our divorce was about in 2000.
Q. No. But did that come up as an issue? Did he express that as an issue back then?
A. In 2000?
Q. During the -- during the divorce proceedings in 2000.
A. No, that was not an issue.
Q. So it's your testimony that there never was a concern raised by your husband with regard to his suspicions or jealousies about former boyfriends or old friends in the Oregon City area?
A. He has never accused me or made any accusations on boyfriends.
Q. So you and your husband paid $2,779 to save your mother's house from foreclosure? Is that your testimony?
A. Yes, it is.
Q. Did you ask your husband to do that for you?
A. No, I didn't. He -- I asked him for -- if he could help my mom with legal advice. And when it came to the foreclosure, he volunteered to

pay that and also was willing to pay the additional 15,000 that would have caught her completely up, if necessary.

Q. Okay. Let me -- let me just direct the questions here, Ms. Steele.

But the point is that, between you and your husband, out of joint accounts, you assisted your mother with $2,779 in the form of a check, which is Exhibit -- Defendant's Exhibit 2003; correct?

A. I approved it, but my husband did that.

Q. Your husband was given a power of attorney by your mother --

A. Yes.

Q. -- is that correct?

Now, do you remember back in November -- was it November of 2009 that he had his -- his health issue with the aortic aneurysm?

A. November 21st.

Q. November 21st.

A. 2009.

Q. 2009.

And that was a major event, was it not?

A. Yes.

Q. And he was in very poor health for a

long time on account of that?

A. Well, yes. I mean, various degrees, but, yes.

Q. He wasn't working?

A. He didn't have the strength to work at that time.

Q. So in November of 2009, he didn't continue to do legal work?

A. He had some pending cases, you know. I know that it depends on when you're talking about. Because he --

Q. He didn't have the strength -- he didn't have the strength to do legal work, did he, at that time?

A. He had the strength to work at his computer. When you say "strength," I'm thinking of physical strength.

Q. Let me --

A. I'm thinking of physical strength when you say that because we would work on the ranch together, also.

Q. Well, let me restrict my question to November and December of 2009. In December, was he still in the hospital?

A. Not after December 9th.

Q. He was released December the 9th?

A. Yes.

Q. And he was still, then, recovering from this major event?

A. Yes.

Q. And it was in December -- on December 11th, then, he took power of attorney to handle your mother's legal affairs?

A. I didn't -- I -- I didn't take note of that exact date, but it was about that time, yes, because it was --

Q. As shown -- excuse me. As shown in Exhibit 2001; correct?

A. I didn't take it -- I can't see it.

Q. Let me put that on the document camera for you.

THE COURT: I'm sorry, Counsel. That's Exhibit 2001?

MR. HAWS: 2001.

THE COURT: Thank you.

MR. HAWS: It's been admitted as --

THE WITNESS: That was about the time. I mean, I can say it was that date.

BY MR. HAWS:

Q. So 12/11 of 2009, Ms. Kunzman signed

over power of attorney for your husband to look after her legal affairs?

A. Yes.

Q. When you do the chores around your place there at 1569 Talache Road and you're out around the riding arena; correct?

A. Yes.

Q. Feeding the horses, do you remember doing that?

A. All the time.

Q. Watering the horses?

A. Yes.

Q. And the sounds of gates opening and closing in the arena, do you remember that?

A. Yes.

Q. And birds chirping in the arena, do you remember that?

A. You know, various times. Mostly in the mornings.

Q. And you know also that the train, which is some distance away, can be heard when there is a still evening, don't you?

A. When there is -- I didn't hear the --

Q. Still evening. When the evening is quiet, you can hear that train from your place,

can't you?
A. Not unless I'm outside the barn.
Q. But outside the barn, you can hear that?
A. Outside the barn, off in the distance, yes.
Q. Okay. Now, you weren't present for the recordings that took place between Mr. Fairfax and Mr. Steele on June the 9th, were you?
A. No.
Q. So you did not hear how your husband spoke on that occasion, did you? The answer is yes or no.
A. I can't answer that yes or no.
Q. Did you hear him speak on that occasion, on June the 9th --
A. No, I didn't.
Q. And on June the 10th, when Mr. Steele was speaking with Mr. Fairfax outside the riding arena, you were not present for that conversation; isn't that correct?
A. No, I wasn't.
Q. You know, don't you, Mrs. Steele, that the voice on the June 9th, 2010, recording is the voice of your husband and the voice of Larry

Fairfax?
A. Parts, but not all of it.
Q. And you know that the voice that's heard on the recording of June 10th, 2010, is the voice of Edgar Steele and Larry Fairfax, don't you?
A. No, I don't.
Q. Do you remember a recording that was played here in court during your direct examination of a telephone call that was placed by Mr. Steele on June the 13th to you?
A. Yes.
Q. So that was shortly after his arrest on June 11th; correct?
A. Yes.
Q. Was that the first time you and he had had a chance to speak after his arrest, was June 13th?
A. No.
Q. So you had spoken on another occasion, another phone call?
A. Yes.
Q. In fact, you had many phone calls with Mr. Steele while he was in jail, didn't you?
A. Until the 15th.

Q. On June the 13th, which has been admitted -- that conversation of the jailhouse call from Mr. Steele to you on June 13th which has been admitted here in evidence, do you remember him saying that he thought you might have a boyfriend over in Oregon City? Do you remember that in the recording?
A. He said it was a passing thought.
Q. So you know that your husband did entertain the suspicion of you having a boyfriend; is that correct? That's a yes-or-no question.
A. Yes.
MR. HAWS: Thank you. No further questions.
THE COURT: Redirect?
REDIRECT EXAMINATION
BY MR. McALLISTER:
Q. Mrs. Steele, you have spent a good deal of time reviewing the cell phone records of your husband and your own records in this case; correct?
A. Yes, I have.
Q. And on June the 10th, at approximately around 9:00, there is a lengthy telephone conversation between you and your husband; correct?

A. Yes.
Q. I believe it's 34 minutes long, according to the telephone billing records.
MR. HAWS: Your Honor, I believe that we're going beyond the scope of cross-examination.
THE COURT: I don't know if we are or not. I'll give you some leeway.
BY MR. McALLISTER:
Q. Did you have that type of phone conversation with him?
A. Yes, I did. It was a long -- I don't know how long, but it was long.
Q. Do you recognize the --
A. I -- I --
Q. Go ahead.
A. What?
Q. You recognized his voice?
A. Yes, I did.
Q. And you discussed various issues and problems of concern to both of you; correct?
A. Yes.
Q. Do you remember what you talked about on June 10th, the night before he was arrested?
MR. HAWS: Objection. Relevance.
THE COURT: Just yes or no. Do you recall?

THE WITNESS: Yes.
BY MR. McALLISTER:
Q. Was there anything in that telephone conversation that was, in your opinion, a fight between you?
A. No, not at all.
Q. Okay. What was the conversation about?
A. It was about my -- working on my mom's house to try to get it short-saled and her health issues and -- and what the next steps were, and then how I was looking forward to going home and he was looking forward for me going home and -- and saying we loved and missed each other.
You know, that -- because other than the "love and miss you," it was primarily on how to save my mom's home.
Q. All right. In the 26 years of your marriage, has your husband, Edgar Steele, ever hit you?
A. No.
Q. How many times do you think he has even raised his voice to you?
MR. HAWS: Objection. Foundation. Form of the question. Relevance. Speculation.
THE COURT: Overruled.

BY MR. McALLISTER:
Q. My question was: Do you recall on how many occasions that your husband has even raised his voice at you?
A. Well, raised his voice? He has a strong voice. I can't recall because it wasn't -- nothing memorable. I mean, it was -- I raise my voice sometimes when I'm excited.
Q. All right. Is it fair to say that, in this case, you do not believe the charges filed against your husband?
A. (Inaudible) --
MR. HAWS: Objection, Your Honor. Calls for speculation.
THE COURT: Sustained.
MR. HAWS: Move to strike.
THE COURT: Sustained. The jury is instructed to disregard the witness's last response.
Counsel, I have already given a pretty clear indication on the court's ruling on that, so I'm going to ask you to refrain from those questions in the future.
Mr. Haws, do you have any recross?
MR. HAWS: No further questions, Your Honor.

THE COURT: You may step down, Ms. Steele. Thank you.
THE WITNESS: Thank you.
THE COURT: Counsel, we're probably at a point where we ought to just go ahead and take the afternoon recess.
Counsel, there is the matter that we discussed this morning before we started with the jury. I'm not sure if that's going to be teed up for us at -- I think what we might do is have the jury come in about 15 minutes later, because I'm not sure -- there is a time difference if -- well, actually, I guess the time difference won't be an issue.
I think there is a chance, rather than have the jury come and just sit, let's have the jury come 15 minutes later. We'll start at 8:45 with the jury and 8:15 with counsel for that issue. I just don't know how long that argument may take.
So I think, for that reason, I think we're going to have to take that -- we'll just proceed in that fashion and start with the jury just a little bit later.
Ladies and gentlemen, as we take the

recess, I'm going to again admonish you not to discuss the case among yourselves or with anyone else. You are not to form or express any opinions about the case until it is submitted to you.
Continue to follow the court's admonition about juror conduct on the evening recess. And I won't repeat it all except, again, to remind you not to -- to be very careful to avoid reading any newspaper accounts or watching or listening to any radio or television accounts concerning the trial. And, likewise, continue to follow all of the court's directions in that regard.
And, likewise, there are some individuals who are in the courtroom today that were not earlier. I have instructed everyone in the courtroom to give the jurors wide berth as they leave the courthouse. Allow them to proceed first down in the elevators. And only after they have cleared out will you be allowed to go ahead and enter the general entry area around the elevators.
And then tomorrow morning, I think the jury assembly room should be free. So we'll just have you reconvene at -- try to be here a few

minutes early. If you're here early and we're done with the matter we need to take up, we'll start a little sooner than 8:45, but at least be here by 8:45 and be ready to go.

(Recess.)

(Jury absent.)

THE COURT: You're indicating that you intend to call Dr. Papcun?

MR. McALLISTER: Well, in light of the court's ruling, I thought I would raise the issue at this time and determine whether or not the court is going to permit the calling of Dr. Papcun in light of the testimony from Kelsie Steele and Cyndi Steele regarding the --

THE COURT: Well, I was pretty clear in indicating it was -- that there would need to be testimony from whatever source -- and I didn't indicate what the source would be -- that the jury could conclude or at least raise an issue with the jury that the voices on the recording were not those of Mr. Steele or that there was some evidence that there had been some modification.

Mr. Haws, I don't want to rule without hearing your side of it. If you want to take that up tomorrow morning -- I don't know how that

affects the defense in terms of getting Mr. Papcun here if I permit it. But it might be better just to include that on the list of things we'll cover tomorrow morning. Perhaps start at 8:00 instead of 8:15.

MS. WHELAN: Judge, I would just ask that you look at the transcript that was created from your ruling. Because what you said wasn't if the voices were different; it was "if somebody testifies that something was said that doesn't appear on the tape or that something wasn't said that does appear on the tape."

THE COURT: I understand that is what I said. I guess I had envisioned there would be some testimony from someone to that effect, but I tried to be careful not to limit how that might occur.

MS. WHELAN: I'm just asking that you look at the transcript.

THE COURT: I will. I will. Is that going to be a problem if we just address it tomorrow morning at 8:00?

MR. McALLISTER: Yes, Your Honor, it will be, in terms of -- in terms of getting him available and having him -- if the court rules

that he is permitted to testify, it will be difficult.

THE COURT: The only thing I can say is be here at either 4:30 or 5:00. I've got a hearing at 3:30 that will take at least an hour. And I've got a conference call right now that I'm late for and I have to take.

MR. McALLISTER: 4:30 or 5:00, or 4:30?

THE COURT: Well, 4:30. You may have to wait until I'm done with the hearing. I've got a summary judgment motion in a civil matter at 3:30. All right.

(Court recessed at 2:31 p.m.)

(Court resumed; jury absent.)

THE COURT: What I was trying to do, and, of course, I was ruling from the bench, I did not have a chance to write out the decision, simply my attempt to articulate my concerns.

I obviously found that Mr. Walsh was not qualified by experience, training or education to offer the opinions that he was offering. I concluded that Dr. Papcun was so qualified, but that his opinions would not be relevant to this proceeding at that point because an issue had not been raised, and his expertise would assist the

jury.

Primarily there was no evidence that, particularly given Dr. Papcun's limited testimony, which was only that there were, I don't recall the exact term, I will refer to them as artifacts. I think there was electronic signatures and several other terms used that those were unusual and perhaps in greater number than he would have anticipated, but he was not -- he was very careful to say, "I'm not going to indicate what caused those."

Given that limited opinion that would only become relevant if, in fact, there was some indication that perhaps what was on the tape was not an accurate rendition of what occurred during the time the conversations were being, allegedly were being, recorded.

I will indicate that my intent was more to provide an example of how I thought this was going to likely come before the Court, which would be some testimony that, in fact, there were statements made at that time not recorded or that there were items on the recording that were not, in fact, said at the time.

Obviously we have not had that

predicate provided up to this point. I anticipated it might come either through cross-examination of Mr. Fairfax, perhaps by Mr. Steele taking the witness stand. So far neither has occurred.

What has occurred was testimony from two individuals familiar with Mr. Steele's voice, his cadence, his syntax, although I am not sure that we should have allowed that without someone's qualification to know what syntax is. But my inclination now is that was probably adequate under what my general intent was in ruling on Dr. Papcun's testimony.

But I am willing to hear very brief argument on the point, starting with the Government since my inclination is to permit Dr. Papcun to testify.

Again, don't push me with my own petard use of the language because I know what I said, but understand I was trying to think of the context in which I thought that would be presented. I did not anticipate that it might come in the way that it did here and, therefore, my rulings kind of focused more on what the underlying thought process was, not the specific way in which it is

presented.

Ms. Whelan.

MS. WHELAN: There is no petard in my argument, Judge.

THE COURT: We'll see.

MS. WHELAN: Here is the problem: During the *Daubert* hearing on the 20th and 21st, Defense counsel specifically said it was not seeking to introduce evidence of voice identification. There is a difference. And because that was solely the opinion of Mr. Walsh, it had nothing to do with Dr. Papcun. And when they said they were not going into it, the United States did not go into the numerous independent experts and voice comparisons who have shown there is no scientific validity for the voice comparison. And we had a stack of those starting from '79 to 2009.

THE COURT: I'm not sure I am tracking with you. No scientific validity of voice comparison where an individual can listen to a recording and say, That sounds like someone I know or isn't someone I know? Are you talking about electronic comparisons of voice?

MS. WHELAN: Judge, what I can tell you is in 2003 the European Conference on Speech

Communication and Technology found there was no scientific process that enables one to uniquely characterize a person's voice or to ID with absolute certainty an individual from his or her own voice.

THE COURT: I am assuming they are talking about voice patterns captured electronically in some fashion.

MS. WHELAN: And they may have been.

THE COURT: I don't know how you can say scientifically a person can or cannot recognize a person's voice. Go ahead. Maybe we are talking about two different things. Go ahead.

MS. WHELAN: I don't think it is you can't recognize, it is that you can't say specifically, That is not the voice. And here is, Judge, what I think is important.

What we have is the testimony of Mrs. Steele and Ms. Steele saying part of the tapes sounded like Mr. Steele's voice, but it didn't convince them to change their mind. They were not part of the conversation and, in fact, they weren't even in the state when those conversations occurred. It is just a lay person who has spoken to somebody saying that didn't

sound like his voice.

Now, what does the jury have? The jury has the June 9 recording, the jury has the June 10 recording, the jury has the June 13 recording between the Defendant and Rex Steele, and the jury has the June 13 recording from Mr. Steele and Mrs. Steele. They can listen to that and say whether they believe it's the voice. They can hear what is there.

But to bring in what Dr. Papcun is going to testify about, the transients and electronic signatures, and again those issues, I think the Court called them artifacts, the United States believes that it will result in confusion. The jury can make the determination. The question goes to voice identification.

Nobody has brought up, at least in testimony, the issues with the recording. And while counsel may say that it was part of the letter that was written to Ms. Loginova, Mr. Steele had not heard those tapes. It was his speculation at that point on the dates that he sent that as to what he thought could have happened.

Judge, under *U.S. v. Castaneda,* which

is a Ninth Circuit case, 94 F.3d 592, the Ninth Circuit held that Rule of Evidence 403 limitations apply to expert testimony. That they can be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, and is misleading to the jury.

As the Supreme Court observed in *Daubert,* "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing the possible prejudice against probative force under 403 exercises more control." Defense said they were not going into voice identification. What has been brought up is voice identification. It is confusing to the jury and it should not be brought up.

And I didn't bring up anything about your ruling.

THE COURT: You were kind. Thank you. Mr. McAllister.

MR. MCALLISTER: Thank you, Judge. I do not intend to wax eloquently for very long at all.

In fairness to the Court, and I suppose in fairness to the Government, it would be our

intention to call Dr. George Papcun as the next witness. However, there is another issue that has arisen that I think I better explain before I make my argument on his testimony.

He is not in the country at the moment; he is on a trip outside the United States with his wife. This trip had been planned for I don't know how long. She had recovered from a very serious medical problem. It was planned, it was paid for, and the Defense did not put him under subpoena before he left.

He has been in contact with his e-mail daily and he is available to testify by video conference, if we could set it up by Skype just like we have heard about in this trial. He is prepared to do that. But I don't think he can voluntarily -- I don't think he will come back voluntarily to be here in person. I don't think he can physically get here.

THE COURT: Where is he at?

MR. McALLISTER: Bora Bora in the south seas. I want to tell the Court that. I am assuming the Government is going to object to it, although I think if the Court permitted a video conference they could cross-examine him as they

have before. I want everybody to know that at the outset.

Judge, in addition to Cindy Steele and Kelsie Steele's testimony, there is in this record Government's Exhibit 1-A and 2, which is the telephone call and the letter to Tatyana. In the letter that the Government has presented it says that, "A man who worked for me stole silver bullion that I had hidden on my property, about 45,000. Then he went to the ADL, an American-Jewish organization that has hated me for many years I have tried as a lawyer, and because of my writings and speeches the ADL manufactured audiotapes using recordings this man secretly made of me talking, and also using some of the many thousands of hours of audio, mine available over the Internet. The phoney tapes make it sound like I tried to hire the man to kill my ex-wife."

Now, the Government put this exhibit in evidence. Told the jury that, in fact, it was written by Edgar Steele and that is the state of the record, and he was a participant to the conversation. And he is stating in writing that, in fact, that someone has made phoney tapes to make it sound like I tried to hire the man to kill

my wife.

In addition, in the recording that was played to the jury between Mr. Steele and Mrs. Steele on June 13, 2010, there is a statement by Mr. Steele, "This is going to be a mission impossible, a world-class level production. It probably is going to be multiple recordings put together from me into something highly improbable, and you are going to be convinced it is me talking, saying these. I guarantee it isn't, sweetheart. I love you dearly. I would never hire, I would never be so stupid as to hire somebody, least of all to kill you."

That is in evidence. Those are statements by the Defendant that I think fall under the Court's previous ruling as to Mr. Papcun.

I want to say one more thing, Judge, and that is there is no issue here that the Government can't rebut this. Obviously you heard their witness, and what we are asking is just that the jury be able to hear both of them or any additional witnesses the Government wants to call in addition to who they presented at the hearing on this issue previously.

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They have two other experts endorsed, too, that they didn't call at the hearing. We could do it all by video conferencing so we wouldn't have to bring their witness back from Washington and we could accomplish that. Both sides would have an opportunity to cross-examine.

THE COURT: Let me ask you, has Dr. Papcun done any further studies or evaluations such that his opinions will vary from what is set forth in his report or what he testified to last week?

MR. MCALLISTER: No, he hasn't done anything further.

THE COURT: You do not anticipate he will testify any differently?

MR. McALLISTER: I do not. Thank you.

THE COURT: Response, Ms. Whelan.

MS. WHELAN: Judge, again, this is not evidence like DNA, it is not evidence like fingerprints. It is evidence of listening to and deciding if it is somebody's voice. The jury has two unconverted known samples -- unconverted is not the right word -- uncontested known samples of the June 13 calls between Mr. Steele and his son, Mr. Steele and Mrs. Steele.

The Defense can make their arguments.

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They can argue based upon what they have, and the jury can compare those and listen to those. But this is not DNA evidence. It is not something with scientific need.

As far as having him testify from Bora Bora, Judge, I tried to be accommodating, but given this witness's unique testifying style, and how he addressed himself and conducted himself in court as far as answering or not answering witnesses, I would want him physically present.

So we would object to him appearing over Skype or the Internet or anything. Plus, my understanding is the Court does not accept Skype. What we had to do with Ms. Loginova an it was not Skype, it was --

THE COURT: I'm not sure. Let me say we do not do Skype. The only time I have allowed witnesses to testify from a remote location was when an arrangement could be made to make that connection using typically court-to-court, where someone would appear in a court somewhere else here in the United States.

I have no idea whether he can appear from Bora Bora, and it is now after 5:00, our technical folks are gone. You would have to visit

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with them in the morning whether it can be done or not. Our system may not be at all compatible. I just don't know. If it can be arranged, that is one thing. If not, that is another, and it may be that he won't be the next witness to testify regardless because of that. I understand your point, though.

MS. WHELAN: In short, Judge, again, we object, one, because of the type of evidence it is and the jury can't test it. We object, two, because we don't believe the foundation has been laid. We object three, because it is confusing. And fourth, because he is not available.

Thank you.

MR. McALLISTER: Judge, we know where he is. I believe he is at a business center -- he will be at a Four Seasons hotel. And Your Honor is right, we don't know at this point whether we can make the technical arrangements, but we believe we could.

THE COURT: Here is my view: First of all, I understand, Ms. Whelan, what you are saying about the challenge of relying upon a witness's testimony concerning whether or not it is a particular individual speaking on a tape.

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But as I noted, I think at one of our sidebars, Rule 901(a) -- excuse me, (b)(5), specifically anticipates that identifying a voice is precisely the kind of thing that lay witnesses would do. It sets forth the minimalist foundation that would need to be laid to authenticate that recording.

And it seems to me the opposite is true, that if we can rely upon witnesses to identify that this is, in fact, the voice of an individual, then again, the opposite is true: You can also have witnesses say that is not the voice of my father or that is not the voice of my husband. And that, moreover, in terms of the cadence, intonation, grammar, that is not consistent with the way our husband or father talks. I think that raises an issue. Now, whether the jury is persuaded, that is another matter altogether.

But I think given those circumstances, consistent with my pretrial ruling, and I tried to make clear that I was not suggesting -- the newspapers picked it up in an odd way. They picked up that I was excluding Dr. Papcun, and there was some reference that he might be allowed

to testify, but I fully anticipated that we would address the issue again in some posture and then I would have to rule at that point.

But I think at this point I would allow him to testify, if arrangements can be made, and, of course, Dr. Papcun will have to be placed under oath. It is what is good for the goose is good for the gander argument. We certainly allowed that with Ms. Loginova and I think we are roughly in the same position here.

I do think, however, that Dr. Papcun will need to be kept on a very tight leash, and I do not anticipate allowing him to testify to anything different from A, in his report and B, in his examination last week.

I think counsel has transcripts, I am assuming, and we will be able to approach that appropriately. If Dr. Papcun starts wandering, then I will intervene, although it is difficult to do so in a live remote broadcast.

That will be the ruling of the Court. What this does to our schedule, I don't know. We will perhaps discuss that tomorrow morning. We will meet at 8:15 and take up the issue of the Fairfax writing, a budding Nobel author, Nobel Prize for literature. We will see how that shakes out tomorrow morning.

We will be in recess until 8:15 tomorrow morning.

(Proceedings concluded at 5:05 p.m.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff,	:	Case No. 10-00148-N-BLW
vs.	:	**JURY TRIAL**
EDGAR J. STEELE, Defendant.	:	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 4

April 29, 2011

Pages 762 to 1034

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(Government's Exhibit 43 admitted.)
THE COURT: Ms. Steele, I'll ask you to retake the witness stand. As you're stepping forward, I'll remind you, you are still under oath.
You may inquire, Ms. Whelan.
MS. WHELAN: Thank you, Your Honor.
CYNDI STEELE,
having been previously sworn to tell the whole truth, testified as follows:
CONTINUED DIRECT EXAMINATION
BY MS. WHELAN:
Q. Mrs. Steele, have you conducted any interviews in this case?
A. Yes.
Q. Do you recall having talked to Jamie Kelso, Michael Collins Piper, David Gahary, Pastor Dan, and Jeff Rense (phonetic)?
A. I don't remember Pastor Dan, but probably, yes.
Q. I'd like to direct your attention to an interview you did with David Gahary of the "American Free Press" this last spring. Do you recall that interview?
A. I have made a lot of interviews. I

can't recall that one in particular.
Q. Do you recall during any of the interviews, then, saying that your husband talked about this exact scenario?
A. I could have said that.
Q. Your husband believed he was going to be set up by the United States, didn't he?
A. He believed that people were coming after him and eventually would come after him, yes.
Q. He had been telling you that for quite some years, hadn't he?
A. We had discussed it, yes.
Q. He had convinced you of that?
A. I know that he was always afraid of it. I'm not sure he convinced me of it because I didn't really believe -- I -- my way of thinking, I believe good in all people, so I had a hard time believing it, but I knew he did.
Q. So he was setting up his defense even then?
A. No.
MR. McALLISTER: I object, Judge. That is totally argumentative, and this witness couldn't answer it anyway.

THE COURT: Rephrase, Counsel. I'm going to sustain the objection.
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. Ma'am, was your husband particularly fond of the TV show or movie "Mission Impossible"?
A. I'm sure he liked it. It wasn't one that we -- I don't even recall us ever watching it.
Q. Did you hear him mention "Mission Impossible" during the phone call with you and your son on June 13th?
A. He mentioned that word a lot, yes.
Q. Did he fancy himself to be as important as the characters in that movie or TV show?
A. No.
Q. That he felt -- did you hear him say he felt it was a "Mission Impossible" attempt to get him?
A. I've heard him say that, yes.
Q. Mrs. Steele, you have not worked outside the home very much, have you?
A. No, because the ranch was my work, and so that was at home.
Q. Yesterday I believe you said that your

husband was the primary breadwinner. Is that the -- or "money bringer," is that the term you used?
A. Yes.
Q. And you said that in relation to why you had asked him for alimony; is that correct?
A. Yes.
Q. Do you recall saying yesterday that the ranch and the horses are your dream?
A. Yes. It's my dream, but my husband and I worked on it together.
Q. If your husband is convicted and in custody, there is nobody to pay for your dream, is there?
A. My dream is done as of June 11th, no matter what.
Q. Ma'am, yesterday, you discussed a little bit about money or silver that was missing from your home. You didn't report the silver missing until after your husband's arrest, did you?
A. I didn't discover the missing of the silver until after my husband's arrest.
Q. You didn't report it until after his arrest, did you?

A. No, I didn't.
Q. Do you recall making a report to the Bonner County Sheriff's Office?
A. Yes, I do.
Q. And that was in September of 2010; is that correct?
A. Yes, it was.
Q. Do you recall in that report saying that the coins were last seen in April or May of 2010?
A. Yes.
Q. When, specifically, did you realize the silver was missing?
A. It was sometime within -- between the 13th and the following week of June, somewhere in there. I don't exactly remember the exact date.
Q. When was the last time you had done an accounting, yourself, of the silver?
A. I started doing an accounting of the silver from what I knew was in the -- in that master bedroom closet after I realized that there was the potential of silver missing.
Q. When was that?
A. In June and through July.
Q. Specifically, where was the silver

missing from?
A. The silver was missing from areas that we would put silver out in outer buildings -- such that we didn't keep our silver all in one place -- and from the master bedroom. Of course, I knew that that was seized by the government.
Q. Would you agree that you had a large amount of silver bars, coins, and other items at the house?
A. Well, yes.
Q. And you had gold, as well?
A. We did not invest our savings into gold.
Q. Did you have any gold at the house?
A. Not other than jewelry.
Q. Do you recall telling the Bonner County Sheriff's Office in September that the coins were last seen in April or May of 2010?
A. Yes.
Q. That's because -- the report that you made was because your husband told you to report it, wasn't it?
A. He asked me to report it after I went and looked at the other places in all our outbuildings to discover all of the silver stashes

gone.
Q. Do you know that, in July, he also asked your son to make sure that it was reported and that it was very important?
A. I don't know about that.
Q. Do you recall telling the Bonner County Sheriff's Office that you should have had 9,047 silver coins?
A. I'm not exactly sure what you're --
MS. WHELAN: Your Honor --
THE COURT: Rephrase the question.
MS. WHELAN: Is the screen on for the jurors?
THE COURT: It is.
MS. WHELAN: Will you turn it off, please.
THE COURT: I'll turn it off.
BY MS. WHELAN:
Q. When you spoke to the Bonner County Sheriff's Office in September, did you tell them that you had -- by your accounting, that you should have 9,047 silver coins?
A. That I should have? I still -- I'm really not sure what --
Q. And I appreciate that. Maybe I'm asking it poorly. But I'd just ask if you could

look at your screen. I'm going to --
THE COURT: Don't repeat anything that's on the screen. It's only being shown, I think, to refresh your recollection.
BY MS. WHELAN:
Q. Do you see where I pointed, ma'am?
A. I'm sorry. I thought you were talking dollar amount, and that number was not --
Q. I'm sorry if I was --
A. -- computing with me.
Q. I understand.
A. That looks about right. I just -- that looks about right. I don't remember the exact amount at this time.
Q. It was --
A. I did the calculations at that time.
Q. It was a pretty specific number, though, wasn't it?
A. Yes.
Q. And you told them, when you made that report, that the FBI had returned 6,180 silver coins. Do you recall saying that?
A. I had -- I had -- I recall saying the amount that the FBI had returned to me, yes.
Q. And, actually, on July 29th of 2010,

the FBI had returned almost 7,000 coins to you, hadn't they?

A. When I recounted and went through everything, it was -- it's the number that was on there.

Q. Ma'am, is that your signature at the bottom of that page right in front of you?

A. Yes.

Q. And, again, this is just offered to refresh your recollection. Please don't testify from it.

Do you see here where you -- you signed that you received 5,750 one-ounce coins?

A. Yes.

Q. And 750 --

THE COURT: Counsel, wait, wait. This is, again, not an exhibit admitted.

MS. WHELAN: Yes. I realized as soon as I went down that road, Judge. I'm sorry.

BY MS. WHELAN:

Q. Did you receive 750 silver dollars from the FBI? Do you recall?

A. Yes.

Q. And did you receive 500 JFK half-dollars?

A. I'm trying to do the calculation here. Sorry. Two bags of 25 rolls.

THE COURT: Well, just -- do you recall? Testify from your own memory. If your memory is -- if you don't recall, you can use this to refresh your memory.

And, Counsel, I don't know that we're here to establish -- let's --

THE WITNESS: I count -- that two bags had always confused me. I -- you know -- and then I kept, you know -- I did get confused on that part. I think I assumed that -- I think I mis- -- undercalculated the two -- the two bags.

BY MS. WHELAN:

Q. When you --

A. Because I wasn't sure if there -- because I forgot if there -- because I didn't know if there was 25 in -- per both bags or 25 in each bag, and I -- and I missed on that.

Q. Ma'am, when you reported the silver as missing, you didn't actually know if it was missing, did you?

A. It was missing.

Q. You didn't know if it was in the custody of the FBI, though, did you?

A. Well, no, I didn't. Because --

Q. But, during the course of that, you made sure in that police report to put that Larry Fairfax was your suspect, didn't you?

A. After I confirmed that the FBI hadn't taken silver out of any of the other buildings and it was only out of the master bedroom, that is when I suspected Larry Fairfax, yes.

Q. In the report, you made sure to mention Larry Fairfax, didn't you?

A. Because I believe Larry Fairfax was the one that stole the silver, yes.

Q. You also told the deputies, though, that the silver that you thought was missing could be with the FBI?

A. Well, yes.

Q. You were trying to establish this idea that your husband told you that Larry Fairfax may have stolen from you to help his defense, weren't you?

A. No. I was telling the truth of what I knew.

Q. And part of that truth was based upon things that your husband told you?

A. I based my investigation on things that

my husband had told me, and then I investigated.

Q. So your conclusion was, in part, based upon things that your husband told you?

A. Only because my investigation confirmed it.

Q. And those were calls from jail where he was trying to make sure that this was set up; correct?

A. No.

Q. Ma'am, yesterday we discussed the difficult times that you had in your marriage in 2000. And I apologize that we need to go into it again. Again, I will try to be brief.

Do you recall getting an email from your husband on June 13th of 2000 which included a copy of a poem or missive entitled "Don't Get Married"?

A. I remember there being a poem, but I don't recall -- that was ten years ago. I don't recall that -- what it said or what the poem was.

Q. Ma'am, I'm going to ask you to look --

THE COURT: The jury monitor -- the jury projector, again, is not on, so you may show something to the witness if you wish.

MS. WHELAN: Thank you.

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BY MS. WHELAN:
Q. What's been marked and identified as United States Exhibit 103. Can you see what's -- I don't want you to testify from it, but can you see what's at the top of it?
A. Yes.
Q. And is that your email address? Or was it back then?
A. It must have been back then.
Q. Now, I want to ask you just to look at this exhibit. In looking at that, do you recall getting that from your husband?
A. I don't recall this. I'm not -- you know, he wrote it, but that -- that wasn't the poem that I was thinking about.
Q. But you do agree that this was sent to your email in 2000?
A. Well, I agree. I just don't recall it.
MS. WHELAN: Your Honor, I'd move for the admission of Exhibit 103 and ask permission to publish parts of it to the jury.
MR. McALLISTER: Your Honor, I object. I think if she doesn't recall it, there is no foundation that it's authentic in any way.
MS. WHELAN: Judge, she said it was from her

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email.
THE COURT: Well, at this point, I'll have to sustain the objection. I'm not sure the witness has adequately identified it to lay a foundation.
BY MS. WHELAN:
Q. Mrs. Steele, in the "To" line of Exhibit 103, what does it say? Can you look at that?
A. I'm sorry. Which line?
Q. The "To" line ma'am, right here.
A. Well, it's from Edgar Steele address -- email -- I don't even remember that email address from him, actually. I have never seen a "Pop.net," but -- and then my email address.
Q. Ma'am, during this time in your life, you and your husband were communicating through email; is that right?
A. Emails and phone calls and when he was home.
Q. And I think you previously said that the email address of who you -- of you, which is what I asked you, the "To," that is your email address; correct?
A. Yes.

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Q. Your husband has had many emails; correct?
A. Yes.
Q. Do you remember one "Bobleep.com"?
A. Yes.
THE COURT: Counsel, you said that he has had many emails. Do you mean email addresses?
MS. WHELAN: I do. Sorry.
BY MS. WHELAN:
Q. He's had very many email addresses; correct?
A. Yes.
Q. Looking at this, just the top part of this email, would you agree that this is an email that you received from your husband?
A. You know, I don't recognize this email. I mean, I don't recall it. That particular email from my husband, I don't recall it. But I can't say it wasn't one of his, because he has had many. But it's just not one that I remember, and it's one that he hasn't used at least in the last several years.
Q. Okay. Looking at just the addresses -- not the content, not whether you recall receiving it, but just the addresses and then that first

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paragraph, would you agree it's an email you received from your husband?
A. Because of the addresses, I have to agree, but I don't recall this particular one.
MS. WHELAN: Your Honor, I would move for the admission of Exhibit 103.
MR. McALLISTER: Same objection in addition to the time, Your Honor.
THE COURT: The time being a relevance objection?
MR. McALLISTER: Yes, Your Honor. Lack of foundation, lack of relevance, outside the scope of the events in this case.
MS. WHELAN: Your Honor, if we were to discuss the relevance, I --
THE COURT: No. All right. I'm going to overrule the objection. The witness has -- on the relevance issue, the court has discussed that at sidebar yesterday and this morning before the jury came in as to the basis for the ruling. It's related to that same issue that we discussed.
In addition, in terms of foundation, the witness's last comment, I think, is sufficient to lay the foundation. It's for the jury, obviously, to determine whether this was, in fact,

authored by Mr. Steele or not, but I'll -- that's an issue for the jury to decide.

I think there is enough foundation under Rule -- I think it's 901, to admit the exhibit. So the exhibit will be admitted.

Counsel, I'm concerned, though, that the only thing that should be admitted would be the statements which at least have some indication they may have been authored by Mr. Steele. I can't see the entire exhibit. So that's the only portion of the exhibit that would be admitted -- and, of course, anything that he forwarded as part of that communication.

So my problem is I can't see the entire exhibit.

MS. WHELAN: But whatever he forwarded is also admitted?

THE COURT: Yes. Now, if you will be careful and limit it just to the text and then this attachment, I'll publish it now to the jury, but I don't want to go beyond that because I don't know what else is there. Are you ready?

MS. WHELAN: Could I have just one second?

THE COURT: Yes.

MS. WHELAN: Your Honor, all that is

contained in the subsequent pages is merely the attachment. There are no other dialogues or exchanges.

THE COURT: All right. Well, with that assurance, I'll published it to the jury. And Exhibit 103 is admitted.

(Government's Exhibit 103 admitted and published.)

BY MS. WHELAN:

Q. Mrs. Steele --

MS. WHELAN: Judge, I'd like to just leave it up there for the jury. I don't want to ask her to read this. It's my prerogative --

THE COURT: You can publish it to the jury however you wish.

MS. WHELAN: Okay. Thank you. I'm going to leave it up there for a few seconds, and then we'll move to the next page. The jury will have this with them, correct, Judge, so we don't need to take up --

THE COURT: Yes. But, again, as part of -- after the evidence is submitted, before the exhibits are sent back to the jury room, Counsel will have an opportunity to review them carefully to ensure that only those portions that I have

admitted actually go back to the jury room. And if there is any need for redactions, we can deal with that before the exhibits go back to the jury room.

Counsel, I'm turning off the jury projector while you're looking at it --

MS. WHELAN: I'm done.

THE COURT: -- just to avoid any inadvertent publication to the jury of something that's not been admitted.

MS. WHELAN: Judge, the pages are only the attachment, and I was just looking to get to the next page. I had erroneously put up the first page.

So would the court publish it to the jury, Your Honor?

THE COURT: I'm sorry. Was this an additional portion?

MS. WHELAN: It's just -- it's just the next page of the --

THE COURT: I'm sorry. Yes. I'm sorry. I didn't understand.

BY MS. WHELAN:

Q. Now, Mrs. Steele, there is a line in this missive or poem that he emailed you that

says, "That it's the kids she'll use, should things get nasty, to tear your guts out. If you think that Cupcake won't do this, you're crazy. Not all -- true, she may not. Not all women do or not to the same degree, but you won't know until it's too late, and the courts will do anything she wants." And then, "Your ex will warm to calling all the shots. She may cancel your visitation now and then." And then it goes on.

In the divorce complaint that you had filed, you were seeking to have the children with you the majority of the time?

MR. McALLISTER: Objection. Asked and answered.

THE COURT: Counsel, I'll give you some leeway, but probably just this one question, and then we move on.

You may answer the question.

THE WITNESS: That was in the decree, and I was --

THE COURT: Not the decree.

THE WITNESS: The --

MS. WHELAN: Complaint.

THE COURT: The petition or complaint. I just --

THE WITNESS: Complaint, petition. Sorry. Because I was taking that under the advisement of the attorney that I had, but it wasn't -- I always knew it was going to be shared custody, and he could see our children as much as he wanted, and the children would be with me.

It was primarily because of schooling and their activities. But outside that, he -- I wanted the -- our children to have time with him.

BY MS. WHELAN:

Q. In the complaint, however --

A. Yes.

MS. WHELAN: Judge, could we turn off the jury projector now?

THE COURT: Yes.

BY MS. WHELAN:

Q. Ma'am, would you agree with this statement: That regardless of the stability of your marriage or any issues between you and the defendant, you were both primarily concerned about your children?

A. Very definitely, yes.

Q. You both love your children, and you have never doubted his love for your children; correct?

A. I have never doubted his love for our children at all.

Q. And the ranch was a place for you guys to raise your children?

A. Yes.

Q. Your husband viewed it as a symbol, though, of wasted money, didn't he?

A. He knew in reality it was not a money-maker, but he knew it was my dream and supported it.

Q. The ranch didn't fit into his future, did it?

A. I honestly can't answer that yes or no.

Q. Ma'am, if --

MS. WHELAN: And the jury screen is off, yes, Judge?

THE COURT: It is off.

BY MS. WHELAN:

Q. Looking at what's been marked as United States' Exhibit 109, you see that -- without testifying about it -- it is a letter addressed to you back in June of 2000; correct?

A. Yes.

Q. It is a letter -- a typed letter but it's signed by your husband; correct?

A. Yes.

Q. I'm going to make a mark on this right here and here. Can you read where -- not out loud, just to yourself -- what I've marked, ma'am.

A. Yes.

Q. Does looking at that help refresh your recollection of how your husband viewed the ranch?

A. Yes.

Q. And he told you it didn't fit into his future -- this is back in 2000 -- didn't he?

A. And that would be a correct statement since, at that time, we were going through divorce proceedings. Separately, it wouldn't fit into his future.

Q. Ma'am, I would ask that you then look -- the ranch just wasn't in his future because of the divorce. It was because he saw it as a waste of money, and it was your thing and not his; isn't that correct?

A. He knew it was taking a lot out of our money. So, you know, yes. But he never said no.

Q. Your husband didn't want to be at the ranch anymore. He wanted to be in California; isn't that right?

A. During that time, yes --

Q. Thank you.

A. -- but he came back.

Q. We discussed about your husband going onto Match.com. You also created a profile on Match.com. Do you remember what your user name was?

A. I don't remember the full name. I think I used "Jenny" or "Jennifer" for the first name.

Q. Do you recall having an email address at that time of "Horsedancer_2000@Yahoo.com"?

A. Sounds like something I would use. I don't remember what I used.

Q. I'm going to ask -- this has been marked as United States' Exhibit 106. Looking at that, does that recall what your specific user name was on the website?

A. It looks like it. I don't -- you know, I don't remember. I thought it was Jennifer. I didn't know -- I don't recall those numbers.

Q. Would you dispute that you were "Jennifer 2819"?

A. Well, looking at it now, you know -- I know I did it. If this is the exact one, I don't recall, because I put -- I put that -- I've put

that behind me when we reconciled.
Q. I would ask you: Do you recall what the defendant's user name was?
A. Actually, I don't. No.
Q. Showing you what's been marked for identification purposes as United States' Exhibit 104. Can you see that?
A. Yes. And that was his ID. That refreshes my memory.
Q. And what was his user ID on Match.com?
A. "Burbman."
Q. Ma'am, looking at that, is that an accurate picture of your husband that you've seen before?
A. Yes, I've seen that picture several times.
Q. Have you seen that picture?
A. Yes.
Q. That is of your husband?
A. Yes.
Q. Have you seen that picture?
A. Yes.
Q. Would you agree that these are accurate printouts of pictures he used on the website as Burbman?

A. Yes.
MS. WHELAN: Your Honor, I would move for the admission of Exhibit 104.
MR. McALLISTER: I object, Your Honor. May we approach?
THE COURT: Well, at this point, I don't see the relevance, Counsel. I don't know that I need to --
MS. WHELAN: I'd like to approach to discuss that.
THE COURT: All right.
(Sidebar commences as follows:)
THE COURT: What are dates of these?
MS. WHELAN: This was back in 2000.
This is the relevance: These pictures are the exact same pictures that were used on the websites that he used on his profile in 2010. The testimony is that, at this time, they're having difficulties in their marriage. He was looking to try on other women.
She says that he was well -- she was well aware of the fact that he was emailing these women and knew what was going on. We believe it's relevant. It's more likely than not that he was using the same pictures because he was looking for

women. These were the best pictures he had. And, therefore, we believe it's relevant. And we do have the exhibits, which I think are 100 and 101, which were used during the Tatyana deposition and the Brent Smith --
THE COURT: So the argument is that, because he was using the same flattering photographs in 2000, when he was going through possible divorce proceedings with Mrs. Steele, that when he uses the same photos in 2010 -- 2009, 2010 in contacting females in the former Soviet Union, that this proves what?
MS. WHELAN: Judge, it's the same MO: being dishappy in your marriage, feeling ignored, going through health issues, looking for other women. However, this time, instead of getting caught by her because she put her profile on, he learned from the other experience, and he tried to tell her it was for a case. And the emails we have don't show that.
And I think it is relevant under 401, and it is not cumulative under 403.
THE COURT: It's not cumulative. That's not the issue. And cumulative is -- I think cumulative is 403.

Mr. McAllister?
MR. McALLISTER: Judge, we have turned a murder case into a divorce case, apparently, when there was no divorce.
The prosecutor in this case has been doing nothing but trying to impeach this witness with documents that are 11 years old. It's not important to this case.
If she wants to argue some kind of motive that he wanted to kill his wife, it's -- you know, she's got to have a basis to do that.
MS. WHELAN: It wouldn't be important, but --
MR. McALLISTER: Excuse me.
THE COURT: Just a moment. Let counsel finish.
MS. WHELAN: Sorry.
MR. McALLISTER: We are so far afield, and you have allowed her from the beginning -- and I didn't object in the beginning, but I am now -- you have allowed her to impeach her over issues that have nothing to do with this case. And, you know, if the government wants to prove that as a motive, let them bring in the witnesses, but don't do it by trying to impeach the witness

or claiming -- as a matter of fact, I don't know that it's impeachment. She said, you know, she knew about the emails.

If these were last year or --

THE COURT: Counsel, I think your argument is getting -- the question now is whether we admit these. Not the emails; that's yesterday's news. We're now talking about this exhibit, which is apparently his profile on this dating site.

At this point, Counsel, I'm going to sustain the objection on relevance grounds. I understand the argument, but it seems to me the fact that he used the same pictures in 2000 as he did in 2010 is just -- is really a stretch, and I think its relevance is becoming very thin.

And then I'm concerned about, not cumulative, but, you know, under Rule 403, kind of confusing the issues.

Now, I don't agree with Mr. McAllister's statement that the divorce ten years prior is not relevant. I think it clearly is relevant in terms of the statements made by Mr. Steele, what he was aware of at the time in terms of what the consequences of the divorce would be, but this is a different issue.

You have laid the foundation. It may be at a later point, after I've seen whatever the communications are he may have had with the woman in the Ukraine or otherwise, that I may reconsider. But at this point, on relevance grounds, I'm going to sustain the objection.

You can renew the proffer at a later point. The foundation has been laid. I'm not concerned about that. I think the witness has identified this sufficiently, but I think the relevance right now has just not been established.

Okay. That's my ruling.

(Sidebar concluded.)

THE COURT: At this point, I'm going to sustain the objection to Exhibit 104. It may be proffered at a later point in time, but that will be the court's ruling at this point.

BY MS. WHELAN:

Q. Ma'am, how did you discover that your husband was on Match.com?

A. He was coming home from California and acting different than I -- than he had over the last 15 years of our marriage. He was being honest with me on how he was not happy being at home, and he didn't know what he wanted out of

life and that he wasn't feeling -- every time he came home, he wasn't feeling comfortable there.

And he was acting different. Things didn't seem the same as they had been over the 15 years, so I started feeling like something was up. So I started looking into his computer, and I came across some emails which indicated to me that he was looking for other women.

And I connected it up with the websites or website. I think there was one; there might have been a second one. And that's how I knew that he was communicating with other women on the Internet.

