

1       **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO**

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3	- - - - -	x
4	UNITED STATES OF AMERICA,	:
5		:
6	Plaintiff,	:
7		:
8	vs.	:
9		:
10	EDGAR J. STEELE,	:
11		:
12	Defendant.	:
13	- - - - -	x

Case No. 10-00148-N-BLW

**JURY TRIAL**

13       **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

14       before B. Lynn Winmill, Chief District Judge

16       Volume 3

18       April 28, 2011

20       Pages 517 to 761

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## PROCEEDINGS

Thursday, April 28, 2011

(Jury present.)

THE CLERK: The court will now hear day three of jury trial in Criminal Case 10-148-N-BLW, United States of America versus Edgar J. Steele.

THE COURT: Good morning, ladies and gentlemen. I hope you had a pleasant evening. We'll reconvene -- resume trial as indicated by Ms. Gearhart.

I'll note that Mr. Fairfax has retaken the stand, and I'll remind him that he is still under oath.

Ms. Whelan, you may resume your direct examination of the witness.

LAWRENCE ANDREW FAIRFAX, having been previously sworn to tell the whole truth, testified as follows:

## CONTINUED DIRECT EXAMINATION

BY MS. WHELAN:

Q. Good morning, Mr. Fairfax.

A. Good morning.

Q. At the conclusion of yesterday, it's my recollection that we had ended on listening to some recordings from June 10th; is that correct?

A. Yes.

Q. I wanted to ask you a couple of questions about that, if I might. During that recording, do you recall the defendant talking about the fact that he would lie himself out of it if you were caught?

A. Yes, I do.

Q. After that, there was a statement: "You and I have discussed this before." Had you discussed that before with the defendant?

A. Yes, I had.

Q. And is that consistent with what he had previously said?

A. Yes.

Q. There was some conversations on that tape about making it look like an accident and discussions about triggering coverage. Do you recall those statements?

A. Yes.

Q. Had you had discussions with the defendant about some type of coverage?

A. Yes, I had.

Q. Can you tell the jury what that was?

A. He said on his automobile accident insurance, there was \$100,000 payoff if she was

killed in an accident.

Q. That's what you were discussing or the defendant was discussing; is that correct?

A. That's correct.

Q. There was also a discussion about a boyfriend and not wanting him touched. Do you recall that?

A. Yes, I do.

Q. Had you heard about a boyfriend before?

A. Yes.

Q. What had the defendant told you?

A. He told me he hired a private investigator to follow his wife around and that she was having an affair with an old school flame in Portland.

Q. Were you supposed to do anything with regards to the boyfriend?

A. At first, he said he didn't want him hurt at all. He changed his mind, I guess, in the last tape.

Q. But he told you he was joking; correct?

A. Yes.

Q. Now, Mr. Fairfax, when the defendant told you about Mrs. Steele and the supposed boyfriend, did you suggest any other ways to end

the marriage other than murder?

A. I asked him why he didn't get a divorce.

Q. And what did he tell you?

A. That the last time he tried to get a divorce from her she was going to take too much and he didn't want to part with --

Q. Part with what?

A. Part with all of his possessions and money.

Q. When this conversation concluded on the 10th of June and you left the Steele place, did you go directly and meet with Special Agent Sotka?

A. Yes, we did.

Q. And did you give him the recorder?

A. Yes, I did.

Q. Later on that night, did you receive \$500 from the FBI?

A. Yes, I did.

Q. Do you know what you were supposed to do?

A. Yes, I do.

Q. What?

A. I was supposed to drive to Portland and make it look like we were carrying out Edgar's

1 plot.

2 **Q.** And when you got to Portland, what were  
3 you supposed to do?

4 **A.** I parked at a restaurant and waited to  
5 be contacted by Mike Sotka.

6 **Q.** Were there any FBI agents you were to  
7 meet?

8 **A.** Yes.

9 **Q.** Did you meet with them?

10 **A.** No, we did not.

11 **Q.** Do you know why?

12 **A.** Yes. There was a little boy missing,  
13 and the priorities had to go to him.

14 **Q.** Were you given anything else besides  
15 the money to go to Portland?

16 **A.** Yes. A GPS device and a recording  
17 device.

18 **Q.** What was the purpose of, as you  
19 understood it, of the GPS device?

20 **A.** So they could keep track of me in case  
21 something happened to me.

22 **Q.** What was the purpose of the recording  
23 device, if you know?

24 **A.** In case Edgar called, I could record  
25 the conversation on the phone.

1 30 days.

2 **Q.** Did he indicate when?

3 **A.** No, actually, he did not.

4 **Q.** Where is your house?

5 **A.** Eight miles out of Sagle, Idaho, on  
6 Talache Road.

7 **Q.** Is it on the east or west side of  
8 Highway 95?

9 **A.** It is on the east side of Highway 95.

10 **Q.** Where is the defendant's house?

11 **A.** He is on the east side of Highway 95,  
12 too.

13 **Q.** Mr. Fairfax, can you describe your own  
14 pickup that you drove to and from the Steele  
15 place?

16 **A.** Oh --

17 **Q.** What color is it?

18 **A.** It's a red GMC Chevy Sonoma.

19 **Q.** Does it have a rack at all?

20 **A.** Yes, it does.

21 **Q.** What color is the rack?

22 **A.** I believe it's white.

23 **Q.** When -- prior to you being arrested on  
24 the 15th, did you ever get immunity?

25 **A.** No, I did not.

1 **Q.** Did the defendant reach out to call  
2 you?

3 **A.** No, he did not.

4 **Q.** After you left on June 10th, did you  
5 hear from the defendant again?

6 **A.** No, I did not.

7 **Q.** Did he ever call off or cancel the plan  
8 to murder his wife?

9 **A.** No, he did not.

10 **Q.** Mr. Fairfax, between June 10th and  
11 June 15th, did you ever tell law enforcement that  
12 you had put a pipe bomb or destructive device on  
13 Cyndi Steele's car?

14 **A.** No, I did not.

15 **Q.** And why not?

16 **A.** Because I thought it wasn't there, and  
17 I was waiting to get my immunity.

18 **Q.** And was that on advice of counsel?

19 **A.** Yes.

20 **Q.** During your conversations with the  
21 defendant, did he ever discuss any upcoming travel  
22 plans?

23 **A.** Yes, he did.

24 **Q.** What did he tell you?

25 **A.** He said he was going to Europe for

1 **Q.** And did you get it on the 15th?

2 **A.** No, I did not.

3 **Q.** Were you prosecuted?

4 **A.** Yes, I have been.

5 **Q.** Did you meet with Officer Dan O'Dell at  
6 about 4:30 in the afternoon on June 15th?

7 **A.** Yes, I did.

8 **Q.** Can you tell us why you met with him?

9 **A.** Because he called me to see about the  
10 first attempt.

11 **Q.** Okay. And what did you tell him?

12 **A.** I would meet him, and I met him at  
13 Athol.

14 **Q.** Where were you when he contacted you?

15 **A.** I was at work.

16 **Q.** And where was that?

17 **A.** It was at Big Al's, one of the mud bog  
18 places.

19 **Q.** What city is that in?

20 **A.** It was in -- by Coeur d'Alene.

21 **Q.** Is it in Post Falls?

22 **A.** Yes.

23 **Q.** And did you travel to meet with Officer  
24 O'Dell?

25 **A.** Yes, I did.

1 Q. And when you met with him, did he ask  
2 you about a pipe bomb or destructive device that  
3 had been found on Cyndi Steele's car?

4 A. Yes. Actually, he showed me a picture  
5 of it.

6 Q. What did you tell him?

7 A. I told him that was the first attempt.

8 Q. What happened next?

9 A. He asked me some questions, if there  
10 was any more devices. I told him no. Then he  
11 followed me up to my house, and I gave him the  
12 pieces from the second device.

13 Q. What second device?

14 A. The one that was placed under  
15 Mr. Steele's Cadillac.

16 Q. And you gave them the pieces?

17 A. Yes, I did.

18 Q. Why did you still have the pieces?

19 A. They were just pipe. I use it in the  
20 plumbing.

21 Q. What about -- was the pipe bomb or  
22 destructive device still intact?

23 A. No, it was not.

24 Q. What had happened to the powder?

25 A. I took it out and dumped it out.

1 no other questions.

2 THE COURT: Cross-examination.

3 MR. McALLISTER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. McALLISTER:

6 Q. Mr. Fairfax, when exactly did you file  
7 for bankruptcy?

8 A. I don't recall the exact date.

9 Q. Do you recall the month?

10 A. No, I don't.

11 Q. Do you recall the year?

12 A. 2010.

13 Q. Do you recall the season, whether it  
14 was winter, summer, or fall, spring?

15 A. No. Actually, I don't.

16 Q. Okay. You did file for bankruptcy,  
17 though, how many months before June? Was it  
18 months before June?

19 A. Yeah. It was probably, maybe three,  
20 four months.

21 Q. Okay. And when did your house go into  
22 foreclosure?

23 A. It was scheduled for foreclosure in  
24 January of 2010.

25 Q. All right. Did it go into foreclosure?

1 Q. Did you burn it?

2 A. Yes, I did.

3 Q. What happened after you admitted to  
4 building the bomb and putting it on Mrs. Steele's  
5 car?

6 A. I was placed in the custody in  
7 Coeur d'Alene jail.

8 Q. Is that why you're still in custody?

9 A. Yes, it is.

10 Q. During that initial meeting with  
11 Special Agent Sotka on June 9th, is that the day  
12 you told him where you had cashed in the silver  
13 from Mr. Steele?

14 A. Yes, I believe so.

15 Q. Other than to check on the pipe bomb  
16 and the destructive device, did you have any other  
17 reason to go to Oregon on May 31st?

18 A. No, I did not.

19 Q. And at whose direction did you go to  
20 Oregon?

21 A. Under Mr. Steele's.

22 MS. WHELAN: Your Honor, may I have just one  
23 moment, please?

24 THE COURT: Yes.

25 MS. WHELAN: Thank you, Your Honor. I have

1 Was it foreclosed upon?

2 A. No, it did not.

3 Q. Why not?

4 A. We renegotiated another deal.

5 Q. Okay. So you were able to keep your  
6 house?

7 A. Yes.

8 Q. At that point in time in January of  
9 2010, to use your words, you were desperate for  
10 money; correct?

11 A. Yes.

12 Q. And you started talking to Mr. Steele;  
13 correct?

14 A. Yes.

15 Q. And during that time period, you  
16 said -- let me rephrase that question.

17 I believe yesterday you said that you  
18 "needed to find a way to get money without doing  
19 it." Was that correct, sir?

20 A. No.

21 Q. Okay. Isn't it true that you said you  
22 "needed to get money without doing it"?

23 A. I don't recall saying that.

24 Q. Okay. Isn't it true, sir, that your

25 plan was to get money from Mr. Steele but never

1 carry out a murder?  
 2 A. Yes.  
 3 Q. Okay. Your plan was to get money from  
 4 Edgar Steele; correct?  
 5 A. Yes.  
 6 Q. And your testimony is that one day he  
 7 just put \$10,000 worth of silver coins in a desk  
 8 drawer in the garage?  
 9 A. No, sir.  
 10 Q. Okay. You testified yesterday that you  
 11 removed silver coins from the desk; correct?  
 12 A. Yes, sir.  
 13 Q. And cashed them in; correct?  
 14 A. Yes, sir.  
 15 Q. And Mr. Steele wasn't there when you  
 16 took those coins, was he?  
 17 A. He was not at the desk, no.  
 18 Q. Okay. As a matter of fact, he wasn't  
 19 in the garage, was he?  
 20 A. Nope. He was standing outside the  
 21 garage.  
 22 Q. Okay. You did work at the Steele  
 23 residence; correct?  
 24 A. Yes, sir.  
 25 Q. And, in fact, you built some safe areas

1 \$45,000 worth of silver; correct?  
 2 MS. WHELAN: Objection. Hearsay.  
 3 Foundation. I move to strike.  
 4 THE COURT: Sustained. Counsel, I think the  
 5 way the question is phrased, there is a predicate  
 6 that necessarily calls for, I think, hearsay.  
 7 I'll sustain the objection.  
 8 BY MR. McALLISTER:  
 9 Q. Well, you were aware of the fact that  
 10 \$45,000 in silver was missing from the Steele  
 11 residence; correct?  
 12 MS. WHELAN: Objection. Presupposes facts  
 13 not in evidence. Move to strike.  
 14 THE COURT: The question is: Were you  
 15 aware? Just yes or no.  
 16 THE WITNESS: Yes, I was aware of it.  
 17 BY MR. McALLISTER:  
 18 Q. And you denied taking it; correct?  
 19 A. Nobody has ever asked me if I took it.  
 20 Q. Okay. Well, do you deny taking it?  
 21 A. Yes, I do.  
 22 Q. All right. I believe, in your  
 23 testimony -- well, let me ask you this: Where  
 24 were the safe places or stashes for the silver in  
 25 the garage?

1 where silver could be stored; correct?  
 2 A. Yes, I built some safe areas.  
 3 Q. Okay. You knew where they were; right?  
 4 A. Yes, sir.  
 5 Q. They were, in essence, hidden places;  
 6 right?  
 7 A. Yes, sir.  
 8 Q. And you could easily go to those places  
 9 and remove silver if you chose to do it; correct?  
 10 A. No, sir.  
 11 Q. Okay. No, sir, you didn't remove any  
 12 silver or, no, you couldn't do it?  
 13 A. Both, sir.  
 14 Q. All right. Are you aware of the fact  
 15 that Cyndi Steele reported to the authorities that  
 16 \$45,000 was stolen -- \$45,000 worth of silver was  
 17 stolen from their property?  
 18 A. Yes. I know she reported that.  
 19 Q. And you were the person suspected of  
 20 doing it; correct?  
 21 MS. WHELAN: Objection. Hearsay.  
 22 Foundation.  
 23 THE COURT: Sustained.  
 24 BY MR. McALLISTER:  
 25 Q. You were the person who denied taking

1 A. Behind a wall that he had Sheetrocked.  
 2 Q. Okay. So no one would know -- no one  
 3 could easily know that they were there; correct?  
 4 A. Correct.  
 5 Q. But you knew they were there?  
 6 A. Yes.  
 7 Q. And as a matter of fact, after you were  
 8 arrested, you told the FBI that they were there;  
 9 correct?  
 10 A. Yes, I did.  
 11 Q. How many times do you think you lied to  
 12 Edgar Steele?  
 13 A. Maybe twice.  
 14 Q. What were those two lies?  
 15 A. That I would kill his wife.  
 16 Q. What was the second one?  
 17 A. That I would kill his mother-in-law.  
 18 Q. And those are the only lies you've told  
 19 him?  
 20 A. Yes.  
 21 Q. All right. What about the fact that  
 22 you denied being in his house?  
 23 A. Which time?  
 24 Q. Any time. Didn't you lie to him?  
 25 A. No.

1 Q. In this particular case, isn't it true  
2 that you lied about going to Portland on June --  
3 on June 11th?  
4 A. No.  
5 Q. Okay. You used the word or words that  
6 you "did not intend to carry out Edgar's plot."  
7 Do you recall testifying --  
8 A. Yes.  
9 Q. -- and using those words? Isn't it  
10 true, Mr. Fairfax, that this was your plot?  
11 A. No, sir.  
12 Q. Isn't it true that the pipe, the  
13 powder, the fuse, all came from your house or  
14 garage?  
15 A. That is correct, sir.  
16 Q. And isn't it true that you, and you  
17 alone, made what has been called a "pipe bomb" or  
18 an "explosive device"; correct?  
19 A. Yes, sir.  
20 Q. No one helped you?  
21 A. No, sir.  
22 Q. And Edgar Steele never saw it or was  
23 present when you were making it; correct?  
24 A. No, sir.  
25 Q. Edgar Steele did not know what you were

1 Q. All right. I believe you've testified  
2 that you didn't put enough powder in the pipe;  
3 correct?  
4 A. Correct.  
5 Q. And, in fact, you didn't fill it up  
6 intentionally because you didn't want it to go  
7 off; correct?  
8 A. Correct.  
9 Q. Now, as I understand it, on June 9th,  
10 you contacted your lawyer, Mr. Michaud, and then,  
11 he recommended that you go talk to the law  
12 enforcement authorities; correct?  
13 A. No, sir.  
14 Q. Okay. You contacted your lawyer, and  
15 you decided you wanted to go to law enforcement  
16 authorities?  
17 A. Yes, sir.  
18 Q. Okay. And your purpose in doing that  
19 was to get immunity from prosecution; correct,  
20 sir?  
21 A. No, sir.  
22 Q. Didn't you, earlier this morning, say  
23 you were "awaiting to get my immunity"?  
24 A. Yes, sir.  
25 Q. Okay. What is "immunity"?

1 doing, did he, sir?  
2 A. Yes, he did.  
3 Q. Okay. And you say that not because of  
4 anything that happened in your presence; you say  
5 that because of things you heard from him;  
6 correct?  
7 A. Things we discussed, yes.  
8 Q. All right. But the fact is he never  
9 touched, saw, or used the explosive device that  
10 you made?  
11 A. That's correct.  
12 Q. Now, as I understand it, when you made  
13 this device, that you broke the fuse in several  
14 spots; correct?  
15 A. Yes, sir.  
16 Q. Why did you do that?  
17 A. So the fuse would not work.  
18 Q. Okay. I believe that you have said  
19 that it would not go off because of the ignition;  
20 correct?  
21 A. Correct.  
22 Q. What did you mean by that?  
23 A. I just had laid it up against the  
24 exhaust pipe, and that doesn't get hot enough to  
25 ignite the fuse.

1 A. It's something that you get when you  
2 don't want to get in trouble.  
3 Q. Okay. But, in fact, you were in  
4 trouble, were you not, sir?  
5 A. Yes.  
6 Q. You had lied to the FBI in your very  
7 first meeting on June 9th; correct?  
8 A. No, sir.  
9 Q. You didn't lie?  
10 A. No, sir.  
11 Q. Well, do you recall being asked about  
12 your travels to Oregon City?  
13 A. You mean to Portland?  
14 Q. To Portland.  
15 A. Yes, sir.  
16 Q. Oregon City is basically near Portland;  
17 correct?  
18 A. Yes.  
19 Q. Okay. So on June 9th, isn't it true  
20 that in your meeting with Agent Sotka, you lied  
21 about your purpose in going to Portland --  
22 A. No, sir.  
23 Q. -- or Oregon City? Did you not make  
24 the statement to Agent Sotka that you took a trip  
25 to Oregon City, Oregon, to scout out the residence

1 where Cyndi Steele and her mother were residing?  
 2 Did you make that statement?  
 3 A. No, sir.  
 4 Q. Do you know why it's in his report?  
 5 A. It's his report, sir.  
 6 Q. Okay. And did you -- when you -- did  
 7 you tell him that you had been over to Portland?  
 8 A. Yes, sir.  
 9 Q. And why is it, sir, you didn't tell him  
 10 that your real purpose in going to Portland was to  
 11 look and see if the explosive device was still on  
 12 Cyndi Steele's car?  
 13 A. Because when we looked, it wasn't  
 14 there.  
 15 Q. Well, this was June 9th, and you didn't  
 16 tell Agent Sotka that you had looked; correct?  
 17 A. Correct.  
 18 Q. And as a matter of fact, you had never  
 19 looked, had you, sir?  
 20 A. No, I hadn't.  
 21 Q. Your cousin, Jim Maher, was with you;  
 22 correct?  
 23 A. Yes.  
 24 Q. And you sent him down the street to  
 25 look?

1 A. Yes, sir.  
 2 Q. And you had no concern about if young  
 3 children would find what you had made -- did you  
 4 have any concern?  
 5 A. Yes. Actually, I did.  
 6 Q. Well, what did you do about your  
 7 concern? You certainly didn't tell the FBI, did  
 8 you?  
 9 A. No, I did not.  
 10 Q. You certainly didn't tell the Portland  
 11 police, did you?  
 12 A. No, I did not.  
 13 Q. You certainly didn't tell anyone, did  
 14 you?  
 15 A. No, I did not.  
 16 Q. Back to the question: Isn't it true  
 17 that in your very first meeting you lied to the  
 18 FBI?  
 19 A. No, sir. I just omitted facts.  
 20 Q. So you think if you omit something,  
 21 that's not a lie?  
 22 A. No, sir.  
 23 Q. Okay. You don't think you can lie by  
 24 telling a story that's only half true?  
 25 A. You could lie that way; yes, sir.

1 A. Yes.  
 2 Q. And when he came back -- well,  
 3 actually, you wanted him to crawl under the car  
 4 and get a good look; correct?  
 5 A. Yes.  
 6 Q. And he refused to do that; correct?  
 7 A. No.  
 8 Q. Okay. So it's your testimony that he  
 9 crawled under the car and looked for anything he  
 10 could find there?  
 11 A. No.  
 12 Q. Okay. He didn't go under the car, did  
 13 he?  
 14 A. Nope.  
 15 Q. As a matter of fact, he got about 40  
 16 feet away and looked at it; correct?  
 17 A. Actually, he said about 15 feet,  
 18 but --  
 19 Q. But he never actually looked under the  
 20 car, did he?  
 21 A. He bended over and looked under it, he  
 22 said.  
 23 Q. Okay. Based upon what Mr. Maher told  
 24 you, you made the assumption that it had fallen  
 25 off?

1 Q. Well, don't you, today, think that you  
 2 should have told the FBI or someone that this  
 3 device, in your opinion, wasn't on the car anymore  
 4 and was someplace in the public?  
 5 A. Yes, sir.  
 6 Q. And you didn't do that?  
 7 A. No, sir.  
 8 Q. As a matter of fact, today, you believe  
 9 that the device was on Cyndi Steele's car?  
 10 A. Can you say the question again?  
 11 Q. You believe today that that device did  
 12 not fall off, that it actually remained on Cyndi  
 13 Steele's car?  
 14 A. No, sir.  
 15 Q. Well, didn't you tell us just shortly  
 16 before -- didn't you tell us this morning that you  
 17 saw a picture of it on June 15th?  
 18 A. The device?  
 19 Q. Yes.  
 20 A. Yes.  
 21 Q. And you were told by Officer Dan O'Dell  
 22 that that was the device removed from Cyndi  
 23 Steele's car earlier that day; correct?  
 24 A. Actually, it was still attached when he  
 25 showed me the picture.

<p style="text-align: right;">550</p> <p>1 Q. All right. That was the device that</p> <p>2 you attached to her car; correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And you identified it; correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. So when you went to Portland with your</p> <p>7 cousin, Jim Maher, you were wrong in assuming that</p> <p>8 it had fallen off; correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Isn't it true that you never told</p> <p>11 anyone about the explosive device until you got</p> <p>12 caught?</p> <p>13 A. Yes, sir. That's true.</p> <p>14 Q. When you were confronted by Officer</p> <p>15 O'Dell, you basically agreed to give a full</p> <p>16 confession; correct, sir?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And you actually went to either the</p> <p>19 police station or the courthouse and gave a</p> <p>20 confession; correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And in your confession, you admitted</p> <p>23 that you, and you alone, attached a pipe bomb on</p> <p>24 Cyndi Steele's car on May 31st; correct?</p> <p>25 A. Yes, under the instruction of</p>	<p style="text-align: right;">551</p> <p>1 Mr. Steele.</p> <p>2 Q. Well, is there anything on -- any</p> <p>3 evidence that Mr. Steele ever saw this device?</p> <p>4 A. No, sir.</p> <p>5 Q. Ever made this device?</p> <p>6 A. No, sir.</p> <p>7 Q. Ever gave you the parts that go into</p> <p>8 making this device?</p> <p>9 A. No, sir.</p> <p>10 Q. He never even saw it; correct?</p> <p>11 A. Correct.</p> <p>12 Q. In your confession, you said, and I</p> <p>13 quote, "But it was not a real bomb. It was not</p> <p>14 designed or built to explode." Correct?</p> <p>15 A. Yes, sir.</p> <p>16 MS. WHELAN: Objection. Foundation</p> <p>17 regarding quote. He can be asked what he</p> <p>18 remembers.</p> <p>19 THE COURT: Rephrase the question,</p> <p>20 Mr. McAllister.</p> <p>21 BY MR. McALLISTER:</p> <p>22 Q. Do you remember making this statement:</p> <p>23 "It was not a real bomb. It was not designed or</p> <p>24 built to explode" during your confession on June</p> <p>25 15th?</p>
<p style="text-align: right;">552</p> <p>1 A. Yes, sir.</p> <p>2 Q. And do you remember, during your</p> <p>3 confession, stating, "I wasn't worried about it</p> <p>4 because those ones wouldn't have went off anyway"?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you remember making the</p> <p>7 statement, "There was, you know, no way for them</p> <p>8 to go off, no ignition," correct, sir?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And then, during your confession, you</p> <p>11 said, "I didn't put enough powder in it to begin</p> <p>12 with"; correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And do you remember stating "but you</p> <p>15 knew it wasn't going to work." "There was no way</p> <p>16 it was going to work"?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And do you recall, when you were</p> <p>19 interviewed by Sergeant O'Dell, that you said you</p> <p>20 were a hundred percent sure that it wouldn't work?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And today -- yesterday, you</p> <p>23 acknowledged in response to Ms. Whelan's question</p> <p>24 that you have become convinced that it could have</p> <p>25 gone off?</p>	<p style="text-align: right;">553</p> <p>1 A. Yes, sir.</p> <p>2 Q. And they convinced you of that;</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever talked to Cyndi Steele</p> <p>6 since June 15th?</p> <p>7 A. No, sir.</p> <p>8 Q. Well, actually, have you ever talked to</p> <p>9 her since May 31st, 2010, the day, I believe, that</p> <p>10 you put the device on her car?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you ever apologized to her for</p> <p>13 putting the device on her car?</p> <p>14 A. I haven't talked to her. How could I</p> <p>15 do that?</p> <p>16 Q. So the answer is, no, you have not</p> <p>17 apologized since your confession or since you made</p> <p>18 the admission?</p> <p>19 A. No, I have not. I was advised not to</p> <p>20 talk to her.</p> <p>21 Q. Okay. Did you write her a note or a</p> <p>22 letter and say, "I'm sorry I did that to you"?</p> <p>23 A. Yes, I did.</p> <p>24 Q. Where is that?</p> <p>25 A. It will be at my sentencing hearing.</p>



1 Q. Okay. Your sentencing hearing is  
 2 scheduled for next week; correct, sir?  
 3 A. Yes, sir.  
 4 Q. And it is your intention or desire to  
 5 get the best sentence possible for you; correct?  
 6 A. Yes, sir.  
 7 Q. And your lawyer is working with you  
 8 towards that goal; correct?  
 9 A. Yes, sir.  
 10 Q. Your lawyer who is here today?  
 11 A. Yes.  
 12 Q. And part of your agreement with the  
 13 government is that you have to come in and  
 14 testify; correct, sir?  
 15 A. Yes.  
 16 Q. And you're expecting, are you not, that  
 17 your jail sentence that you're currently serving  
 18 will end soon; correct, sir?  
 19 A. I have no way to know that, sir.  
 20 Q. All right. Who is Daryl Hollingsworth?  
 21 A. He is an inmate in Bonner County Jail.  
 22 Q. All right. He was an inmate with you  
 23 in Bonner County Jail; correct?  
 24 A. Yes, he was.  
 25 Q. And you talked to him about this case;

1 that, in fact, you wanted to go over to Oregon  
 2 City in the Portland area and warn Cyndi about  
 3 this?  
 4 A. Yes, sir.  
 5 Q. And you told him you wanted to be the  
 6 hero; correct?  
 7 A. No, sir.  
 8 Q. You told him you wanted to be on the  
 9 Oprah show, did you not?  
 10 A. Yes. I might have said that, sir.  
 11 Q. And that's what you saw in yourself, is  
 12 that you would be a hero and be on national TV on  
 13 Oprah?  
 14 A. No, sir.  
 15 Q. Well, you wanted to go on her show, did  
 16 you not?  
 17 A. Yes, I did, sir.  
 18 Q. Have you written any of this book yet?  
 19 A. Yes, sir.  
 20 Q. Where is that at?  
 21 A. It's somewhere, not in jail.  
 22 Q. Okay. When did you start writing it?  
 23 A. Nine months ago.  
 24 Q. Okay. Is it at your home?  
 25 A. Yes, sir.

1 correct, sir?  
 2 A. No, sir.  
 3 Q. You never spoke about this case to  
 4 Daryl Hollingsworth?  
 5 A. No, sir.  
 6 Q. Do you remember telling him that you  
 7 were hoping that you would get probation and time  
 8 served if you did a good job for the government?  
 9 A. No, sir. I never said that.  
 10 Q. You deny making that statement?  
 11 A. Yes, sir.  
 12 Q. Do you recall telling Daryl  
 13 Hollingsworth that you wanted to write a book  
 14 about your experiences?  
 15 A. Yes, sir.  
 16 Q. Are you going to write a book?  
 17 A. Yes, sir.  
 18 Q. Because you're desperate for money  
 19 still?  
 20 A. No, sir.  
 21 Q. As a matter of fact, this book you're  
 22 going to write, you're going to be the hero;  
 23 correct?  
 24 A. No, sir.  
 25 Q. Didn't you tell your cousin, Jim Maher,

1 Q. Is it -- where is it in your home?  
 2 A. I don't know, sir. I haven't been  
 3 there in ten months.  
 4 Q. Have you told the government or the FBI  
 5 about the fact that you want to write a book about  
 6 this experience?  
 7 A. No, sir.  
 8 Q. You have kept that a secret, too, have  
 9 you not, sir?  
 10 A. Nobody asked me, sir. I didn't have a  
 11 reason to tell them.  
 12 Q. Well, in your jailhouse meetings with  
 13 Daryl Hollingsworth, you actually asked him if he  
 14 could design the cover for your book; isn't it  
 15 true, sir?  
 16 A. Yes, sir.  
 17 Q. So you kept it secret from the FBI,  
 18 secret from the government, and secret from the  
 19 defense, but you discussed it with Daryl  
 20 Hollingsworth, did you not?  
 21 A. Yes. He seen me writing one day and  
 22 asked me what it was.  
 23 Q. Okay. And you're the hero in the book?  
 24 A. No, sir.  
 25 Q. Well, isn't it true that you told that

1 to your cousin, Jim Maher?  
 2 MS. WHELAN: Objection. Cumulative.  
 3 THE COURT: Sustained.  
 4 BY MR. McALLISTER:  
 5 Q. You never did warn Cyndi Steele;  
 6 correct?  
 7 A. Yes, sir.  
 8 Q. And you never told the FBI until you  
 9 got caught that somewhere there was a dangerous  
 10 explosive device; correct?  
 11 A. No, sir; I did not tell them.  
 12 Q. But you don't think that was a lie;  
 13 it's just an omission?  
 14 A. Yes, sir.  
 15 Q. Isn't it true that when you were caught  
 16 and confessed, you said, "The minute I took the  
 17 money, I was trapped"?  
 18 A. Yes, sir. I think I did say that.  
 19 Q. And, in fact, you didn't take money  
 20 according to your testimony. You took silver;  
 21 correct?  
 22 A. Yes, sir.  
 23 Q. And you cashed it in?  
 24 A. Yes, sir.  
 25 Q. That wasn't a lie?

