

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

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

Case No. 10-00148-N-BLW
JURY TRIAL

13 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

14 before B. Lynn Winmill, Chief District Judge

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PROCEEDINGS

Friday, April 29, 2011

(Jury absent.)

THE COURT: Counsel, we were going to just take up for a moment a couple of issues before we bring the jury in.

First, with regard to the question of whether Ms. Steele can or should be treated as a hostile witness, the rule indicates that a party must proceed by nonleading questions unless a witness is either hostile, an adverse party, or associated with an adverse party.

To me, a hostile witness becomes hostile only when they either refuse to answer or are being intentionally evasive. And if that appears, then I will allow counsel to proceed by leading questions, or perhaps at a discussion at sidebar as to whether Ms. Steele is -- I'm not sure if the word is "associated," but there is a term used in Rule 611, I think, along those lines.

So that's where we are. I think counsel knows how we'll deal with that. I'll just make a judgment call if I think Ms. Steele is being evasive. And, at that point, I'll allow you to proceed. Rather than declare her hostile --

siding with my client.

THE COURT: It has nothing to do with whether she is telling the truth, in the same way whether -- you know, in a civil matter, if an adverse party gets up, they're telling the truth; but the other side -- just, it's a matter of convenience and a way of proceeding in a more orderly fashion that if somebody is associated with an adverse party -- not suggesting they're not telling the truth -- it's just easier and appropriate to then allow opposing counsel to proceed by asking non -- or by asking leading questions.

So I don't want any suggestion taken from my comments that I'm questioning Ms. Steele's sincerity, her integrity, or her honesty. It's just a question of what the rule calls for. And the rule envisions that we allow parties to proceed by leading questions if a witness is associated with an adverse party. So --

MR. McALLISTER: Judge, I think that the record will show that, from the very second question Ms. Whelan asked, and for an hour, she was totally leading her. And I think the witness basically stood her ground.

which I don't like to do in front of the jury because it suggests I'm taking sides in some ways -- I'll just overrule any objections to leading questions from that point. So counsel will understand why I'm doing what I'm doing without bringing you to a sidebar.

If, on the other hand, Ms. Whelan, you want to have the court determine that she, in fact, is connected with an adverse party, there is some suggestions of that. But it's only suggestions, and I may need to have a specific discussion to make a record at a sidebar as to what factors would justify that conclusion.

All right? Is that clear? Do you need any further clarification?

MS. WHELAN: I don't need any clarification. I would just -- to avoid -- timewise, I would like to be able to make that proffer now as to why she is associated with another party. If the court doesn't want me to do it, that's fine.

THE COURT: Well, Mr. McAllister, do you dispute that she is essentially siding with your client in this matter?

MR. McALLISTER: Judge, I do. I think she is telling the truth as she knows it as opposed to

Oftentimes Ms. Whelan would seek just a yes or no to a leading question, and sometimes the witness told the -- gave the whole answer, and then she would move to strike it. She had been treating her as an adverse, hostile witness from day -- from the very beginning of this case. And if the court makes the decision that, under the rule, she is adverse or hostile, there is not much I can do about it.

But the problem here is that, you know, I didn't object to her method of examination, and I probably won't object in the future because I want the jury to hear what she has to say, and I'm going to get a chance to ask her questions after Ms. Whelan is done.

So it's almost like, you know, she has been leading the whole time anyhow.

THE COURT: Well, I think there have been some leading questions; I wouldn't say the whole time. But I agree with you there clearly have been leading questions.

Mr. McAllister, was there another issue --

MR. McALLISTER: Yes.

THE COURT: -- that you wanted to take up?

1 MR. McALLISTER: Yes. I received this
2 morning, Your Honor, for the first time, what's
3 been marked as Government Exhibit 109. It seems
4 to be -- upon reading it very quickly before court
5 began, it seems to be a letter dated June 13th,
6 2000, in an attempt by Edgar and Cyndi Steele to
7 work out the difficulties that they were having in
8 their relationship at that time.

9 Ms. Whelan yesterday went into the 2000
10 filing of a divorce for quite a period of time.
11 And she went through -- walked through, point by
12 point, the divorce petition or complaint that was
13 filed.

14 I objected. The court overruled my
15 objection but said you would not let her go too
16 far on this because of the fact that it is from
17 2000 and because of the fact that there was no
18 divorce; there was a reconciliation.

19 So I object to any -- to going back to
20 the subject of the divorce, especially since we're
21 still on direct examination. I don't know if I'm
22 going to raise it in cross-examination or not.
23 And at that point, perhaps the government would
24 have some basis for bringing this in.

25 And, in addition, it's trial by ambush

1 inconsistent. She might agree with us, and then
2 it won't be used. But that is the issue.