Q. You were computer-savvy enough to go into his computer and see what he was doing?

A. Yes. He never had denied me access to his computer.

Q. Ma'am, I just asked if you were computer-savvy enough to go into his computer.

A. To pull up his email account, yes.

Q. And that was back in 2000?

A. Around -- yes, 2000.

Q. So you created -- excuse me. Strike that.

Your husband didn't tell you that he

was on a dating site?

A. No, he didn't.

Q. You created a fake profile to -- that you thought would match what you had seen as his likes to try to be matched up with him; correct?

A. Some of the likes in my -- well, some of his likes, yes. My likes were -- I put a lot of my own in that.

Q. One of the things you did is you talked about bagpipe music, which was something he specifically had put in; correct?

A. Oh, he loves bagpipe music.

Q. And you knew that that would create a match?

A. I didn't know it would create a match.

Q. You suspected it would create a match?

A. I was looking to see if it would create a match.

Q. You wanted to create a match so that you could have him email you, and then you could confront him with his betrayal?

MR. McALLISTER: Judge, I object to the form of that question. "Confront him"? I object to the form.

THE COURT: Rephrase.

BY MS. WHELAN:
Q. You wanted to --
THE COURT: Counsel, on reflection, I -- I'm going to overrule the objection. I think the witness can characterize it how she wishes to, but I think the characterization was not overly argumentative.
Go ahead and answer -- or rephrase now.
THE WITNESS: Can you reask the question now, please?
BY MS. WHELAN:
Q. Certainly, ma'am. You created your own match so that the two of you would be matched --
A. Possibly.
Q. -- and so that you could confront him with what you knew he was doing?
A. One, it was to try to confirm. I didn't know if mine would be a match, but I tried to make my profile such that it would be something he would respond to. And -- and -- I mean, yes. I mean --
Q. During this --
A. -- but I didn't know.
Q. During this time in your marriage, both you and the defendant were dishonest with each

other, weren't you?
MR. McALLISTER: Judge, I'm going to object to the form of that question, as well.
THE COURT: Overruled. You may answer.
THE WITNESS: Yes, there was some dishonesty there on both sides.
BY MS. WHELAN:
Q. You have indicated that you knew that your husband, the defendant, was writing to -- had been on a Ukrainian dating site. You knew that; right?
A. Yes.
Q. Are you aware that if you look at just women he emailed at least ten times or exchanged at least a hundred instant messages, there are well over 14,000 messages?
A. Well, I'm not aware of how many. I know that there were a lot.
Q. So you --
A. I didn't count each one.
Q. Did you know he was specifically writing to a 25-year-old woman named Tatyana Loginova?
A. I became aware of that towards, I don't know, the end -- around the spring.

Q. And Mrs. Steele, isn't it true that you previously reviewed those emails at my office on March 8th or 9th, 2011?
A. Yes.
Q. And I had asked you to come in so that you wouldn't be surprised at trial with them, didn't I?
A. Yes, but I knew what they were before I went in. I just agreed to meet and come in and look at them.
Q. And we didn't visit. I didn't want you to be embarrassed or surprised at trial; correct?
A. I wasn't going to be embarrassed because I know about them.
MS. WHELAN: Your Honor, at this time, we are moving for the admission -- excuse me -- of Government's Exhibit 76, which contains with it a 902 certification, which have been reviewed by this witness and provided, of course, to defense.
THE COURT: Is there any objection?
MR. McALLISTER: Relevance, Your Honor.
THE COURT: Counsel, I need to see the -- because I --
MS. WHELAN: Here, let me --
THE COURT: Well, perhaps it would be easier

if you just approach, and we can -- I just need to have an explanation of exactly what it is you're offering.
(Sidebar commences as follows:)
MR. McALLISTER: Did you say 96?
THE COURT: 76.
MR. McALLISTER: Okay.
THE COURT: And the dates of these communications, I'm assuming, are all --
MS. WHELAN: They're from January, Judge, of 2010 to June of 2010. I think --
THE COURT: And the only objection is relevance?
MR. McALLISTER: Judge, and to the volume here. There must be -- I don't know how many emails are attached. I think this would -- under 403, I think this would exclusively confuse the issue in the case.
And there is really no need to put this in. She's -- she's testified that she was aware of the fact that he was communicating, working on a case, writing a book about this. And to put all these in is -- it's confusing. It's misleading.
THE COURT: Okay. I'll overrule the objection. The exhibit will be admitted. It

appears -- again, the government has made clear as to its theory as to what Mr. Steele's motive was, and I think this is certainly corroborative of that.

In terms of volume, I'm assuming we're not going to go through each page.

MS. WHELAN: No. I have highlighted certain pages, Judge. And, also, as -- well, there are 14,000 pages of different -- and --

THE COURT: So this isn't all of them?

MS. WHELAN: No. That's -- this is -- this is very few.

THE COURT: Okay. Well, I'll overrule the objection, and we'll admit the exhibit.

(Sidebar concluded.)

THE COURT: Exhibit 76 will be admitted and may be published to the jury.

(Government's Exhibit 76 admitted and published.)

MS. WHELAN: Thank you, Your Honor.

BY MS. WHELAN:

Q. Ma'am, looking at this page of Exhibit 76, do you recognize those?

A. Yes.

Q. What are those?

A. Those are pictures of my husband.

Q. Are those the same pictures that he used on Match.com?

A. Yes, and the same pictures he used later for his case.

Q. Ma'am, are they the same pictures that he used on Match.com?

A. Yes.

Q. Ma'am, are you aware that -- excuse me. Would you agree that your husband told Ms. Loginova he was on the website to find only one thing?

A. I'm not particularly aware of that particular one, but it fits with what he was doing.

Q. "I'm only here for one thing, to find my second half, a girl I cannot live without. I will settle for nothing less than pure and complete love this time. I settled for less once before and now know better. It was good. It lasted a long time and produced the greatest children in the world, but I deserve more. I will not have another American woman. Never again."

Did your husband tell you he was emailing this young woman those words?

A. Words similar to that, in that exact form, but that he would be saying that he was divorced and that he was very interested in that and that -- that our marriage was not what it was, that that's what he was going to be using for his ruse to get those women to respond. Yes, I did.

Q. Your husband lied to these women, didn't he?

A. He was setting up a ruse, and he knew that was the only way he could figure out what they were doing.

Q. Ma'am, he sent this to a young, 25-year-old Ukrainian woman, and he lied to her, didn't he?

MR. McALLISTER: Judge, I'm going to object as argumentative. There is no proof of that at this point.

THE COURT: Rephrase.

MS. WHELAN: I think maybe I can do something else.

BY MS. WHELAN:

Q. Did your husband ever show you that this is who Tatyana Loginova was?

A. That looks like one of the many pictures of different girls that he showed me.

Q. So you would have --

A. I can't -- they're -- all -- all the girls I saw were pretty like this and very similar in body structure and face. I can't -- you know, off -- I can't remember her particularly because of one -- seeing it once or twice.

Q. According to you -- excuse me. Let me move on.

Would you agree that your marriage to your husband produced the greatest children in the world?

A. Absolutely.

Q. And did you know that he felt he had settled for less than pure and complete love when he married you?

A. That's not true.

Q. It's what he wrote.

A. To who?

Q. Ms. Loginova.

A. Yes, because he was setting up a ruse.

Q. Ma'am, that's what he told you, that he was setting up a ruse?

A. And that is the truth.

Q. What he told you; correct?

A. Yes, it's what he told me, and it is

the truth.
MS. WHELAN: Your Honor, I would move to strike. I know it's a delicate area, but she has no idea what his intentions were. It's --
MR. McALLISTER: Objection, Judge.
THE COURT: I'm going to allow -- the witness can -- the witness has testified as to her belief in that, and I think that's what she is indicating. So I'll allow the response to stand.
But I would caution the witness to phrase it in terms of her own belief and not suggest knowledge as to what Mr. Steele's intent was or was not, since that would be speculation.
Proceed.
BY MS. WHELAN:
Q. Ma'am, you indicated yesterday that you weren't aware that your husband intended to go and meet these girls. You agree, though, that he wrote that he intended to come over for a visit that summer and that he wanted to meet the various girls that he had established contact with.
Were you aware that your husband was asking Ms. Loginova to travel to Kiev to meet him?
A. Yes.
Q. You were aware of that?

A. I was aware that that was going to be part of it. Particularly, you know, that's something that I -- I learned from one of his later letters that I saw, one letter that I saw when I was in your office. That was the one thing. But it followed with what I knew he was going to be doing.
Q. Ma'am, you indicated yesterday that you and your husband would sometimes sit together and laugh at the emails that were sent. Looking at this page from Ms. Loginova -- can you see that if you put your glasses on? I don't know how to --
A. It's --
Q. I'll try to make it better for you, ma'am.
Does that help?
A. There.
Q. Can you read that?
A. Yes, I can.
Q. What's funny about that email from this young woman?
A. What's funny about it?
Q. You said you and your husband would sit and laugh at emails. What's funny about it?
A. Well, what was funny is -- I'm not sure

it's particularly the email that was funny. It's just that we would laugh and -- about that we didn't know that it was coming from a pretty young girl; that it could be anybody on the other side.
And please don't take -- please forgive me. But, I mean, we would laugh and say if it was a fat, old man sitting there writing these emails and that he was actually communicating with.
Q. There is nothing sexual in tone of this email? It's just a young girl's words; correct?
A. I don't see anything sexual about it, unless I'm missing --
Q. Ma'am, I'm asking you to take a look at this. And while reading it might be difficult, would you agree that the words written by your husband sound like a lovesick teenager?
A. Yes.
Q. Looking at this email from March of 2010, again, it was your understanding from your husband, based upon what you said yesterday, that between his aortic aneurysm in November and just before his arrest, he had stopped communicating with these women. That wasn't true, was it?
A. You know, he told me that early on. At what point he picked it back up -- I knew he was

going to be picking it back up, so I was going based off after his aortic aneurysm. And I knew he would be continuing with this case at some point when he felt better. So I don't --
Q. In this --
A. He was not lying to me. I knew he would be continuing.
Q. You didn't believe he was lying to you?
A. He was not lying to me.
MS. WHELAN: Your Honor, I would ask the court for some assistance here. We previously discussed this with the witness.
THE COURT: Again, I think the witness is expressing her own views. I'm going to allow it to stand. Go ahead and proceed.
BY MS. WHELAN:
Q. My question, though, was: You didn't believe he was lying?
A. He was not lying to me.
THE COURT: The question is: What did you believe?
THE WITNESS: Yes, I believed he was not lying to me.
BY MS. WHELAN:
Q. In this email, he tells Ms. Loginova he

has a genuine crush on her, doesn't he?
A. Yes.
Q. He compliments her smile and her eyes and her voice?
A. Yes.
Q. He discusses part of your family. He talks about your son Rex in this email?
A. Yes.
Q. He tells this young woman that he is "worried that Rex's mother will want to come and spend a few days at the ranch because that's where Rex is spending his whole spring break."
That doesn't cause you concern?
A. No, because I knew this was a ruse.
Q. Then he was lying to Ms. Loginova, wasn't he?
A. He was setting up a ruse, the same way the FBI agents did on my husband's arrest.
Q. He was lying to Ms. Loginova, wasn't he?
A. Just the way the FBI did on my husband's day of arrest, yes.
MR. McALLISTER: Objection. Move to strike as nonresponsive.
THE COURT: Sustained. I'll strike the last

response.
Listen to counsel's question and answer the question directly, if you can.
BY MS. WHELAN:
Q. Your husband was lying to Ms. Loginova?
A. He was setting up a ruse.
THE COURT: The question is: Was Mr. Steele lying to the -- Ms. -- I'm not sure how you pronounce the name.
MS. WHELAN: Loginova.
THE COURT: -- Loginova?
THE WITNESS: He was setting up a pretend story.
BY MS. WHELAN:
Q. Which was not true?
A. Yes, it was not true.
Q. So it was a lie?
MR. McALLISTER: Judge, I object. That's a conclusion on the prosecutor's part at this point.
THE COURT: I think it's a question.
You may answer it.
THE WITNESS: In your terminology, yes, it was a lie. It was not a lie, in my belief; it was a ruse. It was a story he was telling to get her to respond and figure out the bride scam.

BY MS. WHELAN:
Q. Mrs. Steele, your husband didn't need to fall in love to do research for a book, did he?
A. He wasn't falling in love with them.
Q. He didn't need to tell Ms. Loginova about your son or about what was -- where he lived in order to do research for a book, did he?
A. He didn't have to, but it -- but putting some reality into it makes it easier for him to -- to seem more real.
Q. He didn't need to share a picture of Missy's kittens for his research, did he?
A. If they talked about the kittens, why not?
Q. He didn't need to send a letter from the jail to Ms. Loginova expressing his love and wanting to have babies with her for research for his book, did he?
A. If he was continuing -- wanting to continue on the case, not knowing what his future was and not break it, why not?
Q. Ma'am, he could have made himself to be anybody in the world and made up fictional children, but he reported things about what was going on in your family, with your children, and

his life, didn't he?
MR. McALLISTER: Object to the form of that --
THE WITNESS: Yes, he used --
THE COURT: Just a moment.
MR. McALLISTER: Object to the form of that question, if it was a question.
THE COURT: Let's rephrase it, Counsel. I think it needs to be stated more as a question, and it appeared to be somewhat compound, as well.
BY MS. WHELAN:
Q. He could have pretended to be anybody on the Internet, couldn't he?
A. He could have, yes.
Q. He didn't -- he could have pretended to have children and given them fictional names instead of giving them real names, couldn't he have?
A. Yes, he could have, but he didn't and --
Q. Do you know what an intimacy request is, ma'am?
A. Not exactly, but I'm sure it's taking it to the next step of emails.
Q. And your husband didn't tell you that

he had made an intimacy request with Ms. Loginova, did he?

A. I know -- I don't know -- I know he was trying to set up a chat or conference. You know, what it's called, I don't know. But I knew about chat and so forth.

Q. But he didn't --

A. Or I don't know -- I know it as Skype. I don't know what it is over international.

Q. But he didn't tell you that he was asking for an intimacy request, did he?

A. Is the chat the same as intimacy? I don't know of the difference.

Q. In order to do research on this case, he didn't have to provide his contact information outside of the dating website, did he?

A. No, he didn't have to.

Q. Yesterday you indicated that your cat had kittens, you thought at the end of May or June. He didn't need to send pictures of those to a young woman, did he?

MR. McALLISTER: I'm going to object at this point, Judge, on relevance grounds.

THE COURT: Well, I think it's also been asked and answered. I think the question was

asked earlier.

BY MS. WHELAN:

Q. But you would agree, based upon his testimony -- your testimony, that this is roughly the time that Missy had her kittens?

A. It was -- yeah, it's roughly around there. We also had another cat that was pregnant. It was around there, yes.

Q. Ma'am, it was your husband who asked Ms. Loginova for her address; correct? She wasn't trying to get his address, was she?

A. I can't testify to that. I don't know exactly how that went.

Q. Mrs. Steele, wouldn't you agree that your husband was on the dating website for the exact reason he stated, which was to find his "second half," a girl he couldn't live without?

A. This was the Russian girl? And please reask the question.

Q. Mrs. Steele, wouldn't you agree that your husband was on the dating website for the exact reason he stated in his emails to Ms. Loginova?

A. No, that's not the reason he was on the website --

Q. He told you --

A. -- with Loginova.

Q. -- he was doing research for a book in case you found out or went into his computer, just like you had in 2000? So he told you about it because of that, didn't he?

A. No. He told me about it because -- he told me about it because he knew of the past. He told me about it because he wanted to discuss it with me and how I felt about it and what he was doing. Because he wanted me to know what he was doing all the way through it so I would -- I would know that it was not like before.

And that's exactly what I did know. It was not like 2000. And this was nothing but research, trying to bring down the bride scam and finding -- discovering that there was a lot of criminal activity in it, and that he saw that there was a book to write in it because there was such a criminal activity in scamming Americans out of thousands of dollars.

Q. That's what your husband told you he was doing, wasn't it?

A. Yes, he told me that, and it was the truth.

Q. Again, ma'am, that's what your husband told you?

A. Yes. And I believe it, and I know it's the truth.

MS. WHELAN: Move to strike the last part.

THE COURT: Sustained. I'll strike the last comment. The witness's statement that she believed it, however, will stand.

BY MS. WHELAN:

Q. Mrs. Steele, in the spring of 2010, your husband felt neglected by you, had fallen out of love, and was looking for a new wife to have more kids with, but he had to get rid of you and didn't want a divorce --

A. No.

Q. -- is that true?

MR. McALLISTER: Well, I object to the question, Judge, as to the form, compound nature, and the fact that it's pure argument.

THE COURT: Sustained.

BY MS. WHELAN:

Q. Mrs. Steele, you don't want to believe that your husband wanted you murdered, do you?

MR. McALLISTER: Objection to the form of the question.

THE COURT: Overruled.
BY MS. WHELAN:
Q. You don't want to believe that, do you?
A. I don't believe it. And, no, I didn't believe it, but I understood that I had to find out and make sure and look at the evidence with a clear mind and let the evidence prove whether he was or not. But, no, I did not believe it.
Q. And you don't want to believe it?
A. At this point, I don't believe it. It's not about what I want. I want to know that I am safe and I make the right decision, because this is my life.
Q. Ma'am, your husband was writing to Ms. Loginova in January, February, March, April, May, and June. He had not ceased writing, had he?
A. No. And it was for the case, whether -- he told me he had stopped, which was right after his aneurysm, and then he picked it up --
Q. Mrs. Steele --
A. -- because he was going to pick it up as he felt better.
Q. Mrs. Steele, this is all based upon what your husband told you?
MR. McALLISTER: Objection, Your Honor.

That misstates the testimony of this witness.
THE COURT: I'm going to allow the answer -- or the question to stand, but the witness can clarify if her assumptions are based upon anything else.
Why don't you rephrase the question for the witness.
BY MS. WHELAN:
Q. Ma'am, this is based upon what your husband told you, isn't it?
A. It is based on conversations we have had and what he told me.
Q. And in 2000, he was discovered on Match.com by you going into his computer?
A. Yes. And that was different.
MS. WHELAN: Move to strike the last portion.
THE COURT: Yes. I'll strike the last response. But the witness's answer that, yes -- her answer in the affirmative concerning what occurred in 2000 will stand.
MS. WHELAN: Mrs. Steele, I don't have any other questions.
THE COURT: Mr. McAllister.
CROSS-EXAMINATION

BY MR. McALLISTER:
Q. Mrs. Steele, have you ever been to Assistant United States Attorney Traci Whelan's office?
A. Yes.
Q. And on what occasions did you go there?
A. On September 21 -- I'm sorry -- September 20th and then on March 7th.
Q. All right. I want to begin with your visit with Ms. Whelan on the 20th. At that point in time, you were described by the government as the "victim" in this case; correct?
A. Yes.
MS. WHELAN: Your Honor, I'm going to object: one, to relevance; and, two, I think -- I have no idea where counsel is going -- relevance.
THE COURT: Well, I don't know where you're going, Mr. McAllister, but I don't see the relevance. What the government has characterized Ms. Steele as or what they have not would not seem to be relevant.
If you somehow quickly tie this into something relevant, I'll allow you some leeway. But if that's your question, I think we ought to just move on.

BY MR. McALLISTER:
Q. Well, when you went to Ms. Whelan's office, you had been told that you had certain rights as a victim; correct?
MS. WHELAN: Your Honor, I'm going to object and move for a sidebar.
THE COURT: All right.
(Sidebar commences as follows:)
THE COURT: If -- I think it is not relevant if you're going to make some showing or argue the government has breached its duty towards victims in this case. It's not relevant to any issue in the case, but I don't know where you're going.
MR. McALLISTER: I am making such an argument. And I'll represent to the court that this witness will testify that she was at Ms. Whelan's office, provided her --
MS. WHELAN: Can we lower our voices?
MR. McALLISTER: -- provided her with evidence in the case, and Ms. Whelan laughed at her. And that offended her greatly.
And she has conducted -- what was brought out by Ms. Whelan is that she came to her office to review letters. And Ms. Whelan even said, "Oh, I did this because I was concerned

about you."
And I'm entitled to put that in the proper perspective.
THE COURT: But why is it relevant?
MR. McALLISTER: It's relevant because she raised the issue in this case, and I think the jury has to --
THE COURT: Raised what issue?
MR. McALLISTER: Raised the issue about coming to her office and reading letters. She has raised that issue.
THE COURT: Okay. Well, I'm going to sustain the objection. I don't see any relevance to -- this interaction between the victim and the U.S. Attorney's Office, to me, is just not relevant to any issue in the case.
You know, I think there is no allegations of government misconduct. And, even if there were, it simply takes the jury's eye off of the ball as to what the issues are in the case.
Now, I'll give you some leeway. You can develop some of this if you're going to get back into something that is relevant. But simply putting into evidence any conflict between the U.S. Attorney's Office and Ms. Steele is just not

relevant.
MS. WHELAN: Judge, I think that what you need to have the background on, as well, is that, through her attorney, Mrs. Steele made a formal complaint. Our office had to handle that. She has been advised that the complaint has been dismissed.
THE COURT: Well, that's the additional reason. It then creates a sideshow for the jury that the jury is going to get caught up in, and it's just not relevant to the proceedings.
So that's my ruling.
(Sidebar concluded.)
THE COURT: The objection is sustained.
BY MR. McALLISTER:
Q. Mrs. Steele, I'm going to direct your attention to the recording that was made of a phone call between you and your husband on the 15th of June. Do you recall hearing that in the courtroom?
A. Yes.
Q. And do you recall that, in the phone call, he told you to "tell them it's not my voice on the tape"; correct?
A. Yes.

Q. And, actually, it's not a tape. It's a recording; correct?
A. Yes.
Q. But those were the words that were used?
A. Yes.
Q. And, in fact, you told him that they didn't want you to listen to the recording, that you wanted to listen to the recording; correct?
A. Yes, I did.
Q. As a matter of fact, from the first time that the FBI told you about this so-called crime, you wanted to hear the recordings; correct?
A. Yes, I wanted to hear the recordings --
Q. Did you --
A. -- immediately.
Q. -- think or believe that your husband was intimidating you in that phone call?
MS. WHELAN: Objection, relevance.
THE WITNESS: No.
THE COURT: Just a moment. Give me -- Counsel, I want to -- give me a moment. I want to review something.
Ladies and gentlemen, I'm going to allow the witness to respond. I'm going to

overrule the objection, but I -- what -- Ms. Steele's subjective belief, however, is not directly relevant. It's only -- again, perhaps it's the circumstantial evidence that we talked about on the first day of trial.
Ms. Steele is married to Mr. Steele for a period of time, and I think her experience -- having been married to Mr. Steele, that her subjective belief may be indicative of Mr. Steele's intent, which is the only thing that's really relevant here, not what affect it had upon Mrs. Steele but only what intent he had in making the statements that he did.
And given the fact that she was married to Mr. Steele for many years, that her subjective belief may give the jury some indication as to what Mr. Steele's intent was based upon the fact that she was married to him for many years and had a relationship, sometimes the -- well, I'm going to leave it at that. I'm going to allow some leeway here and allow the witness to respond.
BY MR. McALLISTER:
Q. Mrs. Steele, at the time of June 15th, when your husband had been jailed, you had been married 25 years; correct?

A. Yes.
Q. And you had had many, many conversations with him, I assume, over the 25 years?
A. Yeah. Thousands. Maybe even --
Q. And when he made this telephone call from the jail to you, he didn't know -- he hadn't listened to any recordings; correct?
A. No, he hadn't.
Q. And you hadn't listened to any recordings; correct?
A. No, not at that point.
Q. You asked for them, had you not?
A. I had asked to hear those tapes. I was asking to hear those tapes on June 12th, the day after his arrest.
Q. Okay. And no one provided you access to them; correct?
A. Not at that point, no.
Q. Okay. And you were asking FBI Agent Sotka; correct?
A. Yes, I was.
Q. And he didn't allow you to listen to the recordings; correct?
A. He kept telling me that he couldn't --

couldn't meet with me and -- and telling me why he couldn't meet with me and the reasons. And I kept trying to say I wanted to hear them immediately. I wanted -- I was willing to jump in my car and could be there in nine hours because he is telling me that he has tapes.
MS. WHELAN: Your Honor, I'm going to object to hearsay as to what Special Agent Sotka said.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. All right. Why did you want to listen to the recordings?
A. Because I didn't believe my husband did the crimes that they were telling me that he did. But, at the same time, it's an F -- it's FBI telling me that my husband had done this. They had me scared, telling me that there were two people out there to run me off the road.
We have had threats in the past. You know, I needed the truth. I needed -- even though I strongly believe my husband did not do this, I knew that, because my life was at risk, I had to look at the proof and let the FBI prove to me that my husband had done this.
Because if, from everything I believed,

he had done this, I needed -- I needed to know that ugly truth if he had, because my life was at stake, and first and foremost is my life. That is why.
Q. All right. Now, when did you actually get a chance to listen to the recordings?
A. Ten days later, on the 21st of June.
Q. All right. And after listening to the recordings, did you change any opinion about your husband?
A. It ended up confirming my beliefs in my husband.
Q. All right. Did the FBI tell you that, in fact, someone named Larry Fairfax had placed the explosive device on your vehicle?
A. I found that out the night of June 15th -- late that night of June 15th, after they had arrested Larry Fairfax. That's when I knew.
Q. All right. And did you understand when you were -- well, did you want to see all the evidence in the case?
A. Yes, I did.
Q. All right. And have you, as of this day, seen all of the evidence?
MS. WHELAN: Objection, Your Honor.

Foundation.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. Did you review FBI reports, witness interviews, statements?
A. Yes.
Q. All right. You were concerned about Larry Fairfax's activities; correct?
A. Yes.
Q. Let me take you back to when you left for your mom's house. I believe that was on -- well, I'll ask you: Do you recall the date that you left your husband and traveled to Oregon City to see your mom?
A. Just prior to the arrest?
Q. Okay.
A. I mean, is that when you're referring to?
Q. No. I'm referring -- I believe -- I'm trying to ask --
A. I mean, the last time before his arrest?
Q. Yes.
A. That was May 28th.
Q. All right. And can you tell us a

little bit about your mom. How old is she?
A. Seventy-nine.
Q. Is she in good health?
A. No.
Q. How many times have you been called to assist her in Oregon City?
A. Oh, ten times. I -- I have lost count. It's been so many times.
Q. What is she suffering from?
A. Pancreatitis, a cyst on a pancreatitis, hernia, a lymph node which was diagnosed as lymphomic [sic] which blew into lymphonic [sic] -- sorry -- but cancer, has been going under chemo. Plus, she fights diabetes, which makes all of these procedures hard.
I mean, it was like it just kept going, one thing after the other, on top of each other. We'd just get her feeling where we thought she was on the road to recovery, and she would be hit with something else.
Q. All right. And when you went to your mother's house on -- in May, she was -- needed you; correct?
A. Yes.
Q. Okay. Do you recall that the FBI came

to your mother's house on the early morning of Friday, June 11th?
A. Yes, I do.
Q. Okay. And the FBI agents there advised you that your life might be at risk; correct?
A. Yes.
Q. And did they search your vehicle?
A. No, not -- no.
Q. Did they look under --
A. They didn't tell me they did. They didn't search my vehicle, no.
Q. Okay. But they told you you were in danger; correct?
A. Yes. They said there were two men out there waiting to run me off the -- run us off the road.
MS. WHELAN: Objection. Hearsay. Move to strike.
MR. McALLISTER: I think it's offered, Judge, in response to what's already been presented by the FBI.
THE COURT: Well, I'll sustain the objection. Strike the last response.
BY MR. McALLISTER:
Q. You learned that there were two men out

there supposedly going to run you off the road; correct?
A. Yes.
Q. Okay. And did the FBI agents, the two of them that were present, remove your cell phone?
A. I'm not sure they removed it. They asked me for it, and I handed it to them.
Q. Okay. Were you in any way uncooperative that morning?
A. Other than not believing my husband, I cooperated and followed everything that they asked us to do.
Q. Okay. After -- well, what did you do the rest of that day?
A. The FBI agents were there until about 10:30, 10:45, at which point they assured my mom and I that we were no longer in danger, that the two men were -- were --
MS. WHELAN: Objection. Hearsay.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. All right. Despite the fact that someone may have told you you weren't in danger, did you think you still were?
A. Yes.

Q. Why?
A. Because we'd had many threats to our lives in the last ten years. And I didn't -- I knew something was wrong. I wasn't sure if there was other people out there to get me.
I didn't -- I didn't feel like I had the facts to know that I was still safe. I wasn't sure that this wasn't somebody coming after my husband, and they were using me to get him.
I didn't know. I was scared because my life was being threatened.
Q. You were informed that your husband had been arrested; correct?
A. Yes, I had.
Q. Were you able to get back to the Coeur d'Alene area?
A. I did on the 13th.
Q. And how did you get back?
A. I had -- I made arrangements for a friend of mine to drive me back, because I was in no condition to be making a 425 -- 40-mile trip back home.
Q. Okay. And when you returned home -- or excuse me. When you returned to the Coeur d'Alene area, did you go to your home?

A. For about a half-hour, 45 minutes with my friend, but I left and went back to Coeur d'Alene at -- well, I had to take her to the airport because she had to fly home, and then I went to stay in Coeur d'Alene and meet my son.

Q. All right. Why didn't you stay at your house?

A. I did not feel safe there. I didn't know that my life wasn't still in danger. I did not feel --

Q. And on the Sunday telephone recording between you and your husband, what did he tell you about staying at home?

A. He told me he didn't want me staying at home, and he felt that it was safer for me not to be home. He also told me he didn't even want to know where I was. He strongly recommended that I didn't stay at home, that I was making the right decision.

MR. McALLISTER: Your Honor, are we at a point that would be convenient to break yet?

THE COURT: We could do so. We're about ten minutes early, but we could take the break now if we need to.

THE WITNESS: Please.

THE COURT: All right. Let's take a -- we'll take the recess at this time. Let's take 20 minutes at this point. We will reconvene at 25 minutes after.

I'll again admonish the -- actually, I guess 10:30. I'll admonish the jury not to discuss the case among themselves or with anyone else, nor should they form or express any opinions about the case until it is submitted to them.

We'll be in recess.

(Recess.)

(Jury present.)

THE COURT: I'll note the jury's presence. Ms. Steele has retaken the witness stand.

I'll remind you, you are still under oath.

You may continue your cross-examination of the witness, Mr. McAllister.

MR. McALLISTER: Thank you, Your Honor.

BY MR. McALLISTER:

Q. Ms. Steele, before the recess, I believe I was asking questions about June 13th, 2010, recorded conversation that you had with your husband while he was in jail.

A. Yes.

Q. And in that conversation -- well, let me ask the question this way: Have you had a chance to review an actual transcript of what is heard on the recording?

A. Yes.

Q. Do you recall your exact words when the -- after your husband asked you about the recording, what you wanted to do?

A. Yes. I don't know if I could repeat it word for word, but --

Q. All right. Well, let me ask the question this way: If I showed you a copy of the transcript, would you know your exact words?

A. Yes.

MR. McALLISTER: Your Honor, if I could refresh the witness's recollection as to her exact words.

THE COURT: Yes. I have turned off the jury screen.

BY MR. McALLISTER:

Q. Do you see on the monitor a typed transcript of the conversation?

A. Yes, I do.

Q. All right. Do you see the part that is indicated as "Cyndi"?

A. Yes.

Q. All right. What did you say?

A. I said, "They weren't the ones insisting that I listen to the tapes. I asked to hear the tape" -- should have been "recording." "It is my choice whether I want to hear them or not."

Q. All right. And what were you telling your husband? Who was "they"?

A. "They" referred to the authorities. I probably meant the FBI because that's who -- that was the only authorities that I was aware of that I had any contact with at the time.

Q. Okay. Did this discussion with your husband influence your testimony in any way?

A. No.

MS. WHELAN: Objection. Relevance.

THE COURT: Sustained. I'll strike the last response.

BY MR. McALLISTER:

Q. After this discussion, did you, in fact, make further efforts to listen to the recording, which were called "tapes"?

A. Yes.

Q. What did you do?

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A. I had obtained an attorney and was asking him to make arrangements for me to listen to the tapes, since they hadn't been provided to me yet -- or a chance -- the chance to listen to the tapes hadn't been provided to me yet.

Q. Were the actual recordings ever provided to you?

A. On the 21st of June.

Q. No. I meant did you actually get a disk, or did you ever physically get the recordings?

MS. WHELAN: Objection. Relevance.

THE WITNESS: No.

THE COURT: Just a moment. The objection is what?

MS. WHELAN: The objection is relevance.

THE COURT: Well, again, at this point, it is irrelevant. But if you're going somewhere else with this that leads us to something relevant, Mr. McAllister, I'll give you some leeway. If that was your only question, I'll sustain the objection and direct you to move on.

BY MR. McALLISTER:

Q. Well, you finally, on June 21st, had an opportunity to listen to the recordings; correct?

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A. Yes, I did.

Q. Where did that take place?

A. That took place at my attorney's office.

Q. All right. And who provided the recordings to you?

A. Mr. - I'm sorry -- Agent Sotka, and I believe it was -- I believe the other person at that meeting was Agent Don Robinson.

Q. All right. Now, your husband at that point had been in jail for ten days; correct?

A. Yes.

Q. And you continued to have conversations with him; correct? On the telephone?

A. With my husband?

Q. Yes.

A. Not after the 15th of June.

Q. Okay. So there was no further contact before you listened to the recording; correct?

A. No, there was not.

Q. All right. Did you -- how many times did you ask for the recordings?

A. I don't remember, but I -- I wanted to hear those recordings.

Q. All right. I believe you testified

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earlier that you had a friend drive you back to the Coeur d'Alene area on Sunday, June 13th; correct?

A. From Oregon, she drove me up to Sagle and then back to the airport. And then from the airport, I actually drove myself because she had to fly home.

Q. Okay. And you stayed with your son Rex that night in a motel or hotel in the Coeur d'Alene area; correct?

A. Yes, I did.

Q. All right. And on the 14th, there was -- you were intending to appear at a hearing in this case; correct?

A. Yes.

Q. And it got postponed until the next day, Tuesday, the 15th?

A. Yes.

Q. All right. If you could tell us, Mrs. Steele, what did you do on June 15th?

A. June 15th, my son and I prepared to check out of the hotel room. I think at that point, we were still trying to ensure that my husband had his counsel in place so he would have representation at his hearing.

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And then we checked out of the hotel, which was, I believe, right around 11:00. His hearing wasn't until -- 4:30 is the time that comes to my mind; that might be off by a half-hour or so.

And we had time to spare. I didn't have time to run home or really do anything, so I decided that I was going to get the -- do something productive to keep my mind preoccupied and get my oil changed in my car. Because I had been traveling a lot. The oil change in my car was overdue.

And so I decided to take my car in, get the oil changed. My son had his car there, so he was actually headed to Schuck's or some automotive place because he had a headlight out, and we were concerned for him going back that night because he had to get back to college to -- because he had a job down at school or -- at school.

So he went one way, I went the other way, and we were going to meet back up and have some lunch and then go to my husband's hearing.

Q. All right. And during this time, you went to have the oil changed; correct?

A. Yes.

Q. And what happened after you went to the facility to have the oil changed?

A. Well, they had me pull my car into the bay. It's one that sits underneath. And I went out to sit in the -- they have -- they have you go out and sit in the waiting room while they change your oil.

And they first came in, and they showed me my air filter and said it was pretty dirty, and I told them to change it. And then it was a few -- a minute or so later, one of the mechanics came in and asked me to come with him because he had something to show me.

At that point, I'm going, "What's wrong with my car? What is this going to cost me? Am I going to know whether it's important to have fixed?" And that was all I needed on top of everything else. I was expecting it to be a hole in my oil pan or whatever.

And so I followed him. And he actually took me down the stairs that goes under the car where they do their work of changing the oil. And I'm walking -- the car is facing out this way, so I'm walking down this way, so on the driver's side.

And he has me turn around, and he points to the area right under my -- the driver's seat, and there I saw a pipe that was about that big around (indicating) strapped to the bottom of my car with green fuses running across, which later I understood was headed towards my exhaust.

The mechanic said did I know what that was. And I said, "It looks like a pipe bomb."

And then I went -- I think the -- I don't recall the exact order of things being said, but he asked me if I wanted him to remove it. And I immediately said, "No. Don't touch it."

And I started muttering things about that I just had threats on my life and that we needed to get the car out of there.

Afterwards, I felt that I probably shouldn't have even had them move the car, but I can't say I was really -- I was shocked. I mean, I was petrified to -- thinking about this bomb that had been on my car.

Q. Let me interrupt at this point, if I could, Mrs. Steele, and ask you this question: Your husband was in jail at this point; correct?

A. Yes, he was.

Q. But you have indicated or testified

that you believed that others were still out there; correct?

A. Yes. I have -- I had feared -- I feared -- I mean, I have always feared because of our past threats, but that was bringing that home to me that others could. And then my husband is in jail, and then I see this five days -- four days later, I find this bomb on my car.

Q. All right. Now, you indicated, I believe, or Ms. Whelan used the phrase "people coming after your husband." Do you recall that?

A. I have said that many times, yes.

Q. All right. Now, your husband is a lawyer; correct?

A. Yes, he is.

Q. Is it fair to say that he represented unpopular causes?

A. Yes.

Q. And is it fair to say that previous threats on your life were made?

A. Yes.

Q. And, in fact, you've turned those over in the past to the law enforcement authorities? You've reported them; correct?

A. Yes.

Q. All right. Who is it that he would represent or has represented in the past that led to threats being made on you or him?

MS. WHELAN: Objection. Relevance.

THE COURT: I'll give counsel some leeway. I'm not sure I see the relevance, but you may answer.

THE WITNESS: Aryan Nations. Actually, he didn't represent the Aryan Nations. He was representing Richard Butler. He has represented the Christines. He has represented -- I can't remember the gentleman's name, but various groups like that or people like that.

BY MR. McALLISTER:

Q. And based upon those cases, you and your family members received threats?

A. Yes, each of my children, and I personally have, besides my husband.

Q. All right. At this point when it was discovered on your vehicle, did you know where Larry Fairfax was?

A. No.

Q. Okay. Were you concerned at all about him?

A. Yes.

Q. Why?
A. Because I knew he was involved in this case.
Q. All right.
A. And he had been -- and he had also been doing things that, before my husband's arrest, that was leading towards criminal activities. And so I didn't --
MS. WHELAN: Objection.
THE WITNESS: -- trust him.
MS. WHELAN: Objection. Foundation, speculation. Move to strike.
THE COURT: Sustained. I'll direct the jury to disregard the witness's response.
Mr. McAllister.
BY MR. McALLISTER:
Q. Prior to June 15th, you had learned that Larry Fairfax had secretly entered your house; correct?
A. Yes. I had learned that towards the end of May.
Q. All right. But at this point in time you didn't know that any silver was missing, did you?
A. Not at that point, no.

Q. Okay. Now, the authorities were called, correct, at the oil-changing station?
A. Yes. Somebody from the oil place had called. I had made a call; but, by the time I made the call to the authorities, they had said that authorities were already on the way.
Q. Okay. And, in fact, the authorities were able to safely remove the device from your car; correct?
A. They ended up removing it safely, but I really didn't know that until later in the day because I wasn't there for -- I wasn't present in that area for the whole removal.
Q. Okay. Did you get your vehicle back?
A. Very late that next night.
Q. Okay. And what did you do on June 15th after the device was found?
A. I was there at the scene for a while. Different authorities -- some were in police uniforms, and then I believe they were agents. I don't know if they -- I don't know what capacity they were in -- were interviewing me and were interviewing my son, who was also there.
Because, by that time -- well, I had also called -- I had also called him and told him

that he needed to get back to the oil change place, which he did. And so they were also interviewing him and myself.
And then they wanted to take us to, I believe it was the Kootenai -- I don't know the exact name, but the Kootenai Police Department, somewhere around Kathleen Street. And so we were escort -- not escorted -- driven to the police station and where they further were asking us questions in relationship to what I had -- or the mechanic discovered on my car.
Q. Did you get to the courthouse and to your husband's hearing?
A. Yes, because I kept saying that I wanted to be at my husband's hearing.
Q. Now, at that hearing, were you still quite scared?
A. I was petrified, because I had no clue who put that bomb on my car.
Q. All right.
A. And, as far as I know, they did not know, either.
Q. Okay. "They" meaning the law enforcement?
A. Law enforcement.

Q. Did anyone offer you protection?
MS. WHELAN: Objection. Relevance.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. I'll ask it this way: Did you seek protection?
MS. WHELAN: Objection. Relevance. Judge, we had a sidebar about this.
THE COURT: Well, I'm going to sustain the objection.
BY MR. McALLISTER:
Q. Were you provided any protection?
A. No. I was told they would not protect me.
MS. WHELAN: Objection. Relevance.
THE COURT: Sustained. I'm going to caution the witness. The court has ruled previously, and I think it was pretty clear. The answer was, simply, "Were you provided --," yes or no. And you can answer that but nothing more.
Mr. McAllister, go ahead. Put another question back before the witness.
BY MR. McALLISTER:
Q. What did you do after that evening?
A. After my husband's hearing, we still

A. Yes.
Q. Was that in place when you arrived?
A. I believe so, yes.
Q. Let's take that down and put up Exhibit No. 29, please, also admitted.
Showing you what's been admitted here as evidence Exhibit No. 29. Does that show the same vehicle?
A. Yes.
Q. Looking from the other side of it?
A. Yes.
Q. So looking at the driver's door. And was that the area that you were told that the pipe bomb was located?
A. Yes. They told me it was directly underneath the driver's seat on the undercarriage.
Q. And then let's take that down. And admitted photograph -- admitted Exhibit No. 30, another photograph.
Look at Exhibit 30. Does that show the location, as well?
A. Yes.
Q. And does it show the same yellow tape?
A. Yes.
Q. The yellow tape appears to be on the

far side of the street closest to the business, the Quaker State lube business. Do you see that?
A. Yes.
Q. Was traffic going through that location on Highway -- on Bosanko Avenue when you arrived?
A. No. They -- I believe they had a patrol car stopping traffic from 95 onto Bosanko, so they couldn't turn off. But they obviously pulled and let us pull down in the area.
Q. Was traffic still circulating southbound on Highway 95 when you arrived?
A. Yes.
Q. And did you have any kind of conversation with law enforcement officers, the law enforcement incident commander?
A. Yes. That was Sergeant Tull from the Coeur d'Alene Police Department. And we discussed the situation and the size of the device. And it was my recommendation that traffic be stopped on Highway 95 when we began our operation for safety reasons for those people driving on 95.
Q. Was Highway 95 stopped, the southbound flow?
A. Yes.
Q. Now, how did you know anything about

the size of the device?
A. While I was en route, I received an email to my phone or a text message from Sergeant Tull, who I had -- after I had talked to Agent Todd Smith, who had told me about the incident and wanted me to respond, I received a phone call from Sergeant Tull, who was the incident commander on scene with Coeur d'Alene P.D.
And I asked him if they had any pictures of it. Quite often, they might. And he did, and he sent me a photograph that was taken by the mechanic while he was underneath the vehicle when he started to change the oil and discovered the item.
Q. Well, this would be a good time to show you what's been admitted as Exhibit No. 27.
If you'll put that up, Ms. Rocca.
What is Exhibit 27?
A. That is the picture that was taken by the mechanic while the item was underneath the vehicle.
Q. As a -- as a trained bomb squad commander, when you arrive at a location like that with a car like that and see that type of a device on a cell phone picture, what do you see in that

picture that governs your reaction and decisions you make as the commander there?
A. It has every indication to me to be an actual device. It looks like it's securely fastened to the car. It didn't just happen upon it. It -- a metal pipe is obviously, for us, between -- of all the types of ways you could make a pipe bomb, galvanized pipe is more dangerous due to the fragmentation of it. It's hard metal compared to plastic.
You can clearly see two fuses.
Q. Would you please put a circle around where those fuses are.
A. (Witness complied.)
Q. And in relationship to the pipe bomb, where are they?
A. It appears they're going into an end cap, which is very common -- a common location for a person who builds these to insert the fuse because they drill through the end cap. It's easier to drill through the flat end rather than through the sidewall.
Q. Now, you didn't know when you saw that picture exactly how it was attached, but that's what occurred to you?

A. Yes.
Q. What else did you see in that picture that would be important for you, as an incident commander?
A. Well, obviously, I'm trying to determine how this is attached to the vehicle. There has to be some type of attachment method.
And you can see -- on my cell phone picture, it wasn't as clear as this, but I could clearly see the electrical tape. And that indicated to me that either they had taped it up with electrical tape -- which was probably unlikely, because electrical tape isn't necessarily that strong by itself -- but that there might have been some other methods, like a magnet, which we have seen used throughout the U.S. and internationally to attach pipe bombs to cars.
Q. Point to the electrical tape that's on that device that you're referring to.
A. It's this black tape here (indicating), as well as here.
Q. Okay.
A. Actually, this tape goes further back if you can follow it.

Q. Were you able to determine -- before you began to deal with this pipe bomb, were you able to determine the size of it, the dimension of it?
A. Just looking at the vehicle and based on what Sergeant Tull had told me about contact with the finder as well as looking at the picture, I immediately believed it was a rather large pipe bomb compared to what we usually deal with.
Q. Okay. Let's take down that exhibit. And let me ask you a couple of other questions here before we move to the next subject.
Did you actually speak with Josh Young, the technician who found the pipe bomb?
A. I did, briefly, yes.
Q. Did he give you any additional information?
A. No. He said that he found it. He went and contacted the lady who brought the car in to ask her about it. He had told me something about offering to remove it for her, and she told him no.
And that he had also -- I don't remember exactly what he told me, but something about he had -- he had dealt with the fuse and

attempted to move the fuse or tried to pull it out of it. And at that point -- you know, I can't remember exactly what he said, but it was something to that --
Q. That he had moved the fuse?
A. Yeah, he had done something with the fuse.
Q. What's the first thing you began to do, then, to handle the situation?
A. The first thing that we do is brief the fire -- well, we come up with a plan as a team. And the three of us there put our heads together with how to deal with it based on our training and experience in dealing with these things. Then we run it by the incident commander. And we had a meeting with them and the fire department.
One of the other things we needed to do was brief the fire department on how to respond if one of my bomb techs got hurt and how to get them out of the bomb suit and respond for first aid and how to do that safely, if there was an accidental explosion.
As soon as all those briefings are done and we're ready to go downrange, we decided to

send the robot down, trying to stay remote.
Q. Let's stop there for just a second, and let me ask you a question.
So there was an overall incident commander for the police. There was somebody in charge of fire units. You were in charge of the bomb unit; is that correct?
A. That's correct.
Q. Where did you station your vehicles in relationship to the black Mitsubishi?
A. We were in another business lot or some type of a parking lot west of there a couple hundred yards.
Q. Were you able to use your -- did you think that you would be able to use your robot to go from there over to the black Mitsubishi?
A. Yes.
Q. Okay. So what is the next step you took?
A. Well, and one thing I forgot is that, in addition to briefing everybody on how we were going to respond, we requested Highway 95 be shut down.
Q. I believe you stated that earlier.
A. We talked about that earlier. And so

that occurred. And once that occurred, then we went -- I sent the robot downrange, and I operated the robot.

Q. Is there a perimeter you were looking to establish for this type of an incident?

A. Our typical guidelines on something are 300 feet plus. I wanted it to be more, based on the size of the device and the fragmentation hazard; if it exploded, the fragmentation that come from the pipe out into the open area.

There was a bank just north of, across Bosanko in a parking lot. They were -- I think they had not let any new customers in, but they were in the process of trying to -- you know, it was midday. They were trying to deal with money in the tills and everything.