1 the form of the question. It's just taken out of  
 2 context.  
 3 THE COURT: Counsel, give me just a moment.  
 4 Obviously, Counsel, you have a chance  
 5 to correct any misimpression on redirect, but I  
 6 think that counsel is entitled to have context  
 7 provided if the statement, or any evidence for  
 8 that matter, if taken out of context might be  
 9 misleading to the jury. So if indeed we're going  
 10 to show or have a discrete statement presented to  
 11 the jury, then I think the -- and it's misleading  
 12 in some way or at least it needs to be put in  
 13 context, I think that needs to be done at this  
 14 time. I was trying to find the specific rule, but  
 15 you can either withdraw the question or give the  
 16 witness a chance to place it in context or  
 17 persuade me that it's not out of context either at  
 18 a sidebar.  
 19 BY MR. McALLISTER:  
 20 Q. The confession that you made on June  
 21 15th was -- a transcript of it was prepared;  
 22 correct, sir?  
 23 A. There was a transcript of it, yes.  
 24 Q. And you've reviewed that transcript?  
 25 A. Yes, I have.

1 A. Who did I lie to, sir?  
 2 Q. The FBI, the police department.  
 3 A. No, sir.  
 4 Q. Actually, I believe it was to ATF Agent  
 5 Todd Smith that you made that statement; correct?  
 6 A. Yes, sir.  
 7 Q. And during your confession, did you not  
 8 say to him -- do you remember saying to him, "It  
 9 was all a big lie"?  
 10 A. No, sir.  
 11 Q. Okay. Do you recall saying that on  
 12 videotape and audiotape?  
 13 A. No, sir, I did not say that.  
 14 Q. Okay. Do you recall making the  
 15 statement, "I was stupid, too"?  
 16 A. Yes, sir.  
 17 Q. Do you recall making the statement, "So  
 18 I, Larry Fairfax, finally, you know, made up a big  
 19 lie"?  
 20 A. I don't know what part that's at.  
 21 Q. But you made that statement, did you  
 22 not?  
 23 A. I would have to see it in the sheet to  
 24 know that.  
 25 MS. WHELAN: Your Honor, I would object to

1 Q. I would like you to review page 14,  
 2 lines 15 through 20, to see if it refreshes your  
 3 recollection.  
 4 MR. McALLISTER: Your Honor, if I may have  
 5 permission to show the witness?  
 6 THE COURT: Yes, you may. Let me turn off  
 7 the jury monitor. If you'll put that on the  
 8 screen, I've got the jury monitor off.  
 9 BY MR. McALLISTER:  
 10 Q. Mr. Fairfax, if you could read that and  
 11 tell us whether or not it refreshes your  
 12 recollection.  
 13 MS. WHELAN: Your Honor, I'm going to  
 14 object. This is not a transcript that I received  
 15 or in a format that I have ever been given by  
 16 defense. We --  
 17 THE COURT: Confer with counsel, see  
 18 where -- I don't know where --  
 19 MR. McALLISTER: This is what I received  
 20 from the government.  
 21 MS. WHELAN: Your Honor, I was just given a  
 22 copy of it. I will need time to look at it.  
 23 THE COURT: Well, approach at a sidebar.  
 24 Let's find out what's going on here.  
 25 (Sidebar commences as follows:)

<p style="text-align: right;">562</p> <p>1 THE COURT: It's in a different format. I</p> <p>2 mean --</p> <p>3 MS. WHELAN: It's entirely in a different</p> <p>4 format. I have never had anyone check it. The</p> <p>5 page numbers aren't the same.</p> <p>6 THE COURT: Was this produced electronically</p> <p>7 so that it was --</p> <p>8 MS. WHELAN: No. This is what they received</p> <p>9 -- excuse me, Judge --</p> <p>10 THE COURT: As a hard copy? Not --</p> <p>11 MS. WHELAN: -- with Bates numbers. It's a</p> <p>12 hard copy.</p> <p>13 THE COURT: Let's speak one at that time.</p> <p>14 So it was produced in hard copy, not in electronic</p> <p>15 format?</p> <p>16 MS. WHELAN: Correct. It was scanned onto a</p> <p>17 disk.</p> <p>18 THE COURT: So the copy that Mr. McAllister</p> <p>19 has, you have never seen before?</p> <p>20 MS. WHELAN: Correct.</p> <p>21 THE COURT: Mr. McAllister?</p> <p>22 MR. McALLISTER: Judge, I received it in</p> <p>23 discovery. Ms. Whelan told me that the transcript</p> <p>24 was actually prepared by the Public Defender's</p> <p>25 Office. I have -- I'll represent to the court I</p>	<p style="text-align: right;">563</p> <p>1 have watched this video, listened to the audio,</p> <p>2 and the transcript accurately portrays what he</p> <p>3 said. And I'm asking to refresh his recollection.</p> <p>4 I'm not asking to introduce it.</p> <p>5 THE COURT: Well, but the problem is if you</p> <p>6 refresh his recollection with something that he --</p> <p>7 in fact, isn't accurate, that can be misleading.</p> <p>8 But it seems to me it's a simple problem. Either</p> <p>9 we can use what the government has or you can just</p> <p>10 point out where in the transcript that you've got</p> <p>11 that you're going to, you know -- the areas right</p> <p>12 now, and very quickly then Ms. Whelan can compare</p> <p>13 it to hers and make sure that there is no</p> <p>14 variation.</p> <p>15 MR. McALLISTER: Page 14, lines --</p> <p>16 THE COURT: Okay. The pagination won't be</p> <p>17 the same.</p> <p>18 MR. McALLISTER: If I could have a moment to</p> <p>19 look at her copy, I probably can find it.</p> <p>20 THE COURT: I think what may have happened</p> <p>21 -- if there is apparently a videotape, perhaps a</p> <p>22 separate transcript was prepared by the Federal</p> <p>23 Defenders, and this is what Mr. McAllister has and</p> <p>24 that's why it's in a different format. If we can</p> <p>25 identify here what the statement is, perhaps Ms.</p>
<p style="text-align: right;">564</p> <p>1 Whelan has no objection.</p> <p>2 MR. McALLISTER: It's page 14.</p> <p>3 MS. WHELAN: Judge, the problem is I need it</p> <p>4 identified on here because this is what I --</p> <p>5 THE COURT: I understand that, but at least</p> <p>6 you can look at it and see if you can perhaps go</p> <p>7 to that point. I don't think -- this is not an</p> <p>8 error of omission. I'm quite confident that this</p> <p>9 was provided by the Federal Defender. Obviously,</p> <p>10 it's not coming before the jury. It can only be</p> <p>11 shown to the witness, and he can say it does or</p> <p>12 does not refresh his recollection. And then it</p> <p>13 will need to be taken down, and then he has to</p> <p>14 testify from his own memory.</p> <p>15 MR. McALLISTER: That's fine with me,</p> <p>16 Your Honor.</p> <p>17 MS. WHELAN: That's fine, but could you find</p> <p>18 it in here?</p> <p>19 MR. McALLISTER: I'm looking very quickly,</p> <p>20 and the answer is I couldn't but I --</p> <p>21 THE COURT: It's roughly halfway through, it</p> <p>22 appears.</p> <p>23 MR. McALLISTER: I have watched the video.</p> <p>24 THE COURT: This is 26. So it's 14 out of</p> <p>25 26 pages, so it should be almost -- just a little</p>	<p style="text-align: right;">565</p> <p>1 more than halfway through the --</p> <p>2 MS. WHELAN: I found it. Are there repeated</p> <p>3 places, though, where this is going to happen?</p> <p>4 THE COURT: Are you going to be referring to</p> <p>5 this again on other questions?</p> <p>6 MR. McALLISTER: Probably not.</p> <p>7 THE COURT: Let's deal with this now, and</p> <p>8 then if you do -- we know roughly how to</p> <p>9 correspond. By comparing pages, I think we can go</p> <p>10 roughly to that point of reference. That's</p> <p>11 five --</p> <p>12 MS. WHELAN: Nine.</p> <p>13 THE COURT: Nine of 17, so again, it's just</p> <p>14 a little more than halfway through your copy.</p> <p>15 Let's proceed in that fashion.</p> <p>16 MR. McALLISTER: Thank you.</p> <p>17 (Sidebar concluded.)</p> <p>18 THE COURT: Mr. McAllister?</p> <p>19 BY MR. McALLISTER:</p> <p>20 Q. Mr. Fairfax, have you had an</p> <p>21 opportunity to review page 14, lines 15 through</p> <p>22 20?</p> <p>23 THE COURT: Counsel, could we take a very</p> <p>24 short recess. One of the jurors needs to take a</p> <p>25 short break. I apologize, but that will give us a</p>

1 chance to -- we'll just take a very short -- it  
2 will be like a five-minute recess, just long  
3 enough so we can accommodate that.

4 I'll again instruct the jury not to  
5 discuss the case among yourselves or with anyone  
6 else nor should you form or express any opinions  
7 about the case until it is submitted to you.

8 We'll be in recess for five minutes.

9 (Recess.)

10 (Jury present.)

11 THE COURT: For the record, I'll note the  
12 jury is present.

13 I'll remind, Mr. Fairfax, you are still  
14 under oath.

15 Mr. McAllister, you may resume your  
16 cross-examination.

17 MR. McALLISTER: Thank you, Your Honor.

18 BY MR. McALLISTER:

19 Q. Mr. Fairfax, have you had a chance to  
20 review the transcript?

21 A. Yes, I have.

22 Q. Does that refresh your recollection  
23 about a statement you made that "I made up a big  
24 lie"?

25 A. Yes, except for it's -- it has to do

1 Jim Maher played in this with you?

2 A. No, I did not.

3 Q. Do you recall during your confession,  
4 your videotaped confession that you gave to Agent  
5 Todd Smith, making the statement -- when asked  
6 about whether Jim Maher was a party to this, you  
7 said, "He didn't know anything about it." Did you  
8 make that statement?

9 A. Yes, but that has to do with placing  
10 the bomb, nothing to do with him going down there.

11 Q. Okay. And so, you never told your  
12 cousin, Jim Maher, about placing the device?

13 A. Not until I was going down there to  
14 look and see if it was there.

15 Q. Okay. So you did discuss this with  
16 your cousin, Jim Maher; correct?

17 A. On the way down to Portland.

18 Q. And you told him that you wanted to be  
19 the hero in this; correct?

20 A. No, sir.

21 Q. Okay. Well, that's not what you told  
22 Agent Smith, is it? You told him just the  
23 opposite -- he didn't know anything about it,  
24 "anything about it"; correct, sir?

25 A. No, sir. That was about placing the

1 with me talking to my wife, explaining to her why  
2 I'm going to Portland, that I was spying for Edgar  
3 on his wife.

4 Q. That was a lie; correct?

5 A. Yes, it is.

6 Q. And you also lied to the FBI?

7 A. No.

8 Q. Correct? You deny lying to the FBI?

9 A. I omitted --

10 MS. WHELAN: I'm going to object.

11 Cumulative.

12 THE COURT: I'll give counsel some leeway,  
13 but we're not going to beat the proverbial dead  
14 horse here. So I'll allow one more question on  
15 this, and then we need to not revisit the area.

16 Go ahead, Mr. McAllister.

17 BY MR. McALLISTER:

18 Q. Is it your testimony you didn't lie to  
19 the FBI?

20 A. Correct. I omitted facts. I did not  
21 lie.

22 Q. Okay. Did you lie to Jim Maher, your  
23 cousin?

24 A. No, I did not.

25 Q. Did you lie to the FBI about the role

1 device.

2 Q. He knew that you had placed the device;  
3 correct?

4 A. Not until we went down to Portland.

5 Q. Okay. Well, this is after you went  
6 down to Portland on June 15th, is it not, sir?

7 A. Yes, but this question you're talking  
8 about you're taking out of context.

9 Q. I see. So you never lied to Agent  
10 Smith?

11 A. No, sir.

12 Q. Yesterday, you talked about going to  
13 the mud bogs?

14 A. Yes, sir.

15 Q. And that is some type of demolition  
16 derby?

17 A. No, sir.

18 Q. What is it?

19 A. Side-by-side racing through the mud.

20 Q. All right. And isn't it true that you  
21 took Edgar Steele's truck?

22 A. Yes, sir.

23 Q. And isn't it true that you damaged the  
24 tires on the truck?

25 A. No, sir.

<p style="text-align: right;">570</p> <p>1 Q. There was no tire damage of any kind?</p> <p>2 A. Not at the mud bog, sir.</p> <p>3 Q. Well, where did the tires get damaged?</p> <p>4 A. At my house.</p> <p>5 Q. Okay. And how did they get damaged?</p> <p>6 A. When I was unloading the mud truck, I</p> <p>7 backed into a piece of dock that I have behind my</p> <p>8 garage and popped a tire.</p> <p>9 Q. Isn't it true that Edgar Steele gave</p> <p>10 you \$400 to replace the tires on the truck?</p> <p>11 A. No, sir.</p> <p>12 Q. Directing your attention back to June</p> <p>13 the 9th at approximately -- I think you said noon</p> <p>14 or 12:30, you had a meeting with Agent Sotka;</p> <p>15 correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And it was at your attorney's home?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And had you spoken to your attorney</p> <p>20 beforehand?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And did you tell him that you had</p> <p>23 placed an explosive device on Cyndi Steele's car?</p> <p>24 MS. WHELAN: Your Honor, I'm going to object</p> <p>25 because it goes into the attorney-client</p>	<p style="text-align: right;">571</p> <p>1 privilege. His attorney is here. He can talk to</p> <p>2 him about it, but --</p> <p>3 THE COURT: Counsel, I think -- I'm trying</p> <p>4 to think how to deal with that in a way that won't</p> <p>5 require disruption. It may just be necessary to</p> <p>6 send the jury out.</p> <p>7 Counsel, if you want to pursue another</p> <p>8 line of inquiry, you can perhaps have that</p> <p>9 consultation on a break. If not, we may need to</p> <p>10 send the jury out and allow Mr. Fairfax to visit</p> <p>11 with his attorney.</p> <p>12 MR. McALLISTER: Maybe, Judge, I can ask it</p> <p>13 a different way.</p> <p>14 THE COURT: All right.</p> <p>15 BY MR. McALLISTER:</p> <p>16 Q. Did you tell anyone that you had made</p> <p>17 an explosive device by yourself and wired it on to</p> <p>18 Cyndi Steele's vehicle?</p> <p>19 A. No, sir.</p> <p>20 Q. No, sir, you didn't tell anyone else?</p> <p>21 A. No, I did not.</p> <p>22 Q. Okay. Now, is it not true that when</p> <p>23 you were at the meeting with the FBI that you</p> <p>24 stated, "I never intended on committing the</p> <p>25 murders but thought that I could string Steele</p>
<p style="text-align: right;">572</p> <p>1 along"? Correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And then you said you were going to pay</p> <p>4 him back; correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Did you ever do that?</p> <p>7 A. No, sir.</p> <p>8 Q. It is your testimony, your statement,</p> <p>9 Mr. Fairfax, that on June 9th, you didn't lie?</p> <p>10 A. No, sir.</p> <p>11 MR. McALLISTER: That's all I have,</p> <p>12 Your Honor.</p> <p>13 THE COURT: Redirect?</p> <p>14 MS. WHELAN: Thank you, Your Honor.</p> <p>15 REDIRECT EXAMINATION</p> <p>16 BY MS. WHELAN:</p> <p>17 Q. Mr. Fairfax, during the break, did you</p> <p>18 have an opportunity to review what was just marked</p> <p>19 as Government's Exhibit 99 for identification?</p> <p>20 A. Yes, I did.</p> <p>21 Q. That's a transcript between you and</p> <p>22 Todd Smith?</p> <p>23 A. Correct.</p> <p>24 Q. Did you -- have you seen it before?</p> <p>25 A. Yes, I have.</p>	<p style="text-align: right;">573</p> <p>1 Q. Have you gone over it with your</p> <p>2 attorney?</p> <p>3 A. Yes, I have.</p> <p>4 MS. WHELAN: Your Honor, we would move for</p> <p>5 the admission of Exhibit 99. Excuse me. I forgot</p> <p>6 a question.</p> <p>7 BY MS. WHELAN:</p> <p>8 Q. Is it a fair and accurate transcript?</p> <p>9 A. Yes.</p> <p>10 MS. WHELAN: Move for the admission of</p> <p>11 Exhibit 99.</p> <p>12 MR. McALLISTER: No objection.</p> <p>13 THE COURT: Exhibit 99?</p> <p>14 MS. WHELAN: Yes, Your Honor.</p> <p>15 THE COURT: Will be admitted.</p> <p>16 (Government's Exhibit 99 admitted.)</p> <p>17 THE COURT: Do you wish to have it published</p> <p>18 to the jury at this time?</p> <p>19 MS. WHELAN: Your Honor, we don't.</p> <p>20 THE COURT: That's fine.</p> <p>21 MS. WHELAN: I will, but --</p> <p>22 BY MS. WHELAN:</p> <p>23 Q. Defense counsel asked you several</p> <p>24 questions about this -- I'll come back to that and</p> <p>25 discuss that in a moment.</p>

1 Now, defense counsel had some questions  
 2 about silver in a desk and that you took it out.  
 3 Who told you where to get the silver?  
 4 A. Mr. Steele.  
 5 Q. And who put the silver in the desk, as  
 6 far as you know?  
 7 A. Mr. Steele.  
 8 Q. When you built these safe areas around  
 9 his house, did the defendant tell you what they  
 10 were for?  
 11 A. Yes.  
 12 Q. What did he say?  
 13 A. They were for stashing weapons for when  
 14 the economy collapsed and everybody was rioting.  
 15 Q. Did he tell you they were for root  
 16 cellars, too?  
 17 A. No. Not those ones weren't, no.  
 18 Q. Were there culverts?  
 19 A. Yes. There was a culvert, a 12-foot  
 20 culvert.  
 21 Q. Was that to be a root cellar?  
 22 A. Yes, it was.  
 23 Q. Defense counsel asked you if you could  
 24 just go in and remove silver, and you said "no."  
 25 Why was that?

1 A. Yes.  
 2 Q. You don't know whether there ever was  
 3 any money missing, do you?  
 4 A. No, I do not.  
 5 Q. And, in fact, you told Edgar Steele  
 6 that you were in his house, didn't you?  
 7 A. Yes, I did.  
 8 Q. And that's when he got mad at you and  
 9 told you he would shoot you?  
 10 A. Yes.  
 11 Q. Whose idea was it to kill Cyndi Steele  
 12 and her mother-in-law?  
 13 A. Edgar Steele's.  
 14 Q. Who brought up the idea to -- initially  
 15 brought it up, the idea to kill Cyndi Steele?  
 16 A. Edgar did.  
 17 Q. Who told you where to put the pipe  
 18 bomb?  
 19 MR. McALLISTER: I'm going to object to the  
 20 form of the question at this time, Your Honor.  
 21 They're all leading.  
 22 THE COURT: Sustained. Rephrase.  
 23 BY MS. WHELAN:  
 24 Q. Did somebody tell you to put a pipe  
 25 bomb on Cyndi Steele's car?

1 A. Because it's drywalled over it, and you  
 2 just can't go in and open them. They're hidden  
 3 behind the wall now.  
 4 Q. So the stashes you built were behind  
 5 drywall; is that correct?  
 6 A. Yes.  
 7 Q. And if you would have taken silver out  
 8 of there, you would have had to cut the drywall?  
 9 A. Yes.  
 10 Q. Counsel asked you some questions about  
 11 missing money. Do you know how much silver or  
 12 gold the Steeles kept at their place?  
 13 A. No. Actually, Edgar said he kept it at  
 14 somebody else's house.  
 15 Q. Okay. Do you know how much may have  
 16 been laying around?  
 17 A. No.  
 18 Q. So are you aware that money was  
 19 actually missing or just that sometime after Edgar  
 20 Steele was arrested Mrs. Steele made a complaint  
 21 about you?  
 22 A. Yes. Mrs. Steele went on the TV and  
 23 said that I stole money -- silver from them.  
 24 Q. And that was after the defendant was  
 25 arrested; correct?

1 A. Yes.  
 2 Q. Who told you that?  
 3 A. Edgar Steele.  
 4 Q. Defense counsel asked you about "They  
 5 convinced you that the pipe bomb could go off."  
 6 Do you recall that question?  
 7 A. Yes, I do.  
 8 Q. Were you convinced of that after  
 9 looking at the ATF reports?  
 10 A. Yes.  
 11 Q. And did you have discussions with your  
 12 counsel?  
 13 A. Yes, I did.  
 14 Q. And is that the "they"?  
 15 A. Yes, it is.  
 16 Q. Why did you ultimately go to the FBI?  
 17 A. Because I didn't want Mrs. Steele to  
 18 get killed.  
 19 Q. And, in fact, did you tell the FBI a  
 20 couple of times you wanted to warn her?  
 21 A. Yes, I did.  
 22 Q. And did you indicate that you wanted to  
 23 apologize to her?  
 24 A. Yes, I did.  
 25 Q. And upon advice of counsel or other

1 circumstances, were you able to do that?  
 2 A. No. Mike Sotka told me not to contact  
 3 her.  
 4 Q. Have you omitted anything from your  
 5 testimony yesterday?  
 6 A. No, I have not.  
 7 Q. Have you omitted anything from your  
 8 testimony today?  
 9 A. No, I did not.  
 10 Q. There were questions about a Daryl  
 11 Hollingsworth. How do you know him?  
 12 A. He was in jail for stabbing somebody.  
 13 Q. What jail?  
 14 A. Bonner County Jail.  
 15 Q. Did you know him before that?  
 16 A. No.  
 17 Q. Were you a podmate with him?  
 18 A. Yes, I was.  
 19 Q. Did you come to know his reputation  
 20 within your pod for truthfulness?  
 21 A. Yes, we did.  
 22 Q. And what was that reputation?  
 23 A. He was a liar.  
 24 Q. There was a question about, that you  
 25 felt trapped because you had taken the money. Who

1 the ATF about what you were telling him, was it?  
 2 A. No, it was not.  
 3 Q. It was a way to explain why you were  
 4 going to Oregon?  
 5 A. Right. Explain to my wife.  
 6 Q. What you told your wife was that you  
 7 were going to check out an adultery issue;  
 8 correct?  
 9 A. Yes.  
 10 Q. Are you proud of the fact that you lied  
 11 to your wife?  
 12 A. No, I am not.  
 13 Q. There were some questions about your  
 14 cousin, Jim Maher.  
 15 THE COURT: Counsel, do you wish to have  
 16 this published to the jury?  
 17 MS. WHELAN: I'm sorry, Judge. Yes. I  
 18 forgot it wasn't up there.  
 19 THE COURT: This is Exhibit 99; correct?  
 20 MS. WHELAN: Yes, Your Honor.  
 21 BY MS. WHELAN:  
 22 Q. Now, when you talked to Todd Smith, you  
 23 told him about taking your cousin to Portland,  
 24 didn't you?  
 25 A. Yes, I did.

1 did you feel trapped by?  
 2 A. Mainly myself because I was stupid to  
 3 take the money, but I felt trapped because I  
 4 needed to do something for Mr. Steele.  
 5 Q. And as you sit there today, would you  
 6 agree that you were stupid?  
 7 A. Yes, I would.  
 8 Q. And you did take a gamble with Cyndi  
 9 Steele's life?  
 10 A. Yes, I did.  
 11 Q. Who told you to do that?  
 12 A. Mr. Steele.  
 13 Q. Counsel asked you about a big lie and  
 14 just asked about -- you said, "It was a big lie."  
 15 And was that in the context -- excuse me -- was  
 16 that in the context of a conversation about the  
 17 defendant harping on you to go down to Oregon once  
 18 the bomb didn't go off?  
 19 A. Yes, it was.  
 20 Q. And so did you have to explain to your  
 21 wife why you were going to Oregon?  
 22 A. Yes.  
 23 Q. And is that what you made up?  
 24 A. That is what I made up.  
 25 Q. It wasn't a big lie to Todd Smith of

1 Q. And you talked about how your cousin  
 2 looked under the car; right?  
 3 A. Yes.  
 4 Q. And then right here, Todd Smith asks  
 5 you, "Okay. So you didn't tell him it was a  
 6 bomb?" And you said -- excuse me. Let's go up.  
 7 You're asked, "Now, your cousin was involved in  
 8 this or did he just know what was going on?" And  
 9 you said what?  
 10 A. He was not involved with it.  
 11 Q. Can you read the exact quote?  
 12 A. "No. I involved him just to see if --  
 13 what was under the car."  
 14 Q. You're asked, "Okay. What did you tell  
 15 him exactly because I'm having a hard time  
 16 understanding?" What did you say?  
 17 A. "That we were going down to see if  
 18 there was something underneath her car."  
 19 Q. You were asked then, "Okay. So you  
 20 didn't tell him it was a bomb?" What did you say?  
 21 A. "No. I told him it was a bomb. We  
 22 were going down to see if there was a bomb under  
 23 her car."  
 24 Q. So you did tell your cousin that?  
 25 A. Yes, I did.

1 Q. And, in fact, what you told Special  
2 Agent Todd Smith during this interview was  
3 consistent with what you have pled guilty to;  
4 correct?  
5 A. Yes.  
6 MS. WHELAN: Nothing else, Your Honor.  
7 THE COURT: Recross?  
8 MR. McALLISTER: Thank you, Your Honor.  
9 RECCROSS-EXAMINATION  
10 BY MR. McALLISTER:  
11 Q. Is it fair to say that when you were  
12 driving to the Portland area with your cousin that  
13 you and he talked a lot?  
14 A. Yes, sir.  
15 Q. And as I understand it, you admitted to  
16 him that you had placed a destructive device of  
17 some kind on Cyndi Steele's car; correct?  
18 A. Yes.  
19 Q. And then, you told him that you wanted  
20 to warn her or take it off so you could be the  
21 hero; correct?  
22 A. No, sir. I didn't say the hero part.  
23 Q. Okay. Did you tell him you wanted to  
24 be on Oprah?  
25 A. I don't think I told my cousin that,

1 Steele?  
2 A. No, sir.  
3 MR. McALLISTER: That's all I have,  
4 Your Honor.  
5 THE COURT: Anything else, Ms. Whelan?  
6 MS. WHELAN: No, Your Honor.  
7 THE COURT: All right. You may step down,  
8 Mr. Fairfax.  
9 MS. WHELAN: Your Honor, I have been asked  
10 by counsel if Mr. Fairfax may be excused -- and,  
11 by that, I mean Mr. Fairfax's counsel -- so  
12 counsel can return to Coeur d'Alene.  
13 THE COURT: Is there -- Mr. McAllister, may  
14 the witness be excused?  
15 MR. McALLISTER: Well, Your Honor, at this  
16 time I think he can be but --  
17 THE COURT: You potentially may want to  
18 recall him as part of your case?  
19 MR. McALLISTER: It's a potential,  
20 Your Honor.  
21 THE COURT: All right. Then the defendant  
22 will need to be on hold. I'll leave it up to  
23 counsel as to the decision whether to remain or  
24 not, but I'm assuming -- well, I won't assume  
25 anything about the timing. But at this point,

1 no, sir.  
2 Q. Okay. You gave your opinion that Daryl  
3 Hollingsworth was a liar?  
4 A. Yes, sir.  
5 Q. Why did you tell him about your book?  
6 A. Because he seen me writing one day on  
7 the table out there.  
8 Q. Why didn't you tell anyone else about  
9 your book?  
10 A. Nobody asked.  
11 Q. Until I did?  
12 A. Right.  
13 Q. Where exactly is that book?  
14 A. I told you already.  
15 MS. WHELAN: Object. Relevance. It's also  
16 beyond the scope of --  
17 THE COURT: I think it's been asked and  
18 answered, and I think it is beyond the scope but  
19 it's not irrelevant. So I'll sustain the  
20 objection.  
21 BY MR. McALLISTER:  
22 Q. You haven't shown anybody the book?  
23 A. No, sir. It's also fiction, too.  
24 Q. Isn't it true that you told Daryl  
25 Hollingsworth that you were paid to set up Edgar

1 certainly, you won't be necessary here today or  
2 tomorrow.  
3 MS. WHELAN: Thank you, Your Honor.  
4 THE COURT: All right. So you may step down  
5 subject to possible recall.  
6 Call your next witness.  
7 MR. HAWS: The government will call Mark  
8 Strangio.  
9 THE COURT: I'm sorry. The name?  
10 MR. HAWS: Mark Strangio, S-T-R-A-N-G-I-O.  
11 We weren't sure how long Mr. Fairfax would go, so  
12 if you'll give us a chance, Your Honor, we'll make  
13 sure he is here.  
14 THE COURT: Ladies and gentlemen, sometimes  
15 trying to orchestrate witnesses is difficult. And  
16 he may be down the hall or it may take just a few  
17 moments, but rather than take a recess, we'll just  
18 remain in our seats.  
19 MR. McALLISTER: May we approach just  
20 briefly?  
21 THE COURT: Yes.  
22 (Sidebar commences as follows:)  
23 THE COURT: Mr. McAllister?  
24 MR. McALLISTER: Judge, in this last  
25 witness's testimony, Mr. Fairfax, I learned for



1 the first time that there is actually a book that  
2 he has been writing, and I'd like to have it  
3 produced if the government has it or if anybody  
4 else has it. And if they don't, the reason I may  
5 recall him is I'd like to have a subpoena served  
6 on him to produce it.