3 THE COURT: Well, all right. Let me
4 clarify -- again, I thought it was clear from my
5 ruling at sidebar. I did not indicate that I was
6 going to limit the government because it was ten
7 years old, but only that the discussion about the
8 prior divorce had to be focused on financial
9 matters and matters which may have provided a
10 motive for Mr. Steele to have engaged in what the
11 government has alleged that he engaged in.

12 And one of the things mentioned, I
13 think, by Mr. Fairfax in his testimony and a
14 statement attributed to Mr. Steele was the -- I
15 think Mr. Fairfax may have even asked him why he
16 didn't just divorce Ms. Steele. And the comment
17 was, financially, he couldn't afford to do that.

18 And so I think whatever financial
19 discussions that occurred in conjunction with a
20 divorce ten years earlier would be completely
21 relevant to the issue of motive in this case; and,
22 therefore, I permitted it for that reason.

23 What I was trying to indicate in terms
24 of limiting is that we're not going to get into
25 what the reason for the divorce was, whether one

1 to get a document the morning of trial. My client
2 hasn't even had a chance to read it.

3 So I object to any introduction or use
4 of Government's Exhibit 109.

5 THE COURT: Ms. Whelan?

6 MS. WHELAN: Your Honor, it's certainly not
7 trial by ambush. It's provided in discovery.
8 Ms. Rocca is looking for the Bates numbers. It's
9 1397 to 1398.

10 When I provided these exhibits to
11 Mr. McAllister, understanding that there had been
12 a lot of discovery, I just made the courtesy to
13 not only have -- make sure they were marked, but I
14 made sure the Bates numbers were on them, as well,
15 so that he could refer to the fact that he had, in
16 fact, received them.

17 That's the first issue. It is not
18 trial by ambush.

19 Secondly, it is relevant because there
20 is a certain portion in here where it has to do
21 with something Mrs. Steele was asked yesterday.
22 Specifically -- and I don't want to give away what
23 I'm going to say; I don't think that I have to.
24 But it may be used to refresh her recollection
25 regarding something she said yesterday that may be

1 side was culpable as opposed to the other, whether
2 there was any other fallout from the divorce. It
3 was purely a question of the fact that Mr. Steele
4 had apparently said to Mr. Fairfax that he
5 couldn't afford to go through a divorce.

6 And that was the reason I allowed it.
7 And I think we pretty much limited it to that.
8 There may have been some questions about
9 visitation or something, but that would be akin to
10 that, as well.

11 So that was the basis for the ruling.
12 I think we're going to proceed. If it's just used
13 to refresh the witness's recollection, Counsel
14 knows the process for doing that. I think it's
15 Rule 614. You simply show it to the witness, see
16 if it refreshes her recollection, take it away
17 from the witness, and then allow her to testify.
18 And only if she maintains an inconsistent position
19 would the document need to be admitted for
20 impeachment purposes.

21 If it's going to be offered independent
22 of that, I'll have to discuss it. We'll take it
23 up at sidebar.

24 MS. WHELAN: Your Honor, there are other
25 exhibits that I provided Mr. McAllister that are

1 relevant, and they are outside of what the court
2 has just said.

3 Yesterday Mrs. Steele testified that,
4 with regards to this Internet emailing and
5 contacting these women, that she was aware of it,
6 that he did it with her support. And the
7 government intends this morning to show --

8 THE COURT: Well, see, that's another issue.

9 There was no --

10 MS. WHELAN: Okay. As long as I'm not
11 limited there.

12 THE COURT: No. I have not even had -- I
13 think we were only talking about the divorce and
14 matters related -- not the divorce -- the filing
15 of the divorce petition and matters related
16 thereto.

17 This other issue, we're just going to
18 have to take it up. You know, we're eating into
19 the jury's time. I'm more inclined just to deal
20 with this as it comes up.

21 Mr. McAllister, is there something else
22 you want to take up?

23 MR. McALLISTER: Yes, Your Honor. It's the
24 same issue about Exhibit 109.

25 I understand what the court ruled

1 it, the issue really arose as a result of
2 Mrs. Steele's testimony yesterday. And counsel is
3 not required to produce in advance exhibits that
4 they don't know they need until they get into the
5 trial; that, obviously, they're not required to
6 have powers of a seer to be able to anticipate
7 everything that will happen during trial.

8 Now, if this was a document not
9 produced in discovery, then we would have another
10 matter to talk about. But merely because it
11 wasn't previously marked as an exhibit, those
12 things happen when issues arise during the course
13 of the trial that could not have been anticipated
14 by counsel.

15 The same thing will be true when and if
16 you call witnesses. If matters come up that you
17 were not aware of and you have not previously
18 disclosed an exhibit, you will be allowed to do
19 the same thing.