So I asked them, if they insisted on staying in the bank, to stay on the opposite side away from the windows.

Q. How close is the Quick Lube to Highway 95 itself?

A. Oh, maybe 30 yards. A hundred feet.

Q. So then what was your next decision?

A. We took the robot downrange. We had our perimeter set. It was safe to approach. So I

ran the robot down using a wireless system and --

Q. Let's explain that for the jury. How do you -- describe this robot.

A. The robot we use is a standard-issue robot for bomb squads of the U.S. and U.S. military. It's made by a company called REMOTEC. It's called an ANDROS F6A Robot. It weighs about 550 pounds. It can drag a 200-pound man in an 80-pound bomb suit out of an area in case, you know, they get stuck or fall down or something and can't get out and it's not safe for us to approach. It's a very strong robot.

Q. Do you operate it remotely?

A. Yes.

Q. Who was operating it on this occasion?

A. I was.

Q. And where do you operate it from? From the vehicle?

A. Yes.

Q. So you got the robot out, you activated it, you brought it over toward the Mitsubishi?

A. Yes.

Q. And were you able to position it?

A. Right. I positioned it in such a way I was trying to -- the plan was to try and remove

the device using the grip or the claw on the front of the robot. However, because the car was so low and the angle, I was not able to do that.

However, I was able to get the camera, which is mounted up on the front of the arm, underneath and inspect the bottom of it, not just for that device but to see if there are other devices there that we weren't aware of.

Q. You mentioned a camera. Does it also take a video of what's happening?

A. Yes. We -- there is three cameras on the robot. And -- actually, four cameras. And it does have -- when it sends the wireless signal back to our truck, we're able to record it onto a VHS tape.

Q. Did you record a video on this occasion?

A. I did.

Q. So let's continue with your -- your description of how you positioned the robot. And you said you placed it next to the driver's side door?

A. Yes.

Q. And were you able to use the claw of the robot to remove the pipe bomb?

A. No.

Q. Why not?

A. The vehicle was too low. And the angle, the robot arm was not able to reach up and grab onto it.

Q. So what was your next alternative, as being the person in charge of that scene, of the bomb scene?

A. We decided to try to attach a rope to it and attach that to the robot in attempt to, once again, stay remote and pull it off. However, in order to put the rope on there, I would have to send a bomb tech down in a bomb suit to lay on the ground and attach that rope to the device.

Q. Did you decide to do that?

A. I decided that -- well, we decided that that would be the best course of action. And Detective Fox volunteered to do that.

Q. He volunteered?

A. Yes.

Q. This -- this rope you're talking about, a term has been used here about an "endless loop." Is that what you're referring to?

A. Right. It's just a piece of rope that we can tie -- you know, it's basically just like a

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circle, and it's tied, you know, knotted at the end. And it's just a way to loop it around the pipe and back into a carabiner -- which people use for their keys or for rock climbing or whatever -- and hook that onto the robot.

Q. What did you do to make sure that a member of your team was safe in getting near that bomb?

A. I kept the video cameras on him while he was downrange, so I could not only communicate with him, but, you know, we could keep an eye on him.

Q. Did he have a special suit?

A. He had on -- it's called an SRS5 search suit. It's actually a midlevel bomb suit. The large bomb suit probably wouldn't have afforded him the flexibility or the ability to lay down like that and get to it. So he had to wear a smaller suit, which offers less protection.

Q. Where was the robot when he approached the vehicle?

A. It was just to the side of him, out of his way.

Q. Were you able to see both him and the robot?

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A. At the --

Q. Were you able to observe both his actions and the robot?

A. Yes.

Q. And did he lay down on the ground next to the vehicle?

A. He did.

Q. Did you observe that?

A. Yes.

Q. And did you observe him placing the endless loop on the -- on the pipe bomb?

A. Yes.

Q. You could see that with the robot camera?

A. Yes.

Q. After he had placed the endless loop, what happened next?

A. He attached it to the robot and he cleared out of the area, around the corner of the building. Once I made sure he was out of the area, I drove the robot backwards in attempt to pull it off. And it didn't move at all off the car, the pipe bomb, but it did break the rope.

Q. And this was what kind of dimension on the rope?

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A. Probably quarter-inch nylon -- or, you know, braided rope.

Q. So the robot was strong enough to pull that back, and the pipe bomb was strongly enough attached to the car that the rope broke?

A. Yes.

Q. What was your next alternative?

A. We wanted to try a stronger rope, because I still didn't want somebody having to go up and put their hand on it.

So he -- Deputy Yingst grabbed some steel rope -- basically, the same thing, just made out of steel, braided steel -- and brought that down, and we attempted to do the same thing again.

Q. Was he able to position the steel rope around the pipe bomb?

A. Yes.

Q. Did he have to do something before he was able to put the steel rope around the pipe bomb?

A. Yes.

Q. Did you observe what he did?

A. Yes.

Q. What did he do?

A. We were watching, and all of a sudden,

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we saw him starting to untangle or untwist baling wire from the device. And then he pulled it off in his hand and he set it on the ground and completed, you know, attaching the endless loop to it.

Q. So there was enough play in the device that it was able to drop from the frame down onto -- he was able to set it from the frame down onto the ground?

A. Yeah. Had he not, it would have just fallen on the ground.

Q. Okay.

A. I mean, he started to pull it off. And then once the magnetic bond broke, he set it on the ground.

Q. So there were no other wires attaching it?

A. Just the fuse going up to the frame.

Q. So there was fuse still visible attached from the pipe bomb up to up underneath the car?

A. Right, at least two pieces that we could see.

Q. Okay. When he -- did he clear the -- clear the area there before you began to back up

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the robot?
A. Yes.
Q. And what happened when you backed up the robot?
A. I began backing it up, and it was just dragging on the ground. And I dragged it from underneath the car so I could grab it with the claw. As I started to drag it, the fuse that was attached to the end cap up to the car became kind of a tug-of-war between us and the fuse, and it actually was attached securely. It lifted the pipe bomb off the ground and then -- just a couple inches.
And then the fuse broke at the end cap, broke loose, and the pipe bomb hit the ground, and we were able to pull it out from underneath the vehicle.
Q. Did you have occasion later on to examine that fuse that was attached to the bomb?
A. Yes.
Q. You said that there were two of them?
A. Yes.
Q. Is fuse that strong to be able to hold resistance against the robot like you're describing?

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A. Yes.
Q. After the pipe bomb broke free from the fuse, what did you do then?
A. We pulled it out, and then I grabbed onto the pipe bomb with the claw and secured it in the claw and lifted it up. And I drove it to our total containment vessel, which is the large ball, for lack of a better term, and put it inside a cardboard box and slid that inside the vessel.
Q. Inside the containment vessel?
A. Yes.
Q. And then did anybody close the doors on the containment vessel?
A. Corporal Fox did.
Q. What was the next procedure?
A. Then we went back down to the vehicles, and Corporal Fox looked at both vehicles to make sure there were no other devices there before we left the scene to deal with the one we had --
Q. Let me stop you. You said "both vehicles."
A. Yes.
Q. The black Mitsubishi we have already talked about.
A. Right.

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Q. So he examined it further?
A. Yes.
Q. Physically, by getting underneath it?
A. Yes.
Q. Looking underneath it?
A. Yes.
Q. What was the second vehicle?
A. That was -- we were told the victim's son's vehicle that was there. And as a precaution, we made sure that there was nothing underneath that vehicle, either -- or in -- you know, obvious.
Q. So Corporal Fox did that himself?
A. Yes.
Q. And there were no other bombs that were seen?
A. No.
Q. What's the next step that the bomb squad took?
A. When we started the operation, I advised them that it would be advantageous to start looking for a pit or a large field or somewhere where we could render the device safe and, you know, basically disassemble it.
Q. Was there such a location?

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A. Yes.
Q. Where was that safe location?
A. That was at Marie Road and Ramsey, I believe.
Q. Ramsey Road?
A. Yes.
Q. And describe this location that was safe.
A. It's a large -- I believe it's a county-owned gravel pit. And it's, you know, a hundred feet deep. It was a perfect location because it was close. It limited our travel time as well as it could withstand a detonation.
If the device, while we were dealing with it, happened to -- we call it "high order." If it exploded as designed, this particular place would be able to take that without causing undue injury or property damage.
Q. So it was a deep gravel pit?
A. Yes.
Q. Before we go to what happened at the gravel pit, I want to just finish up and show you a couple of admitted exhibits.
If I could get Ms. Rocca to put up what's been admitted as Exhibit No. 31. It's a

photograph.
Ask you if you recognize what's shown in Exhibit No. 31, Sergeant.
A. Yeah.
Q. What does Exhibit No. 31 show?
A. It's the -- on the right-hand side -- do you want me to circle it as I tell you?
Q. Yeah.
A. Okay. This right here (indicating) would be the two fuses. You can't see the end of it, but the end down here at the bottom would be where it attached to the pipe bomb.
Q. Did anybody remove that fuse from the vehicle?
A. I did not. I'm assuming somebody did, but it wasn't the bomb squad.
Q. Do you know how it was attached to the vehicle?
A. It looked like it was tied, but --
Q. Do you know whether the emergency brake cable runs through that part of the vehicle?
A. I imagine it does. I couldn't tell you which -- which line it is on there, but --
Q. That's fine. Would you point to the catalytic converter.

A. I believe this is it right here (indicating).
Q. And that's part of the exhaust system of a vehicle?
A. Yes.
Q. Gets hot when the vehicle is in operation?
A. Yes.
Q. Would you indicate where the tailpipe comes out of that catalytic converter?
MR. HAWS: Can we clear that and let him -- can you clear it there on your screen, please?
THE COURT: In the corner of the -- yeah. Someone has done it.
THE WITNESS: I believe the tailpipe continues on to the back from here, if I'm oriented correctly on here.
BY MR. HAWS:
Q. Okay. And do you see a piece of baling wire attached there, as well?
A. Yes. There is some here (indicating). Sorry. There we go. There is a piece there, as well as some here (indicating).
Q. Okay. I want to go back to where you

placed the first circle.
A. Yeah.
Q. Where the tailpipe and the catalytic converter come together, was there a piece of twisted wire there?
A. I believe so, down here (indicating).
Q. Well --
A. And on the back side, as well.
Q. Okay.
A. Right there (indicating).
Q. Let's go to -- let's clear that, and let's show the witness Exhibit No. 32, please.
Is that the wire that we were just talking about between the catalytic converter and the tailpipe?
A. Yes.
Q. Exhibit 32. Let's clear that and go to Exhibit No. 33.
And what does Exhibit 33 show, if you know?
A. It looks like one of the pieces of baling wire that was underneath the car.
Q. Was this shot -- was this picture taken from the robot camera?
A. No.

Q. Okay. You don't know whose hand that is?
A. I do not.
Q. Okay. Do you remember seeing that wire?
A. When we were inspecting the bottom of the vehicle with the robot cameras, we saw several of these.
Q. Okay. Let's go back to the bomb disposal site down on Ramsey Road. Were you able to drive down into the gravel pit?
A. Yes.
Q. What's the next procedure you used in the gravel pit?
A. The first thing we did was make sure we had a location we could disassemble the device remotely using the robot again. It's the safest way to do it.
We located a spot that appeared fairly open. And the first thing we did was park the Excursion, which was pulling the total containment vessel. We pulled that down into the pit and parked that near where we were to do the disassembly.
Q. Now, you said "disassembly." Is that

-- is there another word for that?
A. We call it "render safe procedure," but "disassembly" sounds more -- you know, I mean, it's easier to understand.
Q. The objective was to render it safe?
A. Exactly.
Q. So, after you got it positioned, what did you do then?
A. Then we parked the robot vehicle, the EVI, the Freightliner -- we parked that in the pit further away and set up a wireless system and deployed the robot downrange, sent it down --
Q. Again, you were operating the robot?
A. Yes.
Q. Were you able to grasp the bomb and then take it out?
A. Yes.
Q. And where did you place it?
A. I placed it in the -- in the pit on the ground and set it down and prepared to shoot off the end cap with a proprietary frangible round that we use --
Q. Is that what you mean --
A. -- a disruptor.
Q. I'm sorry. Go ahead.

A. We use a disruptor. As part of our render safe procedure for dealing with pipe bombs is to shoot off the end caps. And we use a certain frangible round, a -- it's -- well, the disruptor itself is similar to a shotgun; however, it can shoot several different types of projectiles or water out of it to disassemble a bomb. It has a breach similar to a shotgun. It fits 12-gauge shells in there.
And so the particular round that we use, which is standard on this, is called an "Avon round." And it's actually dental plaster inside of the round, inside of the shell.
Q. Why do you use dental plaster as a projectile?
A. It doesn't spark. It has -- it's proven its use over thousands of pipe bomb render safe procedures. It has a low likelihood of causing the pipe bomb to detonate when it hits it. And the way it's designed is just exactly for dealing with these.
Q. Okay. I want you to explain to the jury, please, this pipe bomb is, you indicated, a nipple, a straight piece of pipe that's threaded with two threaded caps on it. How can you -- how

can you remove a threaded cap with a disruptor you're talking about? What's the principle involved?
A. The idea behind it is we don't want to unscrew the end caps, because if there was any powder in the threads, it could cause -- the powder could initiate and cause it to explode, and that would be very unsafe. And the only way to do that generally would be by hand, and it's not worth risking someone's life for that.
So the best procedure that we use is to set up the disruptor using a laser sight or some other way to aim it. And we shoot the projectile at the pipe at such an angle that, when the dental plaster hits the pipe, it starts to fragment and spread out.
And it's going at such a high velocity, it's able to travel along on the top of the pipe and hits the end cap and pulls -- and basically swipes the end cap off, away from the threads and disassembles that end.
Q. So, even though it's a threaded end cap, it peels it off?
A. Correct.
Q. Were you able to fire the disruptor

round?
A. Yes.
Q. And were you successful in disrupting that pipe bomb?
A. Yes.
Q. What did you do -- what did you do then? Let me back up.
Was the -- is the disruptor round done remotely, also, using the robot?
A. Yes.
Q. Okay. What did you do then?
A. Then we wanted to make sure there is nothing else inside the pipe. When the disruption occurred and we were watching the video, the end cap flew off. And I panned back with the camera to survey the area, because it's a pretty violent event, and it kind of throws the pipe around a little bit.
And there was observable amount -- significant amount of black-colored powder on the ground that wasn't there prior. Then I grabbed onto the pipe using the claw, was able -- eventually able to grab it and rotate the claw. And when I did that, a significant amount of black-colored powder came out of the pipe.

Q. Do you have an estimate as to -- from what you saw on the ground, what came out of the pipe, and just the volume of the pipe -- about how much powder there was?

A. It was a significant amount. Definitely enough to initiate the device. It could have been upwards of three-quarters full, based on what I saw.

Q. So "enough to initiate the device" means to explode it?

A. Yes.

Q. Okay. Let me ask you to look behind you and find Exhibit No. 80. And it has been admitted into evidence.

A. 80A?

Q. 80A, I believe, is the box. Is that correct? It should be Exhibit No. 80.

A. Yes.

Q. Do you see it there?

A. I do.

Q. It's been admitted. So if you would like to identify that, please, for the record.

A. This is the pipe that we took care of that day.

Q. Approach the microphone just a little

bit more.

A. Sorry. This is a pipe that we dealt with that day.

Q. That's the one that you were just describing that you disrupted?

A. Yes.

Q. Hold it up for the jury, please.

A. (Witness complied.)

Q. And turn it so that they can see how that thread got disrupted and the end got blown off.

A. You can see where the round impacted right here. There is some -- like a skid almost, a deformation of the regular pipe, how it looks.

And you can see where it spreads out and fans out as designed, and it deforms this thread because of that impact of that plaster -- dental plaster into the threaded end of the pipe. And you can imagine, where you look at this end cap, it goes along, grabs onto this end, uses that almost like as a handle, and flips it off.

Q. Thank you. Could I get you to look at -- find up there Exhibit No. 81. This also, I believe, has been admitted into evidence.

A. Yes.

Q. Would you look inside of Exhibit No. 81.

A. (Witness complied.)

Q. What is Exhibit 81?

A. This appears to be the end cap that was shot off the pipe.

Q. That's the one that you blew off with the disruptor round?

A. Yes.

Q. Now, look inside that bag, and tell me if there are some other pieces that went with that end cap.

A. Yes.

Q. And what are those other pieces?

A. These are pyrotechnic fuses.

Q. And did you observe that end cap after you had blown it off?

A. Yes.

Q. And what was the configuration of it after you blew it off? Was it in the same condition it is today?

A. Yes.

Q. Well, did it also have the fuses attached to it?

A. I believe it did.

Q. How were they attached?

A. There is this piece of tape in there, and they were underneath the tape attached to the end cap, I believe.

Q. Now, you testified earlier that when you used the robot to pull the bomb off underneath the Mitsubishi, that the fuse broke. Did it break there at the end cap, and that's why you only have those short fuses?

A. It appears so.

Q. Let me ask you about whether you shot another disruptor round.

A. I did.

Q. Using the robot?

A. Yes.

Q. And what was the target on that particular disruptor round?

A. It was a black box that we suspected was a magnet, but we weren't sure. And because there is always a chance that there is a decoy or a second device attached, I used a disruptor to shoot that box, as well, to make sure it didn't contain another device.

Q. Would you please look at Exhibit No. 82, but do not show it yet because it has not been

admitted.
A. (Witness complied.)
Q. Did you find Exhibit 82?
A. Yes.
Q. Can you describe for the record what it is?
MR. McALLISTER: Judge, there is no objection to these exhibits.
THE COURT: You're offering it?
MR. HAWS: Yes. I'll move for admission right now.
THE COURT: Exhibit 82 will be admitted.
(Government's Exhibit 82 admitted.)
MR. HAWS: Thank you, Your Honor.
BY MR. HAWS:
Q. Would you display that Exhibit No. 82 to the jury, please.
A. (Witness complied.)
This is --
Q. Speak into the microphone, if you could.
A. I'm sorry. It's -- this is what was inside the plastic box. This is the magnet.
Q. And that was the magnet that you shot the disruptor round at on June 15th --

A. Yes.
Q. -- 2010?
A. There is another part here. Sorry. The metal -- part of the metal casing that was on it.
Q. Okay. Any other parts to Exhibit No. 82, just so we can make sure we have the complete thing for the record?
A. I don't see anything else in here, no.
Q. Okay. If you'll replace those.
A. (Witness complied.)
Q. And then I -- then I would like for you to look one more time back at Exhibit 80.
A. Okay.
Q. That's the pipe bomb?
A. Yes.
Q. Is there anything on the outside of that pipe bomb besides some -- what appears to be some electrical tape?
A. There is --
Q. Just show it to the jury, please.
A. It looks like a part of the magnet is still attached.
Q. That's part of the magnet that was blown off from the pipe bomb?

A. Yes.
Q. That was part of -- part of the remains of Exhibit No. 82?
A. Yes.
Q. Okay. Thank you.
In your experience in dealing with pipe bombs, how would you characterize this particular one? Is it a large one? A small one? How would you characterize it?
A. In my experience in dealing with these, it's the largest pipe bomb I've seen, that I have ever dealt with in the field.
Q. Now, you indicated earlier, Sergeant Kittilstved, that the robot takes a video; is that correct?
A. That's correct.
Q. And did you preserve the video that was -- that was shot at the time that the robot was in operation?
A. Yes.
Q. And have you had an opportunity to look at Exhibit No. 79?
A. I have.
Q. And what is 79?
A. 79 is a DVD copy of the VHS recording

from the robot.
Q. And have you recently reexamined it to make sure it's the same as when you took it from the video device of the camera?
A. Yes.
Q. Or of the robot? Pardon me.
A. Yes, it is.
MR. HAWS: I'd move the admission of Exhibit No. 79.
THE COURT: Any objection?
MR. McALLISTER: No, Your Honor.
THE COURT: 79 will be admitted.
(Government's Exhibit 79 admitted.)
MR. HAWS: Your Honor, at this time, I would ask the court's permission to have the witness shown three brief clips from Exhibit No. 79 to illustrate his testimony here today.
THE COURT: Are those marked separately?
MR. HAWS: No, they are not. They are just part of it. We're just publishing --
THE COURT: As long as you can identify which portions you're showing to the jury by reference to a time stamp or otherwise on the recording. And then, obviously, Mr. McAllister, if you wanted to show some additional portions,

you could do so, as well.
Proceed.
MR. HAWS: Thank you, Your Honor.
BY MR. HAWS:
Q. Are you able to identify the footage or the time sequence that you're about to show?
A. Yes.
Q. The first one, please -- would you identify first for the record what -- where it's starting.
A. This is starting at 7 minutes and 52 seconds into the operation.
As you're looking at it, this is the driver's door. We're underneath the driver's door.
THE COURT: I'm not sure that anything is coming up.
MR. HAWS: Well, he is describing prospectively, Your Honor.
THE COURT: He is describing something, I think, that's showing up on his screen that's not on anybody else's. That's what I -- so you may want to --
MR. HAWS: Has it started showing on your machine?

THE WITNESS: Yeah. It shows -- I can start --
MR. HAWS: We had this working earlier.
THE COURT: It's odd that we're seeing the "play" bar, if you will, and not the underlying video. I don't know --
THE WITNESS: Can I start it over and maybe just reset it?
THE COURT: Perhaps. Try that.
THE WITNESS: It will just take a second.
THE COURT: I will turn off the jury monitor until you have it resolved.
We're having the same problem.
MR. HAWS: It's showing up on your computer, but it's not playing?
THE COURT: It's not showing up --
MR. HAWS: I'm not getting a signal over here.
THE COURT: There is no signal coming to anyone except his own computer. I wonder if -- is that burned onto a disk or only --
THE WITNESS: It's onto a -- yeah, it's onto a DVD.
THE COURT: So it's a DVD inside your laptop?

THE WITNESS: Correct.
THE COURT: I wonder if we could try putting it in the --
MR. HAWS: She does not have it timed, Your Honor. She has the exhibit, but it's not timed, and it would be very difficult to locate that in terms of time.
THE COURT: Well --
BY MR. HAWS:
Q. Do you have one other suggestion, Sergeant Kittilstved?
A. I guess if we gave her this particular DVD and told her the start and end times, if she sees it on her side.
Q. Do you have the start and end times written down there so we can tell her?
A. I do. I do.
MR. HAWS: Let's try that.
THE COURT: We will need to change the input source from -- thank you, Ms. Gearhart.
MR. HAWS: Your Honor, that may not work because her computer does not have a way of showing the time on it, so it would be difficult for us to find.
THE COURT: Well --

MR. HAWS: Well, let's give it a try, and let's see if we can do it.
Could we take about a five-minute recess, Your Honor, in order to get this resolved? And then we have one other witness --
THE COURT: Yes.
MR. HAWS: -- that we'll have ready to go.
THE COURT: All right. Let's take a short recess. Ladies and gentlemen, I'll again admonish you not to discuss the case among yourselves or with anyone else, nor should you form or express any opinions about the case until it is submitted to you. And continue to follow the court's admonition concerning juror conduct as given to you on the first day of trial.
We'll be in recess.
(Recess.)
(Jury present.)
THE COURT: I'll note the jury is present. The witness has retaken the witness stand. And I know I won't get your name right, so I'll just remind you -- remind the witness that you're still under oath.
Let me see if I can get it right. Is it -- how do you pronounce it?

THE WITNESS: Kittilstved.
THE COURT: Kittilstved. The "V" is silent?
THE WITNESS: Yes, sir.
THE COURT: All right. You may inquire.
MR. HAWS: Thank you, Your Honor.
BY MR. HAWS:
Q. Sergeant Kittilstved, we had this operational during the lunch hour, right?
A. Absolutely.
Q. Not operational now?
A. No.
Q. With all the electronics minds we have in the room, we couldn't get it working?
A. Correct.
Q. But you can tell the jury certain footage that if they want to look at the video, they can?
A. Yes.
Q. The footage of what you would have shown them, do you want to just read that footage in, and then we'll conclude with your testimony?
A. Certainly. The footage begins with the robot leaving the truck and heading down to the vehicle.
The three areas that we noted that we

were going to show, starting at 8 minutes and 52 seconds, the camera on the front of the robot and the claw is doing a panning and zooming and changing the iris to observe underneath the vehicle and records -- you can see the baling wire on the catalytic converter on the front and the rear.
And then the next --
Q. How far does that extend?
A. That's only about 10, 15 seconds. So I would say that ends at zero-nine minutes.
The next section would be -- start at 34 minutes, 15 seconds. And that shows Corporal Fox in the bomb suit underneath the vehicle. And it shows him unhooking the baling wire and shows the fuse visible from the pipe up to the vehicle, the two fuses.
Then it shows him set it down, and I pull away from -- when I grabbed onto the rope, onto the steel rope, the second rope, pulling away from the vehicle and the fuse breaks free of the pipe and then pull it out --
Q. Where does that section end?
A. That section would end at about 38 minutes.

Q. So that's about a four-minute section?
A. Correct.
Q. And then the last section, what does it show that you wanted to show to the jury?
A. The last section would start at 1 hour, 12 minutes. And that is where we have transitioned to the disposal site, the gravel pit. And at that time, it shows me using the robot to remove the pipe bomb from the total containment vessel. And that particular segment would end at about 1 hour, 40 minutes; so it's about 28 minutes in length.
And during that time, it shows me removing the pipe bomb from the vessel, taking it out into the pit, setting it on the ground, shooting it with the first disruption -- which took the end cap off -- grabbing the pipe, turning it over, rotating it. You can see the powder on the ground. And then lining up and taking the second shot on the magnet, which at that time we didn't know was just a magnet. And then that would be the conclusion.
Q. So the portion that shows the powder on the ground and the powder coming out of the pipe would be around the 1 hour, 40 minute --

A. That particular section you're talking about would be at about 1 hour, 27 minutes, about 40 seconds.
Q. Okay. Thank you very much.
MR. HAWS: We apologize to the jury and the court that we couldn't get the electronics working. It would have been a nice show. We could have given popcorn, too.
Thank you very much, Sergeant Kittilstved.
Nothing further from the government.
THE COURT: Any cross?
CROSS-EXAMINATION
BY MR. McALLISTER:
Q. Was the pipe or any of the components ever tested for fingerprints?
A. That was not part of my responsibility in this case.
Q. Do you know if anyone did?
A. I do not.
MR. McALLISTER: Thank you.
THE COURT: Redirect?
MR. HAWS: No redirect. And ask that the witness be excused, Your Honor.
THE COURT: Officer Kittilstved, you may

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff,	:	Case No. 10-00148-N-BLW
	:	**JURY TRIAL**
vs.	:	
EDGAR J. STEELE, Defendant.	:	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 3

April 28, 2011

Pages 517 to 761

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Q. And when you met with him, did he ask you about a pipe bomb or destructive device that had been found on Cyndi Steele's car?

A. Yes. Actually, he showed me a picture of it.

Q. What did you tell him?

A. I told him that was the first attempt.

Q. What happened next?

A. He asked me some questions, if there was any more devices. I told him no. Then he followed me up to my house, and I gave him the pieces from the second device.

Q. What second device?

A. The one that was placed under Mr. Steele's Cadillac.

Q. And you gave them the pieces?

A. Yes, I did.

Q. Why did you still have the pieces?

A. They were just pipe. I use it in the plumbing.

Q. What about -- was the pipe bomb or destructive device still intact?

A. No, it was not.

Q. What had happened to the powder?

A. I took it out and dumped it out.

Q. Did you burn it?

A. Yes, I did.

Q. What happened after you admitted to building the bomb and putting it on Mrs. Steele's car?

A. I was placed in the custody in Coeur d'Alene jail.

Q. Is that why you're still in custody?

A. Yes, it is.

Q. During that initial meeting with Special Agent Sotka on June 9th, is that the day you told him where you had cashed in the silver from Mr. Steele?

A. Yes, I believe so.

Q. Other than to check on the pipe bomb and the destructive device, did you have any other reason to go to Oregon on May 31st?

A. No, I did not.

Q. And at whose direction did you go to Oregon?

A. Under Mr. Steele's.

MS. WHELAN: Your Honor, may I have just one moment, please?

THE COURT: Yes.

MS. WHELAN: Thank you, Your Honor. I have

no other questions.

THE COURT: Cross-examination.

MR. McALLISTER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. McALLISTER:

Q. Mr. Fairfax, when exactly did you file for bankruptcy?

A. I don't recall the exact date.

Q. Do you recall the month?

A. No, I don't.

Q. Do you recall the year?

A. 2010.

Q. Do you recall the season, whether it was winter, summer, or fall, spring?

A. No. Actually, I don't.

Q. Okay. You did file for bankruptcy, though, how many months before June? Was it months before June?

A. Yeah. It was probably, maybe three, four months.

Q. Okay. And when did your house go into foreclosure?

A. It was scheduled for foreclosure in January of 2010.

Q. All right. Did it go into foreclosure?

Was it foreclosed upon?

A. No, it did not.

Q. Why not?

A. We renegotiated another deal.

Q. Okay. So you were able to keep your house?

A. Yes.

Q. At that point in time in January of 2010, to use your words, you were desperate for money; correct?

A. Yes.

Q. And you started talking to Mr. Steele; correct?

A. Yes.

Q. And during that time period, you said -- let me rephrase that question.

I believe yesterday you said that you "needed to find a way to get money without doing it." Was that correct, sir?

A. No.

Q. Okay. Isn't it true that you said you "needed to get money without doing it"?

A. I don't recall saying that.

Q. Okay. Isn't it true, sir, that your plan was to get money from Mr. Steele but never

carry out a murder?
A. Yes.
Q. Okay. Your plan was to get money from Edgar Steele; correct?
A. Yes.
Q. And your testimony is that one day he just put $10,000 worth of silver coins in a desk drawer in the garage?
A. No, sir.
Q. Okay. You testified yesterday that you removed silver coins from the desk; correct?
A. Yes, sir.
Q. And cashed them in; correct?
A. Yes, sir.
Q. And Mr. Steele wasn't there when you took those coins, was he?
A. He was not at the desk, no.
Q. Okay. As a matter of fact, he wasn't in the garage, was he?
A. Nope. He was standing outside the garage.
Q. Okay. You did work at the Steele residence; correct?
A. Yes, sir.
Q. And, in fact, you built some safe areas

where silver could be stored; correct?
A. Yes, I built some safe areas.
Q. Okay. You knew where they were; right?
A. Yes, sir.
Q. They were, in essence, hidden places; right?
A. Yes, sir.
Q. And you could easily go to those places and remove silver if you chose to do it; correct?
A. No, sir.
Q. Okay. No, sir, you didn't remove any silver or, no, you couldn't do it?
A. Both, sir.
Q. All right. Are you aware of the fact that Cyndi Steele reported to the authorities that $45,000 was stolen -- $45,000 worth of silver was stolen from their property?
A. Yes. I know she reported that.
Q. And you were the person suspected of doing it; correct?
MS. WHELAN: Objection. Hearsay. Foundation.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. You were the person who denied taking

$45,000 worth of silver; correct?
MS. WHELAN: Objection. Hearsay. Foundation. I move to strike.
THE COURT: Sustained. Counsel, I think the way the question is phrased, there is a predicate that necessarily calls for, I think, hearsay. I'll sustain the objection.
BY MR. McALLISTER:
Q. Well, you were aware of the fact that $45,000 in silver was missing from the Steele residence; correct?
MS. WHELAN: Objection. Presupposes facts not in evidence. Move to strike.
THE COURT: The question is: Were you aware? Just yes or no.
THE WITNESS: Yes, I was aware of it.
BY MR. McALLISTER:
Q. And you denied taking it; correct?
A. Nobody has ever asked me if I took it.
Q. Okay. Well, do you deny taking it?
A. Yes, I do.
Q. All right. I believe, in your testimony -- well, let me ask you this: Where were the safe places or stashes for the silver in the garage?

A. Behind a wall that he had Sheetrocked.
Q. Okay. So no one would know -- no one could easily know that they were there; correct?
A. Correct.
Q. But you knew they were there?
A. Yes.
Q. And as a matter of fact, after you were arrested, you told the FBI that they were there; correct?
A. Yes, I did.
Q. How many times do you think you lied to Edgar Steele?
A. Maybe twice.
Q. What were those two lies?
A. That I would kill his wife.
Q. What was the second one?
A. That I would kill his mother-in-law.
Q. And those are the only lies you've told him?
A. Yes.
Q. All right. What about the fact that you denied being in his house?
A. Which time?
Q. Any time. Didn't you lie to him?
A. No.

Q. In this particular case, isn't it true that you lied about going to Portland on June -- on June 11th?
A. No.
Q. Okay. You used the word or words that you "did not intend to carry out Edgar's plot." Do you recall testifying --
A. Yes.
Q. -- and using those words? Isn't it true, Mr. Fairfax, that this was your plot?
A. No, sir.
Q. Isn't it true that the pipe, the powder, the fuse, all came from your house or garage?
A. That is correct, sir.
Q. And isn't it true that you, and you alone, made what has been called a "pipe bomb" or an "explosive device"; correct?
A. Yes, sir.
Q. No one helped you?
A. No, sir.
Q. And Edgar Steele never saw it or was present when you were making it; correct?
A. No, sir.
Q. Edgar Steele did not know what you were

doing, did he, sir?
A. Yes, he did.
Q. Okay. And you say that not because of anything that happened in your presence; you say that because of things you heard from him; correct?
A. Things we discussed, yes.
Q. All right. But the fact is he never touched, saw, or used the explosive device that you made?
A. That's correct.
Q. Now, as I understand it, when you made this device, that you broke the fuse in several spots; correct?
A. Yes, sir.
Q. Why did you do that?
A. So the fuse would not work.
Q. Okay. I believe that you have said that it would not go off because of the ignition; correct?
A. Correct.
Q. What did you mean by that?
A. I just had laid it up against the exhaust pipe, and that doesn't get hot enough to ignite the fuse.

Q. All right. I believe you've testified that you didn't put enough powder in the pipe; correct?
A. Correct.
Q. And, in fact, you didn't fill it up intentionally because you didn't want it to go off; correct?
A. Correct.
Q. Now, as I understand it, on June 9th, you contacted your lawyer, Mr. Michaud, and then, he recommended that you go talk to the law enforcement authorities; correct?
A. No, sir.
Q. Okay. You contacted your lawyer, and you decided you wanted to go to law enforcement authorities?
A. Yes, sir.
Q. Okay. And your purpose in doing that was to get immunity from prosecution; correct, sir?
A. No, sir.
Q. Didn't you, earlier this morning, say you were "awaiting to get my immunity"?
A. Yes, sir.
Q. Okay. What is "immunity"?

A. It's something that you get when you don't want to get in trouble.
Q. Okay. But, in fact, you were in trouble, were you not, sir?
A. Yes.
Q. You had lied to the FBI in your very first meeting on June 9th; correct?
A. No, sir.
Q. You didn't lie?
A. No, sir.
Q. Well, do you recall being asked about your travels to Oregon City?
A. You mean to Portland?
Q. To Portland.
A. Yes, sir.
Q. Oregon City is basically near Portland; correct?
A. Yes.
Q. Okay. So on June 9th, isn't it true that in your meeting with Agent Sotka, you lied about your purpose in going to Portland --
A. No, sir.
Q. -- or Oregon City? Did you not make the statement to Agent Sotka that you took a trip to Oregon City, Oregon, to scout out the residence

where Cyndi Steele and her mother were residing? Did you make that statement?
A. No, sir.
Q. Do you know why it's in his report?
A. It's his report, sir.
Q. Okay. And did you -- when you -- did you tell him that you had been over to Portland?
A. Yes, sir.
Q. And why is it, sir, you didn't tell him that your real purpose in going to Portland was to look and see if the explosive device was still on Cyndi Steele's car?
A. Because when we looked, it wasn't there.
Q. Well, this was June 9th, and you didn't tell Agent Sotka that you had looked; correct?
A. Correct.
Q. And as a matter of fact, you had never looked, had you, sir?
A. No, I hadn't.
Q. Your cousin, Jim Maher, was with you; correct?
A. Yes.
Q. And you sent him down the street to look?

A. Yes.
Q. And when he came back -- well, actually, you wanted him to crawl under the car and get a good look; correct?
A. Yes.
Q. And he refused to do that; correct?
A. No.
Q. Okay. So it's your testimony that he crawled under the car and looked for anything he could find there?
A. No.
Q. Okay. He didn't go under the car, did he?
A. Nope.
Q. As a matter of fact, he got about 40 feet away and looked at it; correct?
A. Actually, he said about 15 feet, but --
Q. But he never actually looked under the car, did he?
A. He bended over and looked under it, he said.
Q. Okay. Based upon what Mr. Maher told you, you made the assumption that it had fallen off?

A. Yes, sir.
Q. And you had no concern about if young children would find what you had made -- did you have any concern?
A. Yes. Actually, I did.
Q. Well, what did you do about your concern? You certainly didn't tell the FBI, did you?
A. No, I did not.
Q. You certainly didn't tell the Portland police, did you?
A. No, I did not.
Q. You certainly didn't tell anyone, did you?
A. No, I did not.
Q. Back to the question: Isn't it true that in your very first meeting you lied to the FBI?
A. No, sir. I just omitted facts.
Q. So you think if you omit something, that's not a lie?
A. No, sir.
Q. Okay. You don't think you can lie by telling a story that's only half true?
A. You could lie that way; yes, sir.

Q. Well, don't you, today, think that you should have told the FBI or someone that this device, in your opinion, wasn't on the car anymore and was someplace in the public?
A. Yes, sir.
Q. And you didn't do that?
A. No, sir.
Q. As a matter of fact, today, you believe that the device was on Cyndi Steele's car?
A. Can you say the question again?
Q. You believe today that that device did not fall off, that it actually remained on Cyndi Steele's car?
A. No, sir.
Q. Well, didn't you tell us just shortly before -- didn't you tell us this morning that you saw a picture of it on June 15th?
A. The device?
Q. Yes.
A. Yes.
Q. And you were told by Officer Dan O'Dell that that was the device removed from Cyndi Steele's car earlier that day; correct?
A. Actually, it was still attached when he showed me the picture.

Q. All right. That was the device that you attached to her car; correct?
A. Yes, sir.
Q. And you identified it; correct?
A. Yes, sir.
Q. So when you went to Portland with your cousin, Jim Maher, you were wrong in assuming that it had fallen off; correct?
A. Yes, sir.
Q. Isn't it true that you never told anyone about the explosive device until you got caught?
A. Yes, sir. That's true.
Q. When you were confronted by Officer O'Dell, you basically agreed to give a full confession; correct, sir?
A. Yes, sir.
Q. And you actually went to either the police station or the courthouse and gave a confession; correct?
A. Yes, sir.
Q. And in your confession, you admitted that you, and you alone, attached a pipe bomb on Cyndi Steele's car on May 31st; correct?
A. Yes, under the instruction of

Mr. Steele.
Q. Well, is there anything on -- any evidence that Mr. Steele ever saw this device?
A. No, sir.
Q. Ever made this device?
A. No, sir.
Q. Ever gave you the parts that go into making this device?
A. No, sir.
Q. He never even saw it; correct?
A. Correct.
Q. In your confession, you said, and I quote, "But it was not a real bomb. It was not designed or built to explode." Correct?
A. Yes, sir.
MS. WHELAN: Objection. Foundation regarding quote. He can be asked what he remembers.
THE COURT: Rephrase the question, Mr. McAllister.
BY MR. McALLISTER:
Q. Do you remember making this statement: "It was not a real bomb. It was not designed or built to explode" during your confession on June 15th?

A. Yes, sir.
Q. And do you remember, during your confession, stating, "I wasn't worried about it because those ones wouldn't have went off anyway"?
A. Yes, sir.
Q. And do you remember making the statement, "There was, you know, no way for them to go off, no ignition," correct, sir?
A. Yes, sir.
Q. And then, during your confession, you said, "I didn't put enough powder in it to begin with"; correct?
A. Yes, sir.
Q. And do you remember stating "but you knew it wasn't going to work." "There was no way it was going to work"?
A. Yes, sir.
Q. And do you recall, when you were interviewed by Sergeant O'Dell, that you said you were a hundred percent sure that it wouldn't work?
A. Yes, sir.
Q. And today -- yesterday, you acknowledged in response to Ms. Whelan's question that you have become convinced that it could have gone off?

A. Yes, sir.
Q. And they convinced you of that; correct?
A. Yes.
Q. Have you ever talked to Cyndi Steele since June 15th?
A. No, sir.
Q. Well, actually, have you ever talked to her since May 31st, 2010, the day, I believe, that you put the device on her car?
A. No, sir.
Q. Have you ever apologized to her for putting the device on her car?
A. I haven't talked to her. How could I do that?
Q. So the answer is, no, you have not apologized since your confession or since you made the admission?
A. No, I have not. I was advised not to talk to her.
Q. Okay. Did you write her a note or a letter and say, "I'm sorry I did that to you"?
A. Yes, I did.
Q. Where is that?
A. It will be at my sentencing hearing.

Q. Okay. Your sentencing hearing is scheduled for next week; correct, sir?
A. Yes, sir.
Q. And it is your intention or desire to get the best sentence possible for you; correct?
A. Yes, sir.
Q. And your lawyer is working with you towards that goal; correct?
A. Yes, sir.
Q. Your lawyer who is here today?
A. Yes.
Q. And part of your agreement with the government is that you have to come in and testify; correct, sir?
A. Yes.
Q. And you're expecting, are you not, that your jail sentence that you're currently serving will end soon; correct, sir?
A. I have no way to know that, sir.
Q. All right. Who is Daryl Hollingsworth?
A. He is an inmate in Bonner County Jail.
Q. All right. He was an inmate with you in Bonner County Jail; correct?
A. Yes, he was.
Q. And you talked to him about this case;

correct, sir?
A. No, sir.
Q. You never spoke about this case to Daryl Hollingsworth?
A. No, sir.
Q. Do you remember telling him that you were hoping that you would get probation and time served if you did a good job for the government?
A. No, sir. I never said that.
Q. You deny making that statement?
A. Yes, sir.
Q. Do you recall telling Daryl Hollingsworth that you wanted to write a book about your experiences?
A. Yes, sir.
Q. Are you going to write a book?
A. Yes, sir.
Q. Because you're desperate for money still?
A. No, sir.
Q. As a matter of fact, this book you're going to write, you're going to be the hero; correct?
A. No, sir.
Q. Didn't you tell your cousin, Jim Maher,

that, in fact, you wanted to go over to Oregon City in the Portland area and warn Cyndi about this?
A. Yes, sir.
Q. And you told him you wanted to be the hero; correct?
A. No, sir.
Q. You told him you wanted to be on the Oprah show, did you not?
A. Yes. I might have said that, sir.
Q. And that's what you saw in yourself, is that you would be a hero and be on national TV on Oprah?
A. No, sir.
Q. Well, you wanted to go on her show, did you not?
A. Yes, I did, sir.
Q. Have you written any of this book yet?
A. Yes, sir.
Q. Where is that at?
A. It's somewhere, not in jail.
Q. Okay. When did you start writing it?
A. Nine months ago.
Q. Okay. Is it at your home?
A. Yes, sir.

Q. Is it -- where is it in your home?
A. I don't know, sir. I haven't been there in ten months.
Q. Have you told the government or the FBI about the fact that you want to write a book about this experience?
A. No, sir.
Q. You have kept that a secret, too, have you not, sir?
A. Nobody asked me, sir. I didn't have a reason to tell them.
Q. Well, in your jailhouse meetings with Daryl Hollingsworth, you actually asked him if he could design the cover for your book; isn't it true, sir?
A. Yes, sir.
Q. So you kept it secret from the FBI, secret from the government, and secret from the defense, but you discussed it with Daryl Hollingsworth, did you not?
A. Yes. He seen me writing one day and asked me what it was.
Q. Okay. And you're the hero in the book?
A. No, sir.
Q. Well, isn't it true that you told that

to your cousin, Jim Maher?
MS. WHELAN: Objection. Cumulative.
THE COURT: Sustained.
BY MR. McALLISTER:
Q. You never did warn Cyndi Steele; correct?
A. Yes, sir.
Q. And you never told the FBI until you got caught that somewhere there was a dangerous explosive device; correct?
A. No, sir; I did not tell them.
Q. But you don't think that was a lie; it's just an omission?
A. Yes, sir.
Q. Isn't it true that when you were caught and confessed, you said, "The minute I took the money, I was trapped"?
A. Yes, sir. I think I did say that.
Q. And, in fact, you didn't take money according to your testimony. You took silver; correct?
A. Yes, sir.
Q. And you cashed it in?
A. Yes, sir.
Q. That wasn't a lie?

A. Who did I lie to, sir?
Q. The FBI, the police department.
A. No, sir.
Q. Actually, I believe it was to ATF Agent Todd Smith that you made that statement; correct?
A. Yes, sir.
Q. And during your confession, did you not say to him -- do you remember saying to him, "It was all a big lie"?
A. No, sir.
Q. Okay. Do you recall saying that on videotape and audiotape?
A. No, sir, I did not say that.
Q. Okay. Do you recall making the statement, "I was stupid, too"?
A. Yes, sir.
Q. Do you recall making the statement, "So I, Larry Fairfax, finally, you know, made up a big lie"?
A. I don't know what part that's at.
Q. But you made that statement, did you not?
A. I would have to see it in the sheet to know that.
MS. WHELAN: Your Honor, I would object to

the form of the question. It's just taken out of context.
THE COURT: Counsel, give me just a moment.
Obviously, Counsel, you have a chance to correct any misimpression on redirect, but I think that counsel is entitled to have context provided if the statement, or any evidence for that matter, if taken out of context might be misleading to the jury. So if indeed we're going to show or have a discrete statement presented to the jury, then I think the -- and it's misleading in some way or at least it needs to be put in context, I think that needs to be done at this time. I was trying to find the specific rule, but you can either withdraw the question or give the witness a chance to place it in context or persuade me that it's not out of context either at a sidebar.
BY MR. McALLISTER:
Q. The confession that you made on June 15th was -- a transcript of it was prepared; correct, sir?
A. There was a transcript of it, yes.
Q. And you've reviewed that transcript?
A. Yes, I have.

Q. I would like you to review page 14, lines 15 through 20, to see if it refreshes your recollection.
MR. McALLISTER: Your Honor, if I may have permission to show the witness?
THE COURT: Yes, you may. Let me turn off the jury monitor. If you'll put that on the screen, I've got the jury monitor off.
BY MR. McALLISTER:
Q. Mr. Fairfax, if you could read that and tell us whether or not it refreshes your recollection.
MS. WHELAN: Your Honor, I'm going to object. This is not a transcript that I received or in a format that I have ever been given by defense. We --
THE COURT: Confer with counsel, see where -- I don't know where --
MR. McALLISTER: This is what I received from the government.
MS. WHELAN: Your Honor, I was just given a copy of it. I will need time to look at it.
THE COURT: Well, approach at a sidebar. Let's find out what's going on here.
(Sidebar commences as follows:)

THE COURT: It's in a different format. I mean --
MS. WHELAN: It's entirely in a different format. I have never had anyone check it. The page numbers aren't the same.
THE COURT: Was this produced electronically so that it was --
MS. WHELAN: No. This is what they received -- excuse me, Judge --
THE COURT: As a hard copy? Not --
MS. WHELAN: -- with Bates numbers. It's a hard copy.
THE COURT: Let's speak one at that time. So it was produced in hard copy, not in electronic format?
MS. WHELAN: Correct. It was scanned onto a disk.
THE COURT: So the copy that Mr. McAllister has, you have never seen before?
MS. WHELAN: Correct.
THE COURT: Mr. McAllister?
MR. McALLISTER: Judge, I received it in discovery. Ms. Whelan told me that the transcript was actually prepared by the Public Defender's Office. I have -- I'll represent to the court I

have watched this video, listened to the audio, and the transcript accurately portrays what he said. And I'm asking to refresh his recollection. I'm not asking to introduce it.
THE COURT: Well, but the problem is if you refresh his recollection with something that he -- in fact, isn't accurate, that can be misleading. But it seems to me it's a simple problem. Either we can use what the government has or you can just point out where in the transcript that you've got that you're going to, you know -- the areas right now, and very quickly then Ms. Whelan can compare it to hers and make sure that there is no variation.
MR. McALLISTER: Page 14, lines --
THE COURT: Okay. The pagination won't be the same.
MR. McALLISTER: If I could have a moment to look at her copy, I probably can find it.
THE COURT: I think what may have happened -- if there is apparently a videotape, perhaps a separate transcript was prepared by the Federal Defenders, and this is what Mr. McAllister has and that's why it's in a different format. If we can identify here what the statement is, perhaps Ms.