7 THE COURT: Well, he indicated that it is  
8 fiction. Does the government know about --

9 MS. WHELAN: I don't know about -- I don't  
10 know about a book. I don't know about the  
11 whereabouts. And it would appear that defense  
12 counsel had some information from Mr. Daryl  
13 Hollingsworth about a book.

14 THE COURT: And you didn't know anything  
15 about it until now?

16 MS. WHELAN: I don't know anything about a  
17 book.

18 THE COURT: Now that you do know about it,  
19 there may be an ongoing Brady obligation so you  
20 may need to find out what's in the book, whether  
21 it contains any information that may be -- well,  
22 exculpatory, and then you can confer with counsel  
23 as to whether -- and then, we'll take it up,  
24 perhaps tomorrow, if -- I'm not convinced that  
25 there is an obligation here to turn it over where

1 Ladies and gentlemen, I'm going to  
2 excuse Ms. Whelan so she can take care of a matter  
3 that we discussed at a sidebar.

4 Thank you, Ms. Whelan.

5 MS. WHELAN: Thank you, Your Honor.

6 MARK WILLIAM STRANGIO,  
7 having been first duly sworn to tell the whole  
8 truth, testified as follows:

9 THE CLERK: Please state your complete name  
10 and spell your last name for the record.

11 THE WITNESS: My name is Mark William  
12 Strangio, S-T-R-A-N-G-I-O.

13 THE COURT: You may inquire, Mr. Haws.

14 MR. HAWS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. HAWS:

17 Q. Good morning, Mr. Strangio. Is that  
18 correct?

19 A. Yes, sir.

20 Q. Mr. Strangio, where do you reside, just  
21 generally?

22 A. I reside in Boundary County, northern  
23 Idaho.

24 Q. And are you employed?

25 A. Yes, sir.

1 he indicated it's fiction. But I'll let  
2 counsel -- leave it up to counsel. You may want  
3 to do some research on whether or not a witness  
4 preparing a somewhat fictitious account of the  
5 incident in question, whether or not that does or  
6 does not constitute Brady material.

7 At this point, I can't rule. I think  
8 the government needs to go in and talk to Mr.  
9 Fairfax, find out what the deal is, and discuss it  
10 with counsel. And if you can't resolve, it we'll  
11 take it up tomorrow morning.

12 MS. WHELAN: While this next witness is  
13 being done then, can I be excused to talk to him?

14 THE COURT: If you wish.

15 MS. WHELAN: Are you okay with that?

16 MR. HAWS: Yeah.

17 THE COURT: All right.

18 MS. WHELAN: Thank you.

19 (Sidebar concluded.)

20 THE COURT: We're still waiting for the  
21 witness? He is here?

22 Detective, would you please step before  
23 the clerk. Come forward and step before  
24 Ms. Gearhart here, be sworn as a witness, and  
25 follow Ms. Gearhart's directions from there.

1 Q. Please tell us where you're employed.

2 A. I'm a detective with the Bonner County  
3 Sheriff's Office in Sandpoint, Idaho.

4 Q. How long have you been employed as a  
5 detective at Bonner County Sheriff's Office?

6 A. Since 2004.

7 Q. And the Bonner County Sheriff's Office  
8 is located in Sandpoint; is that correct?

9 A. Yes, sir.

10 Q. Do your duties carry you throughout the  
11 county of Bonner?

12 A. Yes, sir.

13 Q. And what are your duties?

14 A. My main focus of my duties are mainly  
15 narcotics violations. However, I'm also assigned  
16 as an investigator to the North Idaho Violent  
17 Crimes Task Force.

18 Q. What is the North Idaho Violent Crimes  
19 Task Force?

20 A. It's a regional task force made up of  
21 five different agencies, I believe, that is  
22 centered in Coeur d'Alene, Idaho, and it has a  
23 strong focus on the suppression of violent crime  
24 and narcotics violations.

25 Q. And which other agencies besides Bonner

1 County Sheriff's Office, to your knowledge, are  
2 part of the Violent Crimes Task Force?

3 A. Of course, there is Bonner County  
4 Sheriff's Department, Coeur d'Alene Police  
5 Department, Kootenai County, Idaho State Police.  
6 It has a representative from the FBI. And -- I  
7 think that's it for now.

8 Q. In your normal daily duties, do you  
9 drive a marked vehicle or are you undercover?

10 A. No. I do not drive a marked vehicle.

11 Q. Do you wear a uniform on a daily basis?

12 A. No, sir.

13 Q. Because of the type of jobs that you're  
14 assigned, the duties you're assigned; is that  
15 correct?

16 A. That's correct.

17 Q. Were you employed and on duty on  
18 Thursday, June the 9th, 2010?

19 A. Yes, sir.

20 Q. And where were you at approximately  
21 6:00 that afternoon?

22 A. I was in the Shepherd Lake boat launch,  
23 which is just about three to four miles outside a  
24 little town called Sagle, Idaho. And I was there  
25 staged with two other detectives from the North

1 Office?

2 A. Yes, sir.

3 Q. Do you know whether -- do you know  
4 whether your assignments on that day were part of  
5 a larger operation?

6 A. Yes.

7 Q. And who were you -- who was in charge  
8 of that operation that day?

9 A. It was a coordinated law enforcement  
10 effort. The case agent was Special Agent Mike  
11 Sotka from the FBI. There were other detectives  
12 involved, and who exactly was involved on the same  
13 operation but away from me, I can't say. I can  
14 just speak for Detective Ellis and Sergeant  
15 Hildebrandt, who were with me.

16 Q. And the special operation that you  
17 referred to, is this called a "meet"?

18 A. It was a separate meeting location at  
19 the boat launch; yes, sir.

20 Q. What kind of operation was the task  
21 force involved in?

22 A. We were tasked with attempting to  
23 videotape the entrance to Mr. Steele's driveway.  
24 I was told to anticipate a red pickup that would  
25 be coming down a road called Talache Road. I was

1 Idaho Violent Crimes Task Force: Detective Mark  
2 Ellis and Sergeant Eric Hildebrandt.

3 Q. I want to ask you a couple questions  
4 about Sagle, Idaho. Your duties carry you there  
5 frequently?

6 A. Yes, sir.

7 Q. And how far is that, approximately,  
8 from Sandpoint?

9 A. From Sandpoint, it's approximately, I  
10 would say, about seven to ten miles.

11 Q. And it's located on Highway 95?

12 A. Yes, sir.

13 Q. In Bonner County?

14 A. Yes, sir.

15 Q. And so when you went to -- you said the  
16 Shepherd Lake launch site. That's for launching  
17 boats?

18 A. It's a boat launch site -- yes, sir --  
19 and it's also a public campground.

20 Q. And you indicated that Mark Ellis was  
21 there from the Kootenai County Sheriff's Office?

22 A. That's correct.

23 Q. And Eric Hildebrandt; is that right?

24 A. Yes, sir.

25 Q. Also from the Kootenai County Sheriff's

1 told to be in camouflage clothing so I could blend  
2 in with the wooded environment and attempt to  
3 videotape a red pickup coming into his driveway.

4 Q. Did you know who would be operating  
5 that red pickup?

6 A. No.

7 Q. Did you know that the person operating  
8 the red pickup was a person who was under the  
9 surveillance of the FBI to monitor a tape-recorded  
10 conversation?

11 A. Yes.

12 Q. Did you know at that time -- did you  
13 know the name of the person?

14 A. No.

15 Q. Does the name "Larry Fairfax" now ring  
16 any bells with you?

17 A. Yes. Subsequent to the conclusion of  
18 the investigation, I learned who Larry Fairfax  
19 was, yes.

20 Q. Did you know Larry Fairfax prior to  
21 June the 9th?

22 A. No.

23 Q. Did you know Edgar Steele prior to June  
24 the 9th?

25 A. No.

1 Q. Did you know Cyndi Steele prior to June  
2 the 9th?

3 A. No.

4 Q. And had you ever been to 1569 Talache  
5 Road prior to June the 9th?

6 A. No, sir.

7 Q. You had been on Talache Road before?

8 A. Yes, sir.

9 Q. But you had never been up their  
10 driveway?

11 A. That's correct.

12 Q. Okay. Have you been involved in  
13 controlled meet operations before?

14 A. Yes, sir.

15 Q. And is there a standard procedure by  
16 which you conduct those?

17 A. Yes.

18 Q. Would you explain that briefly to the  
19 jury so we know what this procedure was?

20 A. Basically, the foundation of a  
21 controlled operation like this -- you always want  
22 to try to maintain the integrity of the  
23 investigation by searching the informant or source  
24 beforehand, a proper brief, and you want to follow  
25 that person, whoever that person may be, to the

1 going to 1569 Talache Road?

2 A. Yes.

3 Q. How far is that, by the way, from  
4 Sagle, Idaho, approximately?

5 A. My best estimate would be approximately  
6 three to four miles.

7 Q. Where were you, then, when you set up?  
8 Where were you in relationship to the entrance to  
9 1569 Talache Road?

10 A. I was in a wooded area, approximately  
11 5 feet off the paved roadway, hidden in the clump  
12 of bushes and trees.

13 Q. And at approximately what -- well, let  
14 me strike at that.

15 Did you ever see a vehicle turn off  
16 Talache Road into the driveway to 1569 Talache  
17 Road?

18 A. Yes.

19 Q. At approximately what time?

20 A. To the best of my recollection, it was  
21 a little after 6:00 p.m.

22 Q. And can you give a description of  
23 that -- of that vehicle?

24 A. It was a red pickup with some type of  
25 rack on top of it or in the bed of the pickup.

1 designated target location or meeting location.

2 Most of the time, those meets are done with the  
3 use of body recording devices or listening  
4 devices.

5 And then, to keep the integrity of the  
6 investigation, we always try to -- we always  
7 follow the source away from the target location  
8 back to a predesignated meeting location where,  
9 again, the person is searched for money,  
10 contraband, and then we retain the recording  
11 device, body wire, or any other recording devices  
12 that person may have. And we retain that in our  
13 custody and debrief the source or the informant at  
14 that point.

15 Q. So on June 9th, your part of the  
16 operation was simply to monitor the red pickup as  
17 it went into 1569 Talache Road? Is that what you  
18 stated earlier?

19 A. Yes.

20 Q. And you and two other officers were  
21 doing that?

22 A. Yes.

23 Q. And did you also have a videotape that  
24 you were using at that time to make -- to make a  
25 recording of the person driving the red pickup and

1 Q. And how long did you observe that  
2 vehicle?

3 A. For just a few seconds.

4 Q. And why only a few seconds?

5 A. Because where I was at in my vantage  
6 point I could only see the vehicle as it  
7 transitioned from Talache Road up into the address  
8 of 1569, down a long paved driveway and out of my  
9 vision.

10 Q. Did you remain -- how long did you  
11 remain at that location?

12 A. Approximately 30 minutes.

13 Q. And the other officers, as well?

14 A. The other officers were down the road  
15 in the boat launch in their vehicle. I was the  
16 only one that was actually videotaping dressed, in  
17 camouflage clothing across from the driveway.

18 Q. And were you on public property at that  
19 location?

20 A. Yes.

21 Q. And what happened next after you had  
22 waited for about half-an-hour?

23 A. I saw the vehicle leave out of the same  
24 driveway. The same vehicle that came into the  
25 driveway left, and I attempted to videotape as

1 that vehicle left and turned back and turned south  
2 on Talache Road and out of my vision.

3 Q. And that was what you were supposed to  
4 do?

5 A. Yes.

6 Q. Was that the sum total of your  
7 involvement on that occasion?

8 A. Yes, sir.

9 Q. And did you, in fact, shoot a video of  
10 that pickup as it turned off Talache Road into the  
11 Steele driveway?

12 A. Yes.

13 Q. And have you had occasion, prior to  
14 today --

15 MR. HAWS: Mr. Severson, would you please  
16 hand these to the witness?

17 BY MR. HAWS:

18 Q. Have you had a chance, prior to today,  
19 to review the video that you shot on that  
20 occasion?

21 A. Yes, sir.

22 Q. Identified here as Exhibit 23A.

23 Mr. Severson has handed you two CDs: One is  
24 marked 23A, and the other one is 23B. Do you see  
25 those?

1 objection, but where it's fairly brief in nature,  
2 I think it's not either distracting or confusing  
3 to the jury; therefore, I'll overrule the  
4 objection. The exhibits will be admitted and may  
5 be published to the jury at counsel's option.

6 (Government's Exhibit Nos. 23A and 23B  
7 admitted.)

8 MR. HAWS: Yes, Your Honor, at this time, we  
9 would like to publish Exhibit 23A, please, to the  
10 jury.

11 THE COURT: I assume you have -- change the  
12 input source. Do you need a moment to get that  
13 cued up?

14 MR. HAWS: Yes, Your Honor.

15 We're ready, Your Honor.

16 THE COURT: All right.

17 MR. HAWS: Excuse me. Just one moment. Is  
18 it possible to make that larger? Okay. Would you  
19 back it up and start it again, please, then?

20 (Government's Exhibit No. 23A published.)

21 BY MR. HAWS:

22 Q. Thank you. Now, you've had a chance to  
23 observe that. Let me ask you a couple questions  
24 about it. This was the first video -- correct --  
25 a little after 6:00 o'clock?

1 A. Yes, sir.

2 Q. Have you had occasion to review those?

3 A. Yes, sir.

4 Q. And how recently did you review those?

5 A. Yesterday in the U.S. Attorney's

6 Office, and these are the same videos. I know  
7 that because they're marked with my initials, my  
8 badge number, the date and time that I viewed  
9 them.

10 Q. And do those videos -- from your review  
11 of those videos, do they accurately depict what  
12 you saw at that location on June the 9th, 2010?

13 A. Yes.

14 MR. HAWS: Your Honor, move the admission of  
15 video Exhibits 23A and 23B.

16 THE COURT: Any objection?

17 MR. McALLISTER: Yes, Your Honor. Under  
18 403, it's cumulative at this point. There is no  
19 doubt about what the agent testified to, and I  
20 don't think we need it.

21 MR. HAWS: The videos are about 15 seconds  
22 long each, Your Honor.

23 THE COURT: All right. I'll overrule the  
24 objection. I'm not sure Rule 403 really envisions  
25 cumulative. That's certainly an independent

1 A. Yes, sir.

2 Q. That's a picture of the pickup truck  
3 turning into the driveway off Talache Road?

4 A. Yes, sir.

5 MR. HAWS: Okay. Let's publish Exhibit  
6 No. 23B, please, to the jury.

7 (Government's Exhibit No. 23B published.)

8 BY MR. HAWS:

9 Q. What was the dark object in that  
10 picture, Officer Strangio?

11 A. It was a tree.

12 Q. A tree directly in front of you?

13 A. Yes, sir.

14 Q. But was it the same pickup that is  
15 shown in both 23A and 23B?

16 A. Yes, sir.

17 Q. Thank you. Were you involved in this  
18 case on June the 11th?

19 A. Yes, sir.

20 Q. And that was on Friday, is that  
21 correct, to the best of your recollection, June  
22 11th, 2010?

23 A. I don't remember exactly what day it  
24 was, but I do remember June 11th; yes, sir.

25 Q. Were you involved in a task force

1 operation on that day?

2 A. Yes, sir.

3 Q. And where did you -- where did you go  
4 in order to participate in that operation?

5 A. Again, the Talache Road, Shepherd Lake  
6 boat launch area was one of our staging areas.

7 Q. Did you ever go to 1569 Talache Road,  
8 go into the Steele's driveway that day?

9 A. Yes, sir.

10 Q. At approximately what time did you go  
11 there?

12 A. Approximately 10:00 in the morning.

13 Q. What was your assignment at that point?

14 A. I was a participant in a search warrant  
15 that was to be served at that residence.

16 Q. So the task force had obtained a search  
17 warrant. You were part of the team that was going  
18 to do the search warrant?

19 A. Yes, sir.

20 Q. And where, specifically, did you go  
21 when you arrived at 1569 Talache Road?

22 A. I pulled -- I pulled up into the main  
23 driveway and parked, at which time I was greeted  
24 by Special Agent Sotka who directed me to an  
25 individual who was standing by a red truck and

1 Q. Is that a standard way of identifying  
2 people by the police?

3 A. Yes, sir.

4 Q. And did you obtain a driver's license  
5 or other identification from him?

6 A. Yes.

7 Q. And who was this individual?

8 A. He was identified -- excuse me -- as  
9 Alan Banks.

10 Q. And had you seen him before?

11 A. No.

12 Q. Did you see how he arrived there?

13 A. No.

14 Q. When you say he was "standing by a red  
15 truck" -- is that what you said?

16 A. Yes.

17 Q. Do you know anything about that truck?  
18 Can you describe it further?

19 A. No. I hadn't seen that truck, earlier  
20 in the day, pulling a trailer. That was part of  
21 the operation, the surveillance operation. But it  
22 was parked in the driveway, and I don't know who  
23 owns it or who it belonged to, or anything like  
24 that.

25 Q. So a large truck with a trailer?

1 trailer and asked me to identify this man and find  
2 out what his purpose for being on the property  
3 was, find out who he was. And that's what I did.

4 Q. Was Agent Sotka there then, and he was  
5 in charge of that operation?

6 A. Yes, sir.

7 Q. And did you recognize the individual  
8 that Mr. Sotka wanted you to identify?

9 A. Yes.

10 Q. Did you know him before?

11 A. No.

12 Q. Did you know whether he was part of the  
13 task force operation?

14 A. No.

15 Q. Was he a citizen?

16 A. Yes.

17 Q. And since you had a law enforcement  
18 operation going on, you wanted to identify who it  
19 was?

20 A. Yes, sir.

21 Q. And did you identify this person?

22 A. Yes, sir.

23 Q. By what means?

24 A. I asked to see his driver's license or  
25 identification.

1 A. Yes, sir.

2 Q. Okay. Red in color?

3 A. Yes.

4 Q. Okay. Did Mr. Banks tell you why he  
5 was there?

6 A. Yes, sir.

7 Q. And what did he tell you?

8 A. He said the purpose for him arriving at  
9 the Talache Road address was to ride with Mr.  
10 Steele to Spokane.

11 MR. HAWS: Okay. I have nothing further.

12 Thank you, Mr. Strangio.

13 THE COURT: Cross-examination?

14 MR. McALLISTER: None, Your Honor.

15 THE COURT: All right. You may step down.  
16 Thank you very much, Detective -- is it Strangio?

17 THE WITNESS: Strangio, yes, sir.

18 THE COURT: All right. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MR. HAWS: Thank you, Your Honor.

22 We'll call Frank Heckendorn.

23 Officer Heckendorn, would you please  
24 come to the clerk and be sworn.

25 THE COURT: Yes. Step before Ms. Gearhart

<p style="text-align: center;">606</p> <p>1 and be sworn and then follow her directions from  2 there, if you would.  3 FRANK HECKENDORN,  4 having been first duly sworn to tell the whole  5 truth, testified as follows:  6 THE CLERK: Please state your complete name  7 and spell your last name for the record.  8 THE WITNESS: Frank Heckendorn,  9 H-E-C-K-E-N-D-O-R-N.  10 THE COURT: You may inquire, Mr. Haws.  11 MR. HAWS: Thank you, Your Honor.  12 DIRECT EXAMINATION  13 BY MR. HAWS:  14 Q. Mr. Heckendorn?  15 A. Yes, sir.  16 Q. Where do you reside?  17 A. Portland, Oregon.  18 Q. And are you employed?  19 A. I am employed by the Federal Bureau of  20 Investigation.  21 Q. The FBI?  22 A. Yes, sir.  23 Q. How long have you been with the Federal  24 Bureau of Investigation?  25 A. Fourteen years.</p>	<p style="text-align: center;">607</p> <p>1 Q. What is your title?  2 A. I'm a special agent.  3 Q. What does a special agent do?  4 A. We investigate violations of the  5 federal criminal statutes.  6 Q. Do you have any specific  7 responsibilities or duties?  8 A. I am assigned to a violent crimes  9 squad, and I primarily investigate narcotics and  10 fugitives.  11 Q. Did you receive an assignment from your  12 supervisor on or about June the 10th, 2010?  13 A. I did. In the evening hours of  14 June 10, I was contacted by my supervisor who  15 advised me that an individual by the name of  16 Edgar Steele had hired someone to kill his wife,  17 Cyndi Steele.  18 Q. And what were you assigned to do?  19 A. I was directed to provide assistance to  20 another agent out of the Portland division.  21 Q. And who was that other agent?  22 A. That would be Special Agent Masayo  23 Halpin.  24 Q. Did you and Special Agent Masayo Halpin  25 then work together?</p>
<p style="text-align: center;">608</p> <p>1 A. We did.  2 Q. What did you do?  3 A. We spoke briefly on the phone that  4 evening and made arrangements to meet up early in  5 the morning on June 11. The following morning,  6 June 11, we did meet in the vicinity of  7 Mrs. Kunzman's residence. And then, at  8 approximately 5:30, we positioned our vehicle on  9 Larisa Lane where we had a good view of the house.  10 Q. Where did you do this? What city was  11 this in?  12 A. Larisa Lane is located in Oregon City.  13 It's actually in a -- kind of a rural setting,  14 approximately five miles or so from downtown  15 Oregon City.  16 Q. Where is Oregon City in relationship  17 to, say, Portland, Oregon?  18 A. It's probably about 15 miles south,  19 southeast of Portland.  20 Q. You mentioned the address on Larisa  21 Lane, 18273 South Larisa Lane?  22 A. That's correct, yes.  23 Q. Did you know whose address that was?  24 A. That was Cyndi Steele's mother's house,  25 Ms. Kunzman.</p>	<p style="text-align: center;">609</p> <p>1 Q. Jacquanette Kunzman?  2 A. Yes, sir.  3 Q. Had you been there before?  4 A. No, I had not.  5 Q. Had you been to Larisa Lane before?  6 A. No, I had not.  7 Q. Would you describe for the jury,  8 please, where Mrs. Kunzman's house was located in  9 relationship to Larisa Lane?  10 A. Larisa Lane is a very short road off of  11 Maple Lane, and Mrs. Steele's -- Mrs. Kunzman's  12 house was at the very end. She had kind of a long  13 driveway which led up to her house on the left.  14 Q. Was this a paved road in front of her  15 house, or what kind of road?  16 A. I believe it was a gravel road.  17 Q. And did you say that this was kind of a  18 cul-de-sac or a dead end?  19 A. It's not a cul-de-sac. The road simply  20 ends about where her driveway takes off. So her  21 driveway probably extends another 50 yards from  22 the end of Larisa Lane.  23 Q. And are there other residences nearby?  24 A. Yeah. There is a small cluster of  25 homes on Larisa Lane. There is probably four or</p>

1 five houses.  
 2 **Q.** How close are those houses to  
 3 Mrs. Kunzman's house?  
 4 **A.** I would say the closest house is  
 5 probably -- well, it's right adjacent to her  
 6 driveway, so it would be about another 50 to 75  
 7 yards.  
 8 **Q.** And where is her house in relationship  
 9 to the entrance to her driveway?  
 10 **A.** Her house is off and to the left.  
 11 **Q.** So the -- is there anything in front of  
 12 her house between her -- the front of her house  
 13 and the street?  
 14 **A.** She has a small pasture, fenced-off  
 15 pasture/corral in the front.  
 16 **Q.** When you arrived at that location in  
 17 the early morning -- well, what did you say?  
 18 About 5:00?  
 19 **A.** We arrived at that location about 5:30.  
 20 **Q.** About 5:30. Did you see any vehicles  
 21 in the driveway?  
 22 **A.** Yes. There were two vehicles. There  
 23 was one that matched roughly the description we  
 24 had for Mrs. Steele's vehicle, which was a  
 25 dark-colored SUV.

1 **Q.** What was your objective in arriving  
 2 there --  
 3 **MR. HAWS:** You can take that down, if you  
 4 would please, Ms. Rocca.  
 5 **BY MR. HAWS:**  
 6 **Q.** What time did you arrive -- or what was  
 7 your objective in arriving there at approximately  
 8 5:30 that morning?  
 9 **A.** We had basically two objectives: One  
 10 was to make sure nothing happened to Mrs. Steele  
 11 and also to solicit her cooperation.  
 12 **Q.** And did you ever have contact with  
 13 Mrs. Steele?  
 14 **A.** Yes, we did.  
 15 **Q.** At approximately what time?  
 16 **A.** It would have been about 7:00 a.m.  
 17 **Q.** And how did you -- how did you make  
 18 that contact with her?  
 19 **A.** We drove into the driveway. We hadn't  
 20 seen any activity at the house that morning. We  
 21 didn't see Mrs. Steele outside the house. We  
 22 didn't know for sure if she was there. At that  
 23 point, we decided that we had better make sure  
 24 that she was at that location. So at 7:00 a.m.,  
 25 we drove into the driveway. I parked next to

1 **Q.** Can you describe that further? It was  
 2 a dark-colored SUV, meaning a sport utility  
 3 vehicle? Is that what you mean?  
 4 **A.** Yes, sir. It was a smaller sports  
 5 utility vehicle.  
 6 **Q.** And were you ever -- if not right then,  
 7 were you ever later in the day close enough to  
 8 that vehicle to identify it any further?  
 9 **A.** I believe it was a Mitsubishi.  
 10 **Q.** Did you happen to identify what kind of  
 11 plates it had on it?  
 12 **A.** It had Idaho plates.  
 13 **Q.** And it was parked in the driveway?  
 14 **A.** Yes, sir.  
 15 **Q.** Special Agent Heckendorn, I'd like to  
 16 show you what's been admitted here as Exhibit  
 17 No. 29. A photograph; is that correct?  
 18 **A.** Yes.  
 19 **Q.** And what does that photograph depict?  
 20 **A.** It's a smaller, dark-colored SUV.  
 21 **Q.** Does that sport utility vehicle  
 22 depicted in Exhibit No. 29 resemble the vehicle  
 23 that you described at Larisa Lane on June the  
 24 11th, 2010?  
 25 **A.** Yes.

1 Mrs. Steele's SUV. My partner parked behind one  
 2 of the other vehicles, and then we proceeded on  
 3 foot to the door.  
 4 **Q.** Had you observed anybody approach the  
 5 house between 5:30 and 7:00?  
 6 **A.** No, sir.  
 7 **Q.** And so, when you knocked on the door,  
 8 what happened?  
 9 **A.** My partner asked if the person  
 10 answering the door was --  
 11 **MR. AMENDOLA:** Hearsay.  
 12 **MR. HAWS:** It's a hearsay objection. It's  
 13 not offered for the truth, Your Honor, only the  
 14 conversation that was initiated by the officer.  
 15 **THE COURT:** Just a moment, Counsel. Let me  
 16 see how it was phrased. Overruled.  
 17 **BY MR. HAWS:**  
 18 **Q.** Can you go ahead and answer that  
 19 question?  
 20 **A.** We made -- we knocked on the door. A  
 21 female answered it. My partner asked if she was  
 22 Cyndi. She indicated that she was. And at that  
 23 point, we identified ourselves.  
 24 **MR. AMENDOLA:** Your Honor, objection.  
 25 Hearsay. Move to strike. And it's not responsive

1 to the question. It's simply a narrative.

2 THE COURT: Let's put questions back before  
3 the witness so we're not having just a narrative.  
4 But I'm not going to strike the last response. I  
5 think it's simply an indication -- I think it's  
6 not being offered to prove the truth of the matter  
7 asserted but rather to demonstrate what subsequent  
8 steps were taken in the investigative process.

9 But, Counsel, we have to be careful not  
10 to let the exception become the rule there. But  
11 I'll overrule the objection but direct counsel to  
12 put questions before the witness to avoid a  
13 narrative response.

14 BY MR. HAWS:

15 Q. Special Agent Heckendorn, you were  
16 greeted at the door by a woman who identified  
17 herself as Cyndi Steele; is that correct?

18 A. Yes.

19 Q. Did you have contact with anybody else  
20 in the residence?

21 A. Later that morning, we had contact with  
22 Ms. Kunzman.

23 Q. Was she an older lady?

24 A. Yes, sir.

25 Q. And did she identify herself?

1 Q. How long were you there inside the  
2 residence?

3 A. In total, about three-and-a-half, three  
4 hours and 45 minutes.

5 Q. And why were you there that long?

6 A. We wanted to ensure that she was safe  
7 that morning.

8 Q. And had you been informed of some kind  
9 of a threat to her?

10 A. Yes, we had.

11 Q. And were you able to identify any  
12 threat to her that morning?

13 A. Nothing occurred that morning at the  
14 house.

15 Q. Okay. Were Mrs. Steele, Cyndi Steele,  
16 and Ms. Kunzman cordial to you?

17 A. Yes, they were.

18 Q. At the end of three-and-a-half hours  
19 that you were there with them, did you -- did they  
20 leave the residence?

21 A. Yes.

22 Q. And did they indicate where they were  
23 driving to?

24 A. They were going to the hospital.

25 Q. And what action did you take, if any,

1 A. Yes.

2 Q. Did you inform them as to why you and  
3 your partner were there at their location?

4 A. I did.

5 Q. And were you invited in or did you have  
6 that conversation outside?

7 A. We asked to speak with her privately,  
8 and she invited us downstairs.

9 Q. Did you inform her why you were there?

10 A. Yes.

11 Q. And what did you tell her?

12 A. We told her that we were concerned for  
13 her safety, and we had information that led us to  
14 believe that her husband was trying to kill her.

15 Q. And without stating what she said, did  
16 you observe her reaction?

17 A. Yes.

18 Q. And can you describe that reaction for  
19 the jury?

20 A. I believe, initially, it was one of  
21 disbelief and anger.

22 Q. And then, initially -- you say  
23 "initially." Did you have further conversation  
24 with her?

25 A. We did.

1 at that point?