20 So -- and as far as the court's ruling
21 yesterday, I'm not going to revisit the issue. I
22 have already ruled. Counsel is allowed to go into
23 this. And you've made the record. You've got the
24 appeal issue. And let's move on.

25 All right. Let's go ahead and bring

1 yesterday. And your basis, as stated both
2 yesterday and today, was one answer by the witness
3 Larry Fairfax who's, quote, "an admitted liar."
4 And based upon that one answer yesterday, I think
5 we had about 50 questions on this issue of the
6 divorce petition and the relationship of the
7 parties and counseling and what they did. That is
8 way beyond any need based upon Mr. Fairfax's
9 testimony.

10 And this exhibit, Judge, is one of
11 thousands of exhibits or thousands of documents
12 that was taken in the search of the Steele
13 residence going back some ten years. It was never
14 marked, never shown to me as an exhibit in the
15 case. It may have been produced in the voluminous
16 discovery. And at this point in time, I think it
17 is trial by ambush. I think that, in the recess
18 last night, Ms. Whelan went back and spent all
19 evening digging through --

20 MS. WHELAN: Judge, I'm going to object.
21 This is beyond the scope of proper argument.

22 THE COURT: Counsel, all right. Let's --
23 first of all, let's move on.

24 Mr. McAllister, I understand your
25 concern. The problem is, at least as I understand

1 the jury in, and we'll proceed.

2 MR. HAWS: Your Honor, one brief
3 housekeeping item.

4 THE COURT: Mr. Haws.

5 MR. HAWS: Exhibit 43 was not admitted
6 yesterday with Mr. Clemensen. And rather than
7 bring him back for admitting it, Mr. McAllister
8 indicated that he would agree to, or not object to
9 that admission.

10 So I would move the admission of
11 Exhibit 43 at this time. It's a photo from the
12 inside of the Steele home.

13 MR. McALLISTER: No objection.

14 THE COURT: Very good. I'll announce to the
15 jury that Exhibit 43 has been admitted when the
16 jury enters the courtroom.

17 (Jury present.)

18 THE COURT: I will note for the record that
19 the jurors are present.

20 Ladies and gentlemen, I'll also note
21 Exhibit 43 the court has admitted with the
22 stipulation of counsel. I don't know that it's
23 going to be published to you at this time,
24 although it may be at some point later in the
25 proceedings.

1 (Government's Exhibit 43 admitted.)
 2 THE COURT: Ms. Steele, I'll ask you to
 3 retake the witness stand. As you're stepping
 4 forward, I'll remind you, you are still under
 5 oath.

6 You may inquire, Ms. Whelan.

7 MS. WHELAN: Thank you, Your Honor.

8 CYNDI STEELE,

9 having been previously sworn to tell the whole
 10 truth, testified as follows:

11 CONTINUED DIRECT EXAMINATION

12 BY MS. WHELAN:

13 Q. Mrs. Steele, have you conducted any
 14 interviews in this case?

15 A. Yes.

16 Q. Do you recall having talked to Jamie
 17 Kelso, Michael Collins Piper, David Gahary, Pastor
 18 Dan, and Jeff Rense (phonetic)?

19 A. I don't remember Pastor Dan, but
 20 probably, yes.

21 Q. I'd like to direct your attention to an
 22 interview you did with David Gahary of the
 23 "American Free Press" this last spring. Do you
 24 recall that interview?

25 A. I have made a lot of interviews. I

1 THE COURT: Rephrase, Counsel. I'm going to
 2 sustain the objection.

3 MS. WHELAN: Thank you, Your Honor.

4 BY MS. WHELAN:

5 Q. Ma'am, was your husband particularly
 6 fond of the TV show or movie "Mission Impossible"?

7 A. I'm sure he liked it. It wasn't one
 8 that we -- I don't even recall us ever watching
 9 it.

10 Q. Did you hear him mention "Mission
 11 Impossible" during the phone call with you and
 12 your son on June 13th?

13 A. He mentioned that word a lot, yes.

14 Q. Did he fancy himself to be as important
 15 as the characters in that movie or TV show?

16 A. No.

17 Q. That he felt -- did you hear him say he
 18 felt it was a "Mission Impossible" attempt to get
 19 him?

20 A. I've heard him say that, yes.

21 Q. Mrs. Steele, you have not worked
 22 outside the home very much, have you?

23 A. No, because the ranch was my work, and
 24 so that was at home.

25 Q. Yesterday I believe you said that your

1 can't recall that one in particular.

2 Q. Do you recall during any of the
 3 interviews, then, saying that your husband talked
 4 about this exact scenario?

5 A. I could have said that.

6 Q. Your husband believed he was going to
 7 be set up by the United States, didn't he?

8 A. He believed that people were coming
 9 after him and eventually would come after him,
 10 yes.

11 Q. He had been telling you that for quite
 12 some years, hadn