Whelan has no objection.
MR. McALLISTER: It's page 14.
MS. WHELAN: Judge, the problem is I need it identified on here because this is what I --
THE COURT: I understand that, but at least you can look at it and see if you can perhaps go to that point. I don't think -- this is not an error of omission. I'm quite confident that this was provided by the Federal Defender. Obviously, it's not coming before the jury. It can only be shown to the witness, and he can say it does or does not refresh his recollection. And then it will need to be taken down, and then he has to testify from his own memory.
MR. McALLISTER: That's fine with me, Your Honor.
MS. WHELAN: That's fine, but could you find it in here?
MR. McALLISTER: I'm looking very quickly, and the answer is I couldn't but I --
THE COURT: It's roughly halfway through, it appears.
MR. McALLISTER: I have watched the video.
THE COURT: This is 26. So it's 14 out of 26 pages, so it should be almost -- just a little

more than halfway through the --
MS. WHELAN: I found it. Are there repeated places, though, where this is going to happen?
THE COURT: Are you going to be referring to this again on other questions?
MR. McALLISTER: Probably not.
THE COURT: Let's deal with this now, and then if you do -- we know roughly how to correspond. By comparing pages, I think we can go roughly to that point of reference. That's five --
MS. WHELAN: Nine.
THE COURT: Nine of 17, so again, it's just a little more than halfway through your copy. Let's proceed in that fashion.
MR. McALLISTER: Thank you.
(Sidebar concluded.)
THE COURT: Mr. McAllister?
BY MR. McALLISTER:
Q. Mr. Fairfax, have you had an opportunity to review page 14, lines 15 through 20?
THE COURT: Counsel, could we take a very short recess. One of the jurors needs to take a short break. I apologize, but that will give us a

chance to -- we'll just take a very short -- it will be like a five-minute recess, just long enough so we can accommodate that.

I'll again instruct the jury not to discuss the case among yourselves or with anyone else nor should you form or express any opinions about the case until it is submitted to you.

We'll be in recess for five minutes.

(Recess.)

(Jury present.)

THE COURT: For the record, I'll note the jury is present.

I'll remind, Mr. Fairfax, you are still under oath.

Mr. McAllister, you may resume your cross-examination.

MR. McALLISTER: Thank you, Your Honor.

BY MR. McALLISTER:

Q. Mr. Fairfax, have you had a chance to review the transcript?

A. Yes, I have.

Q. Does that refresh your recollection about a statement you made that "I made up a big lie"?

A. Yes, except for it's -- it has to do

with me talking to my wife, explaining to her why I'm going to Portland, that I was spying for Edgar on his wife.

Q. That was a lie; correct?

A. Yes, it is.

Q. And you also lied to the FBI?

A. No.

Q. Correct? You deny lying to the FBI?

A. I omitted --

MS. WHELAN: I'm going to object. Cumulative.

THE COURT: I'll give counsel some leeway, but we're not going to beat the proverbial dead horse here. So I'll allow one more question on this, and then we need to not revisit the area.

Go ahead, Mr. McAllister.

BY MR. McALLISTER:

Q. Is it your testimony you didn't lie to the FBI?

A. Correct. I omitted facts. I did not lie.

Q. Okay. Did you lie to Jim Maher, your cousin?

A. No, I did not.

Q. Did you lie to the FBI about the role

Jim Maher played in this with you?

A. No, I did not.

Q. Do you recall during your confession, your videotaped confession that you gave to Agent Todd Smith, making the statement -- when asked about whether Jim Maher was a party to this, you said, "He didn't know anything about it." Did you make that statement?

A. Yes, but that has to do with placing the bomb, nothing to do with him going down there.

Q. Okay. And so, you never told your cousin, Jim Maher, about placing the device?

A. Not until I was going down there to look and see if it was there.

Q. Okay. So you did discuss this with your cousin, Jim Maher; correct?

A. On the way down to Portland.

Q. And you told him that you wanted to be the hero in this; correct?

A. No, sir.

Q. Okay. Well, that's not what you told Agent Smith, is it? You told him just the opposite -- he didn't know anything about it, "anything about it"; correct, sir?

A. No, sir. That was about placing the

device.

Q. He knew that you had placed the device; correct?

A. Not until we went down to Portland.

Q. Okay. Well, this is after you went down to Portland on June 15th, is it not, sir?

A. Yes, but this question you're talking about you're taking out of context.

Q. I see. So you never lied to Agent Smith?

A. No, sir.

Q. Yesterday, you talked about going to the mud bogs?

A. Yes, sir.

Q. And that is some type of demolition derby?

A. No, sir.

Q. What is it?

A. Side-by-side racing through the mud.

Q. All right. And isn't it true that you took Edgar Steele's truck?

A. Yes, sir.

Q. And isn't it true that you damaged the tires on the truck?

A. No, sir.

Q. There was no tire damage of any kind?
A. Not at the mud bog, sir.
Q. Well, where did the tires get damaged?
A. At my house.
Q. Okay. And how did they get damaged?
A. When I was unloading the mud truck, I backed into a piece of dock that I have behind my garage and popped a tire.
Q. Isn't it true that Edgar Steele gave you $400 to replace the tires on the truck?
A. No, sir.
Q. Directing your attention back to June the 9th at approximately -- I think you said noon or 12:30, you had a meeting with Agent Sotka; correct?
A. Yes, sir.
Q. And it was at your attorney's home?
A. Yes, sir.
Q. And had you spoken to your attorney beforehand?
A. Yes, sir.
Q. And did you tell him that you had placed an explosive device on Cyndi Steele's car?
MS. WHELAN: Your Honor, I'm going to object because it goes into the attorney-client

privilege. His attorney is here. He can talk to him about it, but --
THE COURT: Counsel, I think -- I'm trying to think how to deal with that in a way that won't require disruption. It may just be necessary to send the jury out.
Counsel, if you want to pursue another line of inquiry, you can perhaps have that consultation on a break. If not, we may need to send the jury out and allow Mr. Fairfax to visit with his attorney.
MR. McALLISTER: Maybe, Judge, I can ask it a different way.
THE COURT: All right.
BY MR. McALLISTER:
Q. Did you tell anyone that you had made an explosive device by yourself and wired it on to Cyndi Steele's vehicle?
A. No, sir.
Q. No, sir, you didn't tell anyone else?
A. No, I did not.
Q. Okay. Now, is it not true that when you were at the meeting with the FBI that you stated, "I never intended on committing the murders but thought that I could string Steele

along"? Correct?
A. Yes, sir.
Q. And then you said you were going to pay him back; correct?
A. Yes, sir.
Q. Did you ever do that?
A. No, sir.
Q. It is your testimony, your statement, Mr. Fairfax, that on June 9th, you didn't lie?
A. No, sir.
MR. McALLISTER: That's all I have, Your Honor.
THE COURT: Redirect?
MS. WHELAN: Thank you, Your Honor.
REDIRECT EXAMINATION
BY MS. WHELAN:
Q. Mr. Fairfax, during the break, did you have an opportunity to review what was just marked as Government's Exhibit 99 for identification?
A. Yes, I did.
Q. That's a transcript between you and Todd Smith?
A. Correct.
Q. Did you -- have you seen it before?
A. Yes, I have.

Q. Have you gone over it with your attorney?
A. Yes, I have.
MS. WHELAN: Your Honor, we would move for the admission of Exhibit 99. Excuse me. I forgot a question.
BY MS. WHELAN:
Q. Is it a fair and accurate transcript?
A. Yes.
MS. WHELAN: Move for the admission of Exhibit 99.
MR. McALLISTER: No objection.
THE COURT: Exhibit 99?
MS. WHELAN: Yes, Your Honor.
THE COURT: Will be admitted.
(Government's Exhibit 99 admitted.)
THE COURT: Do you wish to have it published to the jury at this time?
MS. WHELAN: Your Honor, we don't.
THE COURT: That's fine.
MS. WHELAN: I will, but --
BY MS. WHELAN:
Q. Defense counsel asked you several questions about this -- I'll come back to that and discuss that in a moment.

Q. Did -- did your partner also break off contact with them at that time?

A. No. She broke off contact at the house.

Q. So you were the only one following to the hospital?

A. Yes, sir.

Q. Okay. Did Mrs. Steele cooperate with you throughout that morning?

A. Yes, she did.

Q. Did Mrs. Kunzman cooperate with you throughout that morning?

A. Yes, sir.

MR. HAWS: No further questions. Thank you.

THE COURT: Mr. Amendola?

MR. AMENDOLA: No questions, Your Honor.

THE COURT: You may step down. Thank you, Agent Heckendorn.

Counsel, I think we're about where we take the morning break. I think we'll just go ahead and take a 15-minute recess.

I'll admonish the jury again not to discuss the case among themselves, not to form or express any opinions about the case until it is submitted to you.

We'll be in recess for about 15 minutes.

(Recess.)

(Jury present.)

THE COURT: I'll note that the jury is present.

The government may call its next witness.

MR. HAWS: The government calls Jess Spike.

THE COURT: Trooper Spike, please step before Ms. Gearhart and be sworn, and then follow her directions from there.

JESS SPIKE,

having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please state your complete name and spell your last name for the record.

THE WITNESS: Jess Lachlan Spike, S-P-I-K-E.

THE COURT: You may inquire of the witness.

MR. HAWS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HAWS:

Q. Good morning, Mr. Spike. Where do you live?

A. Coeur d'Alene, Idaho.

Q. And what is your occupation?

A. I'm a trooper with the Idaho State Police.

Q. How long have you been a trooper?

A. I'll start my fifth year September 12th, this year.

Q. And do you have any prior law enforcement experience before becoming a trooper?

A. No, I don't.

Q. And have you been through the academy?

A. I have.

Q. And do you operate in uniform? Are you a uniformed trooper?

A. Yes, I am.

Q. And do you drive a marked vehicle?

A. I do.

Q. You drive an Idaho State Police prowl car or patrol car?

A. Yes.

Q. And what color are those?

A. Black and white.

Q. What are your duties, then, as a trooper for the Idaho State Police?

A. I do a variety of things from traffic enforcement to crash investigation, DUI

enforcement, criminal and drug interdiction on the roadways, as well as we assist local agencies with other general law calls, domestic violence calls, and other things of that nature.

Q. And were you on duty on June the 11th, 2010?

A. I was.

Q. And where were you that morning?

A. I had been called in early that morning by my captain. He had an assignment for me to assist a task force.

Q. That's the North Idaho Violent Crimes Task Force?

A. That's correct.

Q. And so where did you -- where did you go in connection with those duties?

A. He asked me -- he had actually called me at home the night before and told me he had an assignment for me in the morning. He needed me at the office at 0500. I met him there and shortly thereafter met Agent Sotka who briefed me on what the task at hand for that day was going to be.

Q. Where did you meet with Special Agent Sotka?

A. In our office in Coeur d'Alene.

Q. In Coeur d'Alene?
A. That's correct.
Q. And where were you supposed to carry out this operation?
A. At a residence in Sagle.
Q. In Bonner County?
A. That's correct.
Q. Idaho State Police has jurisdiction throughout the state; is that correct?
A. That's correct.
Q. And was there another trooper involved in it as well?
A. There was. Trooper Branch.
Q. Was she also -- was that Heather Branch? Holly Branch. I'm sorry.
A. It was.
Q. And was she also in a marked vehicle?
A. She was.
Q. Was there anybody else involved in this besides you and Trooper Branch and Mr. Sotka?
A. My direct supervisor at the time was involved, Sergeant Johnson, essentially just as an information liaison as to what was transpiring that day, to communicate information between the area that the operation took place and our captain

back at region headquarters.
Q. And so, where did you go in connection with the operation that day?
A. Initially, we -- after I was briefed on what we were doing, we left the office and met at a gas station outside Sagle. We all met up there. When I say "all of us," myself, Trooper Branch, Sergeant Johnson, the three of us in the State Police, as well as Agent Sotka. We were waiting for notification from Agent Sotka on Mr. Steele's movements that morning. We were basically waiting for him to leave the house. Initially --
Q. Before you go on, let me ask you a couple questions. When you traveled from Coeur d'Alene up to Sagle, Idaho, was that on Highway 95?
A. It was.
Q. Is that a major thoroughfare in the State of Idaho?
A. Yes, it is.
Q. And does it go through Sagle, Idaho?
A. Yes.
Q. And did you meet -- this gas station where you met up, was that near Highway 95?
A. Yes. On Highway 95.

Q. And had you met Mr. Steele prior to that time?
A. Negative.
Q. And so, as part of this operation, were you told what -- who Mr. Steele was, what the allegations were against him?
A. Yes.
Q. And what was the operation supposed to accomplish that morning?
A. Essentially, we were to make a false death notification to Mr. Steele. From what we had been told, he had plotted to have his wife --
MR. McALLISTER: Objection, Your Honor, as hearsay, what he had been told.
THE COURT: Sustained. The witness can go ahead and answer, but do not indicate what you were told by somebody else.
BY MR. HAWS:
Q. Let me just go ahead and direct you further, Mr. Spike. And so, you were there to make a false death notification; is that correct?
A. That's correct.
Q. And that was part of the law enforcement plan --
A. That's correct.

Q. -- with regard to Mr. Steele?
A. That's correct.
Q. And that was under the direction of Mr. Sotka?
A. That's correct.
Q. And have you made death notifications before?
A. Yes.
Q. What's involved in making a death notification? Would you tell the jury?
A. Our -- I don't know that we have a written policy. We have a, I guess, an unwritten policy. They are always done in person. Whenever possible, we do it at the person that we're notifying, at their home. We always do it in pairs. We always do it inside the residence. It's never done over the phone unless there is some extenuating circumstance that we physically cannot make an in-person notification. It's one of the more sacred things that we do.
Q. How many times have you made death notifications in connection with your duties?
A. It's not something that we're obviously real proud of. It's not that we keep stats on it. Thinking back, I think that I've been primary in

the last four years on probably 12 or more notifications. I've been the secondary or backing officer on probably further 12.

Q. So a couple dozen?

A. That is correct.

Q. Do you mean proud of them or happy about them?

A. It's not something that we keep stats on because it's not a pleasant part of the job. We'll say that.

Q. But it is part of the duties?

A. It's a very important aspect of our job.

Q. Did you go to a specific location that morning, then?

A. After we met at the gas station?

Q. Yes.

A. We did. A residence on Talache, I believe, is the name of the road.

Q. Talache Road?

A. That's correct.

Q. Do you recognize the number 1569 Talache Road?

A. That sounds correct.

Q. And how far was that, approximately,

from Sagle or from Highway 95?

A. I would have to guess to tell you. Six or eight miles would be my guess. I was following Agent Sotka at the time, and I didn't keep track of how far it was.

Q. What was -- what is at that location? What did you observe there?

A. That's Mr. Steele's residence where we met him.

Q. And it's a house there?

A. That's correct.

Q. Driveway into the house -- into the yard and to the house?

A. Yeah. There is a large number of outbuildings and horse corrals and things of that nature.

Q. Was Mr. Steele there when you arrived?

A. No, he was not.

Q. And had you seen his vehicle or how did you know he was not there?

A. Agent Sotka told me that we had -- that he had left the residence.

MR. McALLISTER: Again, Judge, I object to anything as hearsay that he was told.

MR. HAWS: Not offered for the truth of the

matter as stated, Your Honor, but to show the progress of what law enforcement is doing through its procedures here.

THE COURT: I'll overrule the objection.

Ladies and gentlemen, I'm going to allow the witness to testify as to what he was told, but it's not being offered to prove whether the statement was true or false but rather to simply provide, essentially, a chronology and explain what this officer did in response to that information.

Obviously, Counsel, if we get into any substantive information beyond that, then obviously I will sustain the objection.

You may answer.

BY MR. HAWS:

Q. And so, Mr. Sotka told you that Mr. Steele had left, and for that reason you were able to go ahead and begin to carry out your operation?

A. That's correct. Once he had left the residence, we attempted to head that direction. The problem that we ran into was the distance between his residence and where we had staged to basically organize at the gas station was too far. Initially, Agent Sotka wanted to perform a traffic

stop and make the notification as part of a traffic stop. And I kind of argued with him about that just because it was outside of what we normally do. I wanted it to appear as normal as we normally proceed with a death notification. We would never pull a vehicle over, assuming that that was the deceased family member, and make a notification on the side of the road. Aside from being unprofessional, it's just inappropriate.

Q. So who was there at 1569, then, when you arrived? It was you and Trooper Branch?

A. That's correct.

Q. And Mr. Sotka?

A. That's correct. Yes.

Q. Okay. Did you have any kind of radio contact with Mr. Steele?

A. I did. Approximately halfway between the gas station and the residence, I stopped Agent Sotka and said -- he informed me that he had a telephone number for Mr. Steele, and I asked for that and, from my cell phone, dialed Mr. Steele and spoke with him and informed him that I needed to meet with him and asked if he could return to his residence.

And after a fairly lengthy discussion,

he was concerned about the nature of the call and what it was about and why I couldn't tell him over the phone. I got the feeling that he thought that I was serving him or going to arrest him for something. And I just told him it was a personal matter and that I needed to speak with him in person and asked him to return to the residence, which he agreed to do.

Q. Do you remember any specific things that he said there in that conversation?

A. I believe he asked if I was serving him or if -- if I was there to arrest him or basically if it was criminal in nature.

Q. And what did you tell him when he asked you that?

A. That it was not. That it was a personal matter. I didn't want to discuss it over the phone and that I needed to do it in person and asked that he return to the residence.

Q. And did you observe Mr. Steele return to his residence?

A. He did.

Q. Do you know what kind of vehicle he was driving when he returned to the residence?

A. It was -- I would estimate a '90s model

-- I believe it was a Ford red pickup towing a large tagalong flat-bed trailer. Might have even been a gooseneck. I'm not sure, but it was a fairly large trailer.

Q. And at any point, did Mr. Steele step out of that vehicle?

A. He did. I was -- in the driveway, we had parked our cars off facing out of the driveway -- Trooper Branch and I had -- and we were standing 15 or 20 feet from our cars. He approached and -- stepped out of his vehicle and approached our location halfway between his truck and the porch of his house.

Q. Who was the first to make contact with Mr. Steele, then?

A. I was.

Q. And would you relate what was said on that occasion?

A. He asked what this was about. And, you know, I think he may have inquired why there was two of us there or just the severity of it. And I said, you know, it wasn't the place right there standing in the driveway to discuss it and asked that he walk up on the porch and have a seat.

Q. And is that what happened?

A. It is. He agreed to go up on the porch. Once he was seated, I told him that his wife, Cyndi Steele, had been killed in a car crash.

Q. What was his first reaction when you told him that?

A. The best I can describe it, he was -- very flat affect. I find that there is -- in my relatively brief career, there is kind of two reactions --

Q. Let me ask you some questions here and help you develop your testimony. You have made death notifications; you indicated about 24 of them?

A. Yes.

Q. And you have observed people's reaction during those death notifications?

A. Yes.

Q. And have you observed the type of emotion that they display during those death notifications?

A. Yes.

Q. And can you -- can you state what kind of reactions you get, generally, to those death notifications?

MR. McALLISTER: Judge, I'm going to object at this point. It's getting into his opinion about another person as opposed to just testifying as to what happened.

THE COURT: Well, I think under Rule 701 a witness can offer an opinion based upon common experience, not necessarily calling for a particular expertise. If that's where you're going, I'll allow it, Counsel. I'll overrule the objection.

BY MR. HAWS:

Q. And so, from your experience in giving death notifications, you have observed the emotions of people who you have notified?

THE COURT: Just a moment. Just so we're clear, emotions now talk about subjective. The witness can describe what he has observed.

MR. HAWS: Their reactions.

THE COURT: What he observed, without trying to testify as to what people were actually thinking or emotions they were actually feeling. The question needs to be very carefully phrased that way.

MR. HAWS: I'll rephrase that.

BY MR. HAWS:

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Q. Have you observed the reactions of people when you have given death notifications?

A. Yes. And essentially there is two. People either lash out in anger toward the officer or they just collapse. They may or may not accept what I've said, but it's one of those two reactions. It's either a collapse or an anger and disbelief-type reaction toward the officer.

Q. And when you informed Mr. Steele that his wife had been killed, how did he react?

A. I would describe it as neither of those. It was flat, paused, almost contrived. It was as if he was trying to retrieve something in an archive and come up with what the answer was. It wasn't natural.

Q. Did he say anything?

A. Not initially. He kind of choked up. It appeared as if he was trying to develop tears. No tears developed. I don't recall what his first word after that was.

Q. Were any questions asked by Mr. Steele?

A. Yeah. He, throughout the course of it, asked a number of questions: "Where?" "Was it confirmed?" I believe he asked -- or maybe I told him -- what vehicle she was driving. "Was anyone

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with her?"

Q. Do you remember his response to the question of: "What kind of vehicle she was driving?"

A. I think it -- if memory serves me, I believe I told him that it was a vehicle registered to him, and maybe he said "a black Mitsubishi" or something along those lines. There was some connection that he agreed that the vehicle that she was -- that it made sense the vehicle that I had described to him.

Q. And was there any discussion about where she was?

A. Yes. Oregon City.

Q. Was that supplied by you or by Mr. Steele?

A. He asked, I believe, "Where?" And I said, "Near Oregon City. Does it make sense that she would have been there?" And I think he agreed that that did make sense.

Q. Did -- were any questions asked about whether anybody else was involved?

A. Yes. And he was told that she was alone in the vehicle.

Q. And was there any reaction at that

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time?

A. There was no reaction that was consistent with somebody finding out that their wife was deceased.

MR. McALLISTER: Judge, I'm going to object. I think the officer should properly say what happened as opposed to his opinion about whether or not it was consistent.

THE COURT: Sustained.

BY MR. HAWS:

Q. Have you given death notifications before?

THE COURT: Just a moment. I'm going to sustain the objection and strike the last response. Go ahead.

BY MR. HAWS:

Q. Have you given death notifications before that somebody's relative has -- that a wife has been deceased?

A. Actually, they have all been males.

Q. That a husband has been deceased?

A. Yes, mm-hmm.

Q. And did you have further conversation, then, as to -- with Mr. Steele as to the circumstances of the notification?

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A. Clarify your question.

Q. In other words, as to what happened during the death, the supposed death of Cyndi Steele.

A. We did. We told him that it appeared that her car had been run off the road. There was an eyewitness to the -- to the incident that had taken place on the road. Her vehicle had been run off the road, and she had been killed in a crash. There was -- then later as the -- as the conversation progressed, Agent Sotka brought in that the individual that was involved in the other vehicle that had run her off the road had been located. His vehicle had also crashed after a short pursuit with the Oregon State Police and that he was somewhat conscious and that they were trying to basically put the pieces together. It wasn't --

Q. Let me ask you that. Was there any reaction or any questions by Mr. Steele when he was informed of that?

A. He was -- I think that was the first point that I noticed a change in his demeanor, that he seemed somewhat surprised at that point in time, that his -- what he expected had kind of

gotten away from him, and it wasn't something that he planned for. It was more genuine in reaction.

Q. And so, did -- was Mr. Steele given a chance to reflect or to compose himself?

A. He was. And Agent Sotka pushed him for, you know, "Do you know who this individual might be?" And when the name of "Fairfax" came out, he instantly knew Larry Fairfax, knew the name.

Q. What do you specifically remember him saying about Larry Fairfax?

A. He was just -- it was kind of a question of "Larry Fairfax?" And that's what I'm trying to describe as surprise, that it was -- just he didn't expect that name to come up.

Q. Did Mr. Steele indicate whether he knew Larry Fairfax?

A. Yes, he did.

Q. Did he say how he knew Larry Fairfax?

A. He said that he did work around the house, had worked with the horses, done some building and remodeling construction-type things around the house. He said -- excuse me -- that Cyndi Steele had the majority of the contact -- excuse me -- with Mr. Fairfax.

Q. Did Mr. Steele express any concern about Mr. Fairfax and Mrs. Steele being together?

A. Well, Agent Sotka kind of interjected, you know, "This is difficult, sir, but is there any chance that there is some infidelity?" Or, "Have you ever questioned Cyndi Steele's relationship with someone else?" Or kind of prodded him for that information.

And he said -- I do remember him saying, "Well, he is over there a lot. She has been gone a lot. She doesn't come back here but every couple weeks," I think he said. "And she is from that area, has friends from that area," and -- but in response, as Sotka pushed further toward -- kind of leading him toward lining up Fairfax being the -- Cyndi Steele's affair, he just kind of took it hook, line, and sinker and just went with it. I remember him patting his stomach that Fairfax was -- implying that he was heavyset and didn't think that Cyndi would go for somebody like that.

Q. Mr. Steele did that?

A. Yes.

Q. Where did the conversation go from the discussion -- after the discussion about Mr.

Fairfax?

A. I believe then it went into his mother-in-law. Agent Sotka came in and said that Mr. Steele's mother-in-law had been shot and was dead. And this was the second point that I noted that it was as if his plan had kind of derailed a little bit.

MR. McALLISTER: Judge, I'm going to object.

THE COURT: Sustained, sustained. I'll instruct the jury to disregard.

BY MR. HAWS:

Q. What did Mr. --

THE COURT: Just a moment. I'm going to instruct the jury to disregard the witness' last comment.

BY MR. HAWS:

Q. What did Mr. Steele say in response to that information from Mr. Sotka?

A. His response was, "Fuck me."

Q. And can you describe what kind of inflection or what kind of a -- what kind of a tone of voice he used?

A. It was kind of a, "fuck me." It was almost -- I'm searching for the word -- surprise and disbelief.

Q. What happened after the notification -- after the discussion about Mr. Fairfax and that reaction by Mr. Steele?

A. He wanted to -- if I'm not mistaken, he wanted to contact family members and find out if they were okay. He felt that it was, you know, that if it had happened to two members of his family, I think he wanted to contact his son or daughter and make sure that they were okay. I remember he went upstairs. He retrieved a phone number or something, came back down with it. He wanted to -- and this is -- some of this is out of order, but he also wanted to discuss and Agent Sotka brought up who may have perpetrated this against him, who his enemies were. He had a threatening email that he wanted to retrieve from his computer. He named a number of organizations that may have been against him.

Q. Do you remember the names of any of those organizations that he spoke about on that occasion?

A. There was like the Anti-defamation League, Southern Poverty -- there were one or two others. I don't recall the acronyms or the names of them.

Q. And after discussing -- and you overheard that discussion between the statements by Mr. Steele with Mr. Sotka?

A. Yes.

Q. And after discussing those, where did the -- where did the conversation go then?

A. After we had gone through the possible infidelity, his mother-in-law being shot, it came to -- I believe Agent Sotka took a phone call, and Larry Fairfax, you know, had been identified. And he took another phone call and said that he had --

Q. "He" took another phone call, meaning whom?

A. Sorry. Agent Sotka took another phone call. And in this particular phone call, he had been informed that Fairfax had gained some consciousness and was saying that -- to ask Mr. Steele what was going on, he could explain everything. He could answer all the questions that we had.

Q. Let me make sure that we're clear on that. Mr. Sotka said that related -- related to Mr. Steele that Larry Fairfax made the statement that you just related?

A. Correct. Larry Fairfax made those statements to the supposed officers who were on the scene of the apparent crash that had taken place, the pursuit that was the premise for that information being developed.

Q. When Mr. Sotka relayed that information to Mr. Steele, what kind of reaction was there?

A. He was just -- flat affect. I don't know. I have no idea. Had no response to it, whatsoever. And after, you know, Agent Sotka kind of pushed him harder and harder, he wasn't going to -- wasn't going to crack, that he knew the answers. And I believe, at that point in time, Agent Sotka said, "Your wife is not dead. This has all been contrived. You're under arrest." And at that point in time, I placed him in custody.

Q. You're the one who placed him in custody?

A. Yes.

Q. And was it Mr. Sotka who arrested him then or who placed him under arrest, told him what the charges were, and then you took custody of the prisoner?

A. That's correct.

644 645

Q. Okay. And from there, you took him out to the patrol car?

A. Initially, he was placed in Trooper Branch's car. There was some confusion on where he was going to be transported, whether he was going to go to the federal building, go to the Kootenai Detention Center, and who was transporting him. So initially, he sat in Trooper Branch's car, was in there for a number of minutes, and then it was determined that I would be transporting him, as well as booking him. And so he was transferred to my car, and then I transported him to Kootenai County Public Safety Building.

Q. Was that the end of your involvement in this matter?

A. Yes. After I booked him, that was the last that I had had contact.

MR. HAWS: Just a moment, please.

I believe that's all I have. Thank you, Mr. Spike.

THE WITNESS: Thank you.

THE COURT: Cross-examination, Mr. McAllister.

MR. McALLISTER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. McALLISTER:

Q. Trooper Spike, did you say, "He wasn't going to crack"?

A. Yes.

Q. Okay. And that was a reference to Mr. Steele; correct?

A. That's correct.

Q. And what you meant by that is this whole ruse or setup was designed to see if he would crack and admit that he was in some plot; correct?

A. That's correct.

Q. And he did not --

A. That's correct.

Q. -- admit anything about that; right?

A. Nope.

Q. And this was a cleverly designed ruse, faked deaths to try to see if you could get him to admit something; right?

A. No. The purpose of it was to see if he followed his alibi and the information that we had lined up.

Q. Well, in fact, you call it an alibi. In fact, a friend came named Al Banks; correct?

A. That's correct.
Q. Who he had an appointment with; correct?
A. That's correct.
Q. All right. Now, when I say this was a "carefully designed ruse," you were faking it, weren't you?
A. I'm sorry. I was?
Q. Faking it.
A. Yes.
Q. And the whole idea was to get him to crack, to make some kind of admission?
A. That's correct.
Q. And he never did?
A. Well, I'll retract what I said. That wasn't the whole purpose of it, no.
Q. Well, it was one of the purposes; correct?
A. That was -- we hoped, sure, that he would say, "Okay, yeah," but that wasn't the primary purpose, no.
MR. McALLISTER: Thank you, sir.
THE COURT: Redirect.
MR. HAWS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. HAWS:
Q. What was the primary purpose, Mr. Spike?
A. Again, Agent Sotka had a number of things that Mr. Fairfax claimed that he was going to do on this day, all of which had transpired and lined up verbatim with what he said he was going to do, from mailing something at the post office to making a lunch date with someone. I believe there was something about transporting lumber, and that's why he was in the truck with the trailer. There was just a number of things that all lined up. And this ruse, as the defense counsel put it, was to basically cross those Ts and line up those things so that we could put two and two together.
Q. During the time that you were there with Mr. Steele that morning, did you ever see a tear?
A. No.
Q. Did you ever see a denial by Mr. Steele?
MR. McALLISTER: This is beyond the scope of my cross-examination.
MR. HAWS: If I may answer, Your Honor?
THE COURT: Well, I -- I think it's fair

redirect given the -- it was very limited cross, but I think this is fair. But don't wander too far from the questions you're now putting to the witness.
BY MR. HAWS:
Q. Counsel asked you whether Mr. Steele cracked. Did he ever make a denial that he was involved in the death of Cyndi Steele?
A. No.
MR. HAWS: Thank you. No further questions.
THE COURT: Any recross?

RECROSS-EXAMINATION

BY MR. McALLISTER:
Q. Nor did he admit anything about her phony death; correct?
A. Is that a question?
Q. Yes. He never did admit anything about her supposed death?
A. No.
MR. McALLISTER: Thank you.
THE COURT: I assume nothing else?
MR. HAWS: Nothing else.
THE COURT: You may step down, Trooper Spike. Thank you very much.
MR. HAWS: May he be excused, Your Honor, so

that he can travel back to his duties?
THE COURT: I assume so.
MR. McALLISTER: No objection.
THE COURT: You are excused and released from any subpoena. Thank you.
Call your next witness.
MR. HAWS: Call Eric Clemensen.
THE COURT: Sir, step before Ms. Gearhart, be sworn as a witness, and follow her directions from there.

ERIC CLEMENSEN,

having been first duly sworn to tell the whole truth, testified as follows:
THE CLERK: Please state your complete name and spell your last name for the record.
THE WITNESS: Eric Clemensen, C-L-E-M-E-N-S-E-N.
THE COURT: You may inquire of the witness, Mr. Haws.
MR. HAWS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HAWS:
Q. Mr. Clemensen, where do you reside?
A. Coeur d'Alene, Idaho.
Q. And are you employed?

A. (Witness complied).
Q. Would you show that to the jury, please.
A. (Witness complied). Here it is here, the pipe material, the coupling or coupler, and an end plug on the end here. The other thread side is open.
Q. So that one is equipped with an end plug on one end and the possibility of putting an end cap on the open end; is that right?
A. Yes, you could.
Q. Hold them up together so we can see the approximate sizes of the two.
A. (Witness complied).
Q. Okay. Thank you. You can put those down.

Let me ask you a question about the powder that you examined. Was the powder similar in both cases, the powder residue, the explosive powder?
A. Yes. They were both double-base smokeless powder, as well as they both had the physical characteristic of Hi Skor 700X.
MR. HAWS: If I may have a moment, Your Honor, to check on the exhibits?

THE COURT: Yes.
MR. HAWS: Your Honor, just comparing my records with the court's records, are Exhibits 38 through 42 admitted?
THE COURT: I'm sorry? What numbers?
MR. HAWS: Thirty-eight through 42. Those were --
THE COURT: Yes. I think they were admitted by stipulation yesterday.
MR. HAWS: Okay.
BY MR. HAWS:
Q. And go back to Exhibit No. 98, Mr. Jermain. I want to make sure that we have moved the admission of that. That was the -- that was the powder sample; is that correct?
A. That is correct. Ninety-eight, powder samples.
MR. HAWS: If we didn't admit it before, I would move the admission now, Your Honor.
MR. McALLISTER: No objection.
THE COURT: The exhibit will be admitted.
(Government's Exhibit No. 98 admitted.)
BY MR. HAWS:
Q. Mr. Jermain, what's your understanding as to the origin of Exhibit No. 85? Was that the

one from the Fairfax -- that Fairfax turned over?
A. Eighty-five, my understanding was it was. It was the one disassembled by the individual.
Q. And the one exhibit, was it No. 80? No. 80 is the other pipe bomb?
A. Is this one here, yes.
Q. And it's your understanding that that one was the one removed from Cyndi Steele's vehicle?
A. That's what the case agent told me. Yes.
MR. HAWS: Okay. All right. Nothing further. Thank you very much.
THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. McALLISTER:
Q. Mr. Jermain, when you received these items, they were -- they came in pieces? In other words, there wasn't any powder except samples?
A. For the one, I had samples on it. In the device itself, I did a microscopic analysis. I found additional powder.
Q. Okay. But in other words, they weren't filled?

A. When I received them, no, they were not filled.
Q. And I think you used the word they were "rendered safe" by the case agent or someone in the field?
A. By the bomb squad, yes.
Q. All right. Do you know who is the maker of these devices?
A. As in usually -- do you mean the pipe manufacturer or the actual person who built it?
Q. The person who built the device and designed the device or made the device.
A. I do not know of that person.
Q. All right. Have you interviewed Larry Fairfax about these parts, if you will, of the device?
A. I have not, no.
Q. All right. Do you have any opinion about whether or not these devices that you have could explode?
MR. HAWS: Object to the foundation, Your Honor, as to the devices -- which device are we talking about? The ones as they currently are?
THE COURT: Let's clarify, Mr. McAllister.
BY MR. McALLISTER:

Q. Obviously, the devices or pieces that you have here today are safe. They won't explode; correct?

A. That is correct.

Q. Do you know anything about the device that was discovered under Cyndi Steele's car?

A. In regards to the actual information of how it was, no, I do not know that.

Q. Okay. So I guess my question is: You're from the laboratory, but you don't know in the world real world whether it would have exploded or not?

A. Based on how -- I know how pipe bombs would work, but in this case that would be beyond my base of expertise. The bomb -- I believe that the EEO will be testifying to whether or not the devices would function.

Q. Okay. I think you testified that you see, like, three of these devices a week?

A. A month.

Q. A month. All right. So obviously you're familiar with them?

A. Yes.

Q. Can you tell us anything about the -- about Larry Fairfax, the maker of this device,

whether he was sophisticated or unsophisticated?

A. Based on how the devices were made? Is that what your --

Q. Yes. Based upon your analysis or examination of the devices.

A. These devices are, I would say, very generic, not very sophisticated.

Q. Okay. And that would lead you to conclude that Larry Fairfax wasn't very sophisticated in making it?

MR. HAWS: Objection. Assumes facts not in evidence with this witness, Your Honor.

THE COURT: Sustained. I think the witness can testify that they weren't sophisticated and whoever made them is not sophisticated, but I'm not sure he is in a position to draw the connection as to who actually made them, so I'll sustain the objection.

BY MR. McALLISTER:

Q. Are you aware of the fact that the device removed from Cyndi Steele's car wasn't filled with black powder?

A. With black powder?

Q. I'm sorry. Smokeless powder.

A. I am -- I'm not -- my personal seeing

it, no. I was informed that certain exhibits were removed from it, but I did not see it.

Q. Okay. Were you informed that it was only three-quarters of the way filled with smokeless powder?

A. I was not told that. No.

Q. All right. It's true that, in your experience, that the -- that the device needs to be compressed or the powder needs to be compressed in something; correct?

A. Actually, no, that's not true.

Q. Okay. Well, what about in a bullet? There is a casing, is there not?

A. In a -- I'm sorry?

Q. In a bullet shot from a gun?

A. In a bullet, yes.

Q. Okay. And it's basically -- it's put through some compression when it's fired; correct?

A. When the smokeless is ignited, it will build pressure which will release the bullet out of the cartridge.

Q. Right. Did you observe, in this device that was sent to your lab, electric tape?

A. Yes, I did.

Q. And did you observe that it was

double-wrapped electric tape?

A. Yes, I did.

Q. Do you have any opinion on what that does to a potential explosive device?

A. For the explosive device itself, it makes no containment or anything to that. It wouldn't -- tape would not change the device itself.

Q. Will it affect the fuse?

A. As I got it in, I didn't see the fuse wrapped in electrical tape.

Q. Okay. But if it was double-wrapped in electric tape, what would be the consequence, in your opinion?

A. It shouldn't affect the fuse.

Q. The fuse would just burn through it?

A. It would burn directly through it, yes.

Q. All right. Did you attempt in any way to take fingerprints from the devices?

A. On this one here, no. There was no request for fingerprints.

Q. Okay. And did anyone send you known samples of Mr. Fairfax's fingerprints?

A. Not that I -- no, I did not receive.

Q. I take it that you have no evidence to

offer in this case that Edgar Steele in any way built these bombs, touched these bombs, had them in his possession?

A. I do not, no.

MR. McALLISTER: Thank you, sir.

THE COURT: Redirect?

MR. HAWS: No redirect, Your Honor.

THE COURT: You may step down.

I assume the witness can be excused and released from any subpoena?

MR. HAWS: We would ask that he be released, Your Honor. He needs to travel back to the lab.

THE COURT: Mr. McAllister, any objection?

MR. McALLISTER: None, Your Honor.

THE COURT: You may step down. You will be excused. Leave the exhibits here. Mr. Severson will take care of those.

Counsel, I think we're where we probably take the last break of the day, so we'll be in recess for about 15 minutes.

I'll again admonish the jury not to discuss the case among themselves nor with anyone else, nor should they express or form any opinions about the case until it is submitted to you. As always, continue to follow the court's extended

admonition concerning juror conduct as I gave it to you on the first day of trial.

We'll be in recess.

(Recess.)

(Jury present.)

THE COURT: For the record, I'll note that all jurors are present.

Ms. Whelan, you may call your next witness.

MS. WHELAN: Thank you, Your Honor.

Your Honor, at this time I would ask permission to read a stipulation into the record.

THE COURT: Yes.

MS. WHELAN: The stipulation is that, "Exhibit No. 3 is an audio recording from a telephone call made from the Kootenai County Jail on June 13th, 2010, and contains the voice of the defendant, Edgar Steele, and his son, Rex Steele. This exhibit may be admitted without further foundation or authentication as to the participants' voices."

And with that stipulation, at this point, I would ask permission to publish -- move for the admission of Exhibit 3.

THE COURT: I assume there is no objection

given the stipulation?

MR. McALLISTER: The stipulation, yes, Your Honor.

THE COURT: The exhibit will be admitted.

(Government's Exhibit 3 admitted.)

MS. WHELAN: I would ask permission to publish it to the jury.

THE COURT: Yes. It will be published to the jury. Ladies and gentlemen, you've heard the court's prior instructions concerning transcripts. I'll just repeat it somewhat from memory, but I think I can cover all the major points.

MS. WHELAN: Your Honor, I'm sorry. I apologize for interrupting you, but there was no stipulation as to transcripts so we did not include a transcript in this audio.

THE COURT: So there is no transcript?

MS. WHELAN: No. It will just be the audio.

THE COURT: All right. There was an exhibit marked, but it's not being offered.

MS. WHELAN: That's correct. There is no stipulation as to that. I would ask Ms. Rocca to play that. Judge, will you allow me just to sit down while that's being done?

THE COURT: I'm sorry?

MS. WHELAN: Your Honor, will you allow me just to sit down while that's --

THE COURT: Oh, yes, certainly.

And I assume you'll waive reporting, again, of the playing of the tape?

MS. WHELAN: Yes, Your Honor.

THE COURT: Mr. McAllister?

MR. McALLISTER: Yes, Your Honor.

THE COURT: You can go ahead and start. There is no reason to bring up a screen since there is no transcript being played. I'm just going to leave it off unless --

(Government's Exhibit 3 published.)

MS. WHELAN: Your Honor, I would ask permission to read another stipulation.

THE COURT: Yes.

MS. WHELAN: "Exhibit 1 is an audio recording from a telephone call made from the Kootenai County Jail on June 13th, 2010, and contains the voices of defendant Edgar Steele and Cyndi Steele. This exhibit may be admitted without further foundation or authentication as to the participants' voices."

With the reading of that, I would move for the admission of Exhibit No. 1.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. EDGAR J. STEELE, Defendant.	:	Case No. 10-00148-N-BLW **JURY TRIAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 2

April 27, 2011

Pages 273 to 516

Tamara I. Hohenleitner
Idaho Certified Shorthand Reporter No. 619
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Federal Certified Realtime Reporter

United States Courts, District of Idaho
550 West Fort Street, Boise, Idaho 83724 (208) 334-1500

case to give misleading testimony with regard to evidence during the investigation of murder for hire.

Now, this trial is for you to listen to the evidence and to render a decision. And His Honor has instructed you that you are the judges of the evidence.

Evidence comes into a criminal case like this through papers and documents and tangible objects, and the testimony of witnesses. But the way trials are conducted, it's not always clear, when a piece of evidence comes in, how it's linked to or how it fits with another piece of evidence in the case.

And so, it's like a couple of pieces of jigsaw puzzle that are out before you on the table, and unless you can see the picture on the box, it's hard to know where those pieces fit.

So it's my opportunity this morning to make an opening statement to help you understand how key pieces of the evidence that the government will present will fit into the overall picture of these crimes as charged.

This is basically a simple case. It's the story of a man who wanted to murder his wife,

hired somebody else to do it, and fortunately, they didn't succeed.

A criminal case tells a story, and a story has characters in it. It has times when it takes place. It has places and locations where it occurs. And then it has the decisions and the actions of the people in that story. So I would like to kind of proceed in that fashion and tell you how the evidence fits together in this case.

First of all, with regard to the people, you're going to hear many names mentioned in this case. But the three most important names that you're going to hear frequently throughout the case and the testimony are the names of Edgar Steele, the man who wanted to have -- allegedly wanted to have his wife killed.

You're going to hear the name of Cyndi Steele, and that's the name of his wife and the alleged victim of this crime. And you're going to hear the name of Larry Fairfax, and Larry Fairfax is the person he allegedly hired in order to carry out the murder of his wife.

As to time, this case is going to take place -- this story is going to take place -- the evidence is going to show that it occurred in the

spring of 2010, roughly between January and the 15th of June. And there will be references to many dates in that period of time, but there are some key dates that you may want to make note of now.

You're going to hear the dates 27 and 28 of May, and you may want to circle those dates. You're going to hear the dates 8, 9, 10, and 11 of June, and you may want to circle the 11th of June. You're going to hear the 13th of June and the 15th of June.

This case takes place in north Idaho. There is a small town in north Idaho called Sagle. Many of you are probably familiar with Highway 95; that is the main north/south route in our state. Highway 95 runs almost from the southern border to the Canadian border.

And if you take Highway 95 and drive northward on it, you will come to Coeur d'Alene, Idaho. There will be reference to Coeur d'Alene. That's located in Kootenai County.

If you proceed north, you will come to the largest city in the next county, which is Bonner County, and that's Sandpoint. Maybe you've been to Sandpoint. Before you get to Sandpoint,

Idaho, after you cross the Bonner County line, is Sagle, Idaho. And most of the events take place there.

However, the events are also related to another community a long ways away, 422 miles away. And that community is Oregon City, Oregon, just outside of Portland. And so this case and the evidence of this case will tie those two locations together.

Now, just outside of Sagle, Idaho, there is a county road. That county road is called Talache Road. And at 1569 Talache Road, there is a well-kept house, with a lawn, an attached garage. There is a large garage also that's not attached to the house, with several bays. There are some outbuildings. There is a stable and a riding arena, horse riding arena. There is a pasture next to it, a couple of horses in it, and it's surrounded by dense forest.

1569 Talache Road was the house of Cyndi and Edgar Steele, and you're going to hear many references to that location throughout this trial. The Steeles had lived there -- in the spring of 2010, they had lived there for approximately 15 years. They had finished raising

evidence that is undisputed. This is all his doing.

And in the end, ladies and gentlemen, we will ask you to return verdicts of not guilty in this case, because the government will not be able to prove their case beyond a reasonable doubt, using the testimony and statements of Larry Fairfax.

Thank you.

THE COURT: Thank you, Mr. McAllister.

The government may call its first witness.

MS. WHELAN: Your Honor, we call Mike Sotka.

THE COURT: Sir, will you please step before the clerk and be sworn.

MICHAEL SOTKA,

having been first duly sworn to tell the whole truth, testified as follows:

THE CLERK: Please state your complete name and spell your last name for the record.

THE WITNESS: Michael Sotka, S-o-t-k-a.

THE COURT: Counsel, before we begin, I assume that counsel had indicated a desire to exercise their right under Rule 615 to exclude witnesses, and you have discussed that among

yourselves.

Or is there no such request?

MS. WHELAN: There was no such request, Your Honor.

THE COURT: All right.

MS. WHELAN: Is that right, Mr. McAllister?

MR. McALLISTER: That is correct.

THE COURT: You may inquire of the witness.