2 A. I offered to drive them myself, and  
3 they declined. And then they indicated that they  
4 would feel more comfortable if I followed them to  
5 the hospital, which I did.

6 Q. Was somebody sick or injured as to why  
7 they were going to the hospital?

8 A. Ms. Kunzman.

9 Q. She was sick or she had an appointment?

10 A. She was sick.

11 Q. And so after you followed Mrs. --

12 Mrs. Steele and Mrs. Kunz -- strike that question.

13 When Mrs. Kunzman and Mrs. Steele left  
14 to go to the hospital, did you observe which  
15 vehicle they were driving?

16 A. They were driving the dark-colored SUV.

17 Q. Both of them were in that vehicle?

18 A. Yes, sir.

19 Q. And when you observed that they arrived  
20 safely at the hospital, what did you do at that  
21 point?

22 A. Once we got within the residential area  
23 surrounding the hospital, probably about four  
24 blocks from the actual facility, I terminated the  
25 follow.



<p style="text-align: right;">618</p> <p>1       <b>Q.</b> Did -- did your partner also break off  2 contact with them at that time?  3       <b>A.</b> No. She broke off contact at the  4 house.  5       <b>Q.</b> So you were the only one following to  6 the hospital?  7       <b>A.</b> Yes, sir.  8       <b>Q.</b> Okay. Did Mrs. Steele cooperate with  9 you throughout that morning?  10       <b>A.</b> Yes, she did.  11       <b>Q.</b> Did Mrs. Kunzman cooperate with you  12 throughout that morning?  13       <b>A.</b> Yes, sir.  14       <b>MR. HAWS:</b> No further questions. Thank you.  15       <b>THE COURT:</b> Mr. Amendola?  16       <b>MR. AMENDOLA:</b> No questions, Your Honor.  17       <b>THE COURT:</b> You may step down. Thank you,  18 Agent Heckendorn.  19       Counsel, I think we're about where we  20 take the morning break. I think we'll just go  21 ahead and take a 15-minute recess.  22       I'll admonish the jury again not to  23 discuss the case among themselves, not to form or  24 express any opinions about the case until it is  25 submitted to you.</p>	<p style="text-align: right;">619</p> <p>1       We'll be in recess for about 15  2 minutes.  3       (Recess.)  4       (Jury present.)  5       <b>THE COURT:</b> I'll note that the jury is  6 present.  7       The government may call its next  8 witness.  9       <b>MR. HAWS:</b> The government calls Jess Spike.  10       <b>THE COURT:</b> Trooper Spike, please step  11 before Ms. Gearhart and be sworn, and then follow  12 her directions from there.  13       <b>JESS SPIKE,</b>  14 having been first duly sworn to tell the whole  15 truth, testified as follows:  16       <b>THE CLERK:</b> Please state your complete name  17 and spell your last name for the record.  18       <b>THE WITNESS:</b> Jess Lachlan Spike, S-P-I-K-E.  19       <b>THE COURT:</b> You may inquire of the witness.  20       <b>MR. HAWS:</b> Thank you, Your Honor.  21       <b>DIRECT EXAMINATION</b>  22 <b>BY MR. HAWS:</b>  23       <b>Q.</b> Good morning, Mr. Spike. Where do you  24 live?  25       <b>A.</b> Coeur d'Alene, Idaho.</p>
<p style="text-align: right;">620</p> <p>1       <b>Q.</b> And what is your occupation?  2       <b>A.</b> I'm a trooper with the Idaho State  3 Police.  4       <b>Q.</b> How long have you been a trooper?  5       <b>A.</b> I'll start my fifth year September  6 12th, this year.  7       <b>Q.</b> And do you have any prior law  8 enforcement experience before becoming a trooper?  9       <b>A.</b> No, I don't.  10       <b>Q.</b> And have you been through the academy?  11       <b>A.</b> I have.  12       <b>Q.</b> And do you operate in uniform? Are you  13 a uniformed trooper?  14       <b>A.</b> Yes, I am.  15       <b>Q.</b> And do you drive a marked vehicle?  16       <b>A.</b> I do.  17       <b>Q.</b> You drive an Idaho State Police prowl  18 car or patrol car?  19       <b>A.</b> Yes.  20       <b>Q.</b> And what color are those?  21       <b>A.</b> Black and white.  22       <b>Q.</b> What are your duties, then, as a  23 trooper for the Idaho State Police?  24       <b>A.</b> I do a variety of things from traffic  25 enforcement to crash investigation, DUI</p>	<p style="text-align: right;">621</p> <p>1 enforcement, criminal and drug interdiction on the  2 roadways, as well as we assist local agencies with  3 other general law calls, domestic violence calls,  4 and other things of that nature.  5       <b>Q.</b> And were you on duty on June the 11th,  6 2010?  7       <b>A.</b> I was.  8       <b>Q.</b> And where were you that morning?  9       <b>A.</b> I had been called in early that morning  10 by my captain. He had an assignment for me to  11 assist a task force.  12       <b>Q.</b> That's the North Idaho Violent Crimes  13 Task Force?  14       <b>A.</b> That's correct.  15       <b>Q.</b> And so where did you -- where did you  16 go in connection with those duties?  17       <b>A.</b> He asked me -- he had actually called  18 me at home the night before and told me he had an  19 assignment for me in the morning. He needed me at  20 the office at 0500. I met him there and shortly  21 thereafter met Agent Sotka who briefed me on what  22 the task at hand for that day was going to be.  23       <b>Q.</b> Where did you meet with Special Agent  24 Sotka?  25       <b>A.</b> In our office in Coeur d'Alene.</p>

1 Q. In Coeur d'Alene?  
 2 A. That's correct.  
 3 Q. And where were you supposed to carry  
 4 out this operation?  
 5 A. At a residence in Sagle.  
 6 Q. In Bonner County?  
 7 A. That's correct.  
 8 Q. Idaho State Police has jurisdiction  
 9 throughout the state; is that correct?  
 10 A. That's correct.  
 11 Q. And was there another trooper involved  
 12 in it as well?  
 13 A. There was. Trooper Branch.  
 14 Q. Was she also -- was that Heather  
 15 Branch? Holly Branch. I'm sorry.  
 16 A. It was.  
 17 Q. And was she also in a marked vehicle?  
 18 A. She was.  
 19 Q. Was there anybody else involved in this  
 20 besides you and Trooper Branch and Mr. Sotka?  
 21 A. My direct supervisor at the time was  
 22 involved, Sergeant Johnson, essentially just as an  
 23 information liaison as to what was transpiring  
 24 that day, to communicate information between the  
 25 area that the operation took place and our captain

1 Q. And had you met Mr. Steele prior to  
 2 that time?  
 3 A. Negative.  
 4 Q. And so, as part of this operation, were  
 5 you told what -- who Mr. Steele was, what the  
 6 allegations were against him?  
 7 A. Yes.  
 8 Q. And what was the operation supposed to  
 9 accomplish that morning?  
 10 A. Essentially, we were to make a false  
 11 death notification to Mr. Steele. From what we  
 12 had been told, he had plotted to have his wife --  
 13 MR. McALLISTER: Objection, Your Honor, as  
 14 hearsay, what he had been told.  
 15 THE COURT: Sustained. The witness can go  
 16 ahead and answer, but do not indicate what you  
 17 were told by somebody else.  
 18 BY MR. HAWS:  
 19 Q. Let me just go ahead and direct you  
 20 further, Mr. Spike. And so, you were there to  
 21 make a false death notification; is that correct?  
 22 A. That's correct.  
 23 Q. And that was part of the law  
 24 enforcement plan --  
 25 A. That's correct.

1 back at region headquarters.  
 2 Q. And so, where did you go in connection  
 3 with the operation that day?  
 4 A. Initially, we -- after I was briefed on  
 5 what we were doing, we left the office and met at  
 6 a gas station outside Sagle. We all met up there.  
 7 When I say "all of us," myself, Trooper Branch,  
 8 Sergeant Johnson, the three of us in the State  
 9 Police, as well as Agent Sotka. We were waiting  
 10 for notification from Agent Sotka on Mr. Steele's  
 11 movements that morning. We were basically waiting  
 12 for him to leave the house. Initially --  
 13 Q. Before you go on, let me ask you a  
 14 couple questions. When you traveled from  
 15 Coeur d'Alene up to Sagle, Idaho, was that on  
 16 Highway 95?  
 17 A. It was.  
 18 Q. Is that a major thoroughfare in the  
 19 State of Idaho?  
 20 A. Yes, it is.  
 21 Q. And does it go through Sagle, Idaho?  
 22 A. Yes.  
 23 Q. And did you meet -- this gas station  
 24 where you met up, was that near Highway 95?  
 25 A. Yes. On Highway 95.

1 Q. -- with regard to Mr. Steele?  
 2 A. That's correct.  
 3 Q. And that was under the direction of  
 4 Mr. Sotka?  
 5 A. That's correct.  
 6 Q. And have you made death notifications  
 7 before?  
 8 A. Yes.  
 9 Q. What's involved in making a death  
 10 notification? Would you tell the jury?  
 11 A. Our -- I don't know that we have a  
 12 written policy. We have a, I guess, an unwritten  
 13 policy. They are always done in person. Whenever  
 14 possible, we do it at the person that we're  
 15 notifying, at their home. We always do it in  
 16 pairs. We always do it inside the residence.  
 17 It's never done over the phone unless there is  
 18 some extenuating circumstance that we physically  
 19 cannot make an in-person notification. It's one  
 20 of the more sacred things that we do.  
 21 Q. How many times have you made death  
 22 notifications in connection with your duties?  
 23 A. It's not something that we're obviously  
 24 real proud of. It's not that we keep stats on it.  
 25 Thinking back, I think that I've been primary in

1 the last four years on probably 12 or more  
2 notifications. I've been the secondary or backing  
3 officer on probably further 12.

4 Q. So a couple dozen?

5 A. That is correct.

6 Q. Do you mean proud of them or happy  
7 about them?

8 A. It's not something that we keep stats  
9 on because it's not a pleasant part of the job.  
10 We'll say that.

11 Q. But it is part of the duties?

12 A. It's a very important aspect of our  
13 job.

14 Q. Did you go to a specific location that  
15 morning, then?

16 A. After we met at the gas station?

17 Q. Yes.

18 A. We did. A residence on Talache, I  
19 believe, is the name of the road.

20 Q. Talache Road?

21 A. That's correct.

22 Q. Do you recognize the number 1569  
23 Talache Road?

24 A. That sounds correct.

25 Q. And how far was that, approximately,

1 matter as stated, Your Honor, but to show the  
2 progress of what law enforcement is doing through  
3 its procedures here.

4 THE COURT: I'll overrule the objection.

5 Ladies and gentlemen, I'm going to  
6 allow the witness to testify as to what he was  
7 told, but it's not being offered to prove whether  
8 the statement was true or false but rather to  
9 simply provide, essentially, a chronology and  
10 explain what this officer did in response to that  
11 information.

12 Obviously, Counsel, if we get into any  
13 substantive information beyond that, then  
14 obviously I will sustain the objection.

15 You may answer.

16 BY MR. HAWS:

17 Q. And so, Mr. Sotka told you that Mr.  
18 Steele had left, and for that reason you were able  
19 to go ahead and begin to carry out your operation?

20 A. That's correct. Once he had left the  
21 residence, we attempted to head that direction.  
22 The problem that we ran into was the distance  
23 between his residence and where we had staged to  
24 basically organize at the gas station was too far.  
25 Initially, Agent Sotka wanted to perform a traffic

1 from Sagle or from Highway 95?

2 A. I would have to guess to tell you. Six  
3 or eight miles would be my guess. I was following  
4 Agent Sotka at the time, and I didn't keep track  
5 of how far it was.

6 Q. What was -- what is at that location?  
7 What did you observe there?

8 A. That's Mr. Steele's residence where we  
9 met him.

10 Q. And it's a house there?

11 A. That's correct.

12 Q. Driveway into the house -- into the  
13 yard and to the house?

14 A. Yeah. There is a large number of  
15 outbuildings and horse corrals and things of that  
16 nature.

17 Q. Was Mr. Steele there when you arrived?

18 A. No, he was not.

19 Q. And had you seen his vehicle or how did  
20 you know he was not there?

21 A. Agent Sotka told me that we had -- that  
22 he had left the residence.

23 MR. McALLISTER: Again, Judge, I object to  
24 anything as hearsay that he was told.

25 MR. HAWS: Not offered for the truth of the

1 stop and make the notification as part of a  
2 traffic stop. And I kind of argued with him about  
3 that just because it was outside of what we  
4 normally do. I wanted it to appear as normal as  
5 we normally proceed with a death notification. We  
6 would never pull a vehicle over, assuming that  
7 that was the deceased family member, and make a  
8 notification on the side of the road. Aside from  
9 being unprofessional, it's just inappropriate.

10 Q. So who was there at 1569, then, when  
11 you arrived? It was you and Trooper Branch?

12 A. That's correct.

13 Q. And Mr. Sotka?

14 A. That's correct. Yes.

15 Q. Okay. Did you have any kind of radio  
16 contact with Mr. Steele?

17 A. I did. Approximately halfway between  
18 the gas station and the residence, I stopped Agent  
19 Sotka and said -- he informed me that he had a  
20 telephone number for Mr. Steele, and I asked for  
21 that and, from my cell phone, dialed Mr. Steele  
22 and spoke with him and informed him that I needed  
23 to meet with him and asked if he could return to  
24 his residence.

25 And after a fairly lengthy discussion,

1 he was concerned about the nature of the call and  
2 what it was about and why I couldn't tell him over  
3 the phone. I got the feeling that he thought that  
4 I was serving him or going to arrest him for  
5 something. And I just told him it was a personal  
6 matter and that I needed to speak with him in  
7 person and asked him to return to the residence,  
8 which he agreed to do.

9 Q. Do you remember any specific things  
10 that he said there in that conversation?

11 A. I believe he asked if I was serving him  
12 or if -- if I was there to arrest him or basically  
13 if it was criminal in nature.

14 Q. And what did you tell him when he asked  
15 you that?

16 A. That it was not. That it was a  
17 personal matter. I didn't want to discuss it over  
18 the phone and that I needed to do it in person and  
19 asked that he return to the residence.

20 Q. And did you observe Mr. Steele return  
21 to his residence?

22 A. He did.

23 Q. Do you know what kind of vehicle he was  
24 driving when he returned to the residence?

25 A. It was -- I would estimate a '90s model

1 A. It is. He agreed to go up on the  
2 porch. Once he was seated, I told him that his  
3 wife, Cyndi Steele, had been killed in a car  
4 crash.

5 Q. What was his first reaction when you  
6 told him that?

7 A. The best I can describe it, he was --  
8 very flat affect. I find that there is -- in my  
9 relatively brief career, there is kind of two  
10 reactions --

11 Q. Let me ask you some questions here and  
12 help you develop your testimony. You have made  
13 death notifications; you indicated about 24 of  
14 them?

15 A. Yes.

16 Q. And you have observed people's reaction  
17 during those death notifications?

18 A. Yes.

19 Q. And have you observed the type of  
20 emotion that they display during those death  
21 notifications?

22 A. Yes.

23 Q. And can you -- can you state what kind  
24 of reactions you get, generally, to those death  
25 notifications?

1 -- I believe it was a Ford red pickup towing a  
2 large tagalong flat-bed trailer. Might have even  
3 been a gooseneck. I'm not sure, but it was a  
4 fairly large trailer.

5 Q. And at any point, did Mr. Steele step  
6 out of that vehicle?

7 A. He did. I was -- in the driveway, we  
8 had parked our cars off facing out of the driveway  
9 -- Trooper Branch and I had -- and we were  
10 standing 15 or 20 feet from our cars. He  
11 approached and -- stepped out of his vehicle and  
12 approached our location halfway between his truck  
13 and the porch of his house.

14 Q. Who was the first to make contact with  
15 Mr. Steele, then?

16 A. I was.

17 Q. And would you relate what was said on  
18 that occasion?

19 A. He asked what this was about. And, you  
20 know, I think he may have inquired why there was  
21 two of us there or just the severity of it. And I  
22 said, you know, it wasn't the place right there  
23 standing in the driveway to discuss it and asked  
24 that he walk up on the porch and have a seat.

25 Q. And is that what happened?

1 MR. McALLISTER: Judge, I'm going to object  
2 at this point. It's getting into his opinion  
3 about another person as opposed to just testifying  
4 as to what happened.

5 THE COURT: Well, I think under Rule 701 a  
6 witness can offer an opinion based upon common  
7 experience, not necessarily calling for a  
8 particular expertise. If that's where you're  
9 going, I'll allow it, Counsel. I'll overrule the  
10 objection.

11 BY MR. HAWS:

12 Q. And so, from your experience in giving  
13 death notifications, you have observed the  
14 emotions of people who you have notified?

15 THE COURT: Just a moment. Just so we're  
16 clear, emotions now talk about subjective. The  
17 witness can describe what he has observed.

18 MR. HAWS: Their reactions.

19 THE COURT: What he observed, without trying  
20 to testify as to what people were actually  
21 thinking or emotions they were actually feeling.  
22 The question needs to be very carefully phrased  
23 that way.

24 MR. HAWS: I'll rephrase that.

25 BY MR. HAWS:

1 Q. Have you observed the reactions of  
2 people when you have given death notifications?  
3 A. Yes. And essentially there is two.  
4 People either lash out in anger toward the officer  
5 or they just collapse. They may or may not accept  
6 what I've said, but it's one of those two  
7 reactions. It's either a collapse or an anger and  
8 disbelief-type reaction toward the officer.

9 Q. And when you informed Mr. Steele that  
10 his wife had been killed, how did he react?

11 A. I would describe it as neither of  
12 those. It was flat, paused, almost contrived. It  
13 was as if he was trying to retrieve something in  
14 an archive and come up with what the answer was.  
15 It wasn't natural.

16 Q. Did he say anything?

17 A. Not initially. He kind of choked up.  
18 It appeared as if he was trying to develop tears.  
19 No tears developed. I don't recall what his first  
20 word after that was.

21 Q. Were any questions asked by Mr. Steele?

22 A. Yeah. He, throughout the course of it,  
23 asked a number of questions: "Where?" "Was it  
24 confirmed?" I believe he asked -- or maybe I told  
25 him -- what vehicle she was driving. "Was anyone

1 time?

2 A. There was no reaction that was  
3 consistent with somebody finding out that their  
4 wife was deceased.

5 MR. McALLISTER: Judge, I'm going to object.  
6 I think the officer should properly say what  
7 happened as opposed to his opinion about whether  
8 or not it was consistent.

9 THE COURT: Sustained.

10 BY MR. HAWS:

11 Q. Have you given death notifications  
12 before?

13 THE COURT: Just a moment. I'm going to  
14 sustain the objection and strike the last  
15 response. Go ahead.

16 BY MR. HAWS:

17 Q. Have you given death notifications  
18 before that somebody's relative has -- that a wife  
19 has been deceased?

20 A. Actually, they have all been males.

21 Q. That a husband has been deceased?

22 A. Yes, mm-hmm.

23 Q. And did you have further conversation,  
24 then, as to -- with Mr. Steele as to the  
25 circumstances of the notification?

1 with her?"

2 Q. Do you remember his response to the  
3 question of: "What kind of vehicle she was  
4 driving?"

5 A. I think it -- if memory serves me, I  
6 believe I told him that it was a vehicle  
7 registered to him, and maybe he said "a black  
8 Mitsubishi" or something along those lines. There  
9 was some connection that he agreed that the  
10 vehicle that she was -- that it made sense the  
11 vehicle that I had described to him.

12 Q. And was there any discussion about  
13 where she was?

14 A. Yes. Oregon City.

15 Q. Was that supplied by you or by  
16 Mr. Steele?

17 A. He asked, I believe, "Where?" And I  
18 said, "Near Oregon City. Does it make sense that  
19 she would have been there?" And I think he agreed  
20 that that did make sense.

21 Q. Did -- were any questions asked about  
22 whether anybody else was involved?

23 A. Yes. And he was told that she was  
24 alone in the vehicle.

25 Q. And was there any reaction at that

1 A. Clarify your question.

2 Q. In other words, as to what happened  
3 during the death, the supposed death of Cyndi  
4 Steele.

5 A. We did. We told him that it appeared  
6 that her car had been run off the road. There was  
7 an eyewitness to the -- to the incident that had  
8 taken place on the road. Her vehicle had been run  
9 off the road, and she had been killed in a crash.  
10 There was -- then later as the -- as the  
11 conversation progressed, Agent Sotka brought in  
12 that the individual that was involved in the other  
13 vehicle that had run her off the road had been  
14 located. His vehicle had also crashed after a  
15 short pursuit with the Oregon State Police and  
16 that he was somewhat conscious and that they were  
17 trying to basically put the pieces together. It  
18 wasn't --

19 Q. Let me ask you that. Was there any  
20 reaction or any questions by Mr. Steele when he  
21 was informed of that?

22 A. He was -- I think that was the first  
23 point that I noticed a change in his demeanor,  
24 that he seemed somewhat surprised at that point in  
25 time, that his -- what he expected had kind of

1 gotten away from him, and it wasn't something that  
2 he planned for. It was more genuine in reaction.

3 **Q.** And so, did -- was Mr. Steele given a  
4 chance to reflect or to compose himself?

5 **A.** He was. And Agent Sotka pushed him  
6 for, you know, "Do you know who this individual  
7 might be?" And when the name of "Fairfax" came  
8 out, he instantly knew Larry Fairfax, knew the  
9 name.

10 **Q.** What do you specifically remember him  
11 saying about Larry Fairfax?

12 **A.** He was just -- it was kind of a  
13 question of "Larry Fairfax?" And that's what I'm  
14 trying to describe as surprise, that it was --  
15 just he didn't expect that name to come up.

16 **Q.** Did Mr. Steele indicate whether he knew  
17 Larry Fairfax?

18 **A.** Yes, he did.

19 **Q.** Did he say how he knew Larry Fairfax?

20 **A.** He said that he did work around the  
21 house, had worked with the horses, done some  
22 building and remodeling construction-type things  
23 around the house. He said -- excuse me -- that  
24 Cyndi Steele had the majority of the contact --  
25 excuse me -- with Mr. Fairfax.

1 Fairfax?

2 **A.** I believe then it went into his  
3 mother-in-law. Agent Sotka came in and said that  
4 Mr. Steele's mother-in-law had been shot and was  
5 dead. And this was the second point that I noted  
6 that it was as if his plan had kind of derailed a  
7 little bit.

8 **MR. McALLISTER:** Judge, I'm going to object.

9 **THE COURT:** Sustained, sustained. I'll  
10 instruct the jury to disregard.

11 **BY MR. HAWS:**

12 **Q.** What did Mr. --

13 **THE COURT:** Just a moment. I'm going to  
14 instruct the jury to disregard the witness' last  
15 comment.

16 **BY MR. HAWS:**

17 **Q.** What did Mr. Steele say in response to  
18 that information from Mr. Sotka?

19 **A.** His response was, "Fuck me."

20 **Q.** And can you describe what kind of  
21 inflection or what kind of a -- what kind of a  
22 tone of voice he used?

23 **A.** It was kind of a, "fuck me." It was  
24 almost -- I'm searching for the word -- surprise  
25 and disbelief.

1 **Q.** Did Mr. Steele express any concern  
2 about Mr. Fairfax and Mrs. Steele being together?

3 **A.** Well, Agent Sotka kind of interjected,  
4 you know, "This is difficult, sir, but is there  
5 any chance that there is some infidelity?" Or,  
6 "Have you ever questioned Cyndi Steele's  
7 relationship with someone else?" Or kind of  
8 prodded him for that information.

9 And he said -- I do remember him  
10 saying, "Well, he is over there a lot. She has  
11 been gone a lot. She doesn't come back here but  
12 every couple weeks," I think he said. "And she is  
13 from that area, has friends from that area," and  
14 -- but in response, as Sotka pushed further toward  
15 -- kind of leading him toward lining up Fairfax  
16 being the -- Cyndi Steele's affair, he just kind  
17 of took it hook, line, and sinker and just went  
18 with it. I remember him patting his stomach that  
19 Fairfax was -- implying that he was heavysset and  
20 didn't think that Cyndi would go for somebody like  
21 that.

22 **Q.** Mr. Steele did that?

23 **A.** Yes.

24 **Q.** Where did the conversation go from the  
25 discussion -- after the discussion about Mr.

1 **Q.** What happened after the notification --  
2 after the discussion about Mr. Fairfax and that  
3 reaction by Mr. Steele?

4 **A.** He wanted to -- if I'm not mistaken, he  
5 wanted to contact family members and find out if  
6 they were okay. He felt that it was, you know,  
7 that if it had happened to two members of his  
8 family, I think he wanted to contact his son or  
9 daughter and make sure that they were okay. I  
10 remember he went upstairs. He retrieved a phone  
11 number or something, came back down with it. He  
12 wanted to -- and this is -- some of this is out of  
13 order, but he also wanted to discuss and Agent  
14 Sotka brought up who may have perpetrated this  
15 against him, who his enemies were. He had a  
16 threatening email that he wanted to retrieve from  
17 his computer. He named a number of organizations  
18 that may have been against him.

19 **Q.** Do you remember the names of any of  
20 those organizations that he spoke about on that  
21 occasion?

22 **A.** There was like the Anti-defamation  
23 League, Southern Poverty -- there were one or two  
24 others. I don't recall the acronyms or the names  
25 of them.

1 Q. And after discussing -- and you  
2 overheard that discussion between the statements  
3 by Mr. Steele with Mr. Sotka?

4 A. Yes.

5 Q. And after discussing those, where did  
6 the -- where did the conversation go then?

7 A. After we had gone through the possible  
8 infidelity, his mother-in-law being shot, it came  
9 to -- I believe Agent Sotka took a phone call, and  
10 Larry Fairfax, you know, had been identified. And  
11 he took another phone call and said that he  
12 had --

13 Q. "He" took another phone call, meaning  
14 whom?

15 A. Sorry. Agent Sotka took another phone  
16 call. And in this particular phone call, he had  
17 been informed that Fairfax had gained some  
18 consciousness and was saying that -- to ask  
19 Mr. Steele what was going on, he could explain  
20 everything. He could answer all the questions  
21 that we had.

22 Q. Let me make sure that we're clear on  
23 that. Mr. Sotka said that related -- related to  
24 Mr. Steele that Larry Fairfax made the statement  
25 that you just related?

1 Q. Okay. And from there, you took him out  
2 to the patrol car?

3 A. Initially, he was placed in Trooper  
4 Branch's car. There was some confusion on where  
5 he was going to be transported, whether he was  
6 going to go to the federal building, go to the  
7 Kootenai Detention Center, and who was  
8 transporting him. So initially, he sat in Trooper  
9 Branch's car, was in there for a number of  
10 minutes, and then it was determined that I would  
11 be transporting him, as well as booking him. And  
12 so he was transferred to my car, and then I  
13 transported him to Kootenai County Public Safety  
14 Building.

15 Q. Was that the end of your involvement in  
16 this matter?

17 A. Yes. After I booked him, that was the  
18 last that I had had contact.

19 MR. HAWS: Just a moment, please.

20 I believe that's all I have. Thank  
21 you, Mr. Spike.

22 THE WITNESS: Thank you.

23 THE COURT: Cross-examination,  
24 Mr. McAllister.

25 MR. McALLISTER: Thank you, Your Honor.

1 A. Correct. Larry Fairfax made those  
2 statements to the supposed officers who were on  
3 the scene of the apparent crash that had taken  
4 place, the pursuit that was the premise for that  
5 information being developed.

6 Q. When Mr. Sotka relayed that information  
7 to Mr. Steele, what kind of reaction was there?

8 A. He was just -- flat affect. I don't  
9 know. I have no idea. Had no response to it,  
10 whatsoever. And after, you know, Agent Sotka kind  
11 of pushed him harder and harder, he wasn't going  
12 to -- wasn't going to crack, that he knew the  
13 answers. And I believe, at that point in time,  
14 Agent Sotka said, "Your wife is not dead. This  
15 has all been contrived. You're under arrest."  
16 And at that point in time, I placed him in  
17 custody.

18 Q. You're the one who placed him in  
19 custody?

20 A. Yes.

21 Q. And was it Mr. Sotka who arrested him  
22 then or who placed him under arrest, told him what  
23 the charges were, and then you took custody of the  
24 prisoner?

25 A. That's correct.

1 CROSS-EXAMINATION  
2 BY MR. McALLISTER:

3 Q. Trooper Spike, did you say, "He wasn't  
4 going to crack"?

5 A. Yes.

6 Q. Okay. And that was a reference to  
7 Mr. Steele; correct?

8 A. That's correct.

9 Q. And what you meant by that is this  
10 whole ruse or setup was designed to see if he  
11 would crack and admit that he was in some plot;  
12 correct?

13 A. That's correct.

14 Q. And he did not --

15 A. That's correct.

16 Q. -- admit anything about that; right?

17 A. Nope.

18 Q. And this was a cleverly designed ruse,  
19 faked deaths to try to see if you could get him to  
20 admit something; right?

21 A. No. The purpose of it was to see if he  
22 followed his alibi and the information that we had  
23 lined up.

24 Q. Well, in fact, you call it an alibi.

25 In fact, a friend came named Al Banks; correct?

1 A. That's correct.  
 2 Q. Who he had an appointment with;  
 3 correct?  
 4 A. That's correct.  
 5 Q. All right. Now, when I say this was a  
 6 "carefully designed ruse," you were faking it,  
 7 weren't you?  
 8 A. I'm sorry. I was?  
 9 Q. Faking it.  
 10 A. Yes.  
 11 Q. And the whole idea was to get him to  
 12 crack, to make some kind of admission?  
 13 A. That's correct.  
 14 Q. And he never did?  
 15 A. Well, I'll retract what I said. That  
 16 wasn't the whole purpose of it, no.  
 17 Q. Well, it was one of the purposes;  
 18 correct?  
 19 A. That was -- we hoped, sure, that he  
 20 would say, "Okay, yeah," but that wasn't the  
 21 primary purpose, no.  
 22 MR. McALLISTER: Thank you, sir.  
 23 THE COURT: Redirect.  
 24 MR. HAWS: Yes, Your Honor.  
 25 REDIRECT EXAMINATION

1 redirect given the -- it was very limited cross,  
 2 but I think this is fair. But don't wander too  
 3 far from the questions you're now putting to the  
 4 witness.  
 5 BY MR. HAWS:  
 6 Q. Counsel asked you whether Mr. Steele  
 7 cracked. Did he ever make a denial that he was  
 8 involved in the death of Cyndi Steele?  
 9 A. No.  
 10 MR. HAWS: Thank you. No further questions.  
 11 THE COURT: Any recross?  
 12 RECROSS-EXAMINATION  
 13 BY MR. McALLISTER:  
 14 Q. Nor did he admit anything about her  
 15 phony death; correct?  
 16 A. Is that a question?  
 17 Q. Yes. He never did admit anything about  
 18 her supposed death?  
 19 A. No.  
 20 MR. McALLISTER: Thank you.  
 21 THE COURT: I assume nothing else?  
 22 MR. HAWS: Nothing else.  
 23 THE COURT: You may step down, Trooper  
 24 Spike. Thank you very much.  
 25 MR. HAWS: May he be excused, Your Honor, so

1 BY MR. HAWS:  
 2 Q. What was the primary purpose,  
 3 Mr. Spike?  
 4 A. Again, Agent Sotka had a number of  
 5 things that Mr. Fairfax claimed that he was going  
 6 to do on this day, all of which had transpired and  
 7 lined up verbatim with what he said he was going  
 8 to do, from mailing something at the post office  
 9 to making a lunch date with someone. I believe  
 10 there was something about transporting lumber, and  
 11 that's why he was in the truck with the trailer.  
 12 There was just a number of things that all lined  
 13 up. And this ruse, as the defense counsel put it,  
 14 was to basically cross those Ts and line up those  
 15 things so that we could put two and two together.  
 16 Q. During the time that you were there  
 17 with Mr. Steele that morning, did you ever see a  
 18 tear?  
 19 A. No.  
 20 Q. Did you ever see a denial by  
 21 Mr. Steele?  
 22 MR. McALLISTER: This is beyond the scope of  
 23 my cross-examination.  
 24 MR. HAWS: If I may answer, Your Honor?  
 25 THE COURT: Well, I -- I think it's fair

1 that he can travel back to his duties?  
 2 THE COURT: I assume so.  
 3 MR. McALLISTER: No objection.  
 4 THE COURT: You are excused and released  
 5 from any subpoena. Thank you.  
 6 Call your next witness.  
 7 MR. HAWS: Call Eric Clemensen.  
 8 THE COURT: Sir, step before Ms. Gearhart,  
 9 be sworn as a witness, and follow her directions  
 10 from there.  
 11 ERIC CLEMENSEN,  
 12 having been first duly sworn to tell the whole  
 13 truth, testified as follows:  
 14 THE CLERK: Please state your complete name  
 15 and spell your last name for the record.  
 16 THE WITNESS: Eric Clemensen,  
 17 C-L-E-M-E-N-S-E-N.  
 18 THE COURT: You may inquire of the witness,  
 19 Mr. Haws.  
 20 MR. HAWS: Thank you, Your Honor.  
 21 DIRECT EXAMINATION  
 22 BY MR. HAWS:  
 23 Q. Mr. Clemensen, where do you reside?  
 24 A. Coeur d'Alene, Idaho.  
 25 Q. And are you employed?



1 A. Yes.  
 2 Q. Where?  
 3 A. I'm a special agent with the Federal  
 4 Bureau of Investigation.  
 5 Q. How long have you been a special agent  
 6 with the FBI?  
 7 A. Fourteen years.  
 8 Q. And what did you do before becoming a  
 9 special agent?  
 10 A. I was a commissioned officer in the  
 11 United States Marine Corp for 13 years.  
 12 Q. What are your duties as a special agent  
 13 with the FBI?  
 14 A. To investigate alleged violations of  
 15 federal criminal law.  
 16 Q. And do you, as a special agent, have  
 17 law enforcement powers of search and seizure?  
 18 A. As well as arrest.  
 19 Q. And arrest?  
 20 A. Yes, sir.  
 21 Q. And so, carrying out search warrants --  
 22 warrants authorized by judges to search premises  
 23 -- would be part of your duties; is that correct?  
 24 A. Yes, sir.  
 25 Q. Going back to June the 10th of 2010,

1 Q. And do you know what warrant this was  
 2 that you were searching under?  
 3 A. This was a search warrant for the  
 4 property located at that address.  
 5 Q. And do you know the issuing court?  
 6 A. I'm not sure.  
 7 Q. Which court issued the search warrant?  
 8 A. It was issued by one of the magistrate  
 9 judges. I'm not sure.  
 10 Q. In the District of Idaho?  
 11 A. Yes, sir, District of Idaho.  
 12 Q. How many other individuals were  
 13 involved in conducting the search at 1569 Talache  
 14 Road?  
 15 A. Myself included, there was 15  
 16 individuals or law enforcement officers who  
 17 participated in the search.  
 18 Q. Were there federal agents?  
 19 A. Yes, sir.  
 20 Q. Were there state agents?  
 21 A. Yes, sir.  
 22 Q. County agents?  
 23 A. The task force officers were a mix of  
 24 individuals from either city or county agencies.  
 25 Q. Which county agencies were involved in

1 were you involved in working on a case that we're  
 2 in trial on today?  
 3 A. Yes, sir.  
 4 Q. And what was your assigned duty on that  
 5 day?  
 6 A. I had been informed that a search  
 7 warrant had been obtained by Special Agent Sotka,  
 8 and I was assigned to be the search team leader in  
 9 the execution of that search the following day.  
 10 Q. And in connection with that, where did  
 11 you go?  
 12 A. I went to 1569 Talache Road.  
 13 Q. And that was on the 11th; is that  
 14 correct?  
 15 A. Yes, sir.  
 16 Q. 11th of June of 2010?  
 17 A. Yes, sir.  
 18 Q. 1569 Talache Road, you're talking about  
 19 near the community of Sagle, Idaho?  
 20 A. Yes, sir.  
 21 Q. Who else was involved on the 11th in  
 22 this operation, this search operation?  
 23 A. There were several participants from  
 24 the FBI, as well as several task force officers  
 25 from the North Idaho Violent Crimes Task Force.

1 that search that day?  
 2 A. Bonner County Sheriff's Office,  
 3 Detective Mark Strangio was participating. And we  
 4 had one sergeant from the Kootenai County  
 5 Sheriff's Office who was a task force officer.  
 6 Q. I'd like to show you Exhibit No. 8  
 7 which has been admitted. It's a photograph. Do  
 8 you see Exhibit 8?  
 9 A. Yes, sir.  
 10 Q. Would you tell what Exhibit 8 depicts?  
 11 A. This is the main house at 1569 Talache  
 12 Road, Sagle, Idaho.  
 13 Q. This is where you conducted the search  
 14 warrant?  
 15 A. Yes, sir.  
 16 Q. And I would like to show you Exhibit  
 17 No. 10. Do you recognize what's shown in Exhibit  
 18 No. 10?  
 19 A. This is the two-car garage that's  
 20 attached to the main house on that property.  
 21 Q. Is that also part of the property,  
 22 then, that you searched on that day?  
 23 A. Yes, sir.  
 24 Q. And Exhibit No. 15. Do you recognize  
 25 what's shown in Exhibit No. 15?

1 A. Yes, sir.  
 2 Q. And what is this?  
 3 A. In the foreground, there is a structure  
 4 that -- for lack of a better description, we call  
 5 the in-laws' quarters because it was a complete  
 6 residence with bathroom, kitchen, living quarters,  
 7 and you see it's got the open two-car garage --  
 8 there is actually three cars there. And in the  
 9 background on the -- as you're looking at the  
 10 photo on the left side, that's a multi-car  
 11 detached garage.  
 12 Q. And did the search warrant include all  
 13 premises?  
 14 A. Yes, sir.  
 15 Q. Located at 1569 Talache Road; is that  
 16 correct?  
 17 A. Yes, sir. It was a multi-acre  
 18 property.  
 19 Q. Do you know whether the search warrant  
 20 authorized the search for silver, either coins --  
 21 A. Yes, sir, it did.  
 22 Q. And, in fact -- well, let me back up.  
 23 Who was in charge of conducting the search,  
 24 executing the search, organizing the team, and so  
 25 on?

1 A. All the other outbuildings.  
 2 Q. And no other -- no silver was found  
 3 other than in the location you indicated in the  
 4 master bedroom walk-in closet?  
 5 A. That's correct.  
 6 Q. Did you remove any Sheetrock?  
 7 A. In the outbuilding, the multi-car  
 8 garage that I pointed out in the prior exhibit,  
 9 towards the far end of that from where the vantage  
 10 point of that picture was taken, the distant end  
 11 of that on the back wall, there was -- we had  
 12 information from -- that Mr. Sotka had provided me  
 13 that Mr. Fairfax said that there were some type of  
 14 a built-in safe-type device or devices in that  
 15 area.  
 16 So we removed some Sheetrock and  
 17 exposed the -- since that structure is somewhat  
 18 built into the hillside, there was a taller bit of  
 19 the foundation. So right behind the Sheetrock was  
 20 a concrete wall, and built into that concrete was  
 21 several cylindrical -- I think it was either four  
 22 or five cylindrical safe-type devices.  
 23 Q. Describe the approximate dimensions of  
 24 the safe-type devices.  
 25 A. My recollection is that they were maybe

1 A. I was.  
 2 Q. You were in charge of the search team?  
 3 A. Yes, sir.  
 4 Q. And do you know whether, during that  
 5 search at 1569 Talache Road, whether the officers  
 6 found any silver?  
 7 A. Yes, sir, they did.  
 8 Q. Describe what kind of silver they  
 9 found.  
 10 A. It was several cardboard boxes and/or  
 11 plastic coin containers which contained large  
 12 quantity of one-ounce silver coins -- one troy  
 13 ounce, to be specific -- and there was also  
 14 several -- I believe the proper term is "ingots."  
 15 They were large bars of solid silver.  
 16 Q. Where was the silver located at 1569  
 17 Talache Road?  
 18 A. In the walk-in closet of the master  
 19 bedroom.  
 20 Q. Did you find silver anyplace else on  
 21 the premises?  
 22 A. No, sir.  
 23 Q. Did you search in the garage, you said?  
 24 A. Yes, sir.  
 25 Q. You searched all the other premises?

1 8 to 12 inches in diameter and possibly 2 feet in  
 2 depth.  
 3 Q. And they were located embedded in the  
 4 concrete?  
 5 A. Yes, sir.  
 6 Q. Did you open those?  
 7 A. Yes, sir.  
 8 Q. How did you open them?  
 9 A. I don't specifically recall. They may  
 10 not have been secured. I don't specifically  
 11 recall.  
 12 Q. Were you the one who found those?  
 13 A. I did not act as the supervisor of the  
 14 search. I was not actively involved in looking  
 15 through the areas of it. I was more -- kept  
 16 myself in a position to oversee the entire  
 17 function, and so it was one of the other search  
 18 participants that was directed to look for that.  
 19 They found it, reported it to me, and I went there  
 20 to inspect what they found.  
 21 Q. Was any damage made in order to open  
 22 those devices -- those safes?  
 23 A. Well, I mentioned removing the  
 24 Sheetrock. That caused a little bit of cosmetic  
 25 damage to it, and I seem to remember that we

1 chipped away at the concrete a little bit, as  
2 well.

3 **Q.** Approximately how large an area are you  
4 talking about?

5 **A.** As far as the area of arrangement, I  
6 think that it was within probably 8 to 10 feet  
7 they were co-located with one another. I don't --  
8 I don't think that we specifically measured that  
9 off, but that's just my recollection.

10 **Q.** Did you locate any silver there?

11 **A.** No, sir.

12 **Q.** Did you locate anything in those safes?

13 **A.** No.

14 **Q.** They were empty?

15 **A.** They were empty.

16 **Q.** Did -- did you account for all of the  
17 silver that was located in the walk-in closet?

18 **A.** Yes, sir.

19 **Q.** And would you please describe for the  
20 jury how you accounted for that?

21 **A.** Well, when the silver was located, it  
22 was packaged one of two ways. There were plastic  
23 coin holders which -- from the outside, they are  
24 basically rectangular and approximately 3 inches  
25 long by about an inch-and-a-half square. There is

1 nature to what I described before, but a different  
2 appearance. It had generally a rectangular  
3 exterior with a cylindrical portion inside with a  
4 cap, and those were arranged in large plastic  
5 green trays which were probably -- I want to say  
6 about 1 foot by maybe 15 to 18 inches. And there  
7 were sockets on those trays where each one of  
8 these -- these coin holders would fit so that if  
9 you were to move the tray, they would stay put and  
10 wouldn't shift around.

11 **Q.** Did you fully account for all of the  
12 silver there in the walk-in closet?

13 **A.** Yes, sir.

14 **Q.** And did you -- did you at any time  
15 return that silver to a member of the Steele  
16 family?

17 **A.** Yes, sir.

18 **Q.** And when did you return any silver to  
19 anybody in the Steele family?

20 **A.** It was on June 16th, 2010.

21 **Q.** So a few days later?

22 **A.** Yes, sir.

23 **Q.** And that was returned to whom?

24 **A.** To Cyndi Steele.

25 **Q.** Did you have a way of accounting for

1 a cap to that, and inside that, there is a  
2 cylinder running down the center of that where you  
3 can stack -- I believe it's either 20 or 25 of  
4 these one-ounce coins. And the cap goes on it,  
5 and that provides an easy means to store the  
6 coins, protect them from the elements for tarnish  
7 or anything like that; plus, because of the  
8 rectangular nature of the outside of it, they can  
9 be stacked up without tumbling, and it's an easy  
10 way to organize them.

11 Well, there were several boxes that  
12 were probably, I would say 3 inches by maybe 6  
13 inches across the top and maybe 2-1/2 to 3 inches  
14 high, very sturdy cardboard boxes. And in each of  
15 these boxes, there were several of those  
16 previously described coin holders.

17 On each of the boxes, there was various  
18 notations regarding the contents of the box,  
19 either the type of item that was located inside or  
20 the quantity thereof, or in some cases both, both  
21 a qualitative and a quantitative description of  
22 what was in the boxes. That was one method that  
23 they were packaged in when we located them.

24 The other method was a slightly  
25 different type of plastic container similar in

1 the approximate value of the silver that was  
2 returned to her on that occasion?

3 **A.** Yes, sir. Once we -- in the  
4 documentation process of the search warrant -- I'd  
5 like to explain that some of the documentation  
6 that we do for a search warrant is conducted on  
7 site by filling out various logs for the  
8 administrative details as far as who participated,  
9 what their specific functions were, the times that  
10 we got there, things of that nature. Then we also  
11 maintain logs of the evidence that was seized, the  
12 photographs that were taken. And if it's a very  
13 forensically heavy search where there is a lot of  
14 latent fingerprints or something, we may -- we'll  
15 keep a log on that, too. That was not part of  
16 this search.

17 **Q.** What was the approximate value of what  
18 you returned in silver to Mrs. Steele on the 16th?

19 **A.** \$123,850 and -- like a few dollars over  
20 that. So a little over \$123,850.

21 **Q.** That was based upon the value of silver  
22 on that day?

23 **A.** Yes, sir.

24 **Q.** Was any silver retained as evidence?

25 **A.** Yes, sir. I was instructed that

1 there --  
 2 **Q.** How much silver was retained as  
 3 evidence?  
 4 **A.** \$25,300, slightly over that amount.  
 5 **Q.** And that was retained in the form of  
 6 silver coins?  
 7 **A.** Yes, sir. And the reason it was that  
 8 odd amount was that I was instructed to keep the  
 9 original packaging intact and make that as close  
 10 to \$25,000 as I could, and that, with the  
 11 accounting that I did, it came out to \$25,300 and  
 12 change.  
 13 **Q.** At some point, was that silver also  
 14 returned to Cyndi Steele pursuant to stipulation?  
 15 **A.** Yes, sir, in February of this year.  
 16 **Q.** So all of the silver, to your  
 17 knowledge, was returned to Mrs. Steele?  
 18 **A.** With the exception of one coin.  
 19 **Q.** And that one coin was kept as?  
 20 **A.** As an exemplar.  
 21 **Q.** As a sample?  
 22 **A.** Yes, sir.  
 23 **Q.** I'd like to show you a couple of  
 24 exhibits at this time.  
 25 **THE COURT:** I have turned off the jury

1 **Q.** Removed from the master bedroom closet?  
 2 **A.** Yes, sir.  
 3 **Q.** Show Exhibit No. 54.  
 4 Exhibit No. 54, are these more of the  
 5 rounds?  
 6 **A.** Yes, sir.  
 7 **Q.** From the same occasion?  
 8 **A.** Yes, sir. And I have not used the term  
 9 "rounds" before. That is another term for these  
 10 coins is to call -- in either coin collecting or  
 11 precious-metals investing, these are known as  
 12 "rounds."  
 13 **Q.** Exhibit No. 55, please.  
 14 Does this depict a picture -- does this  
 15 depict any of the silver that was taken under the  
 16 search warrant?  
 17 **A.** Yes, sir.  
 18 **Q.** Same time, same place?  
 19 **A.** Yes, sir.  
 20 **Q.** Exhibit 56, please. Is this another  
 21 picture of silver that was seized from the Steele  
 22 residence on that date?  
 23 **A.** Yes, sir.  
 24 **Q.** Exhibit No. 57. Are these samples of  
 25 coins -- photographs of samples of the coins from

1 projector so you can bring it up. I have turned  
 2 off the jury projector.  
 3 **MR. HAWS:** Thank you.  
 4 **THE COURT:** So if you want to bring it up  
 5 for court and counsel, you may.  
 6 **MR. HAWS:** Thank you, Your Honor. Exhibit  
 7 No. 52.  
 8 **BY MR. HAWS:**  
 9 **Q.** Do you recognize Exhibit No. 52?  
 10 **A.** Yes, sir.  
 11 **Q.** Is this a photograph?  
 12 **A.** Yes, sir.  
 13 **Q.** Does it show a box of some of the  
 14 rounds?  
 15 **A.** Yes, sir.  
 16 **Q.** That were seized on that occasion  
 17 on -- at the Steele residence?  
 18 **A.** Yes, sir.  
 19 **Q.** Show Exhibit No. 53, please.  
 20 Exhibit No. 53, is that another piece  
 21 of evidence that was seized at the time of the  
 22 search warrant?  
 23 **A.** Yes, sir.  
 24 **Q.** Was that silver, also?  
 25 **A.** Yes, sir.

1 one of the boxes?  
 2 **A.** Yes, sir.  
 3 **Q.** Accurately depict what was seen that  
 4 day?  
 5 **A.** Yes, sir.  
 6 **Q.** Exhibit No. 58, please. What does this  
 7 show?  
 8 **A.** This depicts almost identically to what  
 9 Exhibit 57 depicted, sir. The coins -- example of  
 10 the coins and the packaging seized from the master  
 11 bedroom at 1569 Talache Road.  
 12 **Q.** Go to 59, please. And is this another  
 13 photograph of more of the silver that was seized  
 14 at that time?  
 15 **A.** Yes, sir.  
 16 **Q.** Exhibit No. 60. Another exhibit of  
 17 silver coins taken under the search warrant?  
 18 **A.** Yes, sir.  
 19 **Q.** And Exhibit No. 61. Does this show a  
 20 similar group of coins that were seized?  
 21 **A.** Yes, sir. Well, this -- coins are  
 22 packaged with a singular coin remaining outside  
 23 the packaging.  
 24 **Q.** And No. 62, please. What does this  
 25 show?

<p style="text-align: right;">666</p> <p>1       <b>A.</b> This -- this shows the -- the resealed  2 box that the single remaining coin was extracted  3 from, and that single remaining coin has been  4 packaged singularly as a piece of evidence with an  5 FBI evidence label on it.  6       <b>MR. HAWS:</b> I would like to ask Mr.  7 Severson's assistance in showing the witness  8 Exhibit No. 64, please.  9 <b>BY MR. HAWS:</b>  10       <b>Q.</b> Do you recognize what's been handed to  11 you as Exhibit No. 64?  12       <b>A.</b> I do.  13       <b>Q.</b> And what is it?  14       <b>A.</b> This is the single coin that I  15 extracted from the overall seized silver on  16 February 2nd, 2011.  17       <b>Q.</b> Is that the coin that's shown in  18 Exhibit No. 62?  19       <b>A.</b> Yes, sir, it is.  20       <b>Q.</b> And then, Exhibit No. 63, please. Is  21 this another photograph of the same?  22       <b>A.</b> Yes, sir. And the only difference  23 between this photograph and the prior one is on  24 the box -- it displays the evidence label on the  25 box containing the rest of the silver.</p>	<p style="text-align: right;">667</p> <p>1       <b>MR. HAWS:</b> Okay. Your Honor, at this time,  2 I would move for the admission of photographs 52  3 through 63. I believe that those have been  4 stipulated to.  5       Is that correct, Counsel?  6       <b>THE COURT:</b> Mr. McAllister? Mr. Amendola?  7       <b>MR. AMENDOLA:</b> Your Honor, I do not believe  8 that they were part of the stipulation, and so we  9 object on relevance. And I would also like a  10 sidebar.  11       <b>THE COURT:</b> All right. Approach.  12       (Sidebar commences as follows:)  13       <b>THE COURT:</b> Mr. Amendola?  14       <b>MR. AMENDOLA:</b> Yes. Your Honor, I know --  15       <b>THE COURT:</b> Step to the microphone.  16       <b>MR. AMENDOLA:</b> Your Honor, I know that, you  17 know, you're going to grant some leeway in a  18 search warrant because maybe items of some  19 relevance are going to be produced, but not only  20 do we object on relevance, but also I would move  21 to strike all of the testimony regarding silver.  22 For the life of me, I can't discern any relevance  23 to any of the testimony or any of the exhibits at  24 this point.  25       <b>THE COURT:</b> There is no objection as to</p>
<p style="text-align: right;">668</p> <p>1 authenticity or foundation, just as to relevance?  2       <b>MR. AMENDOLA:</b> Yes.  3       <b>THE COURT:</b> Okay. Mr. Haws?  4       <b>MR. HAWS:</b> I think the relevance is clear  5 for several reasons. The relevance is clear for  6 several reasons.  7       <b>THE COURT:</b> Speak right to the mike so the  8 jury can't overhear you. Likewise, Mr. Amendola.  9       <b>MR. HAWS:</b> The relevance is clear for  10 several reasons, Your Honor. First, there has  11 been reference to the silver that was paid to  12 Mr. Fairfax, and Mr. Fairfax has been  13 cross-examined with regard to silver and how that  14 transaction was made and what the coins looked  15 like. Prior coins that were paid to Mr. Fairfax  16 have already been admitted into evidence that came  17 from his residence that he claimed were tied into  18 this case. The defense themselves made reference  19 to silver coins during their opening statement.  20 And so this is highly relevant. Silver is part of  21 this case, Your Honor.  22       <b>THE COURT:</b> Mr. Amendola, do you want to  23 respond?  24       <b>MR. AMENDOLA:</b> Only, Your Honor, that I  25 heard what Mr. Haws said, but I -- he provided no</p>	<p style="text-align: right;">669</p> <p>1 relevance to any other part of this case to any of  2 the charges that Mr. Steele is facing, and so  3 I -- I don't think any relevance has been shown.  4       <b>THE COURT:</b> I will overrule the objection.  5 I think the relevance comes from the fact that  6 Mr. Fairfax has testified that at least apparently  7 he was going to be paid with silver coins, was  8 paid with silver coins. So the availability of  9 the silver coins and the fact that Mr. Steele  10 possessed and kept silver coins as a means of  11 currency and wealth retention I think is relevant  12 then to corroborate Mr. Fairfax's version of what  13 occurred. So I think for that reason it's  14 relevant.  15       Now, it only goes that far. And if  16 counsel tries to make some other use of it, such  17 as that he was a survivalist or whatever, that's  18 completely irrelevant. But I think the fact that  19 he possessed silver coins in the way that  20 Mr. Fairfax has described, I think is relevant, so  21 I'll overrule the objection.  22       <b>MR. HAWS:</b> While we're here, Your Honor, I  23 believe there was a stipulation pursuant to the  24 release of money to Cyndi Steele in January of  25 this year -- February of this year, we would keep</p>

<p style="text-align: center;">670</p> <p>1 one coin as a sample. I believe that counsel has</p> <p>2 stipulated to it, at least prior counsel did.</p> <p>3 THE COURT: I think the stipulation probably</p> <p>4 went to authenticity and foundation, not as to</p> <p>5 relevance.</p> <p>6 MR. HAWS: Correct.</p> <p>7 THE COURT: And I think that's the objection</p> <p>8 stated here.</p> <p>9 MR. HAWS: I'm just raising that now so if</p> <p>10 there's a --</p> <p>11 THE COURT: Okay. That will be my ruling.</p> <p>12 (Sidebar concluded.)</p> <p>13 THE COURT: The objection is overruled. The</p> <p>14 exhibits will be admitted and may be published to</p> <p>15 the jury at counsel's option.</p> <p>16 (Government's Exhibit Nos. 52 through</p> <p>17 63 admitted.)</p> <p>18 BY MR. HAWS:</p> <p>19 Q. Mr. Clemensen, would you please show</p> <p>20 Exhibit -- what's been admitted as Exhibit No. 64</p> <p>21 to the jury, just demonstrate it for them, please.</p> <p>22 And that is the sample or one of the coins that</p> <p>23 was kept from the items that were seized?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. At this time I would like to</p>	<p style="text-align: center;">671</p> <p>1 just publish one sample of the exhibits that we</p> <p>2 talked about, the photographs.</p> <p>3 Mrs. Rocca, if you would put up Exhibit</p> <p>4 No. 52 as a sample of those exhibits that we have</p> <p>5 already admitted.</p> <p>6 Those are the types of boxes that</p> <p>7 you're referring to that were seized in the master</p> <p>8 bedroom closet?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And inside of the cardboard box with</p> <p>11 the notation of "rounds," that's where you found</p> <p>12 the plastic sleeves that you were describing</p> <p>13 earlier that --</p> <p>14 A. Yes, sir.</p> <p>15 Q. -- the coins came in?</p> <p>16 A. Yes, sir.</p> <p>17 Q. I'm going to ask -- Mr. Clemensen, so</p> <p>18 all of the silver was found in one location; is</p> <p>19 that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And it was in the master bedroom</p> <p>22 closet, no place else?</p> <p>23 A. That's correct.</p> <p>24 MR. HAWS: Thank you. No further questions.</p> <p>25 THE COURT: Cross-examination, Mr. Amendola?</p>
<p style="text-align: center;">672</p> <p>1 MR. AMENDOLA: No questions, Your Honor.</p> <p>2 THE COURT: All right. You may step down.</p> <p>3 You may step down. Thank you.</p> <p>4 May this witness be excused and</p> <p>5 released from any subpoena?</p> <p>6 MR. HAWS: Yes, Your Honor.</p> <p>7 THE COURT: Thank you for being here.</p> <p>8 Call your next witness.</p> <p>9 MR. HAWS: Your Honor, if we could have just</p> <p>10 a couple of minutes to be able to move exhibits up</p> <p>11 to the witness stand, we would appreciate it.</p> <p>12 Could we take a brief recess?</p> <p>13 THE COURT: Yes.</p> <p>14 Ladies and gentlemen, we'll take a very</p> <p>15 brief recess. It will be five minutes or so in</p> <p>16 length, just long enough for counsel to bring</p> <p>17 exhibits up to the witness stand. We'll be in</p> <p>18 recess for five minutes.</p> <p>19 Just a moment. I need to admonish the</p> <p>20 jury. Again, do not discuss the case among</p> <p>21 yourselves or with anyone else. Do not form or</p> <p>22 express any opinions about the case, and continue</p> <p>23 to follow the court's more extended admonition</p> <p>24 given to you on the first day of trial.</p> <p>25 We'll be in recess.</p>	<p style="text-align: center;">673</p> <p>1 (Recess.)</p> <p>2 (Jury present.)</p> <p>3 THE COURT: I'll note for the record that</p> <p>4 all jurors are present.</p> <p>5 Mr. Haws, you may call your next</p> <p>6 witness.</p> <p>7 MR. HAWS: Yes, Your Honor. I would like to</p> <p>8 take care of one housekeeping matter before we</p> <p>9 start.</p> <p>10 THE COURT: Yes.</p> <p>11 MR. HAWS: I believe I moved the admission</p> <p>12 of item No. 64, the silver round, but in case I</p> <p>13 didn't, I want to make sure that's clear for the</p> <p>14 record.</p> <p>15 THE COURT: Yes. We discussed that at</p> <p>16 sidebar. I think we discussed that at sidebar.</p> <p>17 The objection is noted. I'll overrule the</p> <p>18 objection. Exhibit 64 is admitted.</p> <p>19 (Government's Exhibit No. 64 admitted.)</p> <p>20 MR. HAWS: Thank you, Your Honor.</p> <p>21 Call John Jermain.</p> <p>22 THE COURT: Sir, would you please step</p> <p>23 before the clerk and be sworn.</p> <p>24 JOHN JERMAIN,</p> <p>25 having been first duly sworn to tell the whole</p>

1 truth, testified as follows:  
 2 THE CLERK: Please state your complete name  
 3 and spell your last name for the record.  
 4 THE WITNESS: John Jermain, J-E-R-M-A-I-N.  
 5 THE COURT: Mr. Haws, you may inquire of the  
 6 witness.  
 7 MR. HAWS: Thank you, Your Honor.  
 8 DIRECT EXAMINATION  
 9 BY MR. HAWS:  
 10 Q. Mr. Jermain, where do you live?  
 11 A. I live in San Francisco, California.  
 12 Q. What kind of work do you do?  
 13 A. I am a forensic chemist with the Bureau  
 14 of Alcohol, Tobacco, Firearms and Explosives.  
 15 Q. And how long have you been a forensic  
 16 chemist?  
 17 A. With the ATF for two-and-a-half years.  
 18 Q. And prior to that?  
 19 A. Prior to that I worked for the San  
 20 Bernardino County Sheriff's Department. I worked  
 21 for narcotics for two years. And before that, one  
 22 year with the Orange County Sheriff's Department.  
 23 Q. When referring to the Alcohol, Tobacco  
 24 and Firearms, it's common to use the acronym ATF;  
 25 is that correct?