MS. WHELAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. WHELAN:

Q. Sir, what do you do for a living?

A. I'm employed by the Federal Bureau of Investigation.

Q. How long have you been with the FBI?

A. I've been with the FBI approximately 11-and-a-half years.

Q. What is your position within the FBI?

A. I'm a special agent.

Q. Does that mean you're a law enforcement investigator?

A. Yes, ma'am.

Q. Did you have any prior law-enforcement experience before joining the FBI?

A. Yes. Prior to joining the FBI, I was a

police officer in the State of Ohio for approximately five years.

Q. And what department was that with?

A. The Euclid, Ohio, Police Department.

Q. What type of work did you do for the Euclid Police Department?

A. While I was employed by Euclid, I was a patrolman, with the additional duties of being a squad officer; but mostly patrol.

Q. Even though you had been a police officer in Euclid, Ohio, did you have to have any additional training or education to become an FBI agent?

A. Yes, ma'am.

Q. Please tell the jury what additional training you had.

A. Well, to become an FBI agent you have to have a minimum of a bachelor's degree. So I had that. We also have to attend the FBI Academy located in Quantico, Virginia. At that time, it was 16 weeks long. We received several different types of basic training that would help you with your FBI career.

Q. Did you graduate from the FBI Academy?

A. Yes, ma'am.

Q. Do you recall when?

A. December of 1999.

Q. What was your first duty station?

A. Lewiston, Idaho.

Q. Can you describe how big the Lewiston office is?

A. It's usually two agents. One time we went up to three, but it's usually a two-man office.

Q. Were you assigned to any special unit or did you have any special type of crime that you worked in Lewiston?

A. We didn't have a special unit, but our primary purpose for being was to investigate violent crime on the Nez Perce Indian Reservation.

Q. Have you ever worked in the Coeur d'Alene office?

A. Yes, ma'am.

Q. And did you transfer up there?

A. Yes.

Q. When?

A. In 2006, I transferred from Lewiston, Idaho, to Coeur d'Alene, Idaho.

Q. Do you know if there are different units or assignments in the Coeur d'Alene office?

A. Yes, ma'am, there are.
Q. Please tell the jury what they are.
A. In the Coeur d'Alene office, we have agents that work violent crime, which was myself; child pornography; white collar crime, which would include mortgage fraud and bank fraud. We have an agent that works primarily reservation.

And we have two agents that work domestic terrorism, and one agent that works international terrorism, and we have one that's called intelligence agent. They gather intelligence from our reports and try to accumulate that together to provide to other offices.

Q. You indicated you worked in violent crime. Was there a certain task force that you were assigned to?
A. Yes, ma'am. I was in charge of the North Idaho Violent Crimes Task Force.
Q. And what is that?
A. It's a task force that's sponsored by the Safe Streets Program for the FBI. It has FBI agents on it. It has state police, the Idaho State Police are on it. It had county police, Shoshone County, Bonner County, and Kootenai

County, and had Coeur d'Alene and Post Falls Police Departments also involved with the task force.

Q. Were you working with the North Idaho Violent Crime Task Force on June 8th, 2010?
A. Yes, ma'am.
Q. And did anything relating to this case happen on that date?
A. Yes, it did.
Q. What happened?
A. On June 8th, I received -- I was contacted by the U.S. Attorney's Office that they had received information to contact an attorney by the name of Jim Michaud. I was told to contact Mr. Michaud because he had information from one of his clients that there was a murder for hire that might be taking place in our area.

So on June 8th, I made contact with Mr. Michaud. We set up a meeting for June 9th with his client.

Q. So the investigation didn't end on June 8th, then; is that correct?
A. No, ma'am. It just began.
Q. Please tell the jury what happened on June 9th.

A. Well, in the morning hours, I once again made contact with Mr. Michaud, and I said, "I would like to meet with your client." He suggested that we meet at his residence.

So myself and Sergeant Dan O'Dell, another task force officer with the North Idaho Violent Crimes Task Force -- he is a sergeant with the Coeur d'Alene Police Department -- we went up and met at Mr. Michaud's house. We made contact with Mr. Michaud. A few minutes later, his client arrived.

Q. What time was that?
A. Approximately lunchtime, a little bit after lunch.
Q. Prior to June 8th or June 9th, did you know Larry Fairfax?
A. No, ma'am.
Q. Did you know Edgar Steele?
A. No, ma'am.
Q. Did you know Cyndi Steele?
A. No, ma'am.
Q. Did you know Jim Michaud?
A. No, ma'am.
Q. You indicated that shortly after you arrived, Mr. Fairfax arrived; is that correct?

A. Yes, ma'am.
Q. Can you describe his demeanor when he arrived?
A. He just walked up to the door. Obviously, he knew Mr. Michaud just from the way he walked up to the door and knocked.

He was let into the house by Mr. Michaud, and we went to the dining room table and sat down.

Q. Why did you set up a face-to-face meeting with Larry Fairfax?
A. Well, the allegations are pretty strong allegation against somebody, and I wanted to speak with this person face to face, not over the phone, try to get to know this person a little bit better and see -- read his body language and stuff and see if the allegation appeared that it could be true.

Q. As a result of the meeting, what did you do?
A. Well, during the meeting, Mr. Fairfax told us that he was supposed --

MR. McALLISTER: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MS. WHELAN:

Q. Special Agent Sotka, as a result of the meeting, without telling us what was said during the meeting, I would like to know what you did.

A. Yes, ma'am. As a result of the meeting, we had set up a meet to go to Mr. Steele's house at approximately 5:00.

Due to the distance between Sagle and having to go back to Coeur d'Alene, it was closer to 6:00 that the meet actually happened.

Q. So, did you go anywhere after the meeting at Mr. Michaud's house?

A. Yes, ma'am. I had to go back to the Coeur d'Alene FBI office.

Q. And why did you have to go back there?

A. There was a lot of details that have to be done before you just send somebody into a meet. I had to speak with my supervisor about an ops plan, operations plan, to make sure everybody was covered for safety and we knew what was going on. I had to obtain a recording device.

And I also had to brief the other members of the North Idaho Violent Crimes Task Force as to what the plan was and how we were going to conduct this operation of sending

Mr. Fairfax into Mr. Steele's residence, kind of for everybody's safety involved.

Q. When you got the recording device, you said -- you mentioned a recording device. Why did you have him take a recording device with him?

A. Whenever we're going to do a meet, we would try to send somebody in with a recording device to obtain evidence as to the meet. In my mind, I wanted to prove or disprove that the allegations that Mr. Fairfax made to [sic] Mr. Steele, and a recording is a good way to do that because you can hear the conversation, and it's memorialized on the recording, so we could hear exactly what was said.

Q. What type of device did you give him?

A. The FBI uses a device, along with other law enforcement agencies, made by ADS. It's a device that the FBI provides to me. It has proprietary software. To my understanding, it has hash marks in the software that doesn't allow it to be tampered with.

Q. Now, is it a tape recorder?

A. It's not like the tape recorder you would buy at, like a Best Buy. It's a digital recorder, but it's in a different type of look, so

it's not -- doesn't look like a tape recorder.

Q. Did you give Mr. Fairfax any instructions on how to turn the recording device on?

A. No, ma'am.

Q. Did -- is this recording device -- does he have any control over it?

A. Well, it is in his possession once I provide it to him. Is that your question?

Q. What do you have to do to turn on the recording device?

A. There is a series of buttons that you have to hit. And I actually have to refresh myself each time, that I do it correctly. Turn it on with this series of buttons, and it stays on until you hit a different series of buttons to turn it off.

Q. And did you return -- did you turn the recording device on?

A. Yes, ma'am.

Q. Now, did you turn it on in Coeur d'Alene or did you turn it on someplace else?

A. As with the plan that we had discussed, we met back at Mr. Michaud's house, and we actually, as part of -- before going to the meet,

it was turned on.

Q. Okay. Did you do anything else before you allowed Mr. Fairfax to go to the meet?

A. Yes, ma'am.

Q. What did you do?

A. Well, once again, I went back to the house with Sergeant O'Dell. And from my training and experience, I'm taught to search an individual before they go into a meet for contraband, if it's a drug meet, or for anything that he would be going into the residence with, so we know what would be on that person. When they come out, anything on them would obviously be from the meets.

So we searched Mr. Fairfax's person. I removed some cash from his person and gave it to Mr. Michaud. And we also did a thorough search of his vehicle. Sergeant O'Dell and I both searched the vehicle, and I searched Mr. Fairfax.

Q. During that search, did you find any other recording devices?

A. No, ma'am.

Q. Did you find any hidden money during the search of him or his truck?

A. No hidden money, but the normal places

you would find money on a man. There was money in his wallet, or however he carried his money.

Q. Did you take that off of him?

A. We did.

Q. After you searched him, did you give him the recording device?

A. Yes, ma'am.

Q. Now, you indicated how you turned it on with a series of buttons. Did you tell Larry Fairfax to turn it on?

A. No, ma'am. I turned it on prior to giving it to him.

Q. Did you ever allow him to see or show him the order in which to turn the buttons on and off?

A. No, ma'am.

Q. What happened after the search of the vehicle, his person, and giving him the recording device?

A. Well, prior to giving him the device, I would put a preamble on the device which would state who I am, the time I'm turning the device on, and basically what the operation was: We're going to make consensual call, we're going to go meet at his residence, whatever it is, so as the

case builds you remember what that meet was.

After giving -- doing the preamble, I provided the recorder to Mr. Fairfax, and Sergeant O'Dell and I followed him to Mr. Fairfax's [sic] residence.

Q. Were there any other members of the Violent Crimes Task Force assisting you with this?

A. Yes, ma'am.

Q. What were the other members doing, if you know?

A. I do know. As a part of our plan, which we briefed earlier, I had three members of the task force go to a park located directly across from Mr. Steele's residence. They hid themselves in the brush to observe Mr. Fairfax going into Mr. Steele's residence.

The members that were there was Sergeant Hildebrandt from the Kootenai County Sheriff's Department, Detective Ellis from the Kootenai County Sheriff's Department, and Detective Strangio from the Bonner County Sheriff's Department. They were all in that park.

Q. Approximately -- well, do you know approximately how far it is from Michaud's place, where you gave Mr. Fairfax the recorder, to the

Steele place?

A. A couple miles; two, three miles.

Q. Is this on a highway?

A. No. It's kind of back roads.

Q. You indicated you were behind Mr. Fairfax; is that correct?

A. We were behind him, but not bumper locking him. That would have been pretty obvious. We were closer to him when we were a distance from Mr. Steele's residence. As we got closer and I knew the surveillance from the park would pick up the vehicle, we had pulled back because it might have looked pretty obvious if we were right behind him and going past the residence when he went in.

Q. Did Mr. Fairfax go up the Steele driveway?

A. Yes, ma'am.

Q. What did you do?

A. We continued past Mr. Steele's residence and found a turnoff on the other side of the lake a short distance away, and we waited there until we heard from the surveillance team at the park that they saw Mr. Fairfax leaving.

Q. What day of the week was this, if you recall?

A. That would be on Wednesday, June 9th.

Q. Do you know approximately how long Mr. Fairfax was at the Steele place?

A. He was at the residence approximately 30 minutes. But from the time I gave him to -- the recorder to the time I got the recorder back was about 45, 47 minutes, somewhere around there.

Q. Less than an hour?

A. Yes, ma'am.

Q. Did you meet with Mr. Fairfax again while he was at the Steele place?

A. While he was at the residence? No.

Q. I'm sorry. Let me rephrase that.

Did you meet with him again after he left the Steele place?

A. Yes, ma'am.

Q. And is that on Talache Road?

A. Yes, ma'am.

Q. Where did you meet with him?

A. Well, when the surveillance units that were in the park said that Mr. Fairfax was leaving the residence, myself and Sergeant O'Dell, in our vehicle, followed Mr. Fairfax back to Mr. Michaud's residence, and we kind of did the reverse procedure of when we searched him at the

beginning.
Q. Okay. So does that mean you searched him again?
A. Took the recorder back, turned it off so it would shut off at that point, and I searched Mr. Fairfax's person and we searched Mr. Fairfax's vehicle.
Q. Did you again have to go through a series of buttons to turn that recorder off?
A. Yes, ma'am.
Q. Other than getting the recording from Mr. Fairfax, did you get anything else from him?
A. Well, I did a quick debrief of Mr. Fairfax as to what happened in the residence, because you never really know if the recorder is going to have worked, because there is no way to tell until you download it. So I did a debrief of Mr. Fairfax.
And he also provided me with $400. And in that debrief he said this was from Mr. Steele, and they had discussed this.
Q. Did you have -- going in to the Steele place, you had searched him. Did he have that $400 on him?
A. No, ma'am. He went in with no money.

Q. Once you got the recorder back, did you look at it?
A. Yes, ma'am.
Q. What did you do with the $400?
A. Well, I kept it in my custody until I got back to the FBI office, and then placed it in a storage locker, an evidence storage locker.
Q. On the floor by your feet, there should be what's been marked for identification purposes as Government's Exhibit, I believe, 77. Can you see if you can find that, please?
A. Yes, ma'am. I have it.
THE COURT: Counsel, I'm going to ask when the exhibits are pulled up, that we not publish those to the jury or show them to the jury until it's been admitted, unless there is no objection from counsel.
But let's go ahead. And I'll just caution the witness, if you can, just keep it down until you've had a chance just to examine it. And then if the exhibit is admitted, then, of course, you can then publish it to the jury.
Go ahead, Ms. Whelan.
BY MS. WHELAN:
Q. What is the number on that exhibit?

A. 77.
Q. Do you know what that is?
A. Yes, ma'am.
Q. What is it?
A. That is the $400 that I obtained from Mr. Fairfax.
Q. How do you know it is the same $400 you received from Mr. Fairfax?
A. Due to the evidence packing label that has my signature on it at the top of the envelope.
Q. Is it in the same condition as when you received it from Mr. Fairfax?
A. Yes, ma'am.
MS. WHELAN: We would move for the admission of Government's Exhibit 77.
THE COURT: Any objection?
MR. McALLISTER: No, Your Honor.
THE COURT: Seventy-seven, was it?
MS. WHELAN: Yes, Your Honor.
THE COURT: Seventy-seven will be admitted and now may be published to the jury.
(Government's Exhibit 77 admitted.)
BY MS. WHELAN:
Q. Special Agent Sotka, could you please lift that up and show that to the jury?

A. (Witness complied).
Q. Thank you.
Special Agent Sotka, is there a date on the envelope from when you put it into evidence?
A. Yes, ma'am, there is.
Q. Okay. What did you do after you got the recorder back from Mr. Fairfax?
A. I also kept that in my custody and returned to the FBI office.
Q. Did you immediately go back to the office?
A. Yes, ma'am.
Q. And what did you do once you got to the office?
A. I downloaded the recording that was on the recording device onto a disk.
Q. Do you know approximately what time it was?
A. It was approximately 8:00.
Q. At night?
A. Yes, ma'am.
Q. Did you download the recording in the manner that you've been shown to do it?
A. Yes, ma'am.
Q. Did you -- after you downloaded the

recording -- now, that's in a proprietary format; is that correct?

A. Yes, ma'am.

Q. Did you then duplicate the disk that you had created from the digital recorder?

A. Yes, ma'am.

Q. And as you were copying it from the original recording onto a WAV file, did you listen to it?

A. Yes, ma'am.

Q. And did the length of time on the recording match the time from when you had turned over the recorder to Mr. Fairfax and when you got it back on?

A. Yes, ma'am, it did.

Q. Did it match the time period that Mr. Fairfax spent up at the Steele place?

A. Yes, ma'am.

Q. Did you hear anything on the recording that caused you to doubt its authenticity?

A. No, ma'am.

Q. In front of you -- and again, please don't lift it up -- is what's been marked as United States Exhibit 21. I think it's on an envelope right in front of you. Do you see that?

A. Yes, ma'am.

Q. Do you recognize it?

A. Yes, ma'am.

Q. What is it?

A. This is a disk containing that conversation I just discussed between Mr. Fairfax and Mr. Steele.

Q. How do you know it is an exact copy of what you downloaded?

A. Well, I reviewed it on April 25th, 2011. My initials are on the disk. While reviewing it, I recalled that the conversation was exactly what I had heard that night.

In addition to that, the preamble that I put on the recording is on this disk, Mr. Fairfax's voice, and Mr. Steele's voice. So it is the same conversation.

MS. WHELAN: Your Honor, I would move for the admission of Exhibit 21.

THE COURT: Any objection?

MR. McALLISTER: Yes, Your Honor, based on foundation and authenticity.

THE COURT: Give me a moment, Counsel, to make a note here.

Counsel, I was just -- I'm sorry. I

was making a note on another matter concerning the trial. Let me review the transcript.

Counsel approach.

(Sidebar commences as follows:)

THE COURT: Counsel, I had thought that this witness did not overhear the conversation.

MS. WHELAN: No. And I'm going to admit it through Fairfax. I just wanted to at least provide the foundation through Sotka, as well. You know, he --

THE COURT: Given the objection, let's wait until Fairfax testifies. Once he has testified, though, just so we're clear, you can make the objection at the time. But as soon as he testifies, if he testifies that he has listened to it and it accurately sets forth what was said at that time, that is the foundation.

You can get it in possibly through a witness like this, but I'm worried about the tape recorder going out of his presence. And he is not an expert who can actually verify it was functioning properly. He is more of a custodian of the device, not actually a technician.

But we're better off just waiting.

MS. WHELAN: I'm going to keep that exhibit,

though, with the court while we're waiting for the next witness.

THE COURT: Just for chain of custody purposes.

MS. WHELAN: Yes.

THE COURT: No problem.

MS. WHELAN: Thank you.

(Sidebar concluded.)

THE COURT: The court will reserve ruling on that. I will sustain the objection as to foundation, subject to further evidence being presented to lay a more complete foundation.

MS. WHELAN: Thank you, Your Honor.

May I continue?

THE COURT: Yes, you may proceed.

MS. WHELAN: Thank you.

BY MS. WHELAN:

Q. Did the investigation end with June 9th and the recording that you've just identified?

A. No, it did not, ma'am.

Q. Did it continue to June 10th?

A. Yes, it did.

Q. Do you know what day of the week June 10th was?

A. June 10th would be Thursday.

Q. On Thursday, what did you do with regards to the investigation?

A. Well, following up on the June 9th recorded conversation, I had contacted AUSA Whelan and my supervisor and advised them that we had this recording from June 9th, and there appeared to be some very good evidence on it there might be a murder-for-hire case. We set up a meeting to have AUSA Whelan and my supervisor come in early in the morning, and we listened to the tapes together.

Q. After that happened, was there an opportunity to meet with Mr. Fairfax again?

A. Yes, ma'am.

Q. And did you have him take a recorder -- well, when did the meeting happen with Mr. Fairfax on the 10th?

A. Well, we actually had two meetings with Mr. Fairfax, one just to discuss that we wanted to try to give Mr. Steele an out, and we were going to send him back to the residence. We wanted to see if Mr. Steele called this hit off, or if he was going to go forward with it.

When we discussed it at that time, we met back up later in the night and we went back to

Mr. Steele's residence.

Q. When you met with Mr. Fairfax on the 10th, was that around 5:00 in the afternoon again?

A. A little bit later than that, but, you know, before 6:00.

Q. And where did that meeting occur?

A. The meeting actually occurred at the crossroad, the Dufort -- I'm not sure how to spell that -- and Talache Road.

Q. Do you know how to spell "Talache Road"?

A. I'll probably get it wrong, but I can come close.

Q. When did you provide Mr. Fairfax with the recorder?

A. When we were at that intersection, we -- he was driving Mr. Steele's vehicle. It was a pickup truck with a trailer on the back. But we searched that vehicle once again, Sergeant O'Dell and I. We removed $487 in cash from Mr. Fairfax's person. I kept it in my possession this time, because we were not at Mr. Michaud's house to give it to him, and I searched Mr. Fairfax's person.

Q. Were there any other conversations on the recorder that you gave him?

A. No, ma'am.

Q. How do you know that?

A. I had -- after you download the recorder, part of the procedure is to delete that conversation and have the recorder clear for the next time you need to use it. So I had deleted them the night before, so the recorder was clear.

Q. When you did the search, other than finding, I believe you said, $487, did you find any other recorders?

A. No, ma'am.

Q. After doing the search of the vehicle, what happened next?

A. After searching the vehicle and his person, I had -- once again had members, the same members, set up at the park across from Mr. Steele's residence, and Sergeant O'Dell and I followed Mr. Fairfax to the residence once again, and followed about the same procedure.

The surveillance units saw him go up the driveway with Mr. Steele's pickup truck and trailer, while we passed the residence.

Q. What town is this residence in?

A. Sagle, Idaho.

Q. Where is Sagle in relationship to Coeur

d'Alene?

A. It's almost right in the middle between -- it's north of Coeur d'Alene, almost in the middle between Sandpoint and Coeur d'Alene.

Q. Where did you go after Mr. Fairfax turned up to the Steele place?

A. I can't recall the exact location. It was just an area that we were able to look like we belonged in, hopefully, for passing vehicles, and we were with -- a very short distance from the residence.

Q. Is there a lake there?

A. There is a lake. That's the lake that the guys were sitting by when they were doing the surveillance. They parked at that parking lot by the lake.

Q. Did Mr. Fairfax leave the Steele place?

A. Yes, he did.

Q. And what was he driving?

A. Now he was back driving his vehicle, because he had dropped off the pickup truck and trailer.

Q. Did you again meet with Mr. Fairfax after he left the Steele place?

A. Yes, ma'am.

Q. Did you conduct a search of he and his truck?
A. Yes, ma'am.
Q. Did you find any other recording devices?
A. No, ma'am.
Q. Did you find any other money?
A. No, ma'am.
Q. What did you do with the law enforcement recording device that you had provided him?
A. Once again, I took it into my custody, kept it with me and returned to the Coeur d'Alene office.
Q. Did you turn it off?
A. Yes, ma'am.
Q. Did you follow the same series of certain button pushing that you had before?
A. Yes, ma'am.
Q. At any time during this period on June 9th and June 10th, did you ever show or instruct Mr. Fairfax how to turn this recorder on or off?
A. No, ma'am.
Q. Did you look at the recorder?

A. Yes, ma'am.
Q. Did it appear to have been tampered with?
A. No, ma'am.
Q. After getting the recorder back -- I'm sorry -- what did you do?
A. I returned to the Coeur d'Alene FBI office.
Q. What did you do at the Coeur d'Alene FBI office?
A. Once again, I downloaded the recorder following the same procedure I had done the day before.
Q. Did you listen to the recording device again?
A. Yes, ma'am.
Q. Did the length of the recording match the time period from when you had turned it on and gave it to Mr. Fairfax to when you got it back and turned it off?
A. Yes, ma'am.
Q. Did it match the length of time that Mr. Fairfax had been up at the Steele place?
A. Yes, ma'am.
Q. Could you please look at what has been

identified as United States Exhibit 22 for identification.
A. Yes, ma'am.
Q. Do you see that?
A. Yes, ma'am.
Q. What is it?
A. That is a disk marked Exhibit 22, which is the recorded conversation from June 10th, 2011.
Q. How are you able to recognize that as the same conversation that you downloaded on the 10th?
A. Once again, I reviewed it on April 25th, 2011, in its entirety. The preamble was the same. The conversation was the same as the conversation I reviewed the day I took it back on June 10th.
Q. And whose voices were on that?
A. My voice with the preamble, Mr. Fairfax, and Mr. Steele's.
Q. And are there any other markings on that exhibit?
A. There are.
Q. And were you present when those were made?
A. Yes, ma'am.

Q. Do you know who made those?
A. I do.
Q. Who made them?
A. Well, there is my marking, and then there is also Mr. Fairfax's marking, because we reviewed the tape together.
Q. If you could set that down, we're going to leave that with the court's custody.
A. (Witness complies.)
Q. After downloading that recording on June 10th, what did you do?
A. Once again, I contacted the United State's Attorney's Office and my supervisor, and we reviewed the conversation that took place on the 10th.
Q. During the course of the investigation, were you concerned as to whether Mr. Steele may have hired another hit man?
A. Yes, ma'am, we were, based on information we obtain- -- had obtained from Mr. Fairfax.
Q. Were you concerned as to whether he was having Mr. Fairfax followed?
A. We were concerned that that was a possibility.

Q. Had you ever met Cyndi Steele?
A. No, ma'am.
Q. What decision did you make with -- regarding Mr. Fairfax between, I guess the night of -- Thursday night and Friday morning?
MR. McALLISTER: Objection to his opinion on her [sic] decision.
THE COURT: Rephrase the question.
BY MS. WHELAN:
Q. What decision did you make with regards to Mr. Fairfax and what should happen with him in the investigation?
A. Well, we had made a decision the night of June 10th. We contacted the Portland Division of the FBI, and they were going to send agents over to make contact with Mrs. Steele on the morning of the 11th.
They were going to set up surveillance early on the residence to make sure Mrs. Steele didn't leave, and they were going to make contact with her at some time that they thought was a good time to make contact. If she is driving away, they might stop the car. That was their determination, because I wasn't there.
Based on that contact being made, and

the possibility -- after discussing it with members of the task force, we decided to send Mr. Fairfax over to Portland, in case Mr. Steele asked for a phone call from him. We figured he would need to come up with an Oregon phone number, not a 208 number from North Idaho.
Q. Did you give Mr. Fairfax anything before he left?
A. Yes, we did. The prior trip that Mr. Fairfax took over, when he went over to Portland, he said it cost him approximately $500 to go. So we gave him $500 dollars to cover his expenses for this trip. We also provided him with a GPS tracking device, so we would know where he was at all times.
Q. Special Agent Sotka, now, Mr. Steele had given him $400. Did you take that -- you took that $400. That's Exhibit 77; correct?
A. Yes, ma'am.
Q. And that was the money he was supposed to use to go to Oregon?
A. Yes, ma'am.
Q. What happened next in the investigation?
A. Well, Mr. Fairfax left late that

evening and drove over to Portland. We told him to stay in the Portland area, do not go to Ocean City, and he would be met by an agent. Call us from a parking lot, and we would have that agent meet up with him.
Q. Now you said "Ocean City." Did you mean --
A. I'm sorry, yeah. Where Mrs. Steele was residing. I'm sorry.
Q. Is that Oregon City?
A. Yes, ma'am.
Q. In the early-morning hours of June 11th, what did the task force do?
A. Well, we had made a determination that night that we still wanted to give Mr. Steele a chance to call this off. So we did not make contact with him on the 10th.
So on the 11th, we were going to see if Mr. Steele tried to call Mr. Fairfax sometime during the night to call this off, or see if he followed an alibi that he stated on the night of the 10th, on the recording, that he was going to do on that day. So we set up surveillance on his residence starting at 5:00 in the morning.
Q. Do you know whether Mrs. Steele was

contacted by any FBI agents?
A. Mrs. Steele was contacted.
Q. Did you do the contact?
A. No, ma'am.
Q. Who did?
A. Agent Heckendorn and Agent Halpin from the Portland Division.
Q. Who was on the surveillance team from the North Idaho Violent Crime Task Force on June 11th?
A. The same agents that had participated the days earlier. We also had additional people from the Coeur d'Alene FBI office, if needed, to join the surveillance.
Q. Okay. Were you able to continue the surveillance and carry it out as long as you had planned to?
A. No, ma'am. We did not carry it out the full length of the day.
Q. Why not?
A. Well, I had received a call from the agents in Portland that Mrs. Steele was not cooperating fully, and she was --
MR. McALLISTER: Objection, Your Honor. Hearsay.

THE COURT: Well, I'm not sure an indication as to a level of cooperation calls for hearsay. I'm going to overrule that objection. But that's a limited ruling, and if we get into specific conversations, I will sustain the objection.
BY MS. WHELAN:
Q. The question, Special Agent Sotka, is: Why were you unable to follow the surveillance for the entire day?
A. We were not sure that we could keep Mrs. Steele from contacting Mr. Steele for the entire day.
Q. Do you know if Mr. Steele did, in fact, leave his place in his truck and trailer in the morning?
A. Yes, ma'am, he did.
Q. At approximately what time?
A. Approximately 9:00 a.m.
Q. Did you have an opportunity to speak with Mr. Steele?
A. Yes, we -- yes, I did.
Q. Can you please explain to the jury how that came about?
A. The prior day, Mr. Steele made a comment that when this was going to happen, the murder of his wife, he didn't know if he would be a suspect or if they would be coming there to notify him. He said during this conversation that they would come in a black and white, and either be there to notify him or take him away.
Based on that -- Idaho State Police has black and white vehicles -- we decided to do a death notification to Mr. Steele, and see how he reacted to that, and if he followed through with other parts of the alibi that he had talked about.
Q. During the course of your conversation with the defendant -- well, first of all, where did that happen?
A. Well, Mr. Steele had left his residence in his truck, pulling his trailer. Officer Jeff Spikes, with the Idaho State Police, called Mr. Steele and asked him to return to his residence; they had to speak with him.
When he returned to his residence, the conversation took place on both his front porch and what I would call his living room.
Q. You were present for the conversation?
A. Yes, ma'am.
Q. Can you tell the jury whether Mr. Steele followed through with any of the alibi

that he had laid previously with Mr. Fairfax?
A. Yes, ma'am, he did.
Q. What did he say?
A. When Mr. Fairfax initially came to us, he said that Mr. Steele wanted Mrs. Steele killed because she was having an affair with an individual in Portland. When I brought that part up to Mr. Steele during this notification, we were investigating what had happened, he said that the thought had crossed his mind because she had been in Portland so much.
He also told Mr. Fairfax, during his alibi plan, that he could not be seen by either Mrs. Steele or her mother, because they both knew him. So don't give them a bunch of time, because if they saw him they could identify him.
Q. Excuse me, Special Agent Sotka. I'm going to ask you, you used "he" and "him" and it's difficult for me to follow. Can --
A. I'm sorry, ma'am.
Q. -- you use names, please?
A. Yes, ma'am.
If Mr. Fairfax was seen by Mrs. Steele or her mother, Mr. Fairfax could be identified because of the relationship, and that they had met in the past. So he had to be very quick.
Mr. Steele was very concerned, when we did the notification, about, was somebody identified, did they get a vehicle, did they get a plate. That fell into part of the alibi, if they had gotten this or seen somebody and they weren't dead, that they could have been identified.
The last thing that Mr. Steele did that was very similar to his alibi, or exactly, is he says, "If you get caught" -- Larry Fairfax -- "over there, I am going to say that you're having an affair with my wife." And Mr. Fairfax -- when I said -- when I told Mr. Steele that Mr. Fairfax was coming out of a coma and starting to talk, he immediately said that, "How could this be? He's so fat. How can my wife be having an affair with him?" So he started to follow elements that he had laid out in his alibi.
THE COURT: Counsel, we're going to need to take the break in the next two or three minutes, but I don't want to interrupt your inquiry. If you want to go just for a few more minutes, you may.
MS. WHELAN: Your Honor, I think it would be a great place to stop, and then I can continue

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when we come back.
THE COURT: Very good.
Ladies and gentlemen, we're going to be in recess. I think, probably more in fairness to counsel, let's try to reconvene about 11:35, give you enough time to even leave the building and stretch your legs if you want. The jury, though, I think, we'll ask to stay here, unless you need a smoke break, I think we will have somewhat more extended snacks for you to tide you over.
We will try to go until about 3:00 this afternoon. I think that will allow us to still get in pretty much a full trial day. And then as we have indicated, in the future we will be going 8:30 to 2:30 each day.
I will again admonish the jury not to discuss the case among yourselves or with anyone else, nor should you form or express any opinions about the case until it is submitted to you.
We'll be in recess until 11:35.
(Recess.)
(Jury present.)
THE COURT: For the record, I'll note that the jury is present.
Is it Agent -- is it Sotka?

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THE WITNESS: Sotka.
THE COURT: Sotka; I'll remind you, you are still under oath.
Ms. Whelan, you may resume your direct examination of the witness.
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. Special Agent Sotka, the recording that was made on June 10th, that you've identified as Government's proposed Exhibit 22, where was that recording made?
A. At Mr. Steele's residence.
Q. As we were leaving here before the break, I had asked you some questions, and it occurs to me I was trying to be speedy, so I'm going to back up a little bit. Okay?
A. Yes, ma'am.
Q. Now, did you make a notification of -- a fake notification of Cyndi Steele's death to the defendant?
A. Yes, ma'am.
Q. Why did you do that?
A. We did that in an attempt to gain more evidence as to what Mr. Steele was trying to do.
On June 10th, he laid out an alibi on

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the recording with Mr. Fairfax. Based on the alibi that he laid out, he started to carry out the alibi by leaving in the truck and trailer to go to Spokane.
We called him back to the residence in a black and white police car, just as he stated that a black and white police car would come to his residence to either notify him about his wife's death or to take him away.
Q. Now, Special Agent Sotka, doesn't that seem rather mean, to notify somebody that their wife has been killed?
A. Yes, ma'am.
Q. Was there a reason why you decided to do it in this case, based upon what you had heard thus far?
MR. McALLISTER: Judge, I object to any reason he may have at this point. That's his opinion. That's not evidence of any fact.
THE COURT: Well, I'm going to overrule the objection. I'll allow the witness to explain the reason, because the jury may obviously have some concern about the tactics used. So I think the officer should be allowed to explain that.
But again, Counsel, it's a limited

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issue. Let's not get into it beyond just a very simple and brief explanation.
You may answer the question.
THE WITNESS: Based on the recording on the 10th and my reviewing of the recording, and the alibi laid out by Mr. Steele, we thought -- an investigative decision was made that we would see how far Mr. Steele would follow his alibi.
Based on us having to call him back to the residence, we were not able to follow him all day long to see if he followed each part of the alibi. However, he did follow certain parts of it, once he was back at his residence, by certain statements that he made.
BY MS. WHELAN:
Q. Based upon the fact that you had these recordings from the 9th and 10th, and his stated intentions, did it still seem mean to notify him of the death?
A. Yes, ma'am.
Q. Special Agent Sotka, please take the jury through the notification process. What happened?
A. Well, early in the morning at about 5:00 a.m., we had surveillance elements set up in

the park across the street, to begin to follow Mr. Steele when he left the residence to go to Spokane with the pickup truck and trailer.

When I had received information that we might not be able to have Mrs. Steele not contact Mr. Steele throughout the day, we decided to have ISP, the Idaho State Police, go along with me to Mr. Steele's residence and notify him that his wife had been killed in a car accident, just as he had requested the night before that Mr. Fairfax do it with a -- kill her in a car accident. So that was the notification that we made.

It also followed what Mr. Steele had said on the 10th, that they would come in a black and white, "either notify me or take me away."

We, myself, Idaho State Police Officer Jeff Spikes and Idaho State Police Holly Branch, went to the residence. Officer Spike made the initial notification, when Mr. Steele came -- arrived at the residence back in the truck, on his front porch.

Mr. Steele's physical reaction, after being a police officer and an agent, was not consistent with somebody that was just notified of his wife's death.

And we began to provide information to him that would allow him to follow his alibi, such as, "Did you contact Mrs. Steele the night before?"

He said, yes, he had.

That was information that we had, based on the tape recording, that he was going to call her to make sure -- to call Mrs. Steele to make sure that she was going to leave in the morning, so Mr. Fairfax could carry out the murder for hire.

Once he had said he made this phone call, we provided a little bit more information to him, and he wasn't really -- coming back -- I'm sorry.

Q. Let me ask a question, Special Agent Sotka.

What I would like you to do is just go through and describe for the jury what was actually happening, where you were, what was said.

A. Initially, the contact was made. Mr. Steele exited his vehicle, approached us. We were standing in the front of his yard, and he approached us.

We went up on his front porch. We had

Mr. Steele sit on his front porch. We stayed there for a few minutes, ten minutes maybe, and then we went into Mr. Steele's residence.

As I described earlier, we sat down in what I would call the living room and we continued with the conversation, on the notification, and Officer Spike started the notification with him.

At some point I began to speak with Mr. Steele, and I was telling him that I was receiving information from the Portland office about what had happened. I provided him with information that we had an incident with an individual, very close to where this all happened, by the last name of Fairfax.

Mr. Steele immediately said, "Larry Fairfax?"

And I said, "Yes, I believe that's his name."

And he said that Mr. Steele [sic] had done work around the residence and he had seen him the day before, but had no clue why he would have gone to Oregon.

Q. Special Agent Sotka, you just said that Mr. Steele had done some work around the place. Did you mean Mr. Fairfax?

A. I'm sorry. Mr. Fairfax had done some work around the place for Mr. Steele.

Q. Okay.

A. But he did not know why he would have any reason to be in Oregon.

At some point during the conversation, I told him that Mr. Fairfax was beginning to speak a little bit to law enforcement.

And Mr. Steele, while sitting on the couch, got this puzzled look on his face and said, "No, how could he," and rubbed his belly, saying, "He must be having an affair with my wife. That's why he went over."

He had stated that prior in the day on June 10th, during that conversation, that, "If you get caught, I am going to say that you're having an affair with my wife." He followed that part of the alibi.

At that point, a short time later, we -- I confronted Mr. Steele about, his wife was not dead, and that we knew he had hired Mr. Fairfax. And that ended the conversation.

Q. At some point, did you place the defendant under arrest?

A. Yes, ma'am.

Q. Special Agent Sotka, when you confronted the defendant with the fact that you knew he had hired somebody to kill his wife, did he stand up?

A. Yes, ma'am.

Q. Did anything else happen?

A. Immediately following that, myself and Idaho State Police officers all noticed that there was an odor of fecal matter in the air, and it appeared that Mr. Steele had defecated himself.

Q. On June 15th, where were you?

A. June 15th, I was teaching a class in Missoula, Montana; a basic SWAT class.

Q. Did you receive a call to come back to Coeur d'Alene?

A. Yes, ma'am.

Q. Did you come back?

A. Yes, ma'am.

Q. Why did you come back?

A. I was notified that an explosive device was located on the bottom of Mrs. Steele's car. And obviously, because this was a case that I was working, this was of great importance.

And I left the school. Other people taught what I need to have -- was going to teach,

and came back to continue the investigation.

Q. Special Agent Sotka, when you met with Larry Fairfax on June 9th, did he ever say anything about having placed a bomb on Cyndi Steele's car?

A. No, ma'am.

Q. When you met with Larry Fairfax on June 10th, did he ever say anything about having placed a pipe bomb on Cyndi Steele's car?

A. No, ma'am.

Q. On the 11th, you didn't -- did you speak with Mr. Fairfax on the 11th?

A. Just telling him that we no longer needed him to be in Oregon, and he could return home.

Q. During that conversation, did he ever say anything about having placed a pipe bomb on Cyndi Steele's car?

A. No, ma'am.

Q. Special Agent Sotka, did the North Idaho Violent Crimes Task Force have any information regarding a murder-for-hire plot prior to Mr. Fairfax coming forward?

A. No, ma'am.

Q. During the investigation, did Larry

Fairfax tell you that he had received payment of some silver coins from the defendant?

A. Yes, ma'am.

Q. Did he ever tell you if he kept any of those coins?

A. Yes, he did tell me that.

Q. What did he say?

A. He said that he had cashed in the majority of the coins at three different locations, and he still had 26 coins remaining. He wasn't exactly sure of the number, but that was the number that I received from Mrs. Fairfax, that she had given back to me.

Q. And did you take those coins into custody?

A. Yes, ma'am.

Q. Now, without showing anything to the jury, could you please look at what's been marked as United States Exhibit 7 for identification?

A. Yes, ma'am.

Q. Have you looked at that?

A. I have.

Q. Do you recognize it?

A. Yes, ma'am.

Q. What is it?

A. Those are the 26 coins provided to me by Mrs. Fairfax.

Q. How do you know it was the silver that -- it's the same silver that you recovered?

A. Based on the packaging and the seal at the top of the K-pack.

Q. Does your name appear on there?

A. Yes, ma'am.

Q. Does the date on which you received them appear on there?

A. Yes, ma'am.

MS. WHELAN: Your Honor, we would move for the admission of Government's Exhibit 7.

THE COURT: Any objection?

MR. McALLISTER: No, Your Honor.

THE COURT: Exhibit 7 will be admitted and may be published to the jury.

(Government's Exhibit 7 admitted.)

BY MS. WHELAN:

Q. Agent Sotka, will you show that to the jury?

(Exhibit published.)

MS. WHELAN: Your Honor, the jury will have all exhibits back in the jury room, correct?

THE COURT: Correct.

MS. WHELAN: So at this time, I'll ask the court to keep that exhibit, then.
BY MS. WHELAN:
Q. Special Agent Sotka, how long was this entire investigation, from information to arrest?
A. Well, June 8th was the first time I received information, and the arrest was on June 11th.
Q. It was a short investigation?
A. Yes, ma'am.
Q. I want to ask you just a couple follow-up questions about that recorder you talked about.
A. Yes, ma'am.
Q. You indicated you took it back to the FBI to download it; is that correct?
A. Yes, ma'am.
Q. Is there any special type of computer you have to use?
A. We have one computer in the Coeur d'Alene office. It's the only computer in north Idaho for the FBI to use for downloading this type of device from ADS. It has proprietary software on the computer that we purchased from ADS, and we are taught that you only use that computer for

downloading. And it is in a separate room. It's with other computers, but all the agents know what that computer is used for.
Q. Is that the computer you used?
A. Yes, ma'am.
Q. So the Coeur d'Alene FBI has other computers than that one, but this is the only one that can be used to download those recorders?
A. Yes, ma'am.
MS. WHELAN: Your Honor, may I have just one moment, please?
THE COURT: Yes.
MS. WHELAN: Your Honor, we will be recalling Special Agent Sotka for other aspects, but that is it for this subject.
THE COURT: Mr. McAllister, you may cross-examine now on the subjects covered here, and then not repeat that, obviously, later; or you can defer the cross-examination until the witness has completed his entire testimony.
MR. McALLISTER: I would like to go forward, Your Honor.
THE COURT: All right.
CROSS-EXAMINATION
BY MR. McALLISTER:

Q. Agent Sotka, the recording device that you placed upon Larry Fairfax, what did it look like?
MS. WHELAN: Your Honor, I would -- excuse me -- sorry -- object and request a sidebar.
THE COURT: Yes. Approach.
(Sidebar commences as follows:)
THE COURT: Ms. Whelan.
MS. WHELAN: Judge, I've been told that this information is law enforcement sensitive. It's sensitive to the fact that it is a certain key fob that's not known to individuals. If we can describe it generally --
THE COURT: Mr. McAllister, can you work around -- I'm not sure where you're going with this.
MR. McALLISTER: I can work around it. I'm not asking for any confidential key fob. I'm not -- I asked what it looked like.
THE COURT: Well, is its physical appearance, is that --
MS. WHELAN: Yes.
THE COURT: Well, where are we going? Why is it relevant what it looked like?
MR. McALLISTER: Well --

THE COURT: I'm trying to figure out a way to protect the defendant's rights, and yet also recognize that there may be some interest on the part of the government in protecting its identity.
MR. McALLISTER: Why don't I rephrase it and see if I can get around --
THE COURT: Okay.
MR. McALLISTER: -- the confidentiality objection.
THE COURT: All right.
MS. WHELAN: Thank you.
(Sidebar concluded.)
THE COURT: Thank you, Mr. McAllister. If you would rephrase.
BY MR. McALLISTER:
Q. Agent Sotka, you placed a recording device or like a microphone that could record sound on Mr. Fairfax; correct?
A. Yes, sir.
Q. All right. And that device did not transmit the conversation to you; correct?
A. No, sir.
Q. So nobody could hear the conversation; it was just being recorded, correct, sir?
A. Yes, sir.

Q. All right. So you listened to it after the fact, later that evening, June 9th; correct?

A. Yes, sir.

Q. And I think you said that you took the recording -- and I'm assuming it was on a disk or a CD?

A. The recording was on the device.

Q. Okay. It was on the device. You took it from the device and put it into a computer; correct?

A. I plug it into a USB adapter that goes into this device.

Q. Okay. So you're transferring to a computer; correct?

A. I'm not sure if it's transferred to the computer or directly to the disk. I'm not really sure.

Q. Okay. Your intent is to put it on another disk, to make a copy; correct?

A. To make the original download, yes.

Q. Okay. And then you erase the original conversation that was recorded; correct?

A. Yes, sir.

Q. Before listening to it; correct, sir?

A. I'm not sure if I listened to it first.

I would have assumed I listened to it, to make sure there was something on the disk. So I believe I listened to it first. Once I confirmed there was a transfer of data to the disk, I deleted it.

Q. Okay. And so, therefore, no one is able today to listen to or examine the original recording; correct?

A. What the FBI considers the original recording is the first download. So that can be examined.

Q. Agent Sotka, I don't know if you understood my question, but it was: The defense doesn't have an opportunity to listen to or examine the original recording; isn't that correct, sir?

A. To answer your question, the way I understand it, the original recording is a download. We don't listen to it from the device. So the original recording is available.

Q. Well, actually, a copy is available; correct, sir?

A. I have to answer how I understand it. The original disk is sent down to our office in Salt Lake City and kept in an L-sure, and that is

considered the original copy.

Q. But it's not the original, is it? It's a copy.

MS. WHELAN: Your Honor, objection. Asked and answered.

THE COURT: Counsel -- you know, I think we're somewhat arguing semantics, but I think counsel is entitled to go ahead and make sure the jury understands what happened.

And perhaps I'll give you one more stab at it. There may be just a disagreement as to how you characterize a copy versus the original, but I think counsel is entitled to some leeway.

Go ahead.

BY MR. McALLISTER:

Q. What you sent to your Salt Lake FBI office, you called just now an original copy; correct?

A. We call it the original. It's stamped that. Copies are everything after that point.

Q. Okay. But it's not the original. The original was in the recording device; correct, sir?

A. I have to disagree with you on that, because we call that the original.

Q. All right. Did you at some point take the recording device and send it back to the FBI laboratory in Quantico, Virginia?

A. The device at that we used?

Q. Yes.

A. Yes, sir.

Q. The recorder. And isn't it true that the lab reported back to you that the recorder was defective?

A. I have never seen that report.

Q. But you've heard about it, have you not?

A. I know the lab looked at it. I haven't heard the results.

Q. You weren't here -- well, let me ask the question this way: You say you haven't seen the report. But you know for a fact that the laboratory determined that the recorder was defective; correct?

MS. WHELAN: Objection. Foundation. Misstates the evidence.

THE COURT: You can just answer -- I'm going to overrule the objection.

Do you know that as a fact? Just yes or no.

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THE WITNESS: No.
BY MR. McALLISTER:
Q. Okay. Was a second recorder used on June 10th, or the same one that was used on June 9th?
A. The same recorder.
Q. Okay. How many recorders did you send back to the FBI lab in Quantico, Virginia?
A. I don't know the answer to that.
Q. Weren't you the case agent who was responsible to do that?
A. I was not. I was the case agent up to a point, and another agent sent them back.
Q. Okay. What is the name -- if you can tell me without violating any confidence, what is the name of the proprietary software that you use?
A. I can't recall the name without -- it's on the -- I can't recall it right now.
Q. Okay. Now, when Larry Fairfax met with you for the first time at his lawyer's house, Mr. Michaud, there was how long of a discussion?
A. Approximately 30, 40 minutes.
Q. Okay. And did you write up a summary of what you heard from Mr. Fairfax on the 8th?
A. Yes, sir.

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Q. Where is that?
A. It's in the case file.
Q. Okay. And it's dated June 8th?
A. I believe so. I would have to look and see the report to tell you the exact date, but it should be dated June 8th.
Q. Okay. And at no time did Larry Fairfax, on June 8th, tell you or anybody else in law enforcement that he had, in fact, placed some kind of device on Cyndi Steele's car?
A. No, sir.
Q. Okay. Now, you, I presume -- or I believe that you ran a record check on Edgar Steele after meeting with Larry Fairfax?
A. Yes, sir.
Q. And you found no evidence of criminal history; correct?
A. Correct.
Q. All right. You knew he was a lawyer?
A. After meeting with Mr. Fairfax, that had been stated, but I did not know prior to that.
Q. Okay. Well, I'm concentrating -- trying to concentrate on the meeting with Mr. Fairfax and the information he conveyed. Correct? Do you understand?

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A. Yes, sir.
Q. All right. Now, the meeting, I think you said, was attended by yourself and Mr. O'Dell at around noon?
A. Yes, sir.
Q. And you wrote a report about this 40-minute meeting?
A. Yes, sir.
Q. And the report tries to summarize whatever it was that Mr. Fairfax told you?
A. Based on the notes I took during the meeting, I wrote the report.
Q. Do you still have the notes?
A. I do.
Q. Okay. And based upon what Mr. Fairfax said, you decided, or the FBI decided, you and your supervisors, to send him in to attempt to record conversations with Edgar Steele that night?
A. Well, there was already a meet set that night to take care of the horses at approximately 5:00. And we decided, since he was going to take care of the horses, to put a recording device on him and see what was said during this taking care of the horses.
Q. Okay. But you couldn't simultaneously

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hear what was being recorded or said; correct?
A. No, sir.
Q. Now, on June 11th, the time -- at the meeting at Mr. Steele's house, you were secretly recording the entire conversation with him; correct?
A. Idaho State Police was recording the conversation, based on their policy to record.
Q. Okay. My question was: Was it done secretly?
A. The device -- you could see the recording device on Officer Branch. It's a normal recording device that goes to the rear of their car. Nothing was stated that it was being recorded, but there was the normal uniform that a police officer would wear, and it's part of their normal uniform. They have the recorders in their car.
Q. Well, let's put it this way: You never told Mr. Steele on June 11th that the entire conversation was being recorded; correct?
A. No, sir.
Q. And that was part of your plan; right?
A. That was never discussed as being part of the plan, whether to tell him or not.

Q. Okay. But that was part of your plan, to record it; correct?

A. I think it was actually Captain Rolands from Idaho State Police wanted it recorded --

Q. Okay.

A. -- and that was what they wanted done. And that's what was done with their system, not ours.

Q. Okay. And you went along with it; correct?

A. Yes, sir.

Q. All right. And when you -- what you were attempting to do on June 11th is to see if Edgar Steele would confess to a plot to kill his wife; correct?

A. No. I was going to see if he was going to follow his alibi, and make statements that he made the day before about what his alibi would be.

Q. Isn't it true, Special Agent Sotka, that you wanted to get a confession from Edgar Steele?

A. I would have liked to have gotten a confession, yes.

Q. Okay. And, in fact, you did not.

A. No, sir.

Q. Now, have you reviewed the transcript of the tape recording that was made between you and Officer Spike and Edgar Steele on June 11?

A. Yes, sir.

Q. And is it accurate?

A. Yes, sir.

MR. McALLISTER: Could I have the witness shown Government's Exhibit 26A?

THE COURT: 26A?

MR. McALLISTER: Yes, Your Honor.

THE COURT: It's not been offered or admitted, but it can be shown to the witness, if you wish.

MR. McALLISTER: That's what I wish to do.

MS. WHELAN: Judge, we gave Mr. McAllister copies of all the exhibits. If he wishes to use them, I -- I don't have them here. I have them as I'm going to go through them. He can use his exhibits.

THE COURT: Mr. McAllister, if you have a copy, you can put it on the jury projector. I'll turn off the jury monitor.

I have turned off the jury projector.

Can you see that on the screen in front of you?

THE WITNESS: Yes, Your Honor.

BY MR. McALLISTER:

Q. Agent Sotka, at page 3 of the transcript, there is a statement by someone called Spike; correct?

A. Yes, sir.

Q. And he is a Idaho State Police police officer?

A. Yes, sir.

Q. And he says --

MS. WHELAN: Your Honor, I would object to reading from the transcript. It's not been admitted.

THE COURT: Sustained.

BY MR. McALLISTER:

Q. I'll ask it this way: Did Officer Spike tell Mr. Steele that his wife was killed?

A. Yes, sir.

Q. And did Mr. Steele say in response, "Oh, come on. Are you serious? Is this -- are -- is this confirmed?"

A. Yes.

Q. And then Officer Spike said, "It has been confirmed"; correct?

MS. WHELAN: Objection.

THE COURT: Sustained.

BY MR. McALLISTER:

Q. Well, that was a false statement; right?

A. This is all -- what you read was exactly what the transcript says.

Q. And it's false; right? She wasn't killed.

A. Mrs. Steele was not killed.

Q. This was a ruse, correct, by you and the other officers?

A. Yes.

Q. None of -- very little of what you said was true that morning; correct?

A. Correct.

Q. Okay. Now, you specifically asked Edgar Steele if there were other people that hated him; correct?

A. Yes, sir.

Q. And he answered, "Yes, there are"; correct?

A. Yes, sir.

Q. And then you started talking about who some of those people might be; correct?

A. Mr. Steele provided information on who

those people might be.
Q. Okay. Well, you specifically asked him, did you not?
A. Yes, sir.
Q. Okay. You basically said that someone trying to get to him may harm his wife; correct?
A. Yes, sir.
Q. And he responded that, "It could be a hate crime"; correct?
MS. WHELAN: Objection, Your Honor. There is a -- a sidebar.
THE COURT: All right, counsel, I'm going to allow it, but try to avoid the sidebars if we can.
Go ahead and approach.
(Sidebar commences as follows:)
MS. WHELAN: Judge, I appreciate it. I don't want to do a talking objection.
THE COURT: I understand, but it's a fine balance. What I usually try to do is see if you can give me a hint where the objection is, so that I can figure it out myself.
This time I couldn't, so go ahead.
MS. WHELAN: The objection is, he's still -- it's reading from the transcript without admitting it.

THE COURT: Well, just so we're clear, it's hearsay. Now, if it's admitted, then you can come back and then certainly it's free -- you can have a free run at it.
You know, maybe you stipulate, if it's going to be offered by the government, maybe we can just stipulate that it's coming in now, so we don't have to recall the witness in case there is something about that transcript that needs to be covered on cross-examination.
But if you don't -- I'm not going to tell the government how to try their case, but that may be one option. Otherwise, I will have to sustain the objection.
MR. McALLISTER: Well, Judge, my purpose in doing this is, Ms. Whelan asked him about what was said, and I didn't object. That was admitted on direct.
And now I'm trying to get the exact words of --
THE COURT: I don't think we --
MR. McALLISTER: -- what was said, and it's impeachment.
THE COURT: I don't think we went into detail as to what was said.

Are you intending to offer the exhibit?
MS. WHELAN: It's Mr. Haws' witness and exhibit. I think the problem with the transcript is that it's incomplete. And so I asked him the same question. He said, no.
MR. HAWS: There -- there was not a complete recording made on that date. There was a malfunction with the microphone, with the --
THE COURT: All right.
MR. McALLISTER: That's another reason why I should be able to ask him, if there was -- that's the first I've heard about a malfunction.
THE COURT: Okay. Well, you certainly can use it to impeach him, in terms of what he recalls. And then if, indeed, he testifies to something contrary, you can use it then to impeach him.
But at this point, I think we're just reading it into the record, which is improper.
MR. McALLISTER: I've been trying not to read it --
THE COURT: Well --
MR. McALLISTER: -- but I'm trying to get the key words, I've been saying, "Didn't you use the exact words."

THE COURT: Well, I think if the witness can -- it's fair game to impeach him, in terms of what he said. But when you bring in your client's statements, that's when we get into some problems, as well. So --
MR. McALLISTER: Well, it is -- it's not necessarily hearsay from my client, or it's an exception.
THE COURT: What is the exception?
MR. McALLISTER: Well, it could be --
THE COURT: It might be excited utterance, if this was done at the time when he was --
MR. McALLISTER: Exactly.
THE COURT: -- allegedly told his wife was killed. Or, if not -- well, regardless, so --
MS. WHELAN: A foundation has to be laid. And, you know -- I mean, we've had no exhibits from the defense at all.
MR. McALLISTER: That's not true.
THE COURT: Well, we don't need to resolve that now. Let's just go ahead and proceed. Make your objection and I'll rule.
MS. WHELAN: Okay.
THE COURT: Okay?
(Sidebar concluded.)

BY MR. McALLISTER:
Q. Agent Sotka, looking at the transcript, does that help you recall what was said?
A. Yes, sir.
Q. Okay. And you provided Mr. Steele with some more false information about a crash; correct?
A. Yes, sir.
Q. You said that, "It looked like your wife was veering or run off the road"; correct?
A. Yes, sir.
Q. You discussed with him specifically different possible suspects?
A. I believe I asked a question, and he provided that information.
Q. Okay. Later on in the conversation, there is a statement, I believe by Officer Spike, that his mother-in-law has been shot and killed.
MS. WHELAN: Objection, hearsay.
THE COURT: Counsel, the question -- the statement attributed to Officer Spike is not being offered to prove the truth of the matter asserted, because I don't think anyone is even alleging that that is, in fact, a true statement, but rather for the effect, presumably, that it had upon

Mr. Steele, and Mr. Steele's reaction.
So I'm going to overrule the objection, because I don't think it's being offered for the truth of the matter asserted, and therefore is not hearsay.
You may answer.
THE WITNESS: Can you restate the question? I'm sorry.
BY MR. McALLISTER:
Q. Yes. I asked you about Officer Spike, but I want to ask you about you, Special Agent Sotka. Did you tell Mr. Steele, "Your mother-in-law was just shot. She is dead at the residence."
A. Could you show me where that is on the transcript, so I can make sure?
THE COURT: The question is your memory. Do you recall?
THE WITNESS: I recall making a statement something like that.
BY MR. McALLISTER:
Q. Would you like to look at page 11 of the transcript?
THE COURT: Counsel, now we're not getting into impeachment. The witness has acknowledged he

made that statement, or something akin to that.
MR. McALLISTER: Okay.
BY MR. McALLISTER:
Q. And Mr. Steele responded to you, did he not?
A. Yes, he did.
Q. As if he was in shock; correct?
A. I wouldn't say that.
Q. Okay. Do you know what he said?
A. I do not, without looking at the transcript or hearing the tape.
Q. Okay. Can you look at page 11?
A. I don't have the ability to do that up here.
MR. McALLISTER: I'm sorry.
THE COURT: Counsel, I'm going to allow you to refresh the witness' recollection.
So you can look at the transcript and then see if that refreshes your recollection. And you must testify from your own memory, not just repeat what is on the transcript. And before answering, we just need to know whether that refreshes your recollection.
THE WITNESS: Yes, it does.
Can you restate that question, so I

make sure I answer it accurately?
BY MR. McALLISTER:
Q. I believe I asked that he responded as if he was shocked by this news.
A. No, he did not.
Q. Okay. What did he say?
A. I don't know what part you're actually referring exactly to.
THE COURT: What do you recall that he said?
THE WITNESS: I don't recall what he said.
BY MR. McALLISTER:
Q. All right. If I could refer you again to the same page 11.
A. Yes, sir.
Q. Now, do you recall what he said?
A. There are so many lines on that page -- I think I know the line you're talking about.
Q. All right. My question was: Did he express shock at your false statement about his mother-in-law being shot?
A. No, he did not. He made the statement, but I don't believe that was expressing that he was shocked.
Q. What did he say after you said, "There is something going on"?

A. He said, "what the fuck."
Q. That's not an expression of shock, in your opinion?
A. That's three words.
Q. Okay. Then he wanted you to let him -- to call his son and his daughter; correct?
A. Yes, he did.
Q. And you didn't let him.
A. If he would have walked up to the phone and picked it up, he could have made the call. We decided to go in the residence, which he invited us into, and he did not make those calls.
Q. Okay. But he wanted to, told you he did?
A. Yes.
Q. Now, in your response to Ms. Whelan, you brought up the name Larry Fairfax; correct?
A. Yes, sir.
Q. And Mr. Steele didn't say anything about Larry Fairfax; correct? Other than he worked around the property?
A. He said that he knew him from the area and that he worked on the property.
Q. And you were hoping that by bringing up his name, Mr. Steele would confess to some type of

conspiracy; correct?
A. Well, actually, I figured because he was following his alibi, he would say that Mr. Fairfax was having an affair with his wife; which he did. That's --
Q. Where does it say that on the transcript?
And I'm afraid you don't have the whole transcript in front of you, but --
THE COURT: Counsel, as we discussed, the transcript is not in evidence. I've allowed it to be shown to the witness to refresh his recollection. But again, it should just be shown to him, see if it does refresh his recollection.
MR. McALLISTER: Okay.
THE WITNESS: Do you want me to answer that question?
THE COURT: No. I instruct you not to answer.
Let's move on.
BY MR. McALLISTER:
Q. Is it fair to say that throughout your conversation with Edgar Steele, that at no time did he confess or admit to a plot to kill anyone?
A. That's correct.

Q. All right. And then at the end, do you recall saying, "Thanks for following your alibi. That was really good"?
A. Yes.
Q. And at that point you placed him under arrest; correct?
A. At some point he was placed under arrest. I don't know if that was before or after I made that comment, but he was placed under arrest.
Q. Okay. And at that point in time, Larry Fairfax had confessed that he was involved in some type of plot; correct? On June 8th?
A. He had received money. At that point we didn't believe there was anything else other than him receiving the money. So I guess he would be involved in the plot of taking -- receiving the $10,000 from Mr. Steele. But at that point, that was his whole involvement that we knew about.
Q. But you didn't arrest him, did you?
A. No, sir.
Q. He told you that supposedly Edgar Steele wanted his wife killed; correct?
A. Yes, sir.
Q. And others; right?

A. Yes, sir.
Q. He said like he wanted 12 other people killed; correct?
A. Yes, sir.
Q. And he told you that he had taken money, either received it or stole it, and that he was involved; correct?
MS. WHELAN: Objection. Form of the question.
THE COURT: Sustained. Rephrase.
BY MR. McALLISTER:
Q. Well, he told you that he had gotten some silver, not money; correct?
A. He was told [sic] that Mr. Steele had put silver in the garage for him to take as payment to commit this murder.
Q. Okay. And you didn't put him under arrest, did you?
A. No, sir.
Q. As a matter of fact, you never arrested Mr. Fairfax. He was arrested by state officers; correct?
A. At some point he was taken into federal custody. I don't exactly recall the order of the arrest.

Q. All right. Well, isn't it true that the only time Mr. Fairfax was arrested was after Cyndi Steele reported that someone had put a device on her car?

A. Yes, sir.

Q. That evening; correct?

A. The evening of the 15th, yes, sir.

Q. All right. You testified in response to Ms. Whelan's question that Cyndi Steele was not cooperating. Do you recall that?

A. Yes, sir.

Q. And when you say she wasn't cooperating, there were two of your fellow FBI agents at her mother's house; correct?

A. Yes, sir.

Q. And they interviewed her; correct?

A. At that point, I don't believe she was interviewed. They called me back and asked if I could speak with Mrs. Steele, because she was not being cooperative. At that point, I don't think she was interviewed.

Q. All right. But she was interviewed that morning, was she not? Gave a very detailed interview to the FBI; correct?

A. Yes, sir.

Q. And isn't it true that when the FBI agents went to her mother's house, that they were told -- or that they did remove the cell phone from Cyndi Steele and her mother?

A. After speaking with me, my understanding was she did not want to provide her cell phone. I explained some of the details to Mrs. Steele about the information we had.

Mrs. Steele said, "I'm not saying this is true, but there is something there that's making me think it could be true," and she provided the phone. That was my understanding.

Q. You wanted to keep her from calling her husband; correct?

A. Yes, sir.

Q. And her mother; correct?

A. I believe her mother was with her.

Q. Okay. And that was so that you could go in with a story about their deaths, and see if Edgar Steele would confess to you.

A. I didn't want -- if Mr. Steele was going through his alibi of driving around Spokane, and we were still doing surveillance, I wouldn't want him contacted, saying -- thinking that a murder had occurred that morning, and get a call

from Mrs. Steele. That would have not allowed him to carry out his alibi.

Q. And it wouldn't have allowed you to see if he would confess.

A. This had nothing to do with a confession at this point.

Q. Well, when you interviewed him, clearly you were hoping or trying to get him to confess to this, or admit his participation in this alleged conspiracy; correct?

A. In law enforcement, we would always like to obtain a confession; but that was not, in our minds, what we were doing that morning.

Q. Okay. You were attempting to gather evidence; correct?

A. Yes, sir.

Q. And you didn't get any evidence from Mr. Steele that he was involved in what Larry Fairfax was doing; correct?

A. I disagree with you. I think his following steps of the alibi was providing us quite a bit of evidence.

Q. I know you've said that, Officer, but my question is, as to not any so-called alibi, but as to the crime itself, you didn't get any

evidence in that interview with Mr. Steele on the morning of June 15th.

A. I disagree with you. Because things he said on the 10th were restated on the 11th, multiple things he restated on the 11th, which corroborates the evidence that was taken on the 10th. So I believe we obtained quite a bit of evidence on the 11th.

Q. Mr. Steele did not make any statement about being involved in a conspiracy to hire someone to murder his wife, did he?

A. No, sir.

MR. McALLISTER: Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. WHELAN:

Q. Special Agent Sotka, can you listen to the conversation that was made -- for example, on June 9th, can you listen to that from the recorder?

A. I don't believe so. I have always downloaded it and listened to it from a CD.

Q. Okay. And so that's why that CD becomes the original evidence?

A. Yes, ma'am.

Q. At the FBI in Coeur d'Alene, Idaho, how many of those recorders do you have -- did you have?

A. We have a couple different recorders, two that were in that type of format, I guess you would say, in terms of that type of device. But we have two that look like that.

Q. Counsel asked you some questions about meeting with Mr. Fairfax on June 8th. Did you meet with Mr. Fairfax on June 8th, or did you meet with him on June 9th for the first time?

A. It was on June 9th the first time. The 8th was actually the phone call from the United State's Attorney's Office and then my contact with Mr. Michaud.

Q. Counsel asked you about the recording device and that you could not hear simultaneously. Are there recording devices that you can hear simultaneously?

A. The ones that we have in Coeur d'Alene are separate units. One is a transmitter and one is a recording device. There may be some out there that do that in the FBI, but I don't have one in Coeur d'Alene to use.

Q. Are those bulkier?

A. Yes, ma'am.

Q. Counsel asked you about arresting Larry Fairfax. As of June 11th, what information did you have about what Larry Fairfax had been involved in?

A. The information we had as of June 11th was that Mr. Fairfax had come forward, he had received -- to law enforcement to provide this information, to stop a deadline that was set for June 11th to kill Mrs. Steele.

He came forward and said he had already received the $10,000 from Mr. Steele, that he had used the majority of it up to pay debts. He was hurting for money. At that point, he had just come forward to try to stop what was going to happen on the 11th.

Q. As of June 11th, did you have any information that Mr. Fairfax had taken any steps to have Mrs. Steele killed?

A. Have her killed? No.

Q. You stated that Cyndi Steele was not cooperating. Can you tell the jury what you meant by "not cooperating"? How are you defining that word?

A. I was not there with Mrs. Steele at the

time. I was in Coeur d'Alene, Idaho, to --

Q. I'm sorry. Let me then ask you a question. Is that based upon something that was told to you by another agent?

A. Yes, ma'am.

MS. WHELAN: Okay. Nothing else.

Thank you, Judge.

THE COURT: Any recross?

MR. McALLISTER: If I might take one moment?

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. McALLISTER:

Q. Agent Sotka, did you also delete the recording from the recording -- recorder on June 10th?

A. I transferred the data from the recorder on the 10th to a disk. Once I confirmed that the information was on the disk, I cleared the recorder off.

Q. Does that mean you deleted it?

A. Delete, cleared, I guess, either way.

Q. No one today can go back and find that recorder, find anything on it that relates to June 10th; correct?

A. Correct.

Q. All right. Now, in fact -- well, let me ask the question this way: On June 9th -- and if I said June 8th before, I apologize; I believe that's the correct date -- you interviewed Mr. Fairfax for approximately 40 minutes in the presence of his lawyer; correct?

A. Yes, sir.

Q. Okay. And this was Mr. Fairfax coming to the FBI; correct?

A. Yes, sir.

Q. And during that interview, did you happen to ask him about whether he had done anything to injure anybody?

A. I did ask him that.

Q. And what did he say?

A. He said that he had only driven over to Portland one time, and that's all he had done.

Q. All right. You determined later that was a lie; correct?

A. Correct.

Q. Now, I think I asked you this earlier, but is there a report in your possession or your notes that reflect exactly what Mr. Fairfax told you on the morning of June 9th?

A. There are both.

Q. All right. Do you have them with you?
A. I can obtain them. I don't have them with me here. I can obtain them for you.
Q. All right. I understand you're going to testify again.
A. That's my understanding, too.
MR. McALLISTER: Thank you.
THE COURT: Anything else?
MS. WHELAN: No. Thank you, Your Honor.
THE COURT: You may step down, subject to being recalled.
Call your next witness.
MS. WHELAN: Your Honor, we will need time for the marshals to get our next witness into the courtroom. He is here.
THE COURT: No, I understand that. I'm just saying -- is he in custody?
MS. WHELAN: Yes.
THE COURT: Is there a reason why we can't go ahead and proceed and have him brought in?
MS. WHELAN: My understanding from the marshals is they needed a few minutes to get him here. And I think they have certain procedures.
THE MARSHAL: He is coming now, sir.
MS. WHELAN: It's Larry Fairfax.

THE COURT: All right.
Mr. McAllister, could you retrieve your copy off from that screen?
MR. McALLISTER: Thank you, Your Honor.
THE COURT: Mr. Fairfax, please step before the clerk and be sworn, and then follow Ms. Gearhart's directions from there.
LAWRENCE ANDREW FAIRFAX,
having been first duly sworn to tell the whole truth, testified as follows:
THE CLERK: Please state your complete name and spell your last name for the record.
THE WITNESS: Lawrence Andrew Fairfax, F-A-I-R-F-A-X.
THE COURT: You may inquire of the witness, Ms. Whelan.
MS. WHELAN: Thank you, Your Honor.
DIRECT EXAMINATION
BY MS. WHELAN:
Q. Mr. Fairfax, how old are you?
A. Fifty years old.
Q. And where are you currently living?
A. Ada County Jail.
Q. Is that here in Boise?
A. Yes, it is.

Q. Sir, do you have any medical conditions that I need to be aware of as I'm asking you questions?
A. Yes, I do.
Q. Could you please tell me what they are?
A. The main one is Meniere's disease.
Q. What is that?
A. It causes dizzy spells.
Q. If you feel dizzy at all, will you make sure and let us know?
A. Yes, I will.
Q. Mr. Fairfax, you're deaf in one ear; is that correct?
A. Yes.
Q. Which ear is that?
A. My left ear.
Q. If you have any problem hearing me, will you let me know?
A. Yes, I will.
Q. You're currently living in the Ada County Jail. When were you arrested?
A. June 15th, 2010.
Q. Do you recall what you were charged with?
A. Possessing an unregistered firearm and

making an unregistered firearm.
Q. Did you ultimately plead guilty to those charges?
A. Yes, I did.
Q. Have you been sentenced yet?
A. No, I haven't.
Q. Are there any promises about what you will be sentenced to?
A. No, there isn't.
Q. Do you understand that sentencing is a matter up to your judge?
A. Yes, I do.
Q. The United States has agreed to recommend you receive a sentence within the calculated United States Sentencing Guideline range; is that correct?
A. Yes, it is.
Q. What is your responsibility under the plea agreement you entered into?
A. To tell the truth.
Q. Tell the truth to who?
A. To the judge.
Q. To anyone else?
A. And to the jury.
Q. Anyone else?

A. Anybody that asks me, in the courtroom.
Q. Prior to June 15th of 2010, where did you live?
A. Sagle, Idaho.
Q. Where is Sagle, Idaho?
A. Up north by Sandpoint.
Q. Is it between Sandpoint and Coeur d'Alene?
A. Yes, it is.
Q. Where were you raised, Mr. Fairfax?
A. Spokane, Washington.
Q. Are you married?
A. Yes, I am.
Q. How long have you been married?
A. Thirty-two years.
Q. Do you have kids?
A. Yes, I do.
Q. Prior to June 15th of 2010, what did you do to earn a living?
A. I was a logger.
Q. What other types of work have you done in your life?
A. Excavating. And I do handyman jobs, too.
Q. Have you ever done any construction

work?
A. Yes, I have.
Q. In the spring of 2010, how was your financial situation?
A. Not very good.
Q. Can you tell the jury what that means?
A. The economy up there where we live kind of collapsed. Several of the mills closed, and everybody was out of work; couldn't make, you know, pay our payments on our equipment, our houses, or anything.
Q. And, sir, I'm going to ask you just to take that microphone in front of you and tilt it up just a little bit. Could you do that?
I apologize. I can't always hear everything.
THE COURT: Just make sure it's pointed directly at your mouth as best you can. All right?
Go ahead and proceed.
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. At some point, did you declare bankruptcy?
A. Yes, I did.

Q. Do you recall when that was?
A. Sometime in 2010.
Q. Do you know Edgar Steele?
A. Yes, I do.
Q. How do you know him?
A. I have done work for the Steeles, on and off, for 15 years.
Q. Is he in the courtroom today?
A. Yes, he is.
Q. Can you please identify for the record where he is seated and what he is wearing?
A. He is the man that just stood up over there.
MS. WHELAN: Your Honor, I would ask that the court record reflect the in-court identification by this witness.
THE COURT: The record will reflect that the witness has identified Mr. Steele.
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. Mr. Fairfax, how long have you known Edgar Steele?
A. Approximately 10 to 15 years.
Q. Do you know his wife, Cyndi Steele?
A. Yes, I do.

Q. Have you known her about 10 to 15 years, too?
A. Yes, I have.
Q. Do you know his three children?
A. I have met them, yes.
Q. Okay. I'm going to ask you to look at the screen in front of you.
MS. WHELAN: And I believe the monitor is blocked off for the jury?
THE COURT: It is.
MS. WHELAN: Thank you.
BY MS. WHELAN:
Q. I'm going to ask you to look at what's been identified as Government's Exhibit 8 for identification purposes.
Mr. Steele, can you -- excuse me. I'm sorry. Mr. Fairfax, can you see that?
A. Yes, I can.
Q. What is that?
A. It's a picture of Edgar Steele's front door of his house.
Q. Is it a fair and accurate picture?
A. Yes.
MS. WHELAN: Your Honor, on the 5th of April, the United States and the defendant entered

into a stipulation that Exhibits 8, 9, 10, and 11 would be admitted, and I intend to go through 8, 9, 10, and 11 with this witness.

At this point, based on the stipulation, I would move for their admission.

THE COURT: I assume you agree --

MR. McALLISTER: Yes, Your Honor.

THE COURT: -- to that stipulation?

All right. Exhibits 8, 9, 10, 11 will be admitted and may be published to the jury.

(Government's Exhibits Nos. 8, 9, 10, and 11 admitted.)

MS. WHELAN: Thank you.

THE COURT: I'm turning on the jury monitor for that purpose -- actually, jury projector.

MS. WHELAN: May I continue, Your Honor?

THE COURT: I'm sorry?

MS. WHELAN: May I continue?

THE COURT: You may, certainly.

MS. WHELAN: Thank you.

BY MS. WHELAN:

Q. So Exhibit 8 is a picture of the Steele home; is that correct?

A. Yes, it is.

Q. Okay. Is that a picture of the front

of the house?

A. Yes.

Q. And is that the place where you've done some work?

A. Yes, it is.

MS. WHELAN: Ms. Rocca, could you please show Exhibit No. 9, please?

BY MS. WHELAN:

Q. Now, that's another picture of the Steele house; is that right?

A. Yes, it is.

Q. And right over here (indicating), what's that?

A. That's the two-car garage that's attached to the house.

Q. And did you have any part in building this house at all?

A. No, not that part of it.

MS. WHELAN: Could you please show him Exhibit 10, please.

BY MS. WHELAN:

Q. Is that another picture of the garage?

A. Yes, it is.

Q. What's in the garage?

A. I can see his Cadillac and various

other stuff.

Q. Have you ever been in that garage?

A. Yes, I have.

Q. And finally, would you look please at Exhibit No. 11. What is that a picture of?

A. That's a picture of the back of the garage, the back door that enters the garage, and his back porches on the house.

Q. It looks like maybe there is a refrigerator there; is that right?

A. Yes.

Q. And that's a part into the house; is that correct?

A. Yes.

Q. That door that's open -- I'm sorry -- where does that go?

A. Into the garage itself.

Q. Okay.

MS. WHELAN: Thank you, Ms. Rocca. I'm done with those for the moment.

BY MS. WHELAN:

Q. Now, what kind of work did you do for the Steeles?

A. I have done various work. I made their pastures, and I cleared off an area for their

arena. I also built them a five-car garage, removed all the dirt that was in the way for the garage, and then another two-car garage, and the woodshed.

Q. Did you -- did you do anything else as far as helping them with horses or pipes or anything?

A. Yeah. I've fed the horses and took care of them, and put in some culverts for drainage.

Q. I'm sorry. Was that culverts?

A. Yeah. Culverts.

Q. Do you know whether the defendant had any health issues in November of 2009?

A. Yes, he did.

Q. And how do you know that he had health issues?

A. I was working for him at the time, and his wife called and told us that he had had a heart attack.

Q. And did you do any work for them after he had this heart issue?

A. Yes, I did.

Q. What did you do?

A. I finished up putting the snow

splitters on the roof. And then we helped water and feed the horses, and then later on fixed the plumbing in the house, because it had froze up and the pipes had broken.

Q. Thinking to December of '09 and January of '09 [sic], was Mrs. Steele at the house all the time during this period of time?

A. No. She was on and off. She would go take care of her mother.

Q. Mr. Fairfax, I want to talk to you, if there ever came a time when you had a conversation with the defendant, Mr. Steele, about him wanting to have some people killed.

A. Yes, there was.

Q. Was there one conversation or more than one conversation?

A. There was two of them.

Q. Okay. I would like you to think to the first one. Can you do that for me?

A. Yes.

Q. Okay. First of all, where did the conversation occur?

A. It was out there where they used to keep the pigs.

Q. And when did it occur?

A. It was approximately September, October, in that area.

Q. Of 2009?

A. Yes. I think so.

Q. Okay. And thinking back, do you know -- so who was present during the conversation?

A. Just Edgar and myself.

Q. Okay. Can you please tell the jury what the conversation was?

A. I was telling him about my house going into foreclosure and my bills not getting paid and stuff and, you know, that I would do just about anything to make some money.

Q. And what did the -- what was the defendant's reaction to what you were saying?

A. He kind of, you know, his eyebrow kind of raises up and he looked, like, "Well, I have a way you can make some money."

Q. What was your reaction to that?

A. I just said, "What?"

Q. What happened next in the conversation?

A. He started talking about some people that he wanted to have killed.

Q. And what was your reaction to that

statement?

A. I didn't really put too much credence in it. I kind of thought he was just blowing smoke.

Q. All right. Did you give him any indication that you had -- that you would be interested in that job or that you had any experience in that area?

A. Yeah. I kind of led him to believe I had experience in that area.

Q. Okay. And tell the jury what you told him that would lead him to that conclusion.

A. Just that, you know, I had done something like that before.

Q. Had you done something like that before?

A. No.

Q. So why would you say something like that?

A. Because I thought there would be a way I could get the money without doing it.

Q. You said there were two conversations. Can you think about when the next conversation occurred?

A. Yeah. The next one was right around

February, March.

Q. Of 2010?

A. Yes.

Q. And, again, where did that conversation occur?

A. That one was towards the five-car garage where I built it, right in front of that one. Because he still wasn't totally up to -- he had just had the heart attack and he was just about -- you know, just getting out and walking.

Q. So was that at Mr. Steele's place on Talache Road?

A. Yes, it was.

Q. In Sagle, Idaho?

A. Yes.

Q. Who was present for that conversation?

A. Edgar and myself.

Q. What was said during that conversation?

A. Let's see. Actually, we -- he wanted to go for a ride in his Crown Vic. We went to the post office.

Q. Okay. And did you have a conversation in the Crown Vic? That's a car?

A. Yeah, that's his car. Yes, we did.

Q. Okay. So what was the conversation?

A. He said, was I serious about killing people.

I said, "Yes."

And he said, "Okay. I've got a couple people I want killed."

Q. Did he identify who?

A. Yes, he did.

Q. And who did he say?

A. His wife and his mother-in-law.

Q. Okay. Now, had he provided any additional names before?

A. Yes, he had, the first time we talked. He mentioned a judge, Jim Michaud; Frank Linscott, a rock pit owner; and his neighbors; and another judge, but I didn't recognize his name, so I don't remember it.

Q. Now, the first conversation you said happened maybe September, October, sometime in the fall of '09; right?

A. Right.

Q. This next conversation you've indicated happened in February, March of 2010?

A. Yes.

Q. Between that period of time, had you killed anybody?

A. No.

Q. So again, why would you tell him that you would do this?

A. Because I thought there was a way I could get the money without doing it.

Q. So what was the particulars, if there were any, during that conversation about how much you were to be paid, how it was to be done, anything about how he wanted these done?

A. He said he would give me $10,000 per person, and he would give an extra $5,000 if I went over there where his wife was staying and did it over there.

Q. Do you know what state that was in?

A. Oregon. Portland.

Q. Did he say how he would pay you?

A. Yes. He said he would give me silver.

Q. Were you going to get any money down, or was it all upon delivery?

A. No. He gave me half of the first 10,000 down. And then two weeks later I told him I had already spent that, and I needed the other half, and he gave me that, too.

Q. So, to be clear, the defendant offered you a job; is that correct?

A. Yes.

Q. A job to kill somebody?

A. Yes.

Q. You accepted that job?

A. Yes.

Q. You took money for it?

A. Yes.

Q. Did you ever intend to carry through on that job?

A. No.

Q. Can you tell the jury, then, how this happened? I mean, did he come up and give you silver coins? What happened?

A. We -- the time when we walked out by the five-car garage that I said that I made for him, he showed me a desk that was in there, and he said he would put the money inside the desk.

Q. And did he do that?

A. Yes, he did. I came back two days later, and the money was in the desk.

MS. WHELAN: Just one moment, please.

Your Honor, in addition to the exhibits that I mentioned and the stipulation that was filed on the 5th, there is also stipulation to Exhibits 12, 13, 14, 15, 16, 17, 18, and 19. That

stipulation has been filed with the court, and I would move for their admission at this time.

THE COURT: All right. I will admit those exhibits at this time, Exhibits, I believe, 12, 13, 14, 15, 16, 17, 18, and 19.

MS. WHELAN: Yes, Your Honor.

THE COURT: Those may be published to the jury, at your option.

(Government's Exhibits Nos. 12, 13, 14, 15, 16, 17, 18, and 19 admitted.)

MS. WHELAN: Thank you, Your Honor.

BY MS. WHELAN:

Q. Mr. Fairfax, I would ask you to please look at what has been admitted as United States Exhibit 17. Do you recognize it?

A. Yes, I do.

Q. What is it?

A. That's the five-car garage that I built for him.

Q. In that picture, can you see where the desk is that you just talked about?

A. Yes, I can.

Q. The screen in front of you has a touch screen. If you can maybe circle or use an arrow, whatever you think is best.

THE COURT: Use your finger as a pen on the screen, itself.
THE WITNESS: The desk is right over there by the Mustang (indicating).
BY MS. WHELAN:
Q. And how was that silver packaged when you pulled it out of the drawer?
A. It was in these sleeves. There was eight sleeves in a box.
Q. And you said you got part of it one time and part of it another time; is that correct?
A. That's correct.
Q. What did you do with the silver?
A. I went and cashed it in.
Q. And had you ever cashed in silver before?
A. No, I haven't.
Q. So how did you know where to go?
A. I looked in the phone book and started calling places.
Q. Do you recall the first place that you went?
A. Yes. It was Coin Corner in Spokane, Washington.
Q. How many times did you go to Coin

Corner in Spokane, Washington?
A. I actually went twice in the same day.
MS. WHELAN: Your Honor, by stipulation, the parties have agreed to the admission of Exhibits 4, 5, and 6. I would move for the admission of those exhibits at this time.
THE COURT: All right. The exhibits will be admitted. That's 4, 5, and 6 will be admitted and may be published to the jury.
(Government's Exhibits Nos. 4, 5, and 6 admitted.)
MS. WHELAN: Thank you.
BY MS. WHELAN:
Q. I would ask you, Mr. Fairfax, to look at what has been admitted as Government's Exhibit 6.
MS. WHELAN: Can we see the next page, please?
BY MS. WHELAN:
Q. Can you see that okay?
A. Yes, I can.
MS. WHELAN: Ms. Rocca, can you make it bigger, the top portion? Thank you.
BY MS. WHELAN:
Q. Is Exhibit 6 a copy of the receipt, or

at least one of the receipts, that you got from Coin Corner?
A. Yes, it is.
Q. And that description of the metal, how many pieces of silver did you trade in?
A. It says, "132 one-ounce silver rounds."
Q. How much did you get for it?
A. $2,428.80.
Q. And that's total; correct?
A. Yes, it is.
Q. Do you know the date that you traded this in?
A. 4/12/2010.
MS. WHELAN: And could we see the next -- well, excuse me. Could you go to the bottom, Ms. Rocca?
THE COURT: Let me point out, although you're being shown these exhibits from a scanned version, the originals will be with you in the jury room during your deliberations.
MS. WHELAN: Thank you.
BY MS. WHELAN:
Q. Mr. Fairfax, whose signature is that at the bottom?
A. That's my signature.

MS. WHELAN: Ms. Rocca, could we go to the next page.
BY MS. WHELAN:
Q. And why were there two -- why did you go twice to the same place in Spokane?
A. Because when I got there, he had raised the price, what he was going to give it to me for. So I asked him if I went and got it, if he would do the same thing again.
And I went and got it, and he actually raised the price again.
Q. So this was a receipt, and this time you cashed in 140 one-ounce silver rounds; is that correct?
A. Yes, that's correct.
Q. And how much did you get for it?
A. $2,543.80.
Q. Okay. Thank you.
MS. WHELAN: Ms. Rocca, could we then go to Exhibit 4.
BY MS. WHELAN:
Q. After -- how far between the time that you picked up the first batch of silver was there -- and when you picked up the second batch from that desk drawer?

A. About a week to ten days, it looks like.
Q. And you're looking now at what's been admitted as Government's Exhibit 4. Do you recognize that?
A. Yes, I do.
Q. What is that?
A. It's a receipt from CoiNutz down in Coeur d'Alene, where I sold some of the silver to.
Q. And what date did you sell it?
A. 4/23/2010.
Q. How much did you get for that?
A. $1,440.
Q. And finally, did you also go to DJ Coins?
A. Yes, I did.
MS. WHELAN: Ms. Rocca, could you please show him Exhibit 5.
BY MS. WHELAN:
Q. And looking at Exhibit 5, you went to DJ's twice; is that correct?
A. Yes, it is.
Q. And you cashed in how many rounds the first time -- total?
A. It looks like -- I can't read how many

was in the first time. I'm sorry.
Q. Okay.
MS. WHELAN: Ms. Rocca, can you enlarge that?
BY MS. WHELAN:
Q. Start with the first date, on April 26th, 2010.
A. Right. Yeah. I'm looking at it, but it's blurry. Maybe 140, it looks like.
Q. 140, 150, 160, something like that; is that correct?
A. Yes.
Q. And you got $2,904?
A. Correct.
Q. Okay.
MS. WHELAN: Ms. Rocca, could we then go to the May 3rd date?
BY MS. WHELAN:
Q. May 3rd, that's the last of the silver you cashed in; correct?
A. Yes, it is.
Q. And how much did you cash in?
A. Twenty of them.
Q. And for how much?
A. $374.

Q. Okay.
MS. WHELAN: Thank you, Ms. Rocca. I'm done with that for a moment.
BY MS. WHELAN:
Q. Now, Mr. Fairfax, how is your math?
A. It's pretty good.
Q. Okay. All told, those five times that you cashed in silver, do you know approximately how much money you received?
A. Right around 9 -- $9,600, somewhere around there.
Q. Would you agree with the number, $9,690.60?
A. Yes. That sounds right.
Q. Did you cash in all of the silver that you picked up out of the desk and got from the defendant?
A. No, I didn't.
Q. How many rounds did you keep?
A. Twenty-six rounds.
Q. And were those turned over to Special Agent Sotka?
A. Yes, they were.
Q. Do you know, approximately, based upon the receipts that we just saw, what silver was

going for back in April of 2010, per ounce?
A. I'm sorry. Can you ask the question again?
Q. In April of 2010, do you know approximately how much was being paid per ounce of silver?
A. Yes. Right around $18 an ounce.
Q. And you had 26 rounds; correct?
A. Yes.
Q. Each of those is an ounce?
A. Right.
Q. So, would you agree, that comes out to $468?
A. Yes, I would.
Q. If you put the total of those together, what you traded in and what you kept, comes out right just to be a little bit above $10,000; is that correct?
A. Yes, it is.
Q. And how much did Mr. Steele pay you as a down payment?
A. 10,000, was what it was supposed to be.
Q. After you got the silver and cashed it in, did you follow through with the murder of Mrs. Steele?

A. No, I did not.
Q. Why not?
A. Because I never planned on doing it in the first place.
Q. Were there some steps taken, though -- well, excuse me.
Did the defendant suggest any ways that the murder could happen?
A. Yes. We discussed several ways.
Q. Okay. What discussions did you have?
A. About ways like shooting, placing a bomb under her car, running her off the road.
Q. Was Mrs. Steele living at her home on Talache Road full-time in April and May of 2010?
A. No. She was in and out, again with her mother.
Q. And how did you know that she was with her mother?
A. Because Edgar would tell me.
Q. Okay. And what was his attitude about that?
MR. McALLISTER: Objection to "attitude," Your Honor.
MS. WHELAN: I can rephrase.
THE COURT: Sustained. Rephrase.

BY MS. WHELAN:
Q. How did he express that to you?
A. When I would go meet him to water and feed the horses, he would tell me what was going on and keep me posted, and ask me when it was going to get done.
Q. Based upon your discussions with him, did he seem to be upset that she was gone?
A. Yes.
Q. Was Mrs. Steele back at the home in Sagle, Idaho, towards the end of May 2010?
A. Yes, she was.
Q. And specifically, during the end of May 2010, did the defendant and you discuss a method of killing her?
A. Yes, we did.
Q. And please tell the jury what you discussed.
A. He had read some books on how to make bombs, and he explained how to do it to me and told me, you know, that would be a good way, and that he had already burned all the books, so there was no proof to tie him into it.
Q. How many bombs -- bombs or -- what do you call these things?

A. Devices.
Q. Okay. And as a -- is it a pipe bomb? Is it a -- I mean, what is your device?
A. Where I live, it's called a north Idaho firecracker; but, yes, it's a pipe bomb.
Q. Were you to make one or two of these?
A. He wanted me to make two.
Q. Why two?
A. Because he had put something on his website to make people mad at him, so he wanted me to put one under her car and one under his, so it would look like they were targeting both of them.
Q. Who is "they"? Did he tell you?
A. Yeah. I don't know for sure who it was. It was some group.
Q. Now, let's talk a little bit about -- about you, Mr. Fairfax, and your experience up north with explosives. Do you have any specific background in explosives?
A. No; just that I make fireworks.
Q. Okay. And when I think of fireworks, I think of sparklers or those parachute things. When you think of fireworks, what are you talking about?
A. Like M80s, you know. They make a big,

loud boom.
Q. Do they have any color to them?
A. No.
Q. Are they pretty?
A. No. They just make a loud noise.
Q. In your construction work, did you ever have to remove stumps or do anything?
A. Yes. We actually blast rocks. We have got this device called a "boulder buster." We drill into the rock about 4 feet down, and then we put powder inside of it. And then we have this square metal box that we put down in the hole, too, and then you pull a firing pin and it ignites with the 12-gauge shotgun shell, and blows the rock to pieces.
Q. And you had actually worked with those before?
A. Yes. I have several.
Q. Had you built them?
A. I bought one, and then I built my own after I bought the first one.
Q. Did the one that you built work?
A. Yes, it did.
Q. Now, when you were a kid growing up, did you build these north Idaho firecrackers?

A. No. At the time when I was a kid, we could actually buy them without any problem.

Q. Okay. As you became a young adult or as an older adult, is that when you used them?

A. Yeah, when I moved out here about 22 years ago.

Q. And how -- let's focus back now on this particular case. How did you make this pipe bomb or north Idaho firecracker?

A. I took two pieces of pipe that I had at the house. I put powder in it, regular gunpowder, and I screwed the ends on. I had to drill the hole in one of the little, the end caps. And I took some hobby fuse and put it in there and wrapped it around with tape. And I actually broke the fuse in several spots so that the fuse wouldn't -- if you lit it, it wouldn't go all the way through.

Q. Now, that's what you thought would happen; correct?

A. Correct.

Q. Okay. And ultimately, did you agree with the government that there was a possibility this could go off?

A. Yes, I did.

Q. Now, where did the materials come from that you used to build these?

A. The gunpowder came from a fire sale. I went to a place that was having -- selling, like a garage sale, and their house had burned down, and they had some powder that went through the house. And it had gotten all wet, so it wasn't good for anything else, and I got it for really cheap. So that's where I got that.

Pipes were just lying around from my plumbing jobs.

Q. What about --

A. And the fuse, I had had from making fireworks.

Q. Now, what's your educational background, sir?

A. I got my GED and I went to college.

Q. And did you graduate from college?

A. Yes, I did.

Q. With what kind of degree or certificate?

A. It was in culinary arts and automotive.

Q. And what college was it?

A. SFCC.

Q. Can you tell me what that stands for?

A. Spokane Falls Community College, in Spokane, Washington.

Q. You didn't take any specific courses that taught you how to build these destructive devices or bombs or whatever; that was based upon just your experience?

A. Yes.

Q. Once you had built these -- do you recall what day you built these?

A. It was the 27th of May, a Thursday.

Q. 2010?

A. Yes.

Q. Why did you build them that day?

A. Because Edgar and I had set it up to where he could take his wife, go into Spokane and pick me up some lumber for the job we were doing on the arena.

Q. Whose idea was it to do it that day?

A. Both of ours.

Q. What did you do with these devices once you built them?

A. I installed one on her car and one underneath his Cadillac.

Q. Why did you put them on those cars?

A. Because he told me to.

Q. And let's talk a little bit about what time you did that that day. Do you know what time?

A. Yes. It was in the afternoon, because he didn't get going until later.

Q. And "he," you mean the defendant?

A. Yeah. I'm sorry. Yeah. Edgar.

Q. Where were the cars when you put them -- the devices on the cars?

A. In the garage.

Q. How did you get into the garage?

A. Edgar left the door open.

Q. Which door?

A. The back door, that was on that exhibit we looked at.

Q. And were both cars in the garage?

A. Yes, they were.

Q. Did you have to do anything to put the -- to be able to put them on there?

A. Her car, I was able just to roll underneath it. His car was too low, so I had to get the floor jack out of the garage, lift it up, and then climb underneath it, and put the floor jack back away.