1 Q. What are the types of things that you  
 2 do in your lab, in this forensic lab? Could you  
 3 explain that?  
 4 A. The laboratory is really basically  
 5 broken into two parts. It's the explosives  
 6 section and the firearms section. In the  
 7 explosives section, we also do fire debris  
 8 analysis. A smaller part is looking at, like,  
 9 device recognition, the weapons themselves and the  
 10 device. We do have a latent print department, and  
 11 we also do DNA analysis on those type of devices.  
 12 Q. So you're in the explosives section of  
 13 the lab?  
 14 A. Yes, I am.  
 15 Q. And routinely, then, you examine  
 16 evidence that's submitted from the field, so to  
 17 speak?  
 18 A. Yes, I do.  
 19 Q. From ATF agents?  
 20 A. It could be evidence from local law  
 21 enforcement that needs ATF assistance, especially  
 22 -- a lot of the local forensic labs wouldn't have  
 23 an explosives department, so they would like our  
 24 assistance on these particular cases.  
 25 Q. Working in the explosives section, do

1 A. That is correct.  
 2 Q. So you are a forensic chemist with ATF?  
 3 A. That is correct.  
 4 Q. Where is the lab located?  
 5 A. The lab is located just outside of  
 6 San Francisco in the city of Walnut Creek.  
 7 Q. Tell the jury a little bit about your  
 8 qualifications and training as a forensic chemist.  
 9 A. I have a bachelor's degree and a  
 10 master's degree in chemistry from the California  
 11 Polytechnic University in Pomona in southern  
 12 California. Involving my explosives training,  
 13 besides just working with ATF and the ATF chemists  
 14 and bomb squads, I have done training with  
 15 Homeland Security, FBI. I have also done some  
 16 international liaison training with the British  
 17 and Australian government.  
 18 Q. And does any of that training involve  
 19 specifically the forensic work you do, any  
 20 seminars and training courses within ATF?  
 21 A. Yes. I also do a lot of teaching  
 22 forensics and explosives to local bomb techs and a  
 23 lot of my explosives directly -- I will teach to  
 24 -- that deals directly involved with forensic  
 25 analysis.

1 you examine explosive devices?  
 2 A. Yes, I do.  
 3 Q. And destructive devices?  
 4 A. Yes, I do.  
 5 Q. Are they similar?  
 6 A. It goes -- the names kind of go  
 7 together, yes.  
 8 Q. Are they interchangeable?  
 9 A. In just regular layman terms, yes.  
 10 Q. Have you ever heard the term, a "pipe  
 11 bomb"?  
 12 A. Yes, I have.  
 13 Q. And would that fit within the category  
 14 of "explosive device" or "destructive device"?  
 15 A. Yes, it would.  
 16 Q. Have you examined pipe bombs in the  
 17 forensic lab?  
 18 A. Yes, I have. In fact, they are our  
 19 most common type of device we get.  
 20 Q. How many pipe bombs do you think you  
 21 work on? Can you estimate that for us in, say, a  
 22 given week or month, however is the best way for  
 23 you to describe that?  
 24 A. In case-wise, I might get maybe two or  
 25 three a month.

1 Q. How do you receive evidence from, say,  
2 an ATF agent in the field? Does that come in  
3 through a secure shipping?

4 A. Yes. Either -- if they are local, they  
5 can deliver it right to the laboratory or we do do  
6 secure shipping through FedEx.

7 Q. What's your procedure once you receive  
8 that evidence in the lab?

9 A. Once the evidence comes into the lab,  
10 we do scan the evidence just through a regular  
11 X-ray analysis to see what it is. We also look to  
12 make sure none of the devices that come in  
13 are -- they could be functional -- that they have  
14 been rendered safe. Once they do come in, they  
15 will go directly to our evidence vault, and they  
16 will be logged into our computer system.

17 Q. You lock them in the evidence vault for  
18 chain of custody purposes to secure them?

19 A. Yes, exactly.

20 Q. Do you assign a lab number to these  
21 items that come into your lab?

22 A. Yes, we do.

23 Q. With regard to this case, did you  
24 receive any evidence in the lab, forensic lab on  
25 July 21st, 2010?

1 the end cap on one of them was removed. The other  
2 one did not have an end cap, so that would make  
3 them safer for us to do our analysis on.

4 Q. I'd like to have you identify Exhibit  
5 No. 34.

6 MR. HAWS: Ms. Rocca, if you could put that  
7 up. Your Honor, could we --

8 THE COURT: Yes, I've turned down the jury  
9 projector.

10 BY MR. HAWS:

11 Q. Please examine the screen in front of  
12 you.

13 THE COURT: The screen in front of you.  
14 It's not up yet, Counsel.

15 BY MR. HAWS:

16 Q. Do you recognize Exhibit No. 34?

17 A. Yes, I do.

18 Q. And what does it show?

19 A. It shows approximately 12-inch-long  
20 pipe with attached end cap, with what appears to  
21 be electrical tape surrounding more toward the  
22 center of the pipe.

23 Q. Have you seen what's depicted in item  
24 34, photograph 34 before?

25 A. Yes, I have.

1 A. Yes, I did.

2 Q. Do you know who it was sent from?

3 A. It was sent from our agent --  
4 affiliated agent up here, Todd Smith.

5 Q. "Up here" meaning in Idaho?

6 A. Idaho. I'm sorry, yes.

7 Q. Okay. Thank you. And can you describe  
8 just generally -- and we'll get into it more  
9 specifically, but what was the type of evidence  
10 that you received?

11 A. The type of evidence I received was two  
12 pipe-looking devices. I had some suspected  
13 explosive material, as well as two rounds,  
14 disruptor rounds that the bomb squad would use to  
15 render the device -- what we call "rendering it  
16 safe," as well as some pyrotechnic fuse.

17 Q. Were these the makings of a pipe bomb?

18 A. For these type of materials, yes. They  
19 are commonly seen for use in making pipe bombs.

20 Q. Was any pipe bomb intact when you  
21 received it?

22 A. These ones intact as that could be  
23 considered still dangerous or --

24 Q. Correct.

25 A. No. They have been rendered safe. So

1 Q. And does it appear in the same way that  
2 you observed it?

3 A. Yes, it does.

4 MR. HAWS: Your Honor, move the admission of  
5 Exhibit No. 34.

6 MR. McALLISTER: No objection.

7 THE COURT: No?

8 MR. McALLISTER: No objection, Your Honor.

9 THE COURT: Exhibit 34 is admitted. It will  
10 be published to the jury.

11 (Government's Exhibit No. 34 admitted.)

12 BY MR. HAWS:

13 Q. Can you explain what you were just then  
14 referring to as the tape and the pipe? Would you  
15 describe that to the jury from the photograph?

16 A. On this one here dealing with my  
17 analysis of it?

18 Q. No, no. Just describe what it is in  
19 the photograph that you were relating to your  
20 testimony a moment ago.

21 A. In this photograph here, what we have  
22 is a approximately 12-inch pipe. It is 2 inches  
23 in diameter. At one end, you can see the end cap  
24 attached directly to it. Toward the center, you  
25 can see electrical tape bound around it. And the



<p style="text-align: right;">682</p> <p>1 other end, you can see the thread. It appears to  2 be damaged. That's probably where the bomb techs  3 rendered it safe. And what they would do is they  4 would use an explosive charge or a type of round  5 to knock off the end cap.  6 <b>Q.</b> Thank you.  7 <b>MR. HAWS:</b> Ms. Rocca, if you could put  8 up, without showing it to the jury, No. 35 for  9 identification.  10 <b>BY MR. HAWS:</b>  11 <b>Q.</b> Mr. Jermain, can you identify what's  12 depicted in the photograph 35?  13 <b>A.</b> Yes, I can.  14 <b>Q.</b> What does it show?  15 <b>A.</b> It shows a fractured end cap with some  16 electrical tape, and it looks like a protruding  17 fuse coming out.  18 <b>Q.</b> Have you seen what's depicted in item  19 35 before?  20 <b>A.</b> Yes, I have.  21 <b>Q.</b> And where did you see that?  22 <b>A.</b> It was submitted to the laboratory, and  23 I analyzed it.  24 <b>Q.</b> And does Exhibit 35 depict what you saw  25 in your laboratory?</p>	<p style="text-align: right;">683</p> <p>1 <b>A.</b> Yes, it is [sic].  2 <b>MR. HAWS:</b> Move for the admission of Exhibit  3 No. 35 and ask that it be published, Your Honor.  4 <b>THE COURT:</b> Any objection?  5 <b>MR. McALLISTER:</b> None.  6 <b>THE COURT:</b> Thirty-five will be admitted and  7 published to the jury.  8 (Government's Exhibit No. 35 admitted.)  9 <b>MR. HAWS:</b> Ms. Rocca, would you please put  10 up Exhibit 36.  11 <b>THE COURT:</b> Counsel, to avoid -- again, I  12 don't want to suggest, but if there is not going  13 to be an objection to a series of exhibits,  14 perhaps we could just agree to that now, and we  15 won't have to wait and publish them to the jury  16 separately.  17 <b>MR. HAWS:</b> I would move the admission of  18 Exhibits 33 through 42, if there is no objection.  19 <b>MR. McALLISTER:</b> There is not.  20 <b>THE COURT:</b> All right. We're up to 36 now,  21 I believe, so it would be 36 through 42 will be  22 admitted and now may be published to the jury as  23 you examine the witness.  24 (Government's Exhibit Nos. 36 through  25 42 admitted.)</p>
<p style="text-align: right;">684</p> <p>1 <b>BY MR. HAWS:</b>  2 <b>Q.</b> Mr. Jermain, do you see Exhibit No. 36?  3 <b>A.</b> Yes, I do.  4 <b>Q.</b> What does it show?  5 <b>A.</b> It is the inside portion of the end  6 cap.  7 <b>Q.</b> Of the same -- same device that you  8 were referring to earlier in photographs 33 and 34  9 and 35?  10 <b>A.</b> Of the inside of that end cap, yes,  11 mm-hmm.  12 <b>Q.</b> Does it show, also, fuse?  13 <b>A.</b> It shows -- you can see the electrical  14 tape surrounding and the pyrotechnic fuse toward  15 the center coming out of it.  16 <b>Q.</b> Exhibit No. 37, please. What is  17 depicted in 37, Mr. Jermain?  18 <b>A.</b> No. 37, I did not receive.  19 <b>Q.</b> Didn't come to the lab?  20 <b>A.</b> Did not come to the lab, no.  21 <b>Q.</b> No. 38 -- we'll tie that in relevance  22 with another witness. No. 38, please.  23 What does 38 show?  24 <b>A.</b> Thirty-eight is -- appears to be  25 apparent smokeless powder particles, the explosive</p>	<p style="text-align: right;">685</p> <p>1 material in the device.  2 <b>Q.</b> No. 39. What does 39 show?  3 <b>A.</b> It is the -- it just seems like  4 another -- a little more enhanced, lighter image  5 of the end cap with the fuse protruding out of it.  6 <b>Q.</b> And No. 40.  7 <b>A.</b> Forty is the opposite side, the outer  8 part of the end cap.  9 <b>Q.</b> Exhibit No. 41, please. What does  10 Exhibit 41 show?  11 <b>A.</b> Exhibit 41 is the original pipe you saw  12 earlier. On this one here --  13 <b>Q.</b> A photograph of the original pipe; is  14 that correct?  15 <b>A.</b> Of the original pipe. A photograph of  16 the original pipe. And you can see on the end  17 where the threads are actually bent down. That's  18 where the bomb squad would have rendered it safe.  19 <b>Q.</b> And it also shows the electrical tape  20 on the device?  21 <b>A.</b> Yes. You can see the electrical tape,  22 and on the far side you can see the other end cap  23 attached to it.  24 <b>Q.</b> Exhibit No. 42, please. Do you  25 recognize 42? That may not have gone to the lab.</p>

1 A. I did not get Exhibit 42.  
 2 Q. Okay. Now, with reference to the items  
 3 that you received in the lab, do you have those  
 4 with you here in court today?  
 5 A. Yes, I do.  
 6 Q. Let me ask you to go to Exhibit  
 7 No. -- No. 80A. Would you just look at that,  
 8 please.  
 9 A. Okay.  
 10 Q. Examine it. And without showing it to  
 11 the jury, what -- what does Exhibit No. -- what is  
 12 Exhibit No. 80A?  
 13 A. It is the original FedEx box that some  
 14 of the exhibits came in.  
 15 Q. And so, it contains the items that were  
 16 sent to your lab?  
 17 A. Yes, it does.  
 18 Q. Within 80A or -- yeah, 80A, do you also  
 19 see another package? And just examine it to  
 20 yourself, please.  
 21 A. Inside here, yes.  
 22 Q. Yes. What is 80B?  
 23 A. It is the wrapping material -- the  
 24 inner packaging material inside the box.  
 25 Q. What about Exhibit No. 80? Do you see

1 Q. Describe what it is you're holding.  
 2 A. This is the -- it's a 12-inch,  
 3 stainless steel pipe with secured end cap. It has  
 4 the electrical tape wrapped around the center, as  
 5 well as the bent part of the threads where the  
 6 other end cap would have been on.  
 7 Q. And that's a threaded end cap on the  
 8 end of it?  
 9 A. This one here, yes.  
 10 Q. Okay. And this is the device that you  
 11 examined in your lab?  
 12 A. Yes, it is.  
 13 Q. Did you -- you can set it down there,  
 14 please. Did you find any particles or residues of  
 15 powder associated with Exhibit No. 80?  
 16 A. Yes, I did.  
 17 Q. Were you able to examine those items of  
 18 powder?  
 19 A. Yes. I did a chemical analysis on  
 20 them.  
 21 Q. And what did you find from the chemical  
 22 analysis that you did on the powder that was taken  
 23 from Exhibit No. 80?  
 24 A. I was able to identify double-base  
 25 smokeless powder. The particular brand of it is

1 it in there?  
 2 A. Yes, I do.  
 3 Q. And would you describe what Exhibit  
 4 No. 80 is?  
 5 A. Exhibit 80 is the original pipe that  
 6 you saw, the one that was rendered safe by the  
 7 bomb squad.  
 8 Q. And you've had a chance to examine it  
 9 recently to make sure it's in the same condition?  
 10 A. Yes, I did.  
 11 Q. Is it in the same condition that you  
 12 saw it when you examined it in your lab?  
 13 A. It is in the same condition.  
 14 MR. HAWS: Move for the admission of Exhibit  
 15 No. 80.  
 16 MR. McALLISTER: No objection.  
 17 THE COURT: Exhibit 80 will be admitted.  
 18 (Government's Exhibit No. 80 admitted.)  
 19 BY MR. HAWS:  
 20 Q. Would you please remove Exhibit 80 from  
 21 the packing, Mr. Jermain.  
 22 A. Yes. (Witness complied).  
 23 Q. Would you please -- would you please  
 24 exhibit that to the jury?  
 25 A. (Witness complied).

1 known as Hi Skor 700X.  
 2 Q. What is -- this is explosive powder?  
 3 Is that how you defined it?  
 4 A. Explosive propellant, yes.  
 5 Q. Explosive propellant?  
 6 A. Yes.  
 7 Q. Is there a common term for that or  
 8 layman's term for that?  
 9 A. A layman's term would be "gunpowder."  
 10 Q. Gunpowder?  
 11 A. Yes.  
 12 Q. Did you examine any of the fuse  
 13 material that was associated with item No. 80?  
 14 A. Yes, I did.  
 15 Q. Okay. And it was part of the end cap  
 16 itself, which is not part of what's before you  
 17 now; is that correct?  
 18 A. That is correct.  
 19 Q. Ask you to examine item No. 81. Do you  
 20 see item 81?  
 21 THE COURT: Counsel, just -- while the  
 22 witness is looking for that, we admitted Exhibit  
 23 80, but I'm assuming that includes 80A and B,  
 24 which are -- I think it's been identified as  
 25 packaging materials.

<p style="text-align: right;">690</p> <p>1 MR. HAWS: I'll take care of that,  2 Your Honor, and clean up the record in that  3 regard. I would move for the admission of  4 Exhibits No. 80A and 80B.  5 THE COURT: Is there any objection?  6 MR. McALLISTER: Under 403, Your Honor, I  7 don't think the packaging material is necessary.  8 MR. HAWS: Just to maintain the chain of  9 custody is all we're doing here, Your Honor.  10 MR. McALLISTER: We have not objected to the  11 chain of custody.  12 THE COURT: Where there is no issue, I don't  13 know that we need to admit 80A and 80B. I'll ask,  14 obviously, the government to retain those. If it  15 becomes an issue for some reason, we can offer  16 them separately.  17 Go ahead, Mr. Haws.  18 BY MR. HAWS:  19 Q. With regard to 80B, however, 80B is not  20 just packaging material, is that correct,  21 Mr. Jermain? Eighty B, doesn't that contain tape?  22 Is that what you said earlier?  23 A. It contains tape that was not on the  24 device. It came off of it.  25 Q. It came off the device. Did you remove</p>	<p style="text-align: right;">691</p> <p>1 it from the device?  2 A. I did, yes.  3 MR. HAWS: Okay. I would move 80B, as well,  4 Your Honor.  5 MR. McALLISTER: No objection.  6 THE COURT: I will admit Exhibit 80B.  7 (Government's Exhibit No. 80B  8 admitted.)  9 MR. HAWS: Thank you.  10 BY MR. HAWS:  11 Q. Exhibit No. 81, is that what you have  12 in front of you now?  13 A. Yes, I do.  14 Q. Okay. Don't demonstrate it yet, but  15 describe for the record what it is.  16 A. It is -- the item here is the end cap  17 with the fuse and electrical tape that you saw in  18 the -- in an earlier photo.  19 Q. Was it received at the same time as  20 Exhibit 80 was received in the lab?  21 A. Yes, it was.  22 Q. And it was part of your analysis?  23 A. Yes, it was.  24 Q. Is it in the same condition as when you  25 examined it in your lab?</p>
<p style="text-align: right;">692</p> <p>1 A. Yes, it is.  2 MR. HAWS: Move the admission of Exhibit  3 No. 81.  4 MR. McALLISTER: No objection.  5 THE COURT: Eighty-one will be admitted and  6 may be published to the jury.  7 (Government's Exhibit No. 81 admitted.)  8 BY MR. HAWS:  9 Q. Would you please lift up Exhibit No. 81  10 and show it to the jury?  11 A. Just the packing material?  12 Q. No. Remove it from the packing  13 material so that we can examine it, please.  14 A. (Witness complied). Here is the end  15 cap with the cracked fracture in the center. This  16 is the pyrotechnic fuse I removed from it and that  17 I repackaged in here, as well as the electrical  18 tape that was on the top portion.  19 Q. And you had occasion to examine all of  20 those in your lab; is that correct?  21 A. That is correct.  22 Q. I would ask you to find Exhibit No. 98  23 there. Do you see Exhibit No. 98?  24 A. Yes. Exhibit 98.  25 Q. What is Exhibit No. 98?</p>	<p style="text-align: right;">693</p> <p>1 A. Ninety-eight is a powder sample taken  2 from the pipe bomb.  3 Q. And that's the powder sample that you  4 examined in the lab?  5 A. On this one, yes, it is.  6 Q. How do you know?  7 A. The chain of custody -- one thing is  8 the bag itself has my signature, initial, my  9 writing. Also, on the front chain of custody here  10 is my signature and dated on there.  11 Q. And that's the black spools of powder  12 that you testified about earlier?  13 A. Yes, it is.  14 Q. What did you -- what did you find with  15 regard to Exhibit No. -- strike that.  16 Did you -- do you find Exhibit No. 83  17 there in front of you? While you're about it, see  18 if you can locate Exhibits 83A and B. They should  19 be together there.  20 A. Here is 83.  21 Q. Okay. What is Exhibit 83?  22 A. Exhibit 83 are multiple lengths of  23 pyrotechnic fuse.  24 Q. And have you seen Exhibit 83 before?  25 A. Yes, I have.</p>

1 Q. Where did you see that?  
 2 A. In the laboratory.  
 3 Q. And was that pyrotechnic fuse  
 4 associated with Exhibit No. 80 that you've  
 5 described earlier?  
 6 A. Yes, it was.  
 7 Q. And did you perform any analysis on  
 8 that pyrotechnic fuse?  
 9 A. On the fuse itself, yes.  
 10 MR. HAWS: Move for the admission of Exhibit  
 11 No. 83, the pyrotechnic fuse.  
 12 MR. McALLISTER: No objection.  
 13 THE COURT: Eighty-three will be admitted.  
 14 (Government's Exhibit No. 83 admitted.)  
 15 BY MR. HAWS:  
 16 Q. Eighty-three A. Do you see that also?  
 17 A. Yes, I do.  
 18 Q. And what is 83A?  
 19 A. Eighty-three A is a length --  
 20 Q. Without --  
 21 A. A length of pyrotechnic fuse.  
 22 Q. And have you examined 83A before?  
 23 A. Yes, I have.  
 24 Q. In the lab?  
 25 A. In the lab.

1 MR. McALLISTER: No objection.  
 2 THE COURT: Eighty-three B will be admitted.  
 3 (Government's Exhibit No. 83B  
 4 admitted.)  
 5 BY MR. HAWS:  
 6 Q. Referring to 83, 83A, and 83B, would  
 7 you show those to the jury, please, and explain  
 8 what you mean by "pyrotechnic fuse."  
 9 A. Here are lengths of fuse that I got  
 10 with the submission. All it is is it's a core  
 11 wrapping with a waterproof coating outside of it,  
 12 usually nitrocellulose. On the inside of the  
 13 material is either some kind of pyrotechnic  
 14 mixture, or it could be black powder. In this  
 15 case when I analyzed it, it was a perchlorate  
 16 mixture, which is typically found in pyrotechnic  
 17 fuses. It's basically the same thing that you  
 18 find on fireworks.  
 19 Q. And that pyrotechnic fuse, just to make  
 20 sure we understand as laymen, it's designed then  
 21 to be ignited and carry the ignition to the  
 22 charge; is that correct?  
 23 A. That is correct.  
 24 Q. How long was this pyrotechnic fuse that  
 25 you received in the lab, approximately?

1 Q. Associated with the device you've  
 2 identified as Exhibit 80?  
 3 A. Yes, I have.  
 4 Q. And is it in the same condition as you  
 5 last saw it in the lab?  
 6 A. The packaging material has my initial,  
 7 my name and dated on it that I repackaged it in  
 8 here, yes.  
 9 MR. HAWS: Move for the admission of 83A.  
 10 MR. McALLISTER: No objection.  
 11 THE COURT: Eighty-three A will be admitted.  
 12 (Government's Exhibit No. 83A  
 13 admitted.)  
 14 BY MR. HAWS:  
 15 Q. Eighty-three B, do you see that in  
 16 front of you?  
 17 A. Yes, I do.  
 18 Q. What is that?  
 19 A. Another segment of pyrotechnic fuse.  
 20 Q. And did you examine it in the lab?  
 21 A. Yes, I did.  
 22 Q. And is it in the same condition as when  
 23 you last saw it in the lab?  
 24 A. Yes, it is.  
 25 MR. HAWS: Move for the admission of 83B.

1 A. I would have to refer to my notes on  
 2 that.  
 3 Q. Do you have an approximation? Are we  
 4 talking about a small -- 2 feet or more?  
 5 A. You could say it's -- there were two  
 6 segments, probably within near a foot or so.  
 7 Q. Okay. You examined these, however,  
 8 and -- strike that.  
 9 You did examine some small pieces;  
 10 right?  
 11 A. Yes, I did.  
 12 Q. And those were Exhibits No. -- I  
 13 believe that was Exhibit 83A. Is that the one  
 14 that came out of the end cap?  
 15 A. That one was the previous one.  
 16 Eighty-three A was not out of an end cap. It was  
 17 just straight fuse.  
 18 Q. Was it 83B? Which one came out of the  
 19 end cap?  
 20 A. I believe it's the previous one.  
 21 Actually, it was associated with the end cap.  
 22 Q. Oh, it was part of the end cap.  
 23 A. Yes. Part of the end cap was that type  
 24 of fuse that came with it.  
 25 Q. Were all of these pieces of fuse that

1 are identified here -- 83A, 83B, and the piece  
2 that came out of the end cap -- are they the same  
3 material?

4 **A.** They are visually similar and in  
5 measurements they are similar, so they do appear  
6 to be the same.

7 **Q.** What kind of tests did you do with  
8 regard to the pyrotechnic material or fuse?

9 **A.** There were two tests that I did. First  
10 was to actually determine if it was a pyrotechnic  
11 fuse.

12 The first thing we like to do is  
13 actually do something called an "IST," which is  
14 ignition susceptibility test, and that's just kind  
15 of a fancy word for lighting it to see if it would  
16 function. In this case, we'll take a small  
17 section of the fuse, light it, and we notice the  
18 characteristics of it. Does it have like a black  
19 smoke coming off it? It just has those  
20 characteristics.

21 A second thing I was asked to do on  
22 this fuse was to look at some suspected heat  
23 damage that was done to it.

24 **Q.** How did you ignite that pyrotechnic  
25 fuse in your test?

1 coupler and a plug.

2 **Q.** And have you seen Exhibit No. 85  
3 before?

4 **A.** Yes, I have.

5 **Q.** And where have you seen it?

6 **A.** In the laboratory.

7 **Q.** It was also sent to you?

8 **A.** Yes, it was.

9 **Q.** By Mr. Smith?

10 **A.** By the case agent, yes.

11 **Q.** By the case agent. Okay. Did you  
12 examine Exhibit No. 85?

13 **A.** Yes, I did.

14 **Q.** And what did you find with regard to  
15 that? Just describe it briefly.

16 **A.** I first did a surface analysis on the  
17 pipe just to determine the material. In this  
18 case, it was steel. Also, from the pipe itself, I  
19 did a microscopic analysis of the inside of it to  
20 see if I could find any type of explosive or any  
21 type of particles in it. And in this case I found  
22 small, remnant particles of double-base smokeless  
23 powder.

24 **Q.** Is that in the same condition as you  
25 last saw it in your lab?

1 **A.** Just to see if it was pyrotechnic fuse,  
2 I just put an open flame to it to light the fuse  
3 itself. For the test I did to see if it was  
4 actual heat damage, I took just a regular hot  
5 plate, put a glass slide on top of that, and I put  
6 the fuse on top of the glass slide and applied  
7 heat slowly to it. What I noticed was the green  
8 color of the pyrotechnic fuse turned to more of a  
9 dark brown color, and the outer layer of the  
10 nitrocellulose started to melt.

11 **Q.** And so, heat did start to -- that heat  
12 that you applied to it started to melt it but did  
13 not ignite it; is that correct?

14 **A.** I was just doing a heat tint on it. I  
15 was doing a slow heat. If I left it on long  
16 enough on the hot plate, it could have ignited it.  
17 I did stop it before I got to that point.

18 **Q.** Okay. Let me ask you to examine or see  
19 if you find Exhibit No. 85 there, please.

20 **A.** Yes. Exhibit 85.

21 **Q.** Do you see it?

22 **A.** Yes, sir.

23 **Q.** Would you identify for the record,  
24 please, what it is.

25 **A.** It is a large pipe with an attached

1 **A.** Yes, it is.

2 **MR. HAWS:** Move for the admission of  
3 Exhibit 85.

4 **MR. McALLISTER:** No objection.

5 **THE COURT:** Eighty-five will be admitted and  
6 now may be published to the jury.

7 (Government's Exhibit No. 85 admitted.)

8 **BY MR. HAWS:**

9 **Q.** Would you demonstrate that or show that  
10 to the jury now, please.

11 **A.** (Witness complied). This one here is  
12 still sealed up, but I can --

13 **Q.** Please take it out. Let's show it to  
14 the jury, please.

15 **THE COURT:** Take it out of the seal?

16 **MR. HAWS:** Yes.

17 **THE COURT:** Is that what you wish?

18 **MR. HAWS:** Yes.

19 **THE WITNESS:** Is there scissors or --

20 **LAW CLERK:** I can get some in 30 seconds.

21 **THE COURT:** Here is --

22 **THE WITNESS:** Thank you.

23 **BY MR. HAWS:**

24 **Q.** Just to be able to take it out of  
25 there, please, Mr. Jermain.

1 A. (Witness complied).  
 2 Q. Would you show that to the jury,  
 3 please.  
 4 A. (Witness complied). Here it is here,  
 5 the pipe material, the coupling or coupler, and an  
 6 end plug on the end here. The other thread side  
 7 is open.  
 8 Q. So that one is equipped with an end  
 9 plug on one end and the possibility of putting an  
 10 end cap on the open end; is that right?  
 11 A. Yes, you could.  
 12 Q. Hold them up together so we can see the  
 13 approximate sizes of the two.  
 14 A. (Witness complied).  
 15 Q. Okay. Thank you. You can put those  
 16 down.  
 17 Let me ask you a question about the  
 18 powder that you examined. Was the powder similar  
 19 in both cases, the powder residue, the explosive  
 20 powder?  
 21 A. Yes. They were both double-base  
 22 smokeless powder, as well as they both had the  
 23 physical characteristic of Hi Skor 700X.  
 24 MR. HAWS: If I may have a moment,  
 25 Your Honor, to check on the exhibits?

1 one from the Fairfax -- that Fairfax turned over?  
 2 A. Eighty-five, my understanding was it  
 3 was. It was the one disassembled by the  
 4 individual.  
 5 Q. And the one exhibit, was it No. 80?  
 6 No. 80 is the other pipe bomb?  
 7 A. Is this one here, yes.  
 8 Q. And it's your understanding that that  
 9 one was the one removed from Cyndi Steele's  
 10 vehicle?  
 11 A. That's what the case agent told me.  
 12 Yes.  
 13 MR. HAWS: Okay. All right. Nothing  
 14 further. Thank you very much.  
 15 THE COURT: Cross-examination.  
 16 CROSS-EXAMINATION  
 17 BY MR. McALLISTER:  
 18 Q. Mr. Jermain, when you received these  
 19 items, they were -- they came in pieces? In other  
 20 words, there wasn't any powder except samples?  
 21 A. For the one, I had samples on it. In  
 22 the device itself, I did a microscopic analysis.  
 23 I found additional powder.  
 24 Q. Okay. But in other words, they weren't  
 25 filled?