Q. Her car, is that that black Mitsubishi

Endeavor?
A. Yes.
MS. WHELAN: Ms. Rocca, could you please show us Exhibit 14, please.
BY MS. WHELAN:
Q. Exhibit 14, does that show us the white Cadillac that you talked about?
A. Yes, it does.
Q. Did you have to actually remove that from the garage to --
A. No, I did not.
Q. You just used the floor jack to jack it up in the garage?
A. Yes.
Q. Where was the Endeavor parked?
A. Right next to it, in this area over here (indicating).
Q. I think, although on your screen it might be different, there is a little button that says "Undo."
THE COURT: It's not a button. It's actually on the screen. It shows in the corner, but you -- yes, you figured it out.
MS. WHELAN: Thank you, sir.
BY MS. WHELAN:

Q. Does that fairly and accurately show the car that you put the bomb on?
A. Yes, it does.
MS. WHELAN: Thank you, Ms. Rocca. I'm done with that.
BY MS. WHELAN:
Q. Do you know what vehicle they took to town?
A. Yes. They took the red Ford pickup.
Q. Is that a diesel?
A. Yes, it is.
MS. WHELAN: Your Honor, the parties have similarly stipulated that Exhibits 24, 27 through 31 are admissible. I intend to use some of those in this, so I would move for the admission at this time.
THE COURT: Admissible or admitted?
I assume you're stipulating to their admission, Mr. McAllister?
MR. McALLISTER: Yes, Your Honor.
THE COURT: 24, and 27 through 31 --
MS. WHELAN: 33, Your Honor.
THE COURT: -- through 33 will be admitted.
(Government's Exhibits Nos. 24, 27, 28, 29, 30, 31, 32, and 33 admitted.)

MS. WHELAN: Thank you, Your Honor.
Ms. Rocca, could you please show us Exhibit 29.
BY MS. WHELAN:
Q. Mr. Fairfax, can you see that picture?
A. Yes, I can.
Q. And is that Mrs. Steele's car that you put the pipe bomb on?
A. Yes. It looks like it.
Q. Can you show, using your finger, the jury where you attached it to her vehicle?
A. Underneath the car. Right there (indicating).
Q. Thank you.
Can you please describe how you attached this to her car?
A. I had a magnet on there, and I tried to use that. But it wasn't strong enough, so I wrapped two pieces of wire around it, too.
Q. Where did the fuse go to?
A. It was laying on the exhaust pipe.
MS. WHELAN: Thank you, Ms. Rocca. I'm done with that one at the moment.
BY MS. WHELAN:
Q. Can you tell me, please -- or not me --

can you please tell the jury what -- what you told Mr. Steele about this device, as to whether it would go off?
A. I said it was questionable about the ignition source.
Q. And why did you tell him that?
A. Because I didn't think it would go off on the exhaust pipe, because it doesn't get hot enough.
Q. What is the ignition source?
A. The exhaust pipe.
Q. Okay. So the fuse goes to the exhaust pipe?
A. Yeah.
Q. And then the other end of the fuse goes to the pipe bomb?
A. Correct.
Q. And the pipe bomb device is attached to the car?
A. Yes.
Q. Okay. Did you know where Cyndi Steele was -- well, was Cyndi Steele supposed to go anywhere on the 28th?
A. Yes, she was.
Q. And how did you know that she was

supposed to go somewhere?
A. Because Edgar told me.
Q. Did you know where she was supposed to be going?
A. Yes. She was supposed to go back to her mother's.
Q. And that, again, is in Oregon?
A. Yes.
Q. Mr. Fairfax, you sit here today and tell the jury that you didn't intend to hurt Mrs. Steele, but you put a destructive device, a pipe bomb, on her car, didn't you?
A. Yes, I did.
Q. Why would you have done that if you didn't want her to get hurt?
A. I didn't want to -- I was afraid that if I didn't do -- make it look real, Edgar would check it out and find out I didn't do it right.
Q. You put gunpowder or smokeless powder in the device?
A. Yes, I did.
Q. Wouldn't it have been safer to use sand?
A. Yes.
Q. Why didn't you use sand?

A. Because I thought Edgar might look at the device. He could have at least looked at the device under his car, and then known.
Q. Were you afraid of the defendant?
A. Yes, I was.
Q. Why?
A. Because he was getting more agitated as this went along, because this was over a couple months. And so he kept doing things like frisking me and showing me his guns and, you know, telling me how he could bury a horse in 15 minutes with his backhoe.
Q. Ultimately, did this destructive device go off?
A. No, it did not.
Q. Did you have any further communication with the defendant after it didn't explode?
A. Yes, I did.
Q. All right. And when did that contact occur?
A. On Sunday.
Q. Had you had any messages from him?
A. Yes. There was three or four messages from him.
Q. And were those left on your telephone?

A. Yes. They were on my cell phone.
Q. Can you tell the jury what the messages were that the defendant left for you?
A. The first one was kind of a little agitated, you know, where, "I need to talk to you." The second one was really agitated. And then, the third one he was like yelling at me, saying he needed to talk to me immediately.
Q. Where were you on Saturday -- I guess it would be the 29th?
A. Yes.
Q. Where were you?
A. I was at the mud bogs; had borrowed his truck and trailer and went to the mud bogs with it.
Q. What are "mud bogs"?
A. It's where a big monster truck with huge tires on it goes through the mud as fast as it can.
Q. It's a form of entertainment?
A. Yes, it is.
Q. So then on Sunday, you had contact with the defendant, I think you said. Where did that conversation occur?
A. At his house, when I brought back his

truck and trailer.
Q. Do you know about what time?
A. Approximately around 10:00.
Q. In the morning or at night?
A. In the morning.
Q. Can you describe for the jury how the defendant looked when you got to the house?
A. A little frazzled. You know, he came out there in kind of a huff, wanted to know what happened.
Q. Can you please tell the jury what the conversation was that you had with the defendant on that Sunday?
A. He was just wondering why the device didn't do what it was supposed to do, and asked me what I was going to do now.
Q. Was there any concern about leaving the device on the car?
A. Yes, there was. His wife had called him, and her heater wasn't working and she wanted to take it to the dealer. And so he gave her an excuse that he had messed with the odometer, so she wouldn't take it to the dealer, so we could go and check and see if it was still under her car.
Q. And that's what the defendant told you?

A. Yes.

Q. You don't know if he actually had that conversation?

A. No. That's just what he told me.

THE COURT: Counsel, we're at about a place where we take the break for the, just the last break of the day, but I'll let you go for a few minutes, at your option.

MS. WHELAN: Your Honor, a break right now is fine.

THE COURT: All right.

Ladies and gentlemen, let's take a 15-minute recess.

I'll again admonish you not to discuss the case among yourselves or with anyone else, nor should you form or express any opinions about the case until it is submitted to you.

We'll be in recess.

(Recess.)

(Jury absent.)

THE COURT: Counsel, I understood that there was -- apparently you're prepared, before we recess for the day, to play one of the recordings. Is that correct, Ms. Whelan?

MS. WHELAN: Yes, Your Honor.

THE COURT: And I was advised that there is a concern that there is apparently a 15-minute or thereabouts block of time in which, based upon the testimony of the officer or the special agent, that is involved in just driving time?

MS. WHELAN: Well, it's driving time. It's Mr. Fairfax getting out of the car. It's doing chores. It's other things like that. It's a 15-minute-and-23-second time from the time that the preamble is on, until the first conversation between Fairfax and Steele.

THE COURT: And you had proposed to just play that, so that it's in its original makeup, without any -- with the jury hearing exactly as it is.

And I understand, Mr. McAllister, you're objecting to --

MR. McALLISTER: I do, Judge. I think it's a waste of time. They can have the witness say that he has listened to it all. And they had the agent testify about it. Just say there is no sounds, other than driving the car, for the first 15 minutes.

THE COURT: Well, if there is a concern, I can instruct the jury that I have advised you to

go ahead and fast-forward to that point in time in which conversations begin, and that there is -- and that you're doing so at the direction of the court, and apparently with the agreement of counsel.

Is that sufficient?

MS. WHELAN: That is sufficient, Judge. My concern will be if, later on -- during this time break -- during --

THE COURT: If a suggestion -- if a suggestion is made that something occurred during that period of time that should have been recorded and was not, or that there is some indication during that period of time where there were perhaps alterations, you at that point can play the entire tape for the jury, if that becomes an issue.

At this point, I see -- I'm assuming that that's not going to be injected into the case, given Mr. McAllister's position that we can forgo playing the entire tape. If that changes, then we can come back and play the entire tape at that time.

MS. WHELAN: Thank you, Your Honor.

The only thing I will say is Ms. Rocca

has advised me that if that is the case, she will need just a moment between the preamble, take it down off the screen, and get it set to where the conversation occurs.

THE COURT: I assume by "a moment," we're not talking about 15 minutes.

MS. WHELAN: No. She says just a moment. I believe her.

THE COURT: All right.

MS. WHELAN: Thank you.

THE COURT: Then there is a net savings of time, so I think we should proceed.

MS. WHELAN: Thank you, Your Honor.

THE COURT: All right. Let's go ahead and bring the jury in.

Counsel, while the jury is being summoned, the transcript, the normal practice, you have a transcript you're going to show on the screen or present to the jury?

MS. WHELAN: We have it synced up with the video; not to provide to the jury, and it's not on the copy that they would be allowed to take back.

THE COURT: All right. And I'll instruct them to that effect. They will not have the transcript with them in the jury room, that it's

been prepared only to assist them, and that the recording itself is the exhibit and the evidence; and any inconsistency between the two, they are to disregard the transcript and only consider the recording itself.

MS. WHELAN: Thank you, Your Honor.

(Jury present.)

THE COURT: I'll note for the record that all jurors are present.

Remind you, Mr. Fairfax, you are still under oath.

Ms. Whelan, you may resume your examination of the witness.

MS. WHELAN: Thank you, Your Honor.

BY MS. WHELAN:

Q. Mr. Fairfax, right before the break, we were talking about a conversation you had with Mr. Steele, after Mrs. Steele had driven to Oregon. Is that your recollection of where we were?

A. Yes.

Q. As a result of the conversation that you had with Mr. Steele on Sunday, the 30th, what did you do?

A. I left Sunday night, went to Portland

to see if the device was still under her car.

Q. Why did you go?

A. Because he told me to go and find out.

Q. Did anyone go with you?

A. Yes. My cousin went with me.

Q. What's your cousin's name?

A. Jim Maher.

Q. Did you tell your cousin why you were going to Portland?

A. Yes.

Q. Area? Excuse me. It's the Portland area; is that correct?

A. Yes.

Q. What did you do once you got to Portland?

A. I located where the house was and drove up the driveway.

Q. What did you drive to Portland?

A. I drove my truck, and I stopped and rented a car.

Q. Why did you rent a car?

A. So she wouldn't recognize my truck.

Q. Did you pay for the car?

A. Yes, I did.

Q. How did you pay for the car?

A. I paid for it with cash.

Q. Did you try to use a credit card?

A. Yes, I did.

Q. Did that work?

A. No.

Q. Why not?

A. Because I was in bankruptcy, and they yanked my bank card from me. So I had to borrow my cousin's. He put it under his name.

MS. WHELAN: Your Honor, I would ask Ms. Rocca to show the witness -- and this has been admitted -- Exhibit 24.

THE COURT: Yes.

MS. WHELAN: Ms. Rocca, could you please go to the next page -- nope. Sorry. Can you make that -- there you go. Can you make that bigger, please?

BY MS. WHELAN:

Q. Looking at Government's Exhibit 24, which has been admitted, are you able to recognize this?

A. Yes. It looks like the rental contract.

Q. And is this the rental car contract from Thrifty Rental Car?

A. Yes, it is.

Q. Is this from your trip on the night of May 30th to the day of May 31st?

A. Yes.

Q. Looking at this receipt, do you know what time you got the car? Were you able to see that?

A. It looks like 9:17 a.m. on 5/31.

Q. Do you recall what kind of vehicle you got, generally?

A. Some little car.

MS. WHELAN: Ms. Rocca, if you could take that down just for a moment. Clear it, if you would. Thank you.

BY MS. WHELAN:

Q. What happened once you left the rental car company?

A. I parked my truck in the parking lot, and we took the car and we went to look for where her house was.

Q. Mr. Fairfax, I apologize. This is me. You have a low voice. I have a hard time hearing.

A. Okay. How is that?

Q. Thank you.

How did you know where Mrs. Steele was

staying?
A. Edgar gave me directions and the address.
Q. Who gave you directions?
A. Mr. Steele.
Q. What else did the defendant tell you about where she was staying?
A. That it was supposed to be kind of out in the woods.
Q. And once you got to the house, what did you do?
A. I drove up the driveway, and the house and the car and everything were right there where you could see in plain sight. So I just turned around and left. Because the house was for sale, so I just pretended like I was looking at it, and left really quickly.
Q. Where did you go?
A. Down to the end of the road. There is a mall. We went and parked there for a couple hours.
Q. Why for a couple hours, sir?
A. To make sure that she didn't see us and was coming out.
Q. Who is "she"?

A. Mrs. Steele.
Q. Did you return to the -- to the residence?
A. Yes, I did.
Q. And what happened once you returned to the residence?
A. I parked out on the main road in this pull-off, and sent my cousin up to look under the car and see if it was still there. He indicated to me that he didn't think it was there. So we left and went back to town.
Q. Now, you had put the device on the car; correct?
A. Correct.
Q. It wasn't your cousin?
A. No.
Q. So why did you have your cousin check and not you?
A. Because you could see the -- from the house, if I went up near the car, and I didn't want her to recognize me. Edgar told me -- Mr. Steele told me that if she seen me, she would call the cops instantly.
Q. After your cousin checked the car, what did you think had happened to the pipe bomb, the

device?
A. I thought it had fell off the car.
Q. Were you worried that some kids could find it?
A. Yes.
Q. But you weren't worried enough to call the police, were you?
A. No.
Q. Why?
A. I didn't want to get in trouble.
Q. After you checked the car, what did you do?
A. I went back to Sagle -- excuse me. First, I went and got my pickup, dropped the rental car off, and then I went back to Sagle.
MS. WHELAN: Ms. Rocca, could we please now see, I think it's page 3 or 4 -- the fourth page of Exhibit 24. One more.
One more page, please.
BY MS. WHELAN:
Q. Mr. Fairfax, can you see what's in front of you?
A. Yes, I can.
Q. And what is that?
A. It's a receipt for the parking lot

where I parked my truck.
Q. And can you tell -- it's in military time, but can you tell what time you left?
A. Yeah. That's 3:57.
Q. Is that how much you paid for parking?
A. Yes, it is.
MS. WHELAN: Thank you, Ms. Rocca. I'm done with that. Thank you.
BY MS. WHELAN:
Q. You drove -- you drove back to Sagle, Idaho; is that correct?
A. Yes, I did.
Q. Did you have any further conversations with the defendant?
A. Yes, I did.
Q. And when did that conversation occur?
A. The next day.
Q. What did you tell the defendant?
A. That it wasn't on the car anymore.
Q. What was his reaction?
A. He wanted me to take the one off of his car, then.
Q. Did he indicate why?
A. Because he didn't need it on there no more.

Q. So what did you do?
A. I went to go into the garage, but he hadn't left the door open.
Q. Is that the back door, sir?
A. Yes. The back door. And so, I went around to the front door in the house, rang the doorbell. He didn't answer. So I poked my head in there and yelled at him. He still didn't answer. So I walked through the house into the garage, opened it up.
Q. Did you go anywhere else in the house other than the garage?
A. No, I did not.
Q. What did you do in the garage?
A. I went and got the jack again, jacked up his car, removed the device and stuck it in the five-car garage inside the locker.
Q. Why did you put it in the five-car garage?
A. Because I was heading into town and I was picking up some stuff, and I didn't want somebody to open up my box and see it.
Q. You didn't want somebody -- I'm sorry?
A. I didn't want somebody to open up the box where I put it in the back, and see the

device.
Q. Box in the pickup?
A. Yes, box in the back of the pickup.
Q. Did you have any more contact with the defendant that day, after you removed the device from his car?
A. No, not that day. No.
Q. At this point, were you working for Mr. Steele every day, taking care of the horses?
A. Yes, I was.
Q. And during this period of time, had you had contact with Mrs. Steele about taking care of the horses?
A. Yes, I had.
Q. What was the nature of that contact?
A. One time she told us to feed them in a different spot, not out in the field anymore, to feed them in this entryway.
And then she asked one time about a pitch fork that was left out in the field, if I had left it out there.
I said no.
Q. On June 2nd, then, did you go back to work at the Steele place?
A. Yes, I did.

Q. What happened?
A. Edgar came up to me and asked me if I had been in the house.
Q. What did you tell him?
A. I said no.
Q. And what did he say?
A. He said, well, there was some things wrong, you know, in the house.
And I said, "Well, the only thing I did was walk from the front door to the garage."
Q. So you had been in the house?
A. Yes.
Q. How did the defendant look? Describe his appearance when he talked to you.
A. Kind of -- he was kind of agitated. He didn't know, you know, what was going on.
Q. Did he say anything to you after you said that you had walked from the front door to the garage?
A. Yes. He had said he called his wife, and that he hadn't messed with the shower door or something, and that's how he thought somebody was in the house, because the shower door was open.
Q. Did he caution you in any way about going into his home?

A. Yes. He told me if I came into the house again without him asking me, he would shoot me, feel sorry for me, and put my kids to work.
Q. And what was your reaction?
A. I was kind of, like, freaked out. You know, it scared me a lot more.
Q. So, sir, at this point we're to June 2nd?
A. Yes.
Q. Why didn't you just give the money back?
A. Because I had already spent it.
Q. On what?
A. My mortgage payment and two car payments.
Q. After this incident, wherein you talked to the defendant about being in his house, did you have any more contact with him?
A. Yes.
Q. And between the 2nd and the 10th, were you still taking care of the defendant's horses?
A. Yes, I was.
Q. And why were you taking care of the horses?
A. Because they asked me to. I was

feeding them. I mean, I was watering -- excuse me -- I was feeding and oating them twice a day.

Q. Oating?

A. Yeah. She has oats buckets that she wanted them to have.

Q. Who gave you most of the directions about what to do with the horses?

A. She told me how to take care of the horses. Mrs. Steele, I'm sorry.

Q. I would ask you to look at what has been marked and admitted as Government's Exhibit 18. Sir, can you see that?

A. Yes, I can.

Q. What is it?

A. That's the arena, indoor arena.

Q. Whose arena?

A. Mr. and Mrs. Steele's arena.

Q. Is that on their property?

A. Yes, it is.

Q. Would you -- between the dates of June 2nd and 10th, were you in that arena at all?

A. Yes, I was.

Q. What was the purpose of being in that arena?

A. You cut through it to get to the

horses, and several times Edgar and I met in the arena to talk.

Q. Are there stalls in that area?

A. Yes, there are.

Q. Can you show us where those stalls are?

A. They are back here (indicating), at the back side.

THE COURT: Can you use -- did you mark that? I'm not sure I see --

THE WITNESS: Let me see if I can -- is that better?

BY MS. WHELAN:

Q. Now, can you describe those stall doors?

A. They're the same thing on the outside as you're looking at right here, this fencing. These ones here (indicating).

Q. Okay.

A. And on the inside, they have these wooden doors, and that's what we were repairing. That's why there was three of them missing there, because we were taking them off. And they were too heavy, and had fell halfway off already.

Q. Were the doors split, sir, like where there was a bottom and a top?

A. Yes, they were.

Q. And so, you were repairing the tops; is that correct?

A. Some of them, the bottoms, too.

Q. Could you hit "Undo" please, sir?

A. (Witness complied.)

Q. Now, when you said that sometimes you would talk to the defendant in the arena, what were you talking about?

A. He wanted to get the job done.

Q. What job?

A. Killing his wife.

Q. Why would you talk in the arena?

A. Usually, that's where I was headed to do the horses, and we would talk while I was walking to do the horses at the same time.

Q. Did you have conversations about this job over the telephone?

A. No.

Q. Why not?

A. He didn't like to talk on the phone.

Q. And by "he," you mean --

A. Mr. Steele.

Q. Would you please look at what has been -- excuse me --

MS. WHELAN: Judge, I'm sorry. Just one second.

Your Honor, the parties have stipulated to Exhibit No. 20. I failed to mention that last time. I apologize. We would move for the admission of Exhibit 20.

THE COURT: There apparently being no objection, Exhibit 20 will be admitted.

(Government's Exhibit 20 admitted.)

MS. WHELAN: Ms. Rocca, will you please show Mr. Fairfax Exhibit 20.

BY MS. WHELAN:

Q. Mr. Fairfax, you can see that picture?

A. Yes.

Q. What is it?

A. That's where the breezeway was I was talking about, where she had us feeding the horses in that area.

Q. Can you tell us what this -- sorry -- what this is right here (indicating)? That building?

A. That's the arena.

Q. That's what we just saw in the previous picture, Exhibit 18; is that correct?

A. Correct, yeah. This is the back side

where the stalls are.
Q. Is that one of the horses?
A. Yes, it is.
Q. Now, on the 9th and 10th, had one of the horses been injured previously?
A. Yes, it had.
Q. Is this the horse that had been injured, if you know?
A. I don't -- I don't know for sure. I don't think so, though.
Q. On the 9th and 10th, did you work in this area, as well?
A. Yes, I did.
Q. I see that there are -- the previous picture and this picture, there is some green fencing, like metal tubes.
A. Yes.
Q. Do those make any noise when they're opened?
A. Yes, they do.
MS. WHELAN: Thank you, Ms. Rocca. I'm done with that.
BY MS. WHELAN:
Q. Mr. Fairfax, at some point, did you decide to tell the police what was going on?

A. Yes, I did.
Q. And why did you do that?
A. Because he was getting agitated. Mr. Steele was getting agitated, and he said that if I didn't take care of the job, he would get somebody else to do the job, and me.
Q. What steps did you take to notify the police?
A. I tried to get ahold of a legal person that I knew that could contact the right authorities.
Q. Was that Jim Michaud?
A. Yes, it was.
Q. And were you able to immediately get ahold of him?
A. No, I wasn't.
Q. Do you know why?
A. He was -- what I come to find out, he was in Oregon on vacation.
Q. Ultimately, around the 7th of June, were you able to get in touch with Mr. Michaud?
A. Yes, I was. He came back as soon as he got my message.
Q. Did you meet with him in person?
A. Yes, I did.

Q. Where did that meeting occur?
A. At his residence.
Q. On the 9th of June of 2010, did you meet with Special Agent Mike Sotka and Officer Dan O'Dell?
A. Yes, I did.
Q. Where did you meet with them?
A. At Mr. Michaud's house.
Q. Did you tell Special Agent Sotka that you had been hired to commit a murder?
A. Yes, I did.
Q. Did you tell him that you had been to Portland already?
A. Yes, I did.
Q. What did you tell him you had gone to Portland for?
A. For reconnaissance.
Q. Did you ever tell him on that date that you had put a bomb or a device on Cyndi Steele's car?
A. No, I did not.
Q. Why not?
A. Because I didn't have my immunity yet, that I thought I was going to get, and I didn't want to get in trouble.

Q. Who talked to you about immunity? Was that your lawyer?
A. Yes, Mr. Michaud.
Q. Did you tell him that you had been paid some silver?
A. Yes, I did.
Q. At some point in the investigation, did you tell them where you had traded the silver?
A. Yes, I did.
Q. After meeting with Special Agent Sotka and Officer Dan O'Dell on the 9th at Mr. Michaud's house, did you meet with them later on that afternoon or early evening?
A. Yes, I did.
Q. Where did that meeting occur?
A. At Michaud's house again.
Q. And what happened when you met with them?
A. He checked my vehicle out, seen what was in my vehicle, checked myself out, seen what I had on my person, and then, he gave me a device to take and record the conversations that we had.
Q. And when you say "he," are you talking about Special Agent Sotka?
A. Yes. I'm sorry, yes.

Q. Now, did either Special Agent Sotka or Officer Dan O'Dell tell you how to turn that recorder on or off?
A. No, they did not.
Q. Did you know how to turn it off or on?
A. No, I did not.
Q. Did Special Agent Sotka just tell you it was on, once he gave it to you?
A. Yes, he did.
Q. Do you have -- and I don't want you to lift it up, just look -- in front of you any envelopes with discs in them?
MS. WHELAN: Oh, sorry.
THE WITNESS: No, I don't.
MS. WHELAN: Your Honor, may I provide these to Mr. Severson?
THE COURT: Yes.
MS. WHELAN: Thank you.
BY MS. WHELAN:
Q. Okay. Do you see one that is marked United States Exhibit 21?
A. Yes, I do.
Q. Do you know what that is?
A. That is the disk of the recording that we recorded June 9th, when I went to see

Mr. Steele.
Q. Do your initials appear on that?
A. Yes, they do.
Q. Do they appear on it twice?
A. Yes.
Q. Did you listen to it twice?
A. Yes, I did.
Q. Did you carefully review it?
A. Yes.
Q. Does it fairly and accurately capture the sounds of what you were physically doing at the Steele place?
A. Yes, it does.
Q. Does it fairly and accurately capture the conversations between you and the defendant, Edgar Steele?
A. Yes, it does.
Q. Have you had an opportunity to read and compare Exhibit 21A, a transcript, with that exhibit?
A. Yes, I have.
Q. Is the transcript a fair and accurate transcript of the conversation?
A. Yes, it was.
MS. WHELAN: Your Honor, at this time I

would move for the admission of Government's Exhibit 21; 21A is only an aid and would only be included for the record if the court needs it.
THE COURT: Mr. McAllister, any objection?
MR. McALLISTER: 21A.
THE COURT: 21A is the transcript. That will not be admitted into evidence, but may be shown to the jury as an aid in their listening to Exhibit 21, if it is admitted.
MR. McALLISTER: I object to it, Your Honor, as well as the actual recording, for reasons stated previously to the court.
THE COURT: All right. The objection is overruled. The exhibit will be admitted and may, at counsel's option, be published to the jury by playing the recording.
(Government's Exhibit 21 admitted.)
MS. WHELAN: Thank you.
BY MS. WHELAN:
Q. Mr. Fairfax, having listened --
THE COURT: Wait. Exhibit 21A will be received by the court and made available to show to the jury while the recording is being played, but will not be with the jury in the jury room, since the recording itself is the exhibit.

(Government's Exhibit 21A admitted.)
MS. WHELAN: Thank you, Your Honor.
BY MS. WHELAN:
Q. Mr. Fairfax, having listened to United States Exhibit 21, did you notice that there is about approximately a 15-minute time period at the beginning where there isn't any talking?
A. Yes, I did.
Q. What was occurring during that period of time, if you know?
A. I drove from Michaud's to Mr. Steele's, and then I started feeding the horses before Edgar Steele got out there.
MS. WHELAN: Your Honor, at this point, we will ask permission to publish this to the jury. I don't know if the court has an instruction that --
THE COURT: Yes, I do. You're not going to play the 15-minute period of time?
MS. WHELAN: That is correct, Your Honor.
THE COURT: All right. I've -- let me indicate, ladies and gentlemen, I'm going to give you a couple of instructions.
First, you're about to hear a recording

that has been admitted into evidence. A transcript of the recording will be provided to you. In fact, as I understand it, it will be shown on the screen as the recording is played.

That is being provided to you only to help you identify speakers and to help you decide for yourself what the speakers actually say. But remember that the recording itself is the evidence, not the transcript.

The transcript was prepared by someone after the fact. Presumably they did as good a job as they could, but mistakes could have been made. There could be errors in the transcript. Therefore, if there is any inconsistency between what you hear and what you see on the transcript, you are to follow the recording and disregard the transcript, to the extent there is any inconsistency.

Listen carefully. The transcript will not be available during your deliberations. But, of course, if you need to, the recording may be replayed for you. But you will probably be brought back into the courtroom for that purpose, as well. So listen carefully as the recording is played.

In addition, there is a roughly 15-minute-and-some-odd-second portion of the tape recording, which I'm going to direct counsel -- Ms. Whelan indicated a willingness to play it all, but with Mr. McAllister's concurrence, we're going to not play that 15-minute period in which, presumably, there is either no sound or the sound does not include any voices. It's apparently just random noise which occurred during the drive that the witness has described, and whatever else was occurring during that 15-minute period of time.

So I'm going to direct counsel to not play that or take the time here in the courtroom to play that.

It may be possible at some point in the trial that you will hear that 15 minutes, if that becomes an issue for some reason. And likewise, you will always be free to listen to the entire recording, start to finish, during your deliberations if that should be your choice.

All right. With that, I'll direct then the -- oh, do you need -- you will need the recording back.

MS. WHELAN: We have loaded the exact copy into the trial software program.

THE COURT: All right.

MS. WHELAN: Your Honor, the only other thing I would like to advise the court is, this transcript, we have done our best, it has highs and lows, and there may be some loud parts, and we can't do anything about it. So we apologize in advance.

THE COURT: Well, we'll see how it plays out here in the recording. Sometimes we have to adjust our speaker system, as well. So let's go ahead and start, then, and we'll see how it goes.

MS. WHELAN: Thank you.

Ms. Rocca --

THE COURT: I want to indicate that where you stop and start, I assume there is a time sequence reference on the recording. I'll want to know -- there is not?

Well, I see on the screen reference to some, the red zeros. Does that not --

MS. WHELAN: Your Honor, may I confer?

THE COURT: Yes.

MS. WHELAN: Your Honor, there is -- there is a counter, Ms. Rocca tells me. And we will play the preamble, and then she will be able to advance to the point where the sound starts again.

THE COURT: What I would ask, though, is let's state for the record where it stops and where it resumes, using that counter that's here, so that --

MS. WHELAN: So the record is clear.

THE COURT: -- for purposes of the record.

Counsel, I assume you would be willing to waive reporting of the playing, since it would be imperfect, at best?

MS. WHELAN: Yes, Your Honor.

MR. McALLISTER: Yes, Your Honor.

THE COURT: All right.

MS. WHELAN: Ms. Rocca, I would ask you to play the preamble and then stop.

(Audio recording published.)

MS. WHELAN: Your Honor, for the record we started at the counter at 0000. The counter has stopped at 00027.8.

THE COURT: Okay. And I think I'll turn down the jury -- turn off the jury projector until you get to that point where you want to resume.

MS. WHELAN: Thank you, Your Honor.

Your Honor, we're starting at 14, 12 seconds. That's the closest we're able to get it. It does start again within a short period of time.

THE COURT: All right.
BY MS. WHELAN:
Q. Mr. Fairfax, what is happening at this point?
A. I'm filling up the water inside the arena.
(Audio recording published.)
MS. WHELAN: Your Honor, for the record, at this point, we have paused it at 21 -- 21 minutes, 48 seconds, .3. There is, at this point, approximately a seven-minute break. If the court would like me to forward it, as well, I will attempt to do so.
THE COURT: Mr. McAllister, any objection?
MR. McALLISTER: None, Your Honor.
THE COURT: All right. I'll turn off the jury monitor so you can --
MS. WHELAN: Thank you.
THE COURT: -- find that point in the recording.
MS. WHELAN: While Ms. Rocca is doing that, I would like to ask a couple of questions, Your Honor.
THE COURT: Yes.
BY MS. WHELAN:

Q. Mr. Fairfax, there are two voices on that cassette, as far as the conversation goes; correct?
A. Yes.
Q. And is one of those yours?
A. Yes, it is.
Q. And one of those is Mr. Steele's; is that correct?
A. That's correct.
Q. At the very beginning, you have a conversation about what time you are heading out. Where were you going?
A. Portland.
Q. Why were you to be going to Portland?
A. Because -- to kill his wife.
Q. In the background, there is a train sound. Did you hear that?
A. Yes, I did.
Q. Is there a train track near Sagle, Idaho?
A. Yes, there is.
Q. Is it unusual to hear trains when you're working at the Steele place?
A. No, it's not.
Q. There was a discussion about how much

you needed, minimum, maximum. You indicated $400. What was the $400 for?
MR. McALLISTER: Judge, I'm going to object at this point. It's just the witness expressing his belief as opposed to what is stated in the conversation. I think the best evidence is what is set forth.
THE COURT: Counsel, I'm going to ask you to either rephrase or withdraw the question. The witness can testify as to why he asked for the money and what his motivation was, but it would be speculation as to anything -- except what was said. And then what was said, of course, is on the recording and, as Mr. McAllister has pointed out, the best evidence is the recording.
MS. WHELAN: I can rephrase.
THE COURT: All right.
BY MS. WHELAN:
Q. You asked for $400; is that correct?
A. Yes.
Q. Why?
A. So I could pay for fuel and the rental car when I went to Portland.
Q. But did you intend to go to Portland at this point?

A. Yes.
Q. Okay. And at this point, you were working with law enforcement; correct?
A. Yes, I was.
Q. Why were you still intending to go to Portland?
A. So Edgar would think we were still going ahead with the plan.
MS. WHELAN: Before you start -- we are restarting the tape now at 27 minutes, 46.9 seconds.
THE COURT: All right. And I will turn back on the jury projectors for the transcript.
Mr. McAllister?
MR. McALLISTER: Yes. Ms. Whelan said: We're turning the "tape" on. There is no tape --
THE COURT: It's a recording.
MR. McALLISTER: -- I understand.
THE COURT: It's a recording. Some of us who are a little older still think of recordings as all being reel-to-reel tape recorders, and in fact, we haven't seen those in a while.
So if counsel or the court inadvertently refers to a tape recording, I'm sure the jury understands we're referring to a

recording, however it is recorded and whatever medium or media it is memorialized on.

Proceed.

MS. WHELAN: Thank you.

Ms. Rocca, if you'll start.

(Audio recording published.)

MS. WHELAN: We have stopped the recording at 37 minutes, 53 seconds, .1.

Q. Mr. Fairfax, did that conclude your conversation with Mr. Steele?

A. Yes, it did.

Q. After you left the Steele place, where did you go?

A. Back to Michaud's.

Q. And did you meet with Special Agent Sotka?

A. Yes, I did.

Q. Did you give Special Agent Sotka anything?

A. I gave him the -- my key ring.

Q. Okay. Did you give him the recorder?

A. Yes. It was on the key ring.

Q. And did you give him anything else?

A. Yes, I did.

Q. What else did you give him?

A. The $400 that Edgar gave me.

Q. Did you go back to the Steele place on June 10th, 2010, in the morning?

A. Yes, I did.

Q. Why did you go back?

A. To feed and water the horses.

Q. All right. Did you pick up the truck that you discussed in the tape?

A. Yes, I did.

Q. Why did you -- now, you have a truck, don't you?

A. Yes, I do.

Q. Why did you need to borrow his truck?

A. His trailer is a lot longer, and my -- the bus would have stuck out like six feet on the back of my trailer. And I had to go down the highway a long ways.

Q. Now, what bus are you talking about?

A. My son and I were doing scrapping. We would -- people would call us up and give us their junk cars and stuff, and we would go pick them up.

Q. Is that scrap metal?

A. Yes.

Q. And on the 10th, did you go pick up scrap metal?

A. Yes, I did.

Q. Is that the bus?

A. Yes, it is.

Q. Where did you pick it up?

A. Down in -- down south in here -- in Idaho.

Q. Okay. Like southern Idaho, like Boise?

A. No, not that far. Just -- I can't think of the name where it was. It's down by Plummer.

Q. Okay. And do you know when you picked it up, roughly?

A. Approximately noon, somewhere in there.

Q. What did you do with it?

A. I took it to a scrapper in Athol, Idaho.

Q. And did you sell it?

A. Yes, I did.

Q. How much did you get for it?

A. $300.

Q. Now, did you see Special Agent Sotka again on the 10th?

A. Yes, I did.

Q. And during that meeting on the 10th, did you tell him about the pipe bomb or device

that you had put on Cyndi Steele's car?

A. No, I did not.

Q. And why not?

A. Because I thought it wasn't there no more.

Q. Did you think you could get away with it because it wasn't there anymore?

A. Yes.

Q. Did you go back to the Steele place to return the truck and trailer?

A. Yes, I did.

Q. About what time?

A. About 6:00 at night.

Q. Did you talk to the defendant when you got there?

A. Yes, I did.

Q. Did you have that same recorder again?

A. Yes, I did.

Q. And is that the recorder that Special Agent Sotka gave you?

A. Yes, it was.

Q. Did you tamper with it in any way?

A. No.

Q. Were you able to turn it off or on?

A. No. I didn't know how.

Q. Did you have an opportunity -- in front of you is another disk, Government's Exhibit 22. Did you have an opportunity to listen to that?

A. Yes, I did.

Q. Did it accurately depict the conversations you had with the defendant on June 10th?

A. Yes, it does.

Q. And did it accurately reflect the sounds of what you were working on during that time?

A. Yes, it does.

Q. Have you had an opportunity to listen to it and compare it to United States Government 22A, the transcript?

A. Yes, I have. Twice.

Q. Is it a fair and accurate transcript of the conversation between you and the defendant?

A. Yes, it is.

Q. Did you initial that disk after you listened to it?

A. Yes, I did. Both times.

MS. WHELAN: Your Honor, may I have just a moment?

THE COURT: Yes.

BY MS. WHELAN:

Q. Mr. Fairfax, have you ever heard of the movie, "Throw Mama from the Train"?

A. Yes, I have.

Q. Do you know what that movie is about?

A. Yes, I do.

Q. What is it about?

A. Two people trade off. One kills one's -- supposed to kill one's wife, one is supposed to kill the other one.

Q. Did you know where Cyndi Steele was staying on June 10th and 11th?

A. Yes, I did.

Q. How did you know where she was staying?

A. Because Mr. Steele told me.

Q. And is that where the defendant wanted you to go?

A. Yes, it was.

Q. Is that where this accident was supposed to happen?

A. Yes.

Q. After you went to the Steele place and made the recording, did you meet up with Special Agent Sotka again?

A. Yes, I did.

Q. And did you give him the recorder?

A. Yes.

Q. Were you also trying to meet with a man after that, to sell your trailer?

A. Yes, I was.

MS. WHELAN: Your Honor, we have about half an hour. My concern is --

THE COURT: It's your call, Counsel. We can -- is it longer than half an hour?

MS. WHELAN: I believe it is. I haven't timed it, but I believe it's about 40 minutes.

MR. McALLISTER: Well, the -- it says 27 in the transcript.

THE COURT: If it's ready, I prefer to go. But, Counsel, do you have some questions during the recording that might stretch the time?

MS. WHELAN: I do have some questions during the recording, specifically this one.

THE COURT: Well, approach.

(Sidebar commences as follows:)

THE COURT: Are we progressing on schedule? Ahead of schedule?

MS. WHELAN: We are progressing on schedule. I think that -- I believe that we will be getting done right like when we said we would.

THE COURT: Which was?

MS. WHELAN: Friday or Monday. Remember we talked if we finish Friday, we might need an extra day, but I think Monday or Friday.

THE COURT: Why can't we just play it? Is there a reason we can't break it up?

Is there going to be another 15-minute break like the last one?

MS. WHELAN: There is a slight break in it.

But the concern I have, Judge, is just in presenting it, I don't want -- this is the critical piece of evidence, and I -- as the government presents its case, I would just as soon present it all in one piece, where it's not being broken up. And we're not running behind.

MR. McALLISTER: And what's the -- why can't we go to 3:05 or 3:15?

THE COURT: Well, I told the jury that we were going to stay approximately until at least 3:00. We could go five or ten minutes over, if that will allow you to finish up.

MS. WHELAN: Okay.

THE COURT: All right. Let's do that.

(Sidebar concluded.)

THE COURT: Ladies and gentlemen, the next

exhibit may take us a little beyond what I told you, which is 3:00. So we might go to 3:05, 3:10. I assume there's nobody for whom that would be a problem?

Okay. I don't see anyone being too concerned, so let's go ahead with that.

MS. WHELAN: We would move for the admission of Exhibit 22 and 22A.

MR. McALLISTER: Same objection as previously stated, Your Honor.

THE COURT: All right. The exhibit [sic] will be overruled, the exhibit received, and I'll allow counsel to now play the recording.

(Government's Exhibits Nos. 22 and 22A admitted.)

THE COURT: I'll again admonish the -- not admonish, but instruct the jury, as I did previously, that the recording itself is the exhibit, not the transcript. There may be some errors in the transcript, not intentional, but inadvertent.

If there is any inconsistency between the two, you are to follow and make your verdict based upon the recording and not the transcript. And I would again caution you that you will not

have the transcript with you in the jury room during your deliberations.

And again, Counsel, please note on the recording where the starting and stopping points are. And I will instruct you, with the concurrence of counsel, that you can skip over any dead points where there is no actual discussion on the tape.

MS. WHELAN: Thank you, Your Honor.

THE COURT: And I assume that counsel again will waive reporting of the playing of the transcript -- or the recording, and we'll assume that will be the case throughout the trial unless counsel indicates otherwise.

MS. WHELAN: Thank you, Your Honor.

(Audio recording published.)

MS. WHELAN: Your Honor, there is a break approximately 1 minute, 36, but I figured it would take almost as long to --

THE COURT: Let's just play --

BY MS. WHELAN:

Q. Mr. Fairfax, when this is happening, did you have -- Mr. Fairfax?

THE COURT: I just would note that you're stopping at, it looks like 57 seconds in. I just

want to note it for the record.

MS. WHELAN: Sorry.

BY MS. WHELAN:

Q. Did you have Tic Tacs in your pocket that day?

A. Yes, I did.

Q. Was the recorder in your pocket?

A. Yes, it was.

Q. That noise that we hear, is that the Tic Tacs?

A. Yes, it is.

MS. WHELAN: We will start again at 57.4 seconds.

(Audio recording published.)

MS. WHELAN: Your Honor, at this point there is a 3 minute, 36, break. I think we're better just to play it through.

We have paused at 3 minutes, 34.1 seconds.

BY MS. WHELAN:

Q. Mr. Fairfax, what were you driving to Mr. Steele's home?

A. His pickup and trailer.

Q. Is that the diesel?

A. Yes, it is.

Q. Is that what we can hear on the tape?

A. Yes.

Q. Mr. Fairfax, there was a brief bit of conversation. Did that happen in person or on the telephone?

A. I called him on my cell phone.

Q. When you say "him," who do you mean?

A. Edgar Steele.

Q. Why did you call him?

A. To let him know that I was getting there, so he could come out and talk to me like he usually does.

Q. And Mr. Fairfax, did -- on the 10th when you drove, did you start off at Mr. Michaud's house this time, as well?

A. No, I did not.

Q. Okay. Were you significantly closer to the house?

A. Yes, I was.

MS. WHELAN: We'll start it again at 3 minutes and 34.1 seconds.

(Audio recording published.)

MS. WHELAN: Judge, we paused at 11 minutes, 35 seconds, .3.

BY MS. WHELAN:

Q. Mr. Fairfax, there is a break here for

approximately a minute and 22 seconds. Do you recall that?

A. Yes, I do.

Q. What were you doing during this period of time?

A. Feeding the horses and opening up the gates.

MS. WHELAN: I'm going to ask Ms. Rocca to start this up again at 11:35.

(Audio recording published.)

MS. WHELAN: Your Honor, we have stopped the recording at 24 minutes, 47.2 seconds.

Your Honor, I do have some questions, but I would prefer to take it up in the morning.

THE COURT: That's fine. No, we're at 3:00, and we got through that perhaps more quickly than you assumed. So we'll start at 8:30, resume at 8:30 tomorrow morning.

Ladies and gentlemen, I'll again admonish you not to discuss the case among yourselves or with anyone else, nor should you form or express any opinions about the case until it is submitted to you.

Just a couple things. Make absolutely sure that you do not read any newspaper, local

newspapers. Do not watch any local news or listen to any radio news, since there may be some coverage of this, and it's extremely important that you not hear or listen to anything about the case.

Again, I'm not going to go through the full admonition that I gave you previously, but you're not to conduct any outside inquiry concerning this matter. Don't consult any reference materials. Don't visit any websites.

In fact, it would be better probably to just stay off the Internet. Well, I won't say that. As long as there is no conscious effort to try to find something out about this case, that shouldn't be a problem. But I think the local news, both print and -- well, television, radio and newspapers, I think could be problematic, so just stay away from them.

Also, as you leave the courthouse tonight, I'll remind you to go directly to your car. When you return tomorrow morning, come directly to the jury assembly room on the fifth floor.

And I'll again admonish those involved with the case or related in any way to give the

jury a wide berth. Let's let them take the elevators first, to go down to the first floor. As soon as they have cleared, then everyone else can leave.

Counsel, if there is anything else, please notify Mr. Severson or Ms. Tetrick so we can take it up early in the morning. Otherwise, we'll just see you here at 8:30.

All right. We'll be in recess until 8:30 tomorrow morning.

(Court recessed at 3:02 p.m.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. EDGAR J. STEELE, Defendant.	:	Case No. 10-00148-N-BLW **JURY TRIAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge

Volume 1

April 26, 2011

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, vs. EDGAR J. STEELE, Defendant.	Case No. 10-CR-00148-BLW-1 **EXAMINATION OF** **DENNIS WALSH** **DAVID J. SNYDER, III**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

before B. Lynn Winmill, Chief District Judge.

April 21, 2011

Day 2, Pages 175 to 325

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Does the court have any questions for me?

THE COURT: No, I don't.

MS. WHELAN: Thank you, Your Honor.

THE COURT: Response?

REBUTTAL ARGUMENT BY THE DEFENSE

MR. McALLISTER: Judge, almost everything Ms. Whelan said in her presentation just now goes to the weight of the evidence. And all we're really asking here is for the court to allow us to challenge those tapes. And we have presented, clearly, scientific evidence, and we have presented two experts who have years and years of experience.

On the other hand, she has presented an FBI agent who disagrees with their opinions, and that's why juries get to decide the facts. And in this case, all we're really asking the court to do is allow us to, in front of the jury, question whether or not they should rely upon these tapes and let them decide for themselves.

Ms. Whelan can say all she wants that Dr. Papcun pontificated or that Mr. Walsh isn't -- doesn't have the -- that she finds problems with his resume. Those are cross-examination questions

that go to the issue of weight.

And in this case, what we're asking the court to do is allow the jury to hear the testimony of experts on both sides and make their own decision in the case.

THE COURT: All right. Well, Counsel, I've had -- well, I think I'll take just a brief recess, and then I'm going to announce my decision. I want to review the brief that's been submitted.

But I think, rather than issue a written decision, if I can take perhaps just a 15-minute recess, reconvene, then I'll announce my decision, so we don't have to wait a day or so for me to put something in writing.

I think my thinking is sufficiently developed at this point that I can just rule from the bench, but I just want to make sure that I have reviewed everything that's been submitted by counsel.

So we'll be in recess for just 15 minutes. Court will be in recess.

(Recess.)

RULING BY THE COURT

THE COURT: Counsel, I'm going to indicate

my ruling. I did get a chance to review the briefs and very briefly scan over the attached decisions submitted both by the government and the defense.

During the course of the hearing, I was making notes and outlining my thoughts, and so you're going to have to bear with me as I go through this.

But, as a first order of business, Ms. Whelan, you indicated you wanted to review Exhibits 1 through 10 to make sure you had them and that you had no objection. Is there any objection to Exhibits 1 through 10?

MS. WHELAN: I have not yet seen the court's exhibits, Your Honor. I'm sorry.

THE COURT: Okay. I thought you had -- those had been shared. I have here 2 through 10, I think. No. I have 1, as well.

I thought it was more a matter of your getting a copy from Mr. McAllister.

MR. McALLISTER: Judge, she has a copy. I think it's that she wants to see the marked exhibits.

THE COURT: All right.

MS. WHELAN: Judge, I don't believe that --

Exhibits 3, 4, and 5 I don't recall having seen before in the materials that I received. I certainly have received Exhibit 1 and Exhibit 2.

THE COURT: Is 3, 4, and 5 some of the graphs?

MS. WHELAN: They're graphs with specific language on it.

THE COURT: Well, likewise, I think what's, you know --

MS. WHELAN: For purposes of this hearing, I'm telling just him, for the court, that I don't think I've had them, but no objection.

THE COURT: That's what I was going to say, is what is good for the goose is good for the gander. And I admitted for purposes of this hearing items that were not attached to the government's expert's report and, likewise, will admit Exhibits 1 through 10; although, apparently, there is no objection.

(Defendant's Exhibits 1 through 10 admitted.)

THE COURT: Counsel, let me go through -- and, again, my notes are somewhat cryptic, but I think I can hopefully make sense of all this.

You know, again, we refer to this as a

Daubert analysis, and it's really a Rule 702 analysis. You know, when Daubert was, in essence, incorporated into the Federal Rules of Evidence, you know, there were some minor changes, but I think pretty much everything applicable under Daubert is, likewise, applicable to Rule 702.

The critical thing to understand, I think, about Daubert is that there are really two prongs to any analysis under Daubert.

The first is a question of reliability. And that really goes to the question of whether it is adequately based upon scientific, technical, or other specialized knowledge which does not include unsubstantiated speculation and subjective beliefs.

The second is a question of relevance. It's sometimes referred to as "fit." In other words, does it really address a question that is properly before the jury?

And I think both issues, both prongs of Daubert and Rule 702 are clearly implicated in -- with regard to both Dr. Papcun and Mr. Walsh and really guide the court's decision.

First, let me deal, I think, with Mr. Walsh. I think the problem here with

Mr. Walsh's testimony is one of reliability.

And, again, I will note the Daubert standard, which points the court toward a nonexclusive list of factors which the court might consider, including whether the theory or the technique or the device has been subjected to -- or can be and has been tested, whether it can be subjected to peer review and publication, whether there is a known or potential rate of error, and maintenance of standards controlling the technique's operation, and whether the technique is generally accepted. That's the Daubert language.

I think the 702 language is comparable. They state whether the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and whether the witness has applied the principles and methods reliably to the facts of the case.

So let me address Mr. Walsh's testimony. Mr. Walsh -- as Ms. Whelan, I think, is fond of referring to -- takes substantial part of Dr. Papcun's expert report and has incorporated it, perhaps, wholesale into his own report, but then goes further. And whereas Dr. Papcun was

unwilling to ascribe a particular cause to the artifact, the, again, electronic signature, the electronic -- I can't recall the other terms that -- potential gaps -- Mr. Walsh is willing to offer that opinion.

So there is a difference, and I have to analyze these two separately.

Looking at Mr. Walsh's background and experience, I just have to conclude he doesn't have the background or experience and has not reliably used the techniques necessary to offer the opinion that he wishes to offer.

First, looking at his background. And, as I noted earlier, a person can become an expert even in the absence of an educational or training background that would justify his offering that opinion. He can obtain that through actual experience. But I think there is a lacking in both.

First, in looking at his CV, he refers to two training programs, which were basically provided by vendors regarding the use of their equipment. He has referred to an audio engineer certification from the SAE Institute. But that appears to be -- and from his own description, it

really appears to be a program designed to assist sound engineers in working in studios, sound studios, in the creative media and does not appear to have anything, that I could tell, from a forensic acoustical analysis or any kind of qualification along those lines.

And so, with that background, it is just wholly lacking in a training background that would allow him to offer the opinions that he wants to offer.

If one looks at his experience as possibly providing a basis, he points to the fact that he has worked in the NYPD, but there is virtually no description of what he was doing other than perhaps running wires, monitoring recordings, and whatnot, in that experience.

He has been involved in this business for 10 or 11 years but doesn't really explain how that experience or the level of experience that he has obtained really qualifies him to offer those opinions.

Notably, he has never been certified as a forensic examiner in this field. I did ask him the question about his notation that he has been qualified as an expert in a variety of courts in

New York.

And, again -- and I won't fault Mr. Walsh for having too much trouble with years. Notably, on several occasions he was confused about years. One of the times he was so confused is indicating that he had testified in 1989, but he corrected himself, said it was 1999. That was very shortly, it sounds like perhaps months, after he left the police force but before he had attended any of the seminars and training that he now he points to as justifying his being qualified as an expert.

I don't know what standard was applied in the Southern District of New York, but -- I don't know what the circumstances are, but that certainly is questionable in my mind.

Notably, his testimony appears to be based almost exclusively on the use of programs or devices, including the EdiTrack or EdiTracker device, and perhaps -- I think it's DC-7, and then offering opinions based upon the results of running that device.

It reminds me -- and this harkens back to my days many, many years ago as a prosecutor in even handling DUIs in which intoximeters were

offered into evidence. And if the defense raised an issue about the authenticity of the process used in intoximeters, the prosecutor had the obligation of coming forward and, in fact, showing how it works, why it's reliable.

I haven't heard any of that with regard to either of these devices. You can't simply say, "We put data in, and we got good results out," without explaining how that process works. And I think that's wholly lacking here.

Moreover, the use of the device has been criticized. And I noted on our short break that a court in Pennsylvania has refused to accept that device, finding that it has some serious problems. And there has been no rebuttal from the defense with regard to that criticism, saying that, in fact, the EdiTrack device is, in fact, reliable.

And then I also note that he has reached a conclusion that a qualified expert or at least someone more qualified is unwilling to offer; that is, suggesting that, in fact, there was conscious editing that went on in this instance.

So, for that reason, I am going to find

that Mr. Walsh is not qualified to offer an opinion based upon the reliability prong of Daubert.

Let me turn to Dr. Papcun's testimony. That is not a question in my mind, necessarily, of reliability. I understand that there are differences and that the expert proffered by the government takes issue with Dr. Papcun's conclusions, but it appears to me that those are more a matter of weight to be given to the testimony and would be subject-appropriate for cross-examination by the government.

The problem, though, with Dr. Papcun's testimony in my mind is the second prong or the other prong of Daubert and Rule 702, which is the issue of relevance or fit.

"Relevance" means that the evidence will assist the trier of fact to understand or determine a fact properly at issue in the case. The evidence must logically advance a material aspect of the party's case. And encompassed in that determination of relevance is whether it is helpful to the jury, which really is the court's central concern.

At this point, my conclusion is that --

at least at the outset, that his testimony is not relevant to an issue in the case; but it may become so, as I'll explain in a moment.

He has indicated only that there is an unusually large number of gaps, electronic signatures, and electronic transients in the recording.

Significantly, those gaps, electronic signatures, and electronic transients can be caused by equipment anomalies, equipment malfunctions, inadvertent starts and stops of the recording, ambient noise, or purposeful editing.

And he is quite clear that he cannot and is not prepared to offer an opinion as to which of those sources might actually have caused the particular gaps, signatures, and transients that have been identified.

Standing alone, I think that is not relevant to the case at hand; and to the extent that it is relevant, it would be confusing to the jury and lead to confusion of the issues and mislead the jury under Rule 403.

However, that may well change if there is evidence during the trial that something was said at the time of the recordings which was not

picked up on the recording or something on the recording was not said during the conversation. Then, I think Dr. Papcun's testimony would become relevant as corroboration of other evidence.

But without that, it's of very limited probative value. Just suggesting that there is a lot of artifact, if you will, in the recording is substantially outweighed by the likelihood of confusion of the issues and the potential for misleading the jury.

And, for that reason, I think, either under Rule 403, Rule 401, its relevance either has not been established or it is substantially outweighed by the potential for confusion of the issues and misleading the jury.

So, at this point, my ruling is that Mr. Walsh will not be allowed to testify because of the -- he does not meet the reliability prong under Daubert and Rule 702.

Dr. Papcun may be allowed to testify but only if that predicate is established at some point and in some fashion during the trial -- and I'm not going to say how it might be done -- suggesting that something was said during the conversation that was not recorded or something appears on the recording that, in fact, was not said. Then, at that point, that would then create an issue before the jury, and then Dr. Papcun's testimony would be properly corroborative of that issue, and we would proceed.

Counsel, we're not going to issue a written decision. I may have -- you know, Ms. Tetrick and Mr. Severson may be begging to clean up what I've said here for the record, but I think we're going to just let that be enough for now. And where it leads us, we'll see.

All right. Counsel, is there anything else at this time?

MR. HAWS: Nothing further, at this time, Your Honor.

MR. McALLISTER: No, Your Honor.

THE COURT: If there is nothing else, we'll be in recess.

(Proceedings concluded at 11:32 a.m.)

REPORTER'S CERTIFICATE

I, Tamara I. Hohenleitner, Official Court Reporter, State of Idaho, does hereby certify:

That I am the reporter who transcribed the proceedings had in the above-entitled action in machine shorthand and thereafter the same was reduced into typewriting under my direct supervision; and

That the foregoing transcript, pages 175 to 325, contains a full, true, and accurate record of the proceedings had in the above and foregoing cause.

IN WITNESS WHEREOF, I have hereunto set my hand June 14, 2011.

-s-
Tamara I. Hohenleitner
Official Court Reporter
CSR No. 619

to make those determinations.

Q. In this particular case, did you receive some recordings directly from the FBI or Department of Justice?

A. Yes, I did.

Q. All right. Can you tell us what you did or what happened?

A. Well, the first step was simply to copy the data in those recordings into my computer.

Q. Okay.

A. And then in that case, what I did was I also made copies of the recordings, and then I returned them -- then I sent them on to the attorneys.

Q. All right. In this particular case, the court ordered that you receive a recording in a native format. Are you familiar with a native format?

A. Yeah, certainly. Well, all I know was that I received recordings. Whether they were in the native format, I really would have no way of knowing, as far as I knew. I assumed that they were. They were speech data, and I proceeded on that basis.

Q. What did you do -- after entering the

data or information into your computer, what did you do?

A. Well, I analyzed them in a number of ways. I used a program named Sound Forge. It's a very common program in the -- any kind of acoustics community. It's produced by Sony. And the reason I really use it, it's user-friendly. It's very rock-solid dependable. It's a very widely used program.

THE COURT: Is it Sound Forge, F-O-R-G-E?

THE WITNESS: F-O-R-G-E.

THE COURT: Did I hear you correctly?

THE WITNESS: Forge.

THE COURT: Sound, S-O-U-N-D, F-O-R-G-E?

THE WITNESS: Yes.

THE COURT: One word? That's all right. It doesn't matter.

THE WITNESS: I don't know if it's one word.

THE COURT: It's just for my notes, but that's fine.

Go ahead.

BY MR. McALLISTER:

Q. What did you do with the Sound Forge program?

A. Well, I, first of all, looked at the

waveform. Sound can be represented electrically as a graph, so I made graphs of the sounds that were in these recordings.

Q. All right. When you say you looked at it in a "waveform," what does that mean?

A. Well, you've got a graph. Time, the way this one is set up, runs along the horizontal axis. And the vertical axis then, in this case, at this point, represents the electrical energy. Or another way of representing the electrical energy is in terms of numbers, where, when the graph goes up, it represents numbers in the positive direction; and when the graph goes down, it's in the negative direction.

I am very experienced, I think I can fairly say, in looking at this kind of graph and understanding certain aspects of what it tells me.

Q. I take it you've done this procedure or this exercise many times in the past?

A. Yeah, many times.

Q. All right. What did you observe?

A. Well, I observed that there were numbers of interesting events, interesting in the sense that they tell something about the recording and something about the environment.

So there were sounds of, if you will, in lay language, glitches or clicks or that sort of thing. And some of them were obviously sounds like doors closing, something being dropped, and some of them were not. The more interesting ones to me, under this circumstance, were those in which it sounded pretty much like the other, but it wasn't. It was an electronic transient, an electronic signature.

THE COURT: I'm sorry. An electronic what?

THE WITNESS: Transient.

BY MR. McALLISTER:

Q. Can you explain to us, what is an electronic transient?

A. Well, a transient is just any very rapidly changing signal.

But electronic transients are different from doors closing. They occur more rapidly. They are generally more pure signals. And by "pure," in this case, what I mean is that they only have a single kind of frequency associated with them; whereas other sounds, like drumbeats or doors closing, have many different-signaled frequencies, I should say, at the same time associated with them.

Also, electronic transients are much more rapid than real-world transients. They can occur in as little as, oh, possibly ten-thousandths of a second; whereas events in the real world, although they can be fast, they're not that fast.

And also, electronic transients, signatures, have a certain pattern of decay usually associated with them. It's called an "exponential decay," but that is not usually the case -- or I would even say ever the case, as far as I've seen -- with real-world sounds, real-world clicks and glitches.

So you can't necessarily hear the difference, but when you look at a fine-grain display electronically, you can see that kind of a difference.

Q. Okay. And today in the exhibits that are before you, can you find an example that you've prepared of a graph of an electronic transient?

A. Yeah. I have several, of course.

Q. Can you first tell us what the exhibit number is that you're looking at?

A. Yeah. Frankly, I'm not sure I can

read -- oh, the writing here. I think this says --

Q. At the bottom right-hand --

A. Oh, it's Exhibit -- yeah, EX8. Yes, I'm looking at EX8 here.

Q. And what does -- what -- you prepared this exhibit; correct?

A. Yes, I did.

Q. All right. What does it depict?

A. Well, there are various, if you will, wiggles in the waveform. Right? "Oscillations," to use fancy speech about it. But the oscillation that's in the middle is clearly an electronic transient. The ones to the left probably are not.

THE COURT: Just a moment. It's really helpful, I think, if this could be shown on the evidence presenter while we're talking about it rather than have to go back over that again.

Do you have a copy, Mr. McAllister, that you could put on? The witness will be able to see that, as well, and he might even be able to use the annotation feature to point out what it is he's referring to.

That's --

THE WITNESS: Yeah, that's fine.

THE COURT: It's not a very good picture, and I don't know why. I don't know if those arms -- perhaps -- can you -- is that good enough for you to -- perhaps you could zoom in.

THE WITNESS: I don't have my reading glasses. But, that aside, yes.

THE COURT: Could you zoom in and -- there. And perhaps slide it over so that it's centered a bit more. There.

MS. WHELAN: Your Honor, I'm sorry. Is this Exhibit 8? Because --

THE COURT: That's what we're going to do now, is identify what exhibit we're referring to.

BY MR. McALLISTER:

Q. Exhibit 8 is from the June 10th, 2010, recording; correct?

A. That's correct, yes.

Q. And it ties into the transcript at page 4, line 6; correct?

A. That's correct.

Q. And there is a label, "signature and ambient sounds"; correct?

A. That's correct.

Q. Now, could you tell us what it is this chart or this exhibit shows to you?

A. Well, as I've said previously, time runs along the horizontal axis. I can't read these numbers, but on the original, it is possible to read these numbers as to the times.

Q. All right.

THE COURT: I'm actually concerned, because it seems like we're not getting a very bright projection. Perhaps it just needs to warm up a bit. But go ahead. I'm thinking ahead to the jury trial next week. But go ahead, Dr. Papcun.

THE WITNESS: Sure. Well, the oscillations that are on the left well may be what I've called "ambient sounds," and they're probably not --

THE COURT: Just so we're -- let's -- when you say "ambient sounds," I'm thinking of the kind of background noise that you've referred to, doors shutting, things of that sort. So, when you use that term, is that what you're referring to?

THE WITNESS: Yes, that's what I mean.

THE COURT: All right. Not the -- what is the word -- let me go back to my notes. Not the electronic transient that you referred to?

THE WITNESS: Precisely. And that's the distinction I want to draw here.

THE COURT: All right.

BY MR. McALLISTER:

Q. Go ahead.

A. All right. Whereas the more pronounced -- sharper, if you will -- oscillation towards the middle, that's an electronic signature. It represents higher frequencies. It's shorter in time.

And although I can't read the numbers off this somewhat fuzzy depiction of the graph here, I think you will find it's within -- well, I know because I've looked at it in the original. It's in -- within a few thousandths of a second. And this high-frequency, sharp pulse, I can tell you on the basis of having looked at many and on the basis of my experience and also understanding of how these things are produced, that this is an electronic signature kind of transient that I'm distinguishing from other ambient sounds.

THE COURT: Okay. You have indicated that the distinguishing characteristics are that the electronic transient is both more pure and more rapid than signals that are resulting from ambient sound. What is it about looking here or the data that you've obtained that shows us that it is more pure in the sense that the -- well, I'll let you

tell me what you mean when you say "pure" and/or in terms of being more rapid. Looking at the chart and looking at the other sounds to the left, they appear to be more closely bunched but still relatively comparable in terms of -- if time is the horizontal axis here, they at least seem within a range and not considerably different.

And I need to know what it is -- I mean, it's not enough just to say that, based upon experience, you know what this is. You've got to tell me why you know it is and what is it about that that tells you, as an expert, that, in fact, it is an electronic transient, not the result of ambient background noise.

THE WITNESS: Well --

THE COURT: Yes. And if you would bring the microphone around. And unless you are going to use -- you can use your finger as a illustrator on the screen there if you want to, but you probably don't need to get too close to that unless you're going to illustrate something. But go ahead, Dr. Papcun.

THE WITNESS: Certainly. Well, on the one that I'm describing as an electronic signature, you will see that, given the amplitude -- that is

to say, the range of the oscillation -- this is greater than those other ones. It dies off more quickly, at least given the initial amplitude.

And the bends, if you will, are sharper. And what that means, the sharper bends mean that this has higher frequencies as a component, and those high --

THE COURT: Is that what you meant by "pure sound"? Is it higher frequencies or less mixing of frequencies?

THE WITNESS: No. In this case, higher frequencies is different from a pure sound.

THE COURT: All right. So is that another telltale characteristic of electronic transient, is greater variation in frequency?

THE WITNESS: No. Higher frequency.

THE COURT: Well, not -- right. Higher frequency rather than variation in frequency.

THE WITNESS: Yeah. Yeah. Exactly.

THE COURT: Okay.

THE WITNESS: And these sharp bends indicate higher frequencies.

BY MR. McALLISTER:

Q. Now, in terms of a transient or an electronic signature, in reviewing both the tapes

of June 9th and June 10th, how many did you find, approximately?

A. In both cases, there were -- I didn't count them, but I can give you a very reasonable ballpark -- there were dozens of these electronic signatures apparent.

Q. All right.

A. In some cases, it wasn't clear whether it was an electronic signature or an ambient sound, but there were dozens of clear ones.

Q. How does -- in your opinion, what can you tell us from a scientific point of view that the presence of an electronic signature or an electronic transient -- what does that mean to a lay person?

A. Well, you've got to consider the possible sources. It can be editing. It can be equipment malfunction. It can be turning something on or off.

However, whatever the particular source is, it tells you that there is some defect in the recording there, assuming that you don't intentionally want to record equipment defects or editing or turning something on or off.

If your purpose is just to get a true

and accurate recording of whatever happened under these circumstances, they shouldn't be there; or they, at very least, demand explanation. You have to know why each one is there.

Q. All right. And you can't tell us at this point in time why they're there; you just simply know they're there; correct?

A. Well, that's right. I can tell you the possible sources. Yeah. Frankly, I didn't have control of this equipment, and so I can't tell you the source of each of these.

Q. All right. Do you have another example there, Dr. Papcun? Exhibit --

A. This is called "Exhibit 10."

Q. All right. Could you tell us what -- first of all, tell us how Exhibit 10 was created. Or how is it made?

A. Well, this was done with my software, the Sound Forge software. Listened to the recording. I found suspicious, if you will, clicks or transient events, and then I zoomed in on them. This is zoomed in extremely close. So we have eight-thousandths of a second shown here.

And it exhibits basically the same characteristics as the one I showed you

previously. It's a pretty clear example. It's brief. It has high frequencies. It exhibits exponential decay in a way that you would expect from an electronic signature.

Many parts are relatively pure; that is to say -- not all of it, but many parts show that it contains essentially a single frequency. You see that by the smooth parts as it tapers off.

So, on the basis of what I see here, this is a good example of an electronic signature and not some sound like a -- if you will, something being dropped or a door closing or something like that.

Q. In your experience and training and education, are -- is it important to determine whether there is an echo event?

A. Yes, it is.

Q. All right. Can you, first of all, explain what an echo is or what an echo event is?

A. Well, an echo is what you hear when you walk up to a cliff, I suppose, and say "hello"; and a while later, it says "hello" back to you, or you hear the word "hello."

Echos happen all the time every day. In this courtroom right here, there is an echo.

And when you sing in the shower, your voice sounds resonant because of echos. Usually, you don't take note of them. You don't hear them as distinct from the original sound, but sounds in the real world produce echos all the time everywhere.

Q. But an electronic signature or transient does not produce an echo; correct?

A. That's right. Yeah. It was never a sound in the real world.

Q. Okay. Why is a -- why is the echo important to you, or an echo event?

A. Well, it's one very useful way of determining whether something was just a sound being recorded in the real world, whereas a lack of an echo indicates that you have an electronic signature rather than -- and probable, you know, either an edit or a machine defect or a switch being thrown on or off or something like that, as opposed to some ambient sound.

Q. In this case, in examining the June 9th and June 10th recordings, what did you look for in terms of echos or echo events?

A. Well, after the clicks that I heard and then made graphs of, I looked for the echos to see

whether or not it would -- to help me determine whether or not it was an electronic signature or just some ambient background happenstance sound.

Q. What did you find?

A. There was a group that I have indicated, roughly 50 events, that were not door closings or ambient sounds. They were not events where somebody dropped something or something like that.

Q. Does that mean, in your opinion, that there was some type of electronic change in the recording?

A. Exactly so, yes.

Q. All right. And, as you said, that could be somebody editing the recording; correct?

A. Absolutely, yes.

Q. It could be a malfunction in the machinery or the device being used?

A. Well might.

Q. All right. Anything else it could be?

A. Anything else what?

Q. Anything else it could be? Lack of power?

A. Okay, yes. That would be, presumably, a defect in the equipment, a lack of power, yes.

A disconnection of the microphone, for example, would normally make this kind of a signature.

Q. Okay. Did you examine the June 9th and June 10th recordings for what we laymen call "gaps"?

A. Yes, I did.

Q. How did you do that?

A. A very similar graph is most useful here, and another kind of a graph is also useful. I don't have an exhibit that would show the other kind of graph, but I made the other kind, as well.

The other kind is called a spectrum delay -- "display," I meant. Sorry. A spectrum, similarly, has time going along the horizontal axis.

The vertical axis is different, though. It shows frequencies, lower pitch on the bottom, higher pitch towards the top. And typically you will get, from a spectral display, a place where the background sounds just go away.

And same thing here with this waveform graph. The waveform, as it were, goes away. It flat-lines, if you will.

I think that there is a valid, actually, analogy between this kind of a display

and a flat line in a heart monitor. You know, in a heart monitor, you see this -- very similar kind of a waveform flow by on the screen, and you can see sometimes, under unfortunate circumstances, a flat line.

Well, on this display, when there is a real gap in the recording, you see a flat line.

Q. Did you -- were you able to tell how many gaps were in the tapes?

A. I don't know the overall answer, but it's much fewer than the other signals, but I know that there were at least three --

Q. All right.

A. -- in the June 9th recording. In fact -- no, let me correct that. At least four. And I know that there were some, but I don't know how many there were, in the June 10th recording.

Q. And do you -- or can you say how long the gap was, whether it was a microsecond or 15 minutes?

A. Well, that's the interesting thing about a gap in a recording. Even if -- even if the gap in the recording was, let's say, one second or less than a second, you cannot tell and you have no way of knowing actually what the time

covered in reality really was. I mean, it may have just been that one second, or it may not. You just can't tell.

Q. What would cause a gap in a recording?

A. Well, again, an equipment malfunction well might do it. Or, as in the Nixon tapes, it might have been done purposely by your secretary or by anybody. An attempt to copy the tapes at some point. If you're putting more than one together, a gap would be very common in that situation. So --

THE COURT: When you say "put one together," do you mean consolidate two tapes into one?

THE WITNESS: Yes. Thank you. That's what I wish I had said.

BY MR. McALLISTER:

Q. What is voice morphing?

A. It's a technology that involves changing of voice so it sounds like a different voice. For the simplest variety of voice morphing, you can buy programs or gadgets that will change a man's voice into a woman's voice and vice versa.

But in order to try to make one person's voice sound like that of another, you

need somewhat more sophisticated techniques; but within limits, it can be done.

Q. How easy is it for a person who does not have your education and experience to edit a tape -- excuse me -- a recording that -- like June 9th and June 10th?

A. To do simple editing is absolutely trivial, and people can do it with free software available over the Internet. Actually, a good deal of the software available for free over the Internet is really quite sophisticated and is capable of doing an excellent job.

But directly, the answer is, for simple editing tasks, it's just easy.

Q. All right. Is it easy to insert words?

A. Absolutely.

Q. Is it easy to take out words?

A. Even easier, for the most part.

Q. Okay. Directing your attention to a MITRE -- M-I-T-R-E -- Technical Report prepared by Patrick M. Howard.

Did you get an opportunity to look at this briefly this morning or early this afternoon?

A. Yes, I have.

Q. All right. Are you familiar with the

Edi -- E-D-I -- Tracker for the detection of tampering in digital audio recordings?

A. Yes, I am. Not in great detail, but in the essentials, yes, I am.

MS. WHELAN: Your Honor, I apologize. Objection as to the foundation. Also, this witness hasn't disclosed that he did any EdiTracking.

THE COURT: Well, that's what I think we're going to find out here. At this point, if he didn't use EdiTracking, it obviously is not relevant.

But I certainly will give Mr. McAllister some leeway and see where we're going here. But I guess I have already indicated what I think of its relevance. If the doctor didn't use it or perhaps Mr. Walsh or someone else used it, I guess we'll find out.

BY MR. McALLISTER:

Q. Okay. Dr. Papcun, it's true that Mr. Walsh used the EdiTracker analysis; correct?

A. To my knowledge, yes, but I don't know that for a fact. But that's my understanding.

Q. All right. Well, you reviewed his work, did you not?

A. Yes, I did.

Q. All right. And you're familiar with the EdiTracker; correct?

A. Yes, I am.

Q. And can you tell us what digital processing is?

A. Well, with any recording of this sort, it either originated as or is turned into, really, a set of numbers. Then you perform mathematical operations on those numbers in order to reveal certain characteristics of the signal.

You can make graphs with them. You can determine the frequencies that are in them and many other characteristics.

Q. In essence, is that what you were performing?

A. Yes. Well, first of all, I did the graphs; that's pretty straightforward. But then I did the spectral analysis. That turns the information into an estimation of the different frequencies that are present.

Q. Okay. What is harmonic consistency analysis?

A. Well, first of all, I have to tell you what harmonics are.

Q. Okay.

A. Sorry. It's just necessary.

When any note is played, let's say, on a piano, all right, the string vibrates at a certain frequency, and that gives it its pitch. But at that same time, that string is vibrating at other frequencies, as well.

So if you hit middle A on a piano, typically that's 440 times a second vibrating back and forth. But it's not that simple with real-world objects, as I alluded to previously.

It's also going to do a more complex motion and vibrate at 880 times a second. That's a harmonic. So the multiples of the fundamental frequency -- in this case, 440, then our 880 and double that and so forth and triple it and so on. Because things in the real world just move in complicated ways.

Harmonic analysis, then, is an analysis of the frequencies of all of these harmonics.

THE COURT: Is the same object moving at different frequencies, or is there a sympathetic response by similar objects? I'm not quite sure I'm tracking with you.

When you say it's more complicated than

simply a -- was it middle A vibrating at 440 times a second, that then you also will have these harmonics which will be vibrating at different frequencies, 880 and so on. Is it the same object giving off different frequencies at the same time or --

THE WITNESS: I think I appreciate the question, Your Honor. And if I may wave around with my hands, which I'm afraid might be difficult to capture here, the string goes back and forth, okay, 440 times a second.

But it's not that simple, in that it also is going to move in a sideways direction, like this (indicating). And that's going to happen at a faster frequency.

Because, effectively, what's happening to make this sideways movement occur is that the string is divided in half. So this half will be vibrating, but it's going to go faster because it's shorter than the original piano string.

So the very same object can, and does, in fact, move in this more complex way. And that's related to the richness of the sound that a piano string gives you. You don't just get one note, even though you hit only one note.

THE COURT: I think I understand that. So the middle A is actually made up of a number of different frequencies that create, I guess, this richer sound?

THE WITNESS: Exactly.

THE COURT: All right. Go ahead.

THE WITNESS: That's what you want out of a piano.

Flutes actually, for the most part, don't have that sound. They don't sound as rich as a piano. They have a more pure sound to them.

BY MR. McALLISTER:

Q. Dr. Papcun, I'd like to ask you a question based upon the information provided by the government in the scholarly article written about EdiTracker. And I'd like to know whether you agree with this statement: That "the EdiTracker operates automatically, and it combines three powerful methods of tracking for auto-tampering traces."

Do you agree with that?

A. I disagree with one aspect of it, if I might say.

THE COURT: Well, just a moment. But you have, in fact, used EdiTracker, and you are

familiar with its use? Because I think that's the foundation we need to know before we have an answer to that question.

Because you didn't use it here; correct?

THE WITNESS: No. I -- in fact, I observed Mr. Walsh using it.

THE COURT: All right.

THE WITNESS: So I looked over his shoulder, as it were. Actually, I -- to some trivial extent, I drove it myself. But for the most part, I used it by looking over his shoulder while he was using it.

BY MR. McALLISTER:

Q. So the question was: In terms of trying to determine whether an audio or recording has had traces of tampering, EdiTracker is a good analysis or good system to use?

A. Yes. If I may address your first question now. Let me explain my cavil, if you will, with it.

To call it "automatic," that's wrong. None of these programs -- I mean, they may function automatically, but any decision made is not and should not be automatic. It requires

judgment on the person -- on the part of the person who is using the machine.

Q. Okay. In other words, someone who is using EdiTracker has to have education, experience, and an understanding of what they're seeing.

A. Exactly. And that's the sense in which I argue with the word "automatic."

Q. All right. EdiTracker is a system designed to find whether or not an audio recording has traces of tampering; correct?

A. Absolutely.

Q. And it relies upon tracking of digital processing, harmonic consistency analysis, and background noise analysis; correct?

A. Yes. Exactly.

Q. And that is what you were doing in your examination of these tapes on June 9th and June 10th; correct?

A. No. I didn't use EdiTracker, but I did use those processes.

Q. All right. Dr. Papcun, have you formed any opinions about the authenticity of the June 9th and June 10th recordings?

A. Yes, I have.

Q. And what is your opinion?

A. I have determined that there are serious questions with respect to the authenticity of the recordings; that it appears to me that there are defects in the recording that would render them inauthentic; and it's quite clear that whatever is on these recordings is not entirely whatever occurred in the real environment being recorded.

Q. All right. Can you say to any certainty that, in fact, the tapes were edited?

A. Well, if by "editing," you mean spliced and conjoined --

Q. Yes.

A. -- no. No, I don't have that opinion.

Q. All right. Can you say that the gaps that you noted were, in fact, intentionally done by anyone?

A. Oh, no way that I address intention. I can only tell you the scientific facts that I see on the recordings.

Q. All right. What would you tell to a lay -- a jury, a group of folks without training in this area, about this recording in layman's terms?

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A. Well, is the word "inauthentic" a layman's term? If so, I would use that. But I would say, "Look, whatever happened in the course of these recordings, this recording does not represent that and only that."

Q. Why?

A. Well, I see the electronic signatures. I see the gaps. I know of the harmonic inconsistencies that, again, show -- I'm not sure what -- they show defects in the recording; that's for sure. Whether or not they show that the equipment is not working right or something else, that I don't know for sure.

But I know, just as I said, this recording does not contain what was being picked up and only that. So, in that respect, they're defective.

Q. In your field, Doctor, what does an anomaly in a recording mean?

A. Well, in this context, it would be an electronic signature. Again, it's something that doesn't represent that reality that's supposed to have been recorded.

Q. Did you find anomalies in listening and examining the June 9th and June 10th recordings?

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A. Yeah. There were two main kinds of anomalies. They were the gaps and these electronic signatures.

MR. McALLISTER: Thank you, Dr. Papcun.

That's all I have, Your Honor.

THE COURT: Ms. Whelan, before we start, let me just ask a question.

EXAMINATION

BY THE COURT:

Q. When you say that these -- there are serious questions about the authenticity of the recordings, what I take from that -- and one of the concerns I have is "authenticity" is a legal term. It's a part of foundation that -- but in the legal world, all it means is that it is what its proponent says that it is, which in this case, I suspect Ms. Whelan or Mr. Haws is going to say it is a recording of communications. That's all it means.

And, frankly, the standard for its admission is fairly low. It simply has to be enough evidence from which a finder of fact could conclude that it is, in fact, a reasonably accurate tape recording.

What I take you to mean, though, by the

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term "authenticity," is that it is not exactly reflective of what really happened and what words were spoken in whatever communication may have taken place, if any. And that breakdown, if you will, between, I guess, the real environment and what is picked up in the recording just means that there are some artifact -- what's the word we've used? -- electronic signatures, gaps, things that just indicate that something is less than pure, less than one hundred percent accurate in terms of what actually was said if we had actually been sitting there listening.

Is that a fair representation?

A. That is absolutely a fair representation. I might want to go a little further in certain respects.

Q. Okay.

A. Okay. First of all, thank you for correcting me about the legal interpretation of --

Q. I knew you were talking -- although I suspect you have been around the courtroom long enough, someone has probably talked to you or mentioned that before about authenticity. But --

A. No. Actually, they have not.

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Q. Well, I assumed we were talking about different things, somewhat different things.

A. But, yeah, I did intend the other sense of it.

Q. Okay.

A. And the only addition that I would make to what you said is that, particularly with respect to the gaps, where we don't know how long that reality might possibly have been -- it might have been only as long as the gap on the tape, but we don't know that, and we can't know it -- and with respect to these other things, well, they may be adventitious events or not. They could indicate splice. I'm not saying they do, but I'm saying we don't know.

Q. We don't know what it is or why it is that they vary from the actual environment in which the statements were made or not made. All we know is that they're there, and they make the recording less than pure.

A. Yes, Your Honor.

THE COURT: All right.

CONTINUED DIRECT EXAMINATION

BY MR. McALLISTER:

Q. Dr. Papcun, do you think it would

assist the jury or the triers of fact if you provided an opinion that these recordings were suspicious?

MS. WHELAN: Your Honor, I object. That's a decision for the court to make.

THE COURT: Well, I'll allow the witness to answer and explain why, because it's the answer to that further question, "why," which may inform the court's decision as to whether it will, in fact, help or assist the finder of fact.

But you're correct, Ms. Whelan, that that is for the court to decide. But you're going to be -- there is going to be a further follow-up question as to not only whether it will assist the finder of fact, but why do you think it will.

THE WITNESS: Well, frankly, I would not be comfortable using the word "suspicious" because that seems to have kind of a moral judgment attached to it, and I just want to report on the scientific facts. And I can't use "authentic," or perhaps I ought to use that word.

THE COURT: Well, actually, the jury -- the jury will not -- the question of authenticity is for the court. So you can use whatever term is a term that would be used by someone in your field.

And I don't want you to limit your vocabulary in any fashion, because the question of authenticity is something we'll discuss with the attorneys, not with the jury.

THE WITNESS: All right. In that case, I would say that these recordings don't accurately and completely reflect whatever happened when it was being recorded and nothing other than that.

So as to whether or not that is a suspicious circumstance according to the jury's judgment, I would leave the word "suspicion" to the jury. But I could certainly tell them about these problems with the recording; and then, using context and whatever other information that they might bring do it, I think that the combination would, as I would understand, enable the jury to make the best possible judgment as to what's going on here in this situation.

MR. McALLISTER: Thank you, Dr. Papcun.

THE COURT: Ms. Whelan, we could take a short break. Do you want to go now? All right.

MS. WHELAN: Judge, I'm concerned of us getting done today, and we have got people from all over.

THE COURT: I am, as well. Fortunately for

me, I'm free tomorrow morning. Perhaps not so fortunate for you all if we can't get it all done today. But go ahead.

MS. WHELAN: Thank you.

THE COURT: But we are going to take a break. I can't go for four hours without some kind of a break or even three and a half. So, within the next 15, 20 minutes, we'll probably take a break.

MS. WHELAN: Okay.

THE COURT: So maybe you'll be done in 15 or 20 minutes, but we'll see. Go ahead.

MS. WHELAN: Thank you.

CROSS-EXAMINATION

BY MS. WHELAN:

Q. Good afternoon, Dr. Papcun.

A. Good afternoon.

Q. My name is Traci Whelan. I'm an assistant United States attorney in the Coeur d'Alene office of the United States Attorney's Office, and I do have some questions for you, I'm sure you can imagine.

You completed your report on February 28th that you authored and sent to Mr. McAllister; is that correct?

A. I don't have the date before me, but I'm comfortable to take your word for it.

Q. If you look at what's been marked -- and it does have a tag on it -- as United States Exhibit A, looking at the top there. Can you see that?

A. Yes.

Q. And is that you? George Papcun?

A. Yes.

Q. And looking at the date -- and it's addressed to Mr. McAllister -- and, I guess -- I hate to move these things because I know it makes people nauseous, but I'm going to try to make it closer; then if I have to move it, I will. Apologizing to people ahead of time.

Is that the report that you authored to Mr. McAllister?

A. Yes, it is.

Q. Okay. And that is February 28th; correct?

A. That's correct.

Q. When did you receive the CDs that you evaluated?

A. I don't remember.

Q. Do you have any idea?

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. EDGAR J. STEELE, Defendant.	Case No. 2:10-CR-148-BLW **MEMORANDUM DECISION AND ORDER**

INTRODUCTION

The Court has before it Defendant's Third Motion to Continue Trial (Dkt. 128.) For the reasons explained below, the Court will deny the motion.

BACKGROUND

Early in this case the Court appointed the Federal Defenders to represent Defendant. A jury trial was initially scheduled for August 16, 2010. On July 17, 2010, Defendant filed a motion to continue the trial and to extend the time for filing pretrial motions. Defendant asked for a sixty-day continuance. (Dkt. 23.) A few days later, the Government filed a Superseding Indictment, and Defendant supplemented his motion to continue by asking that trial be continued until November 2010. The Court granted the motion and set trial for November 1, 2010, with all pretrial motions due October 4, 2010. (Dkt. 32.) On October 5, 2010, Defendant filed a second motion to continue. (Dkts. 53

& 59.) Defendant suggested that the case was complex, and he asked for a six-month continuance. The Court granted a four-month continuance, and set trial for March 7, 2011, with all pretrial motions due February 4, 2011.

At a January 26 status conference, Defendant's attorney informed the Court and the Government that Defendant would be filing the motion for substitution of counsel. On February 7, 2011, Defendant filed that motion. At a hearing on the motion for substitution, Defendant's new attorney asked for another continuance of the trial date and to extend the deadline for providing notice of expert evidence of a mental condition pursuant to Rule 12.2. The Court denied the motion to continue the trial, but extended the deadline for pretrial motions and for providing notice of expert evidence of a mental condition to February 9, 2011. The Court gave Defendant until February 16, 2011 to file any expert witness reports. In turn, the Court gave the Government until February 18, 2011 to designate additional experts.

ANALYSIS

The Ninth Circuit is guided by four factors when it reviews a district court's decision on a motion to continue: "(1) the extent of appellant's diligence in his efforts to ready his defense prior to the date set for hearing . . . (2) how likely it is that the need for a continuance could have been met if the continuance had been granted . . .(3) the extent to which granting the continuance would have inconvenienced the court and the opposing party, including its witnesses . . . (4) the extent to which the appellant might have suffered harm as a result of the district court's denial." *U.S. v. Rivera-Guerrero*, 426 F.3d 1130,

1138-39 (9th Cir. 2005).

1. Diligence

Defendant contends that his new attorney, Robert McAllister, has not had time to adequately prepare for trial because he has only been counsel of record since February 7, 2011. However, this case has been pending for more than eight months, and Defendant chose to wait until one month before trial to have Mr. McAllister enter his appearance.

Why Defendant waited until one business day after the deadline for filing pretrial motions and notices is unclear to the Court. Defendant may be suggesting that he could not have retained counsel earlier because the Government seized his silver coins as evidence, and that he needed those coins to pay counsel. However, counsel has made it clear that half the coins were returned to Defendant's wife early in this case, and Defendant's wife has been willing to pay for the defense. More importantly, Defendant did not ask the Government to return the coins until late January or early February 2011, seven months into the case. Once the request was made, the Government promptly returned the coins after reaching a stipulation to admit photographs of the coins as evidence at trial.

Moreover, Defendant did not retain Mr. McAllister because of any breakdown in the relationship with his public defenders. Mr. McAllister stated during the February 7 hearing that the Federal Defenders had done excellent work in terms of preparing the case for trial. He further stated that he had to convince Defendant to seek an extension of the trial date.

The Court is also skeptical of Defendant's suggestion that the Federal Defenders did not provide Mr. McAllister with access to the discovery in the case until February 16, 2011, or that Mr. McAllister only recently learned about the degree of preparation done by the Federal Defenders regarding expert witnesses. At the February 7 hearing, Mr. McAllister specifically stated that he has "been involved in this case since . . . November. And [he has] been working on it closely with Mr. Peven and Ms. Moran [the Federal Defender attorneys] steadily." Moreover, at the February 7 hearing, the Court specifically ordered the Federal Defenders to remain available to Mr. McAllister on a consulting basis, and to make any experts and investigators available to him. There is no evidence before the Court that the Federal Defenders disobeyed that order or otherwise impeded Mr. McAllister's access to the information.

Defendant's argument that the Government waited until less than thirty days before trial to depose a witness in Ukraine is also less than accurate. Counsel for the Government indicated that it had a stipulation with the Federal Defenders which would have removed the need for the Ukrainian witness. When Mr. McAllister substituted in as counsel of record, he chose not to agree to that stipulation. That is his choice, but it does not change the fact that the stipulation was agreed to by previous counsel, and the Court has not heard from previous counsel that no such stipulation existed. Again, by his own admission, Mr. McAllister has been working closely and steadily with the Federal Defenders on this case since last November, which makes it hard to believe he only recently learned about the stipulation.

For these reasons, the Court finds that Defendant's lack of diligence is the main reason for any lack of preparation at this point. Accordingly, this factor weighs against a continuance.

2. Need For Continuance Would Not Be Met If Continuance Granted

Defendant requests a continuance so his attorney will have adequate time to prepare for trial. Specifically, he requests more time to retain and prepare expert witnesses and other potential witnesses. As explained above, Defendant wholly failed to meet the Court's initial deadline for filing pretrial motions and giving his Rule 12.2 notice. The Court already extended that deadline once. The Court gave Defendant five additional days to file pretrial motions and his Rule 12.2 notice, plus an extra week to disclose expert reports. Moreover, the Court explained this ruling to Defendant before it granted the motion to substitute counsel, and asked if Defendant still wanted to proceed with the substitution. The Court made it clear that the only real possibility for a continuance would be if Defendant's expert disclosures triggered a need for the Government to request an Independent Medical Exam. Even then, the Court explained, a continuance would not be automatic. Through Mr. McAllister, Defendant indicated that he still wanted to proceed with the substitution of counsel.

Additionally, the Court finds that Defendant's own choices caused any need for additional time to prepare for trial. A defendant and defense counsel cannot make tactical choices simply to delay trial. The public has a right to a speedy trial. 18 U.S.C. § 3161(h)(7(A). Granting a continuance in such situations would forever cause delays.

As Mr. McAllister stated himself, he has been working closely and steadily with the Federal Defenders in this case since November 2010. Thus, Mr. McAllister has the benefit of the work done by the Federal Defenders for the previous seven months. He also had three months from November to February 7 to work with the Federal Defenders in preparing for trial. He had even more time to prepare motions and expert reports once the Court extended the pretrial motions deadline beyond February 4. As the Court noted above, The Court does not know why Mr. McAllister's waited until one business day after the pretrial motions deadline to make a formal appearance in this case. But defense counsel's collaboration with the Federal Defenders is evidenced by his own statements and by the fact that he recently provided the Government with the expert report of Dr. Fox dated September 22, 2010.

Therefore, the Court cannot see how extending the deadlines and trial date again will make any difference in counsel's ability to adequately prepare for trial. Defendant has not provided the Court with any real detail or explanation as to what additional experts he wishes to retain and what the testimony of those experts would cover. There is no reason for the Court to believe that, if the continuance were granted, Defendant's situation would be materially different 45 days from now. Thus, granting the requested continuance would do nothing more than delay the trial. Accordingly, this factor also weighs against a continuance.

3. Inconvenience to Court and Government

The inconvenience to the Court is substantial. The District of Idaho is extremely

busy and has only two District Judges to preside over criminal trials. The District of Idaho is also unique because the judges are required to, in essence, "ride circuit" presiding over all criminal trials in three different courthouses separated by hundreds of miles across the State. This adds to the Court's time commitments and makes re-scheduling hearings and trials difficult.

Months ago the Court set aside two weeks to try this case beginning March 7. The Court informed the parties that moving the trial would wreak havoc on the Court's calendar. If the trial is moved again, the Court will need to find another two-week period to try the case, and the Court will be left with a two-week hole in its calendar that it cannot fill at this late date. This would be an inconvenience to the Court.[1]

The Government has also expressed that it will encounter certain inconveniences if the trial is continued. Government counsel expressed a concern that the lead AUSA prosecuting this matter has plans to take another position with the Department of Justice. Delay in the trial may affect those plans or require the Government to transition this case to another attorney.

4. Prejudice

Denying the motion to continue will not harm or prejudice Defendant. Defendant and Mr. McAllister have had ample time to prepare for trial in this matter. As explained

[1] While recognizing the challenge which a continuance will create for its docket, the Court is not basing its decision on that factor. If the continuance were otherwise justified, the Court would have found the time to reschedule the trial.

in detail above, any failure to adequately prepare for trial was caused by Defendant's own decisions and trial strategies. The Court cannot allow a party to create the circumstances needed to require a continuance. The problem facing Defendant is that the requested continuance has not been justified. As noted above, defense counsel (1) has been at work on this case for months, (2) has worked closely with the Federal Defender's office during that time frame, (3) entered a late appearance in the case for no particular reason, and (4) has not provided the Court with any real detail or explanation as to what additional experts he wishes to retain and what the testimony of those experts would cover. Accordingly, the Court will deny the motion to continue.

5. Exculpatory Evidence

In his motion to continue, Defendant stated that the Government has not provided him with a critical tape containing potentially exculpatory evidence. Presumably, Defendant is referring to tape recording that allegedly captures Defendant and the co-defendant discussing the murder-for-hire plot. Defendant has not provided the Court with any details about the tape or why he believes it contains exculpatory evidence. However, the Government failed to respond to Defendant's suggestion that it has not provided Defendant with any such tape. Therefore, the Court will require the Government to file a statement with the Court acknowledging or denying that it has not provided Defendant with a tape containing exculpatory evidence so the Court can better address the issue. The Court may require a telephonic hearing on the matter after it receives the Government's submission if the Court believes the issue is requires reconsideration of the

motion to continue.

ORDER

IT IS ORDERED:

1. Defendant's Third Motion to Continue Trial (Dkt. 128) is **DENIED**.

2. The Government shall file a statement acknowledging or denying that it has not provided Defendant with a tape containing exculpatory evidence on or before **Wednesday, March 2, 2011 at 5:00 p.m.**

DATED: **March 1, 2011**

Honorable B. Lynn Winmill
Chief U. S. District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Idaho, and that on November 30, 2012, one copy of the foregoing **GOVERNMENT'S SUPPLEMENTAL EXCERTS OF RECORD, VOLUME II of II**, was mailed, postage prepaid, to the persons listed below:

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