1 THE COURT: Yes.  
 2 MR. HAWS: Your Honor, just comparing my  
 3 records with the court's records, are Exhibits 38  
 4 through 42 admitted?  
 5 THE COURT: I'm sorry? What numbers?  
 6 MR. HAWS: Thirty-eight through 42. Those  
 7 were --  
 8 THE COURT: Yes. I think they were admitted  
 9 by stipulation yesterday.  
 10 MR. HAWS: Okay.  
 11 BY MR. HAWS:  
 12 Q. And go back to Exhibit No. 98,  
 13 Mr. Jermain. I want to make sure that we have  
 14 moved the admission of that. That was the -- that  
 15 was the powder sample; is that correct?  
 16 A. That is correct. Ninety-eight, powder  
 17 samples.  
 18 MR. HAWS: If we didn't admit it before, I  
 19 would move the admission now, Your Honor.  
 20 MR. McALLISTER: No objection.  
 21 THE COURT: The exhibit will be admitted.  
 22 (Government's Exhibit No. 98 admitted.)  
 23 BY MR. HAWS:  
 24 Q. Mr. Jermain, what's your understanding  
 25 as to the origin of Exhibit No. 85? Was that the

1 A. When I received them, no, they were not  
 2 filled.  
 3 Q. And I think you used the word they were  
 4 "rendered safe" by the case agent or someone in  
 5 the field?  
 6 A. By the bomb squad, yes.  
 7 Q. All right. Do you know who is the  
 8 maker of these devices?  
 9 A. As in usually -- do you mean the pipe  
 10 manufacturer or the actual person who built it?  
 11 Q. The person who built the device and  
 12 designed the device or made the device.  
 13 A. I do not know of that person.  
 14 Q. All right. Have you interviewed Larry  
 15 Fairfax about these parts, if you will, of the  
 16 device?  
 17 A. I have not, no.  
 18 Q. All right. Do you have any opinion  
 19 about whether or not these devices that you have  
 20 could explode?  
 21 MR. HAWS: Object to the foundation, Your  
 22 Honor, as to the devices -- which device are we  
 23 talking about? The ones as they currently are?  
 24 THE COURT: Let's clarify, Mr. McAllister.  
 25 BY MR. McALLISTER:

1 Q. Obviously, the devices or pieces that  
2 you have here today are safe. They won't explode;  
3 correct?

4 A. That is correct.

5 Q. Do you know anything about the device  
6 that was discovered under Cyndi Steele's car?

7 A. In regards to the actual information of  
8 how it was, no, I do not know that.

9 Q. Okay. So I guess my question is:  
10 You're from the laboratory, but you don't know in  
11 the world real world whether it would have  
12 exploded or not?

13 A. Based on how -- I know how pipe bombs  
14 would work, but in this case that would be beyond  
15 my base of expertise. The bomb -- I believe that  
16 the EEO will be testifying to whether or not the  
17 devices would function.

18 Q. Okay. I think you testified that you  
19 see, like, three of these devices a week?

20 A. A month.

21 Q. A month. All right. So obviously  
22 you're familiar with them?

23 A. Yes.

24 Q. Can you tell us anything about the --  
25 about Larry Fairfax, the maker of this device,

1 it, no. I was informed that certain exhibits were  
2 removed from it, but I did not see it.

3 Q. Okay. Were you informed that it was  
4 only three-quarters of the way filled with  
5 smokeless powder?

6 A. I was not told that. No.

7 Q. All right. It's true that, in your  
8 experience, that the -- that the device needs to  
9 be compressed or the powder needs to be compressed  
10 in something; correct?

11 A. Actually, no, that's not true.

12 Q. Okay. Well, what about in a bullet?  
13 There is a casing, is there not?

14 A. In a -- I'm sorry?

15 Q. In a bullet shot from a gun?

16 A. In a bullet, yes.

17 Q. Okay. And it's basically -- it's put  
18 through some compression when it's fired; correct?

19 A. When the smokeless is ignited, it will  
20 build pressure which will release the bullet out  
21 of the cartridge.

22 Q. Right. Did you observe, in this device  
23 that was sent to your lab, electric tape?

24 A. Yes, I did.

25 Q. And did you observe that it was

1 whether he was sophisticated or unsophisticated?

2 A. Based on how the devices were made? Is  
3 that what your --

4 Q. Yes. Based upon your analysis or  
5 examination of the devices.

6 A. These devices are, I would say, very  
7 generic, not very sophisticated.

8 Q. Okay. And that would lead you to  
9 conclude that Larry Fairfax wasn't very  
10 sophisticated in making it?

11 MR. HAWS: Objection. Assumes facts not in  
12 evidence with this witness, Your Honor.

13 THE COURT: Sustained. I think the witness  
14 can testify that they weren't sophisticated and  
15 whoever made them is not sophisticated, but I'm  
16 not sure he is in a position to draw the  
17 connection as to who actually made them, so I'll  
18 sustain the objection.

19 BY MR. McALLISTER:

20 Q. Are you aware of the fact that the  
21 device removed from Cyndi Steele's car wasn't  
22 filled with black powder?

23 A. With black powder?

24 Q. I'm sorry. Smokeless powder.

25 A. I am -- I'm not -- my personal seeing

1 double-wrapped electric tape?

2 A. Yes, I did.

3 Q. Do you have any opinion on what that  
4 does to a potential explosive device?

5 A. For the explosive device itself, it  
6 makes no containment or anything to that. It  
7 wouldn't -- tape would not change the device  
8 itself.

9 Q. Will it affect the fuse?

10 A. As I got it in, I didn't see the fuse  
11 wrapped in electrical tape.

12 Q. Okay. But if it was double-wrapped in  
13 electric tape, what would be the consequence, in  
14 your opinion?

15 A. It shouldn't affect the fuse.

16 Q. The fuse would just burn through it?

17 A. It would burn directly through it, yes.

18 Q. All right. Did you attempt in any way  
19 to take fingerprints from the devices?

20 A. On this one here, no. There was no  
21 request for fingerprints.

22 Q. Okay. And did anyone send you known  
23 samples of Mr. Fairfax's fingerprints?

24 A. Not that I -- no, I did not receive.

25 Q. I take it that you have no evidence to

<p style="text-align: right;">710</p> <p>1 offer in this case that Edgar Steele in any way  2 built these bombs, touched these bombs, had them  3 in his possession?  4 A. I do not, no.  5 MR. McALLISTER: Thank you, sir.  6 THE COURT: Redirect?  7 MR. HAWS: No redirect, Your Honor.  8 THE COURT: You may step down.  9 I assume the witness can be excused and  10 released from any subpoena?  11 MR. HAWS: We would ask that he be released,  12 Your Honor. He needs to travel back to the lab.  13 THE COURT: Mr. McAllister, any objection?  14 MR. McALLISTER: None, Your Honor.  15 THE COURT: You may step down. You will be  16 excused. Leave the exhibits here. Mr. Severson  17 will take care of those.  18 Counsel, I think we're where we  19 probably take the last break of the day, so we'll  20 be in recess for about 15 minutes.  21 I'll again admonish the jury not to  22 discuss the case among themselves nor with anyone  23 else, nor should they express or form any opinions  24 about the case until it is submitted to you. As  25 always, continue to follow the court's extended</p>	<p style="text-align: right;">711</p> <p>1 admonition concerning juror conduct as I gave it  2 to you on the first day of trial.  3 We'll be in recess.  4 (Recess.)  5 (Jury present.)  6 THE COURT: For the record, I'll note that  7 all jurors are present.  8 Ms. Whelan, you may call your next  9 witness.  10 MS. WHELAN: Thank you, Your Honor.  11 Your Honor, at this time I would ask  12 permission to read a stipulation into the record.  13 THE COURT: Yes.  14 MS. WHELAN: The stipulation is that,  15 "Exhibit No. 3 is an audio recording from a  16 telephone call made from the Kootenai County Jail  17 on June 13th, 2010, and contains the voice of the  18 defendant, Edgar Steele, and his son, Rex Steele.  19 This exhibit may be admitted without further  20 foundation or authentication as to the  21 participants' voices."  22 And with that stipulation, at this  23 point, I would ask permission to publish -- move  24 for the admission of Exhibit 3.  25 THE COURT: I assume there is no objection</p>
<p style="text-align: right;">712</p> <p>1 given the stipulation?  2 MR. McALLISTER: The stipulation, yes, Your  3 Honor.  4 THE COURT: The exhibit will be admitted.  5 (Government's Exhibit 3 admitted.)  6 MS. WHELAN: I would ask permission to  7 publish it to the jury.  8 THE COURT: Yes. It will be published to  9 the jury. Ladies and gentlemen, you've heard the  10 court's prior instructions concerning transcripts.  11 I'll just repeat it somewhat from memory, but I  12 think I can cover all the major points.  13 MS. WHELAN: Your Honor, I'm sorry. I  14 apologize for interrupting you, but there was no  15 stipulation as to transcripts so we did not  16 include a transcript in this audio.  17 THE COURT: So there is no transcript?  18 MS. WHELAN: No. It will just be the audio.  19 THE COURT: All right. There was an exhibit  20 marked, but it's not being offered.  21 MS. WHELAN: That's correct. There is no  22 stipulation as to that. I would ask Ms. Rocca to  23 play that. Judge, will you allow me just to sit  24 down while that's being done?  25 THE COURT: I'm sorry?</p>	<p style="text-align: right;">713</p> <p>1 MS. WHELAN: Your Honor, will you allow me  2 just to sit down while that's --  3 THE COURT: Oh, yes, certainly.  4 And I assume you'll waive reporting,  5 again, of the playing of the tape?  6 MS. WHELAN: Yes, Your Honor.  7 THE COURT: Mr. McAllister?  8 MR. McALLISTER: Yes, Your Honor.  9 THE COURT: You can go ahead and start.  10 There is no reason to bring up a screen since  11 there is no transcript being played. I'm just  12 going to leave it off unless --  13 (Government's Exhibit 3 published.)  14 MS. WHELAN: Your Honor, I would ask  15 permission to read another stipulation.  16 THE COURT: Yes.  17 MS. WHELAN: "Exhibit 1 is an audio  18 recording from a telephone call made from the  19 Kootenai County Jail on June 13th, 2010, and  20 contains the voices of defendant Edgar Steele and  21 Cyndi Steele. This exhibit may be admitted  22 without further foundation or authentication as to  23 the participants' voices."  24 With the reading of that, I would move  25 for the admission of Exhibit No. 1.</p>



<p style="text-align: center;">714</p> <p>1 THE COURT: I assume there is no objection?</p> <p>2 MR. McALLISTER: No, Your Honor.</p> <p>3 Stipulated.</p> <p>4 THE COURT: Exhibit 1 will be admitted and</p> <p>5 may be published to the jury.</p> <p>6 (Government's Exhibit 1 admitted.)</p> <p>7 MS. WHELAN: Your Honor, I would ask</p> <p>8 permission to publish this to the jury now.</p> <p>9 THE COURT: You may.</p> <p>10 (Government's Exhibit 1 published.)</p> <p>11 MS. WHELAN: Your Honor, we would call Cyndi</p> <p>12 Steele.</p> <p>13 THE COURT: Ms. Steele, would you please</p> <p>14 step before the clerk and be sworn. And then</p> <p>15 follow Ms. Gearhart's directions from there after</p> <p>16 you've been sworn.</p> <p>17 CYNDI STEELE,</p> <p>18 having been first duly sworn to tell the whole</p> <p>19 truth, testified as follows:</p> <p>20 THE CLERK: Please state your complete name</p> <p>21 and spell your last name for the record.</p> <p>22 THE WITNESS: Can I spell my first name,</p> <p>23 too?</p> <p>24 THE CLERK: Please.</p> <p>25 THE WITNESS: Cyndi, C-Y-N-D-I, Steele,</p>	<p style="text-align: center;">715</p> <p>1 S-T-E-E-L-E.</p> <p>2 THE COURT: Ms. Whelan, you may inquire of</p> <p>3 the witness.</p> <p>4 MS. WHELAN: Thank you.</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MS. WHELAN:</p> <p>7 Q. Mrs. Steele, are you married?</p> <p>8 A. Yes.</p> <p>9 Q. To whom are you married?</p> <p>10 A. To Edgar Steele.</p> <p>11 Q. That is the defendant in this case?</p> <p>12 A. Yes, it is.</p> <p>13 Q. What town do you currently live in?</p> <p>14 A. Sagle, Idaho.</p> <p>15 Q. Your home with your husband is on</p> <p>16 Talache Road; is that correct?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Did you used to be a dancer?</p> <p>19 A. Yes.</p> <p>20 Q. What kind of dancer?</p> <p>21 A. Ballet.</p> <p>22 Q. Did you work in different areas, as far</p> <p>23 as geographically across the country?</p> <p>24 A. I primarily studied and danced in</p> <p>25 Oregon where I grew up. Then I moved to Seattle</p>
<p style="text-align: center;">716</p> <p>1 to continue my training. That took me to New York</p> <p>2 City where I continued to train and audition, and</p> <p>3 then I went to San Francisco where I had gotten a</p> <p>4 job with a dance company.</p> <p>5 Q. Do you recall, ma'am, when you lived in</p> <p>6 San Francisco?</p> <p>7 A. I really don't remember the exact year,</p> <p>8 but it had to have been '79, '80, in there. I</p> <p>9 really don't -- it's --</p> <p>10 Q. Let me just ask you another question.</p> <p>11 Did you get married while you lived in San</p> <p>12 Francisco?</p> <p>13 A. Yes.</p> <p>14 Q. And did you have your daughter, Nicole?</p> <p>15 A. Yes.</p> <p>16 Q. And then subsequently, that marriage</p> <p>17 ended in divorce; correct?</p> <p>18 A. Yes, it did.</p> <p>19 Q. Can you explain to the jury how you met</p> <p>20 the defendant, Mr. Steele?</p> <p>21 A. My mom and I were running a dance</p> <p>22 studio down in the Bay Area that we had opened up</p> <p>23 down there. And my mom was in a car accident, and</p> <p>24 she needed to seek an attorney. And we went -- I</p> <p>25 forget how we -- I think we got a recommendation</p>	<p style="text-align: center;">717</p> <p>1 and -- and my husband at the time was -- had just</p> <p>2 began his law career in that office and that's --</p> <p>3 as an associate attorney and that's how I met him.</p> <p>4 Q. How old were you when you met Mr.</p> <p>5 Steele? Do you remember?</p> <p>6 A. How old? I was -- it was about March</p> <p>7 '83. I know I was 28, somewhere, 29. I haven't</p> <p>8 done the math on that. Sorry.</p> <p>9 Q. That's okay. But you were in your 20s?</p> <p>10 A. Yes.</p> <p>11 Q. And did you get married about 1983,</p> <p>12 1985, sometime in that?</p> <p>13 A. My first marriage or my second -- my</p> <p>14 marriage to my husband?</p> <p>15 Q. To the defendant. Yes, to your</p> <p>16 husband.</p> <p>17 A. We got married on April 27th, 1985.</p> <p>18 Q. 1985, okay. Did you close your dance</p> <p>19 studio after you got married?</p> <p>20 A. Yes. Because of my mom's injuries and</p> <p>21 such, it wasn't -- it sort of left me handling the</p> <p>22 studio by myself, and we were going to be starting</p> <p>23 a family, and so I had decided that I wanted to</p> <p>24 close the studio. And then, I found another</p> <p>25 studio that I started taking classes and teaching</p>

1 a few classes for them to keep up on my dance.

2 Q. Was that in San Mateo?

3 A. That studio was actually -- well, the  
4 studio we had was in Foster City, and the other  
5 studio that I was taking classes and working at  
6 was located in Belmont. They're all very close.

7 Q. And Belmont is where your son was born;  
8 is that correct?

9 A. Yes.

10 Q. And then sometime after your son was  
11 born, roughly five years, six years later, you  
12 moved to Bend, Oregon; is that correct?

13 A. We moved to Bend, Oregon, about '93,  
14 '94, I believe.

15 Q. And your son was born in '88; is that  
16 right?

17 A. Yes. He was born in '88.

18 Q. And you ended up moving from Bend,  
19 Oregon; correct?

20 A. Yes, we did.

21 Q. And you moved to where?

22 A. We moved to Sagle, Idaho.

23 Q. Now, when you were living in Bend,  
24 Oregon, your husband was still practicing law in  
25 California; is that correct?

1 cancer, and I was afraid of losing him because we  
2 were partners.

3 Q. And that was hard for you?

4 A. Yes, it was very hard for me.

5 Q. And during this time -- I think maybe  
6 before you've described it just generally as a  
7 time that you had maybe a breakdown or depression  
8 in your life. Does that sound accurate?

9 A. I mean, you know, I was still  
10 functioning, but I was -- I wasn't functioning as  
11 well as I used to be, and I was scared and -- you  
12 know, I mean, I -- you know, I was depressed.  
13 Yes, I was depressed. I was scared of losing my  
14 husband.

15 Q. And while -- so your husband had his  
16 health issues?

17 A. Yes.

18 Q. And you had your health issues?

19 A. If you call them health issues.  
20 Mental, I guess, yes.

21 Q. We can characterize it as mental health  
22 issues. I mean, I'm not trying to pinpoint you,  
23 just paint the picture of what was happening then.  
24 What if we just call them "issues"?

25 A. Thank you.

1 A. He was. He was in the process of  
2 selling the business and -- because we wanted to  
3 move our children out of the San Francisco area  
4 and raise them out in the country where both of us  
5 had. But it was going to be a long process  
6 because they were going to buy him out, sort of,  
7 so -- and then there came times when he had to go  
8 back because that business deal was falling  
9 through. So he started traveling back and forth,  
10 yes.

11 Q. And in the late '90s, did your husband  
12 have a significant health issue, a health scare?

13 A. Yes. He was diagnosed with prostate  
14 cancer.

15 Q. And can you tell the jury whether the  
16 stress of that caused you to have some problems?

17 A. I think that was sort of the straw that  
18 broke my back at the time. That really sent me  
19 over, and that made me very depressed and had sort  
20 of a breakdown because we were having financial  
21 issues that we were -- we were struggling trying  
22 to work them all through. And just before that,  
23 everything was starting to come back in place. We  
24 were getting back on top of things, and then we  
25 were hit with that he had -- was diagnosed with

1 Q. Is that okay?

2 A. Yes.

3 Q. During this period of time, the  
4 defendant felt that you had kind of abandoned him  
5 when he needed you because you had to deal with  
6 your own issues; is that correct?

7 A. Yes.

8 Q. And at that point, the defendant  
9 remained in California to work at his firm during  
10 this period of time; right?

11 A. Even -- it wasn't that he remained in  
12 California. It was that he was going back -- he  
13 was still going back and forth. He was going to  
14 California when he was tending to business and  
15 then he would come back home.

16 Q. And I apologize. I mean, the things we  
17 get into I know are personal, but I need to ask  
18 you: While the defendant was in California, is  
19 that the time period that you found out that he  
20 had been Internet dating?

21 A. Yes, it was.

22 Q. And that was on Match.com?

23 A. I don't remember the sites. That  
24 sounds like one of them. You know, I mean, that I  
25 know -- that I know exist.

1 Q. And in finding that out, I mean, you  
2 actually set up a profile on Match.com and put up  
3 his likes to try to see if he would contact you;  
4 correct?  
5 A. Yes, I did.  
6 Q. Okay. And you confirmed -- I mean,  
7 that was one of the ways you confirmed that he was  
8 on the site?  
9 A. Yes.  
10 Q. Okay. And at that point, you had some  
11 marital problems, and you filed for divorce;  
12 correct?  
13 A. I think that was the crux of the  
14 marital problems because he had been coming home  
15 and saying that he wasn't happy at home. He was  
16 being honest with me how he felt. And if he  
17 wanted to go elsewhere, I mean, you know, it hurt  
18 because I still loved him even though I didn't  
19 feel like I was giving him what he needed. I  
20 wasn't willing to hold him to a marriage, and I  
21 was willing to let him go. And I -- you know, I  
22 didn't want the divorce, but I had -- he was  
23 unhappy, and if he was unhappy, I wasn't going to  
24 hold him to it. And it was also to protect me  
25 because I've always had abandonment issues and --

1 Q. And then I just want to show you the  
2 title. I don't want you to talk about it. I just  
3 want to see if you recognize it. Do you recognize  
4 it, ma'am?  
5 A. I mean, it looks -- it looks like  
6 appropriate. It looks like what would be filed,  
7 but I don't -- I mean, it's been so long I  
8 don't -- I mean, I'm sure that's correct.  
9 Q. And then, I would just ask that you  
10 look at the last page of the exhibit, and that has  
11 a date on it.  
12 A. 7th of June.  
13 Q. And is that your signature, ma'am?  
14 A. Yes, it is.  
15 Q. And would you agree that Exhibit 91 is  
16 an accurate copy of that document that you filed?  
17 I'm trying to talk around it.  
18 A. Yes.  
19 Q. Okay.  
20 MS. WHELAN: Your Honor, we would move for  
21 the admission of United States' Exhibit 91.  
22 MR. McALLISTER: I would object, Your Honor.  
23 Relevance grounds, anything that happened in 2000.  
24 THE COURT: Counsel, at this point, I tend  
25 to agree. I'm not sure -- I mean, the witness has

1 because of things that have happened in my past,  
2 and so I wasn't going to let myself be abandoned.  
3 I was going to take the first step.  
4 Q. And that was in June of 2000; correct?  
5 A. It was around -- it was around 2000. I  
6 know it was around there. I really don't recall  
7 the exact date because I have put that in my past  
8 and have not dwelled on it since.  
9 Q. Understood.  
10 MS. WHELAN: Judge, is the display to the  
11 jury blocked off?  
12 THE COURT: It's off. Do you wish to have  
13 the input changed to the evidence presenter?  
14 MS. WHELAN: Yes, please.  
15 THE COURT: Ms. Gearhart, if you would do  
16 that.  
17 BY MS. WHELAN:  
18 Q. Mrs. Steele, it's not going to show  
19 behind you but on the screen right before you.  
20 I'm going to put this down and ask you to look at  
21 it. Okay? It's been marked for identification  
22 purposes as -- I'm going to show you the sticker  
23 -- Government's Exhibit No. 91. Do you see the  
24 sticker down there?  
25 A. Yes.

1 testified she filed for divorce. The petition  
2 itself, I'm not sure what that adds, and the  
3 relevance would be marginal.  
4 MS. WHELAN: We may come back to it, then,  
5 Judge. Thank you.  
6 THE COURT: All right. I'll refuse the  
7 exhibit at this point, but if you tie in the  
8 relevance at a later point, you can reoffer it.  
9 MS. WHELAN: Thank you, Your Honor.  
10 THE COURT: That was Exhibit 91?  
11 MS. WHELAN: Yes, sir.  
12 THE COURT: All right. Thank you.  
13 BY MS. WHELAN:  
14 Q. Ma'am, in the petition that you filed  
15 back in June of 2000, there were certain demands  
16 that you made. Do you recall those?  
17 A. Not all of them, I don't.  
18 Q. Okay. I'm going to ask you just if you  
19 recall certain ones. Just tell me if you recall  
20 them, okay?  
21 A. All right.  
22 Q. One is you asked for child support of  
23 about \$1,400 per month. Do you recall that?  
24 A. I don't remember the amount.  
25 Q. If you can just look at the screen in

1 front of you. I'll quit moving it. Does looking  
2 at page 4 of that Exhibit 91 help refresh your  
3 recollection?

4 **A.** Not -- honestly, no, it doesn't. I  
5 was -- at that time I had hired an attorney, and I  
6 was basically going on her recommendation what the  
7 typical amounts were asked and what to ask for.  
8 So I really don't remember.

9 **Q.** Okay. Would you dispute that that's an  
10 accurate recitation within that complaint?

11 **A.** It's in a document that I signed so I  
12 can't dispute it.

13 **THE COURT:** Counsel, if you want, we can  
14 visit at a sidebar, but I'm going to reconsider on  
15 my prior ruling. I had forgotten some prior  
16 testimony that I had not considered, but almost  
17 immediately after I ruled, I recalled that  
18 testimony. If you want, I can discuss it at  
19 sidebar and explain the court's ruling.

20 Counsel, approach.

21 (Sidebar commences as follows:)

22 **THE COURT:** Counsel, I had just completely  
23 forgotten Mr. Fairfax's testimony that the reason  
24 he didn't divorce and wanted Mrs. Steele killed  
25 was because she wanted too much money in her

1 relevant, especially if we don't know if that's  
2 truthful from Mr. Fairfax.

3 **THE COURT:** Ms. Whelan?

4 **MS. WHELAN:** It exactly makes it relevant.  
5 One, the defendant told him he didn't do it  
6 because of the cost. Two, we have a document that  
7 shows what she prayed for, which is substantial.  
8 Three, it goes to the defendant's -- if they had  
9 gotten divorced, there would be no murder for  
10 hire. It is relevant. We do intend to bring it  
11 out. We asked about --

12 **THE COURT:** I'm going to admit the exhibit.  
13 The objection is noted and overruled.

14 (Sidebar concluded.)

15 **THE COURT:** On further reflection, I am  
16 going to overrule the objection and admit  
17 Exhibit 91 for the reasons discussed at sidebar.  
18 Exhibit 91 will be admitted and published to the  
19 jury.

20 (Government's Exhibit 91 admitted.)

21 **MS. WHELAN:** Thank you, Your Honor.

22 **BY MS. WHELAN:**

23 **Q.** Mrs. Steele, I need to ask you some  
24 questions about Exhibit 91. It's not done to  
25 embarrass you. I will go through it as quickly as

1 divorce. And so I think what she had filed for  
2 and prayed for in the complaint in a divorce, even  
3 if it was ten years earlier, would be relevant to  
4 that issue. I'll hear you otherwise, but it does  
5 seem to me to make it relevant, and the fact that  
6 it's ten years old goes to the weight, not to  
7 admissibility.

8 **MR. McALLISTER:** Judge, there was no  
9 divorce. They reconciled.

10 **THE COURT:** I understand that, but it was  
11 filed.

12 **MR. McALLISTER:** I understand what's filed.  
13 But the proof is going to be there was no divorce,  
14 and yet, the prosecutor is dwelling on this for 15  
15 minutes and asking pointed questions that -- she  
16 said she made the decision based upon her lawyer's  
17 advice to ask for whatever was typical. This is  
18 impeachment when there is no need for it, Judge.  
19 It's using something that's unfair, ten years ago.  
20 If it was a divorce, that would be a different  
21 story, but in this case there wasn't. And there  
22 was a reconciliation. And I don't think it's  
23 appropriate. I don't think -- just because  
24 Mr. Fairfax said in testimony that she asked for  
25 amounts of money back in 2000 does not make this

1 possible. Okay?

2 **A.** Okay.

3 **Q.** Exhibit 91 is entitled "Complaint for  
4 Divorce"; is that correct?

5 **A.** Yes, it is.

6 **Q.** It was filed in Bonner County, Idaho?

7 **A.** I don't remember. Yes, it was.

8 **Q.** In the complaint, you offered your  
9 husband -- excuse me -- you asked for \$1,400 per  
10 month child support; is that correct?

11 **A.** I don't remember that. That's what it  
12 says so I'm assuming that's what I did.

13 **Q.** You wanted the defendant to pay for the  
14 children's healthcare; correct?

15 **A.** Yes.

16 **Q.** Did you ask the defendant to pay for  
17 your healthcare for a year?

18 **A.** I don't recall that.

19 **Q.** Ma'am, did you offer that your husband  
20 could visit with the kids when he came to Idaho  
21 and agree to split the holidays and two weeks of  
22 visitation in the summer, but only if you approved  
23 the dates?

24 **A.** Yes, because I had -- my intention was  
25 never to deny either one of us our children. We

1 both loved our children. There was never a  
2 question of that. It's just that I was hoping to  
3 remain in Idaho. If he decided to be in  
4 California -- I didn't know where he would decide,  
5 and it was more the idea of -- you know, being  
6 able to say what dates was because I had to  
7 consider the children's schooling.

8 **Q.** And they were involved in other  
9 activities like 4-H and the other things you  
10 outlined; correct?

11 **A.** They were involved in 4-H. At that  
12 time, I had a daughter that was very involved with  
13 music. Our son was involved with karate. My  
14 youngest was probably just 4-H because I  
15 don't -- I mean, she was still fairly young yet.

16 **Q.** In the complaint, ma'am, you wanted the  
17 defendant to tell you by May 1st of what the  
18 visitation was that he wanted for the summer and  
19 you had authority, or you asked for authority, to  
20 decide if the dates would not interfere with the  
21 children's schedules; correct?

22 **A.** I was just asking for him to verify and  
23 hopefully give me dates so that we could work out  
24 schedules.

25 **Q.** Thank you. You wanted the child

1 other objection to any questions that do stray  
2 beyond that.

3 **MS. WHELAN:** Yes, Your Honor. I understand  
4 that.

5 **THE COURT:** Proceed.

6 **BY MS. WHELAN:**

7 **Q.** So you were the plaintiff and you were  
8 looking for the defendant to pay for your  
9 healthcare expenses; correct?

10 **A.** And this says for one year following;  
11 correct?

12 **Q.** Right. Just for the one year after the  
13 decree.

14 **A.** Well, yes. I was -- because my husband  
15 was the primary -- primary earner in our family,  
16 and I -- I wanted to at least have time to be able  
17 to figure out how I was going to -- what I was  
18 going to do in order to be able to take care of  
19 myself. I had always assumed that we would take  
20 care of our children together, but if I'm going to  
21 leave somebody and go on my own, then I believe it  
22 becomes my responsibility. But I wanted at least  
23 time to be able to put that all in place and not  
24 just be all of a sudden one day without being  
25 covered for a while until I could manage to do

1 support paid through the State of Idaho and not  
2 directly to you; correct?

3 **A.** I relied on my attorney for that one.

4 **Q.** You wanted the defendant to pay the  
5 \$300 a month for both your children to attend  
6 private school; is that correct?

7 **A.** I honestly don't recall that.

8 **Q.** In looking at paragraph 13, you asked  
9 that health insurance be covered for you -- you  
10 were the plaintiff in this case -- for one year  
11 following the entry of the decree; correct?

12 **MR. McALLISTER:** Judge, I'm going to object.  
13 Asked and answered, and the relevance is far  
14 beyond anything in this trial in this case, in  
15 this petition.

16 **MS. WHELAN:** Your Honor, I would object to  
17 speaking objections.

18 **THE COURT:** Counsel, let's just -- an  
19 objection on relevance grounds would be  
20 sufficient, Mr. McAllister.

21 I'm going to overrule the objection for  
22 the reasons noted. As long as we restrict  
23 ourselves to the type of issues that we discussed  
24 at sidebar, I will permit it. Counsel, no leeway  
25 beyond that, and I will certainly sustain any

1 that.

2 **Q.** I don't think anybody is questioning  
3 why, just as to what the defendant was told you  
4 were asking for in the petition.

5 Now, you also asked for alimony;  
6 correct?

7 **A.** Yes.

8 **Q.** And you wanted \$1,000 per month for a  
9 year from the defendant in addition to any child  
10 support; correct?

11 **A.** For a year so I could get -- so I could  
12 manage until I could get myself settled, yes.

13 **Q.** Ma'am, in the petition, specifically in  
14 paragraph 16, you asked that the defendant pay for  
15 your counseling because the knowledge that your  
16 marriage was in serious jeopardy severely  
17 traumatized your life, and you wanted him to pay  
18 for the counseling; correct?

19 **A.** I -- you know, I'm having a difficulty  
20 with this because I don't recall all of these  
21 specific things. I was working with an attorney,  
22 and some of these things she said that we would  
23 ask and then it goes to court and it gets  
24 resolved. So all of these -- I don't remember  
25 those particular -- I know that I had said I had

1 been going to counseling, but I had been going to  
2 counseling prior to even this.

3 THE COURT: Ms. Whelan, I think we need to  
4 limit ourselves just to what was asked, not the  
5 reason it was asked. I think that -- it's just  
6 what is in the petition, and that's all that's  
7 relevant to the proceeding.

8 MS. WHELAN: Okay.

9 THE COURT: I think dwelling on anything  
10 beyond that does go beyond the scope of what would  
11 be relevant under Rule 402.

12 BY MS. WHELAN:

13 Q. Ma'am, in addition to that, you sought  
14 to have the ranch in Sagle awarded to you as your  
15 sole and separate property; correct?

16 A. Yes, because that was my dream.

17 Q. And that was your dream, the ranch in  
18 Sagle, not your husband's; correct?

19 A. The home and the place was -- was our  
20 dream. The horses and the ranch was my dream that  
21 my husband helped me to build because he knew it  
22 was my dream and supported. You know, I figured  
23 that there would have to be some division because  
24 I wasn't going to leave him penniless either. But  
25 the ranch was important, and I wanted to try to

1 Q. He told you -- excuse me -- did he tell  
2 you that he had merely wanted to try on other  
3 women but had decided you were the one for him?

4 A. I mean, that's a very small summary of  
5 it, but I could -- I would say yes.

6 Q. In exchanges that you had about his  
7 Internet dating, is that the -- basically, what he  
8 told you is he was trying on other women?

9 A. I wouldn't say he said he was "trying  
10 on other women." He was looking to see -- because  
11 he was so unhappy, he was looking to see if -- if  
12 our home life was really what he wanted or if  
13 there was something better. I think he was -- he  
14 was questioning everything about his life at that  
15 point in time.

16 Q. Ma'am, in the early months of 2010, did  
17 you have to split your time between your family  
18 home in Sagle, Idaho, and your mother's home?

19 A. I'm sorry. We jumped way ahead. What  
20 year?

21 Q. I'm sorry. Just this last, the early  
22 months of 2010.

23 A. Well, it actually started back in  
24 December, the first part of December of 2009, and  
25 I was being torn between Oregon City and Sagle.

1 figure out how I could manage it on my own because  
2 it was my dream.

3 Q. Ma'am, you also asked for sole  
4 possession of a 1996 suburban?

5 A. Yes.

6 Q. A 1986 Mustang?

7 A. Yes.

8 Q. One-half of all the gold and silver  
9 coins which value was in excess of 50,000?

10 A. Probably half, yes. I mean, it was  
11 half. I don't remember the amount.

12 Q. There were various accounts that your  
13 husband had which were in his name -- retirement  
14 accounts, IRAs and other things -- and you asked  
15 for approximately \$163,000 in cash out of those;  
16 correct?

17 A. I don't recall that. But I -- I don't  
18 recall.

19 Q. But if it's in the document, you  
20 wouldn't dispute it?

21 A. If it's in the document and I signed  
22 it, then I can't dispute it.

23 Q. Ultimately, you and your husband  
24 reconciled; correct?

25 A. Yes, we did.

1 Q. And that was hard for you?

2 A. It was very hard because I needed to be  
3 in both places, and I had to -- I had to go where  
4 the most emergency was. And it wasn't that I  
5 wasn't needed in one place, because I was, and  
6 I -- and I wanted to be there, but I also needed  
7 to be in the other place. So it always came down  
8 to where the most -- I had to weigh it, and it was  
9 hard to weigh it because I had two people that I  
10 very much loved that needed me and I'm only one  
11 person.

12 Q. And so you had to make decisions about  
13 between going to your mom's house in Oregon or  
14 going back to Sagle; right?

15 A. Yes.

16 Q. Now, your husband had several surgeries  
17 between November of 2009 and June of 2010;  
18 correct?

19 A. Yes, he did.

20 Q. We have heard about the aortic  
21 aneurysm, and that was in November of 2009?

22 A. It was November 21st, 2009.

23 Q. And were you living in Sagle then?

24 A. Yes, I was. My home has always been in  
25 Sagle.

1 Q. And were you at home when that  
2 happened?  
3 A. Yes, I was. And thank God I was.  
4 MS. WHELAN: Judge, may I ask are there any  
5 Kleenexes up there for the witness?  
6 THE COURT: Yes. Ms. Gearhart.  
7 MS. WHELAN: Do you want us to take a break?  
8 THE COURT: We can take a break, if you'd  
9 like.  
10 THE WITNESS: No. Let's just go on, please.  
11 THE COURT: Ms. Whelan?  
12 MS. WHELAN: Thank you, Your Honor.  
13 BY MS. WHELAN:  
14 Q. Then there was a hernia operation, as  
15 well, that your husband had; correct?  
16 A. Yes. April 22nd.  
17 Q. And you were not able to return for  
18 that; is that right?  
19 A. I wouldn't say -- I wouldn't say not.  
20 I could have returned. I mean, I could have  
21 returned. And with my husband and our  
22 conversation, if I felt it was a serious operation  
23 or that he really needed me there, I could have,  
24 but he also knew how serious my mom's health  
25 issues were. And he had encouraged me that he --

1 conversation between you and your husband when he  
2 was in the jail.  
3 A. Yes.  
4 Q. And during that conversation, your  
5 husband had stated that he had felt neglected by  
6 you; correct?  
7 A. You know, he made that statement. He  
8 would call me and tell me he was lonely. I mean,  
9 I -- I can understand why he felt I was maybe  
10 neglecting him but nothing mean about that.  
11 Q. He said that he hadn't been getting  
12 enough of you?  
13 A. I hadn't been getting enough of him,  
14 either.  
15 Q. But you heard him say that; right?  
16 A. Yes, I did.  
17 Q. And not getting enough attention from  
18 you had been the same thing that had happened  
19 prior to the petition for divorce in 2000; right?  
20 A. No. This was much different.  
21 Q. Prior -- in 2000 when your husband had  
22 cancer and you had some things going on that you  
23 needed to take care of, your husband at that point  
24 felt neglected; correct?  
25 MR. McALLISTER: Objection to the leading

1 he had encouraged me to stay and take care of my  
2 mom so that -- and that he had it handled with a  
3 friend of his and that he would be okay because it  
4 was a day surgery.  
5 Q. And there was the nose embolism in  
6 2010. It was in May, wasn't it?  
7 A. I believe it was May 4th or 5th.  
8 Q. And you came back for that?  
9 A. Yes, I did.  
10 Q. And then there was an elective surgery.  
11 Was that liposuction in the spring?  
12 A. That was back in the first part of  
13 March.  
14 Q. Okay. And did you come back for that?  
15 A. Yes, I did.  
16 Q. Ma'am, you have been in the courtroom  
17 during the trial; correct?  
18 A. Yes, I have.  
19 Q. And you were here. We played Exhibit 3  
20 while you were seated so you didn't have to sit up  
21 there. You were able to hear that; right?  
22 A. I've heard a lot of exhibits. I don't  
23 know what Exhibit 3 is.  
24 Q. I think I gave you the wrong one,  
25 anyway. But it's maybe Exhibit 1, the

1 nature of the question.  
2 THE COURT: Try to proceed without leading  
3 questions, or we may have to have a discussion at  
4 sidebar about --  
5 MS. WHELAN: Judge, could we just have a  
6 discussion on the sidebar?  
7 THE COURT: All right. Approach.  
8 (Sidebar commences as follows:)  
9 THE COURT: Mr. McAllister, I think the  
10 options are either giving Ms. Whelan some leeway  
11 or we're going to have to a discussion about  
12 whether she is a hostile witness, since I'm not  
13 sure -- I mean, we can send the jury out, but  
14 ultimately I would have to explain to the jury, if  
15 I make that determination, that she is a hostile  
16 witness. I don't know if that's what you want,  
17 but I think that's where we're going to end up  
18 quite possibly based on what I understand the  
19 issue is here. Pick your poison, I guess, is what  
20 I'm saying.  
21 MR. McALLISTER: Judge, there is no basis,  
22 whatsoever, to declare her hostile, or I think the  
23 word is "adverse" in this case. There isn't a  
24 basis for it, number one. Number two, I have  
25 allowed the prosecutor to ask leading questions up

1 to this point in time about her personal life and  
2 everything else. But the witness answered no to  
3 her, and then she just restated it again. That's  
4 the basis of my objection.

5 THE COURT: Ms. Whelan --

6 MR. McALLISTER: It was argumentative.

7 THE COURT: Ms. Whelan, let's go ahead and  
8 try to proceed. If you feel that she is hostile  
9 or adverse, we'll take that up at that time, but I  
10 think we can -- until it's clear that she is  
11 simply trying to avoid answering the question, I'm  
12 going to have to ask you to proceed by nonleading  
13 questions, and we'll see how it goes. Okay?

14 (Sidebar concluded.)

15 THE COURT: Proceed, Ms. Whelan. I'll  
16 sustain the objection.

17 BY MS. WHELAN:

18 Q. Did you testify maybe about a half hour  
19 ago -- one second, let me look what I wrote --  
20 that the defendant had told you he felt abandoned  
21 when he needed you when he had been sick before?

22 A. Yes, I did.

23 Q. And did you just hear your husband say  
24 that he felt neglected, in the recording that we  
25 played?

1 Q. He was away at college?

2 A. Yes.

3 Q. Did you have any cats at the ranch?

4 A. Numerous cats. I don't -- I've lost  
5 track.

6 Q. Do you recall a cat named Missy?

7 A. Oh, yes.

8 Q. Did she have kittens?

9 A. Right around June, May, end of May,  
10 June, somewhere in there.

11 Q. She has had several litters of kittens;  
12 correct?

13 A. She has maybe one other. We have had  
14 several cats that have had kittens. She has maybe  
15 one other, but that might have been her first  
16 because we had a cat that looked exactly like her  
17 that had several batches. Sorry.

18 Q. How many horses were at your ranch on  
19 June 9th, 2010?

20 A. Four.

21 Q. And did any of these horses have  
22 injuries?

23 A. One of them did later part of --  
24 sometime around the later part of May. I don't  
25 know exactly because I was not home.

1 A. I heard him say that, yes, but it's  
2 different.

3 Q. Ma'am, what kind of car were you  
4 driving in March of 2010?

5 A. Well, it's one of two depending on  
6 where I was.

7 Q. Okay.

8 A. But I would either drive the black  
9 Mitsubishi or a red Mustang.

10 Q. And in April, May, and June of 2010,  
11 were those the same cars you drove, either the  
12 black Mitsubishi or the red Mustang?

13 A. I would say 90 percent of the time -- I  
14 mean, sometimes I did also drive our red pickup.

15 Q. When you made your trips back and forth  
16 from Oregon, what were you driving?

17 A. It would -- it was always the -- it was  
18 always the Mitsubishi. And I apologize for  
19 hesitating because there has been one or two times  
20 I have taken the red pickup, and I was trying to  
21 remember if that was one of the trips. But I  
22 believe it was always the Mitsubishi at that time.

23 Q. Was your son living at home in the  
24 spring of 2010?

25 A. No, he was not.

1 Q. Did he get bunched up in some wire?

2 A. I really don't know. I was not home.  
3 I just know my husband took -- I had -- he called  
4 me about it. I called a friend and had her go out  
5 and see how bad it was because he didn't -- he  
6 wasn't sure if it was bad enough to call a vet.  
7 And since it's hard to tell over the phone, I had  
8 a friend go out and look, and she felt that it was  
9 important to have a vet come out. And so he  
10 called a vet to have him come out and check and  
11 make sure that the horse was okay.

12 Q. I want to ask you about something,  
13 ma'am, that was brought up this morning having to  
14 do with a report you made that there were some  
15 silver coins missing from your home.

16 A. Yes.

17 Q. Do you recall making that report?

18 A. Yes, I do. I don't -- I know it was --  
19 I think it was around September. I don't remember  
20 exactly when, but, yes.

21 Q. And you indicated that you thought you  
22 were missing about 45- to \$55,000 in coins; is  
23 that correct?

24 A. I recall it being 45,000.

25 Q. Ma'am, are you aware that in the



1 spring, specifically April 21st of 2010, your  
2 husband went in and cashed in approximately 45- to  
3 \$55,000 in silver?

4 **A.** It was \$55,280 -- \$290.80 and that was  
5 not -- when I was calculating what silver was --  
6 when I was figuring out all of the silver, I was  
7 not -- that I took into consideration. I took  
8 that away because I knew that had been cashed. I  
9 had also taken what was seized from -- from our  
10 home and deducted that, and what should have been  
11 there, and there was \$45,000 missing.

12 **Q.** Ma'am, when did you become aware that  
13 that silver had been cashed in?

14 **A.** I was aware of it when it was being  
15 cashed in.

16 **Q.** Do you recall when that was?

17 **A.** In April. End of April, mid-April.  
18 I -- you know, I wasn't there when it was cashed  
19 in, but I knew it was being cashed in.

20 **Q.** The silver in your house was all hid  
21 in -- excuse me -- I don't mean hid, but it wasn't  
22 out for everyone to see. The silver was placed in  
23 the master bedroom walk-in closet; correct?

24 **A.** Some.

25 **Q.** There was no silver in the hidden space

1 between the time his aneurysm happened and about  
2 May the defendant had stopped writing?

3 **A.** I had believed he had stopped, but if  
4 he didn't, then, you know, he was continuing on  
5 the case. I was just assuming that he had, but I  
6 still know it was a case he was working on because  
7 we still -- we would talk about it.

8 **Q.** Do you know how many women he wrote to?

9 **A.** It was several, a lot. I can't put a  
10 number on it, no.

11 **Q.** Are you aware that when he wrote to  
12 these women he told them that he was divorced?

13 **A.** Yes, I do.

14 **Q.** Are you aware that as he wrote to these  
15 women he told them that while he had married  
16 somebody who was a good companion, he was no  
17 longer in love with her?

18 **A.** Yes, I do.

19 **Q.** You reviewed letters in my office;  
20 isn't that correct?

21 **A.** I knew that before I reviewed those  
22 letters.

23 **Q.** Did you review letters in my office?

24 **A.** Yes, I did.

25 **Q.** Did you have time to specifically read

1 behind the drywall out in the five-car garage, was  
2 there?

3 **A.** There was none -- I'm sorry. Please  
4 repeat where you're talking about.

5 **Q.** The five-car garage where there was an  
6 area made behind the drywall.

7 **A.** It wasn't hidden there, no.

8 **Q.** What do you call the five-car garage?

9 **A.** Car barn, car garage.

10 **Q.** Do you recall that when you reported to  
11 law enforcement in September of 2009, that you  
12 said the silver had been kept in the master  
13 bedroom, the car barn, the equipment shed, and the  
14 shop -- excuse me -- the shop?

15 **A.** Yes, I do.

16 **Q.** Ma'am, you are aware that your husband  
17 was sending letters and doing Internet chats with  
18 various women in the Ukraine, are you not?

19 **A.** I was aware of it before he started it.

20 I was aware of it when he was doing it. And we  
21 discussed it quite often.

22 **Q.** He told you it was for a case?

23 **A.** It was for a case.

24 **Q.** And do you recall when you spoke with  
25 agents that you told them that you understood that

1 them?

2 **A.** I glanced and read through and got  
3 enough of what just confirmed that I already knew.

4 **Q.** Did you know that he professed his love  
5 for certain women?

6 **A.** I knew he was doing that, yes.

7 **Q.** Did you know that he was sending gifts?

8 **A.** Yes, I do. He told me about -- before  
9 he even started sending the gifts long ago, told  
10 me he was going to be doing that, and he would  
11 have to put money towards -- towards that.

12 **Q.** Do you know that he started this in  
13 August of 2009?

14 **A.** I don't know the exact date, but I do  
15 know that it was -- that it was a few -- three,  
16 four, five months before he had his aneurysm.

17 **Q.** Do you know that he continued up until  
18 the date he was arrested?

19 **A.** Yes, I do.

20 **Q.** Are you aware that he made these women  
21 promises that he loved them and wanted to have  
22 children with them?

23 **A.** I am aware that he was -- was trying to  
24 make them believe that he was a serious prospect  
25 in order to figure out the Russian bride scam

1 because he wanted to write a book, and that was  
 2 all part of it. We would talk about it. He  
 3 informed me about it. Because he knew this -- I  
 4 mean, it was a sensitive situation. I -- I gave  
 5 him the go-a head because I trusted him, and I  
 6 knew every -- I didn't know every single word, but  
 7 he would let me read anything I wanted. I knew  
 8 when he was sending -- you know, that he was going  
 9 to send things. He was going to send cashier's  
 10 checks. He was going to send gifts. I knew all  
 11 about it and I knew it was a case and I knew he  
 12 saw a book in it.

13 There were times we would even sit in  
 14 his office and we would read the -- we would read  
 15 his writings and the responses. And, frankly, we  
 16 would end up laughing together because we didn't  
 17 believe that it was always the girl, the pretty  
 18 girl behind the writings. It could have been a  
 19 man as far as we knew.

20 MS. WHELAN: Your Honor, I'm going to object  
 21 and move to strike. First, it's not an answer to  
 22 the question, which was, "Were you aware he said  
 23 he wanted to have babies?" Secondly, it is  
 24 involved in --

25 MR. McALLISTER: I'm going to ask to do a

1 not aware of that.

2 Q. Your husband told you in general what  
 3 he was doing. He did not check with you before  
 4 every email he sent, did he?

5 A. I didn't ask him to, and he didn't need  
 6 to.

7 Q. He did not show you copies of all of  
 8 the emails, did he?

9 A. No.

10 Q. He was lying to these women?

11 A. He was setting up a ruse.

12 Q. According to you, he was lying to these  
 13 women?

14 A. No.

15 Q. Are you aware he told these women he  
 16 was going to travel to Kiev and see them?

17 A. I don't recall any of that, but I  
 18 wouldn't be surprised.

19 Q. Are you aware that once he was in  
 20 custody he sent a letter to one of the women?

21 A. Yes, I am.

22 Q. From jail?

23 A. Yes.

24 Q. Professing his love?

25 A. Yes.

1 sidebar, Judge, if she is going to make a speech  
 2 about the objections.

3 MS. WHELAN: -- speculation.

4 THE COURT: Well, I think it is  
 5 nonresponsive. But, again, I'll ask both counsel  
 6 to avoid speaking objections. It is  
 7 nonresponsive. I'll strike the last response.  
 8 Let's put the question back before the witness.

9 And, Ms. Steele, if you will listen  
 10 carefully to the question and answer only that  
 11 question, we will be able to go more smoothly and  
 12 more quickly.

13 THE WITNESS: All right, Your Honor.

14 THE COURT: Proceed, Ms. Whelan.

15 BY MS. WHELAN:

16 Q. Are you aware that he told these women  
 17 he wanted to have babies with them?

18 A. Not specifically, but I would assume  
 19 that that would be part of him -- part of it.

20 Q. Are you aware he discussed your  
 21 children with them?

22 A. Yes.

23 Q. Are you aware he took pictures of your  
 24 home and sent them to them?

25 A. I'm not aware that he did, but -- I'm

1 Q. Talking about his ex-wife?

2 A. Yes.

3 Q. Because while he was in jail, he needed  
 4 to continue the lie?

5 MR. McALLISTER: I'm going to object to the  
 6 form of the question, Judge.

7 THE COURT: Restate the question.

8 BY MS. WHELAN:

9 Q. He was in custody on a serious charge;  
 10 correct?

11 A. Yes.

12 Q. He had somebody look up this woman's  
 13 address; correct?

14 A. Yes.

15 Q. Did defense counsel or your attorney  
 16 provide you with information as to how old this  
 17 woman is or her Internet site photo?

18 MR. McALLISTER: Judge, I object to anything  
 19 defense counsel may have provided.

20 MS. WHELAN: I can restate it, Your Honor.

21 THE COURT: Please do.

22 BY MS. WHELAN:

23 Q. Have you seen Ms. Loginova's Internet  
 24 profile?

25 A. I believe I saw her Internet -- a copy

1 of her Internet profile, and whether or not that  
2 was one of the many that my husband had showed me  
3 earlier on, I didn't keep track of the faces.  
4 They were just all pretty girls.

5 Q. These women were very young?

6 A. Yes.

7 Q. Mrs. Steele, in the exhibit that we  
8 played, your husband told you several things;  
9 correct? He told you to remember that if he goes  
10 to prison it will be because of what you say?

11 A. Yes. He said that.

12 Q. He told you that if you didn't do what  
13 he said and say that that was not his voice, you  
14 would wake up every day without him; is that  
15 correct?

16 A. I'm not sure it was exactly. I don't  
17 remember exactly how that was put.

18 Q. Did he tell you if you didn't, you're  
19 going to be "dealing with our kids and explaining  
20 to them how your testimony put me in prison"?

21 A. He said that. And if I put -- and if I  
22 falsely put my husband in prison, I would feel  
23 guilty.

24 MS. WHELAN: Your Honor, move to strike.  
25 Nonresponsive.

1 On cross-examination, there will be an opportunity  
2 to explain this further.

3 Proceed.

4 BY MS. WHELAN:

5 Q. Your husband told you that, "No matter  
6 what you hear, no matter what you think, no matter  
7 what you feel, you have to say the following:  
8 'No, that is not my husband's voice.'" Your  
9 husband told you that, didn't he?

10 A. Yes.

11 Q. Because he wanted you to communicate  
12 something, those words, "No, that is not my  
13 husband's voice," to law enforcement, didn't he?

14 A. Please repeat that.

15 Q. Your husband told you, "No, that is  
16 not" -- to say, "No, that is not my husband's  
17 voice"; correct?

18 A. Yes.

19 Q. And that was regardless of what you  
20 thought; correct?

21 A. That's what he said.

22 Q. And regardless of what you would hear  
23 when you heard the tapes?

24 A. That's what he said.

25 Q. So your husband wanted you to disregard

1 THE COURT: Sustained. I'll strike the last  
2 response and instruct the jury to disregard it as  
3 being nonresponsive.

4 Ms. Whelan?

5 BY MS. WHELAN:

6 Q. Mrs. Steele, would you agree that your  
7 husband was trying to put significant pressure on  
8 you to tell law enforcement something that he  
9 wanted you to say?

10 A. No.

11 Q. You do not characterize as -- that you  
12 would have to "deal with the kids and explain to  
13 them how your testimony put me in prison" was not  
14 pressure?

15 A. I don't. No, I don't. Because he was  
16 trying to tell me he was innocent, and that's what  
17 he was standing up for. He never asked me to lie,  
18 and he knows that I would be upset if he wrongly  
19 went to prison.

20 MS. WHELAN: Your Honor, move to strike,  
21 nonresponsive.

22 THE COURT: I'll sustain the objection and  
23 strike the last response and instruct the jury to  
24 disregard.

25 Again, listen to counsel's question.

1 what you heard and do what he told you to?

2 A. I don't know what he wanted, because  
3 that was not my interpretation of it.

4 Q. When you had this discussion with your  
5 husband, he confirmed that he thought you may have  
6 a boyfriend, didn't he?

7 A. He said that it crossed his mind.

8 Q. And you talked about concerns that you  
9 were having in the marriage at that point, weren't  
10 you?

11 A. I was talking about concerns of  
12 everything that was going through my mind when I  
13 was told that he wanted me dead. I was  
14 considering everything and anything, so every  
15 little argument, every little saying was going  
16 through my mind.

17 Q. But, Mrs. Steele, that's not what you  
18 said. Do you recall saying, "I told you I was  
19 giving you six months"?

20 A. Yes, I recall that.

21 Q. And that's because that was something  
22 that occurred prior to this conversation. It  
23 didn't have anything to do with his desire to have  
24 you murdered, did it?

25 A. What? The six months?

1 Q. Right.  
 2 A. No.  
 3 Q. It's because you were having concerns  
 4 about the marriage during the spring of 2010?  
 5 A. No, I wasn't having concerns about our  
 6 marriage.  
 7 Q. Your husband had told you that he  
 8 wanted a divorce?  
 9 A. No. He did not tell me he wanted a  
 10 divorce.  
 11 Q. Your husband never told you he wanted a  
 12 divorce?  
 13 A. No.  
 14 Q. Do you recall having a conversation  
 15 with law enforcement on the 9th of July?  
 16 A. Yes, I do.  
 17 Q. And on that day, do you recall telling  
 18 law enforcement that the day your husband checked  
 19 out of the rehab center he told you he wanted a  
 20 divorce?  
 21 A. He did not tell me that, and I -- that  
 22 is not what I said in that meeting.  
 23 Q. Did --  
 24 A. He -- the statement he made that day  
 25 is, "I want you to stay out of my way because I'm

1 we can discuss that tomorrow morning.  
 2 Ladies and gentlemen, we're going to  
 3 take the evening recess or afternoon recess at  
 4 this time. We'll reconvene tomorrow morning at  
 5 8:30.  
 6 I'll again admonish you not to discuss  
 7 the case among yourselves or with anyone else and  
 8 not to form or express any opinions about the case  
 9 until it is submitted to you. Again, be very  
 10 careful to follow the court's admonition. Stay  
 11 away from local newspapers, radio, and television  
 12 news coverage. It's critically important that you  
 13 follow the court's admonition. Do not discuss the  
 14 case with anyone, including family members,  
 15 friends. Don't visit any websites, blogs, chat  
 16 rooms where subject matters related to this might  
 17 be discussed. Do not consult any outside  
 18 reference materials. And be very careful as you  
 19 leave the courthouse today that you have no  
 20 contact with any of the attorneys, witnesses, or  
 21 parties. Proceed directly to your vehicle.  
 22 Then when you return tomorrow morning,  
 23 proceed directly to the jury assembly room on the  
 24 fifth floor.  
 25 Again, I'll caution everyone in the

1 perfectly capable of handling myself."  
 2 That -- that was not a divorce.  
 3 Q. So your testimony is that he never said  
 4 he wanted a divorce?  
 5 A. He never said he wanted a divorce.  
 6 Now, there is an earlier situation when he was  
 7 very sick under hallucinations coming off of a  
 8 respirator that he, yes, called up and said if I  
 9 didn't come down to the hospital, he would divorce  
 10 me. But I do not count that as he wanted a  
 11 divorce. He was extremely sick, under  
 12 hallucination drugs, and was having all sorts of  
 13 hallucinations.  
 14 MS. WHELAN: Objection. Move to strike as  
 15 nonresponsive. Ask for a sidebar.  
 16 THE COURT: Counsel, we're where we're going  
 17 to take the evening break.  
 18 MS. WHELAN: Your Honor, perhaps we could  
 19 take the matter up in the morning.  
 20 THE COURT: I think we can. Let's convene  
 21 at 8:15 in the morning, and I'll take it up with  
 22 counsel at that time. I'm not going to, at this  
 23 point, strike the testimony. I think it is  
 24 somewhat responsive to the question, but we can --  
 25 you can look at the transcript, and then perhaps

1 courtroom to give the jurors wide berths and do  
 2 not in any way be in close proximity to any of the  
 3 jurors as they leave the courthouse today.  
 4 We'll be in recess until 8:30 tomorrow  
 5 morning.  
 6 (Court recessed at 2:30 p.m.)

1        R E P O R T E R ' S   C E R T I F I C A T E

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I, T a m a r a I. H o h e n l e i t n e r, O f f i c i a l  
C o u r t R e p o r t e r, S t a t e o f I d a h o, d o e s h e r e b y  
c e r t i f y :

T h a t I a m t h e r e p o r t e r w h o t r a n s c r i b e d  
t h e p r o c e e d i n g s h a d i n t h e a b o v e - e n t i t l e d a c t i o n  
i n m a c h i n e s h o r t h a n d a n d t h e r e a f t e r t h e s a m e w a s  
r e d u c e d i n t o t y p e w r i t i n g u n d e r m y d i r e c t  
s u p e r v i s i o n ; a n d

T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a  
f u l l, t r u e, a n d a c c u r a t e r e c o r d o f t h e p r o c e e d i n g s  
h a d i n t h e a b o v e a n d f o r e g o i n g c a u s e .

I N W I T N E S S W H E R E O F, I h a v e h e r e u n t o s e t  
m y h a n d J u n e 2 4, 2 0 1 1 .

- s -

T a m a r a I. H o h e n l e i t n e r  
O f f i c i a l C o u r t R e p o r t e r  
C S R N o . 6 1 9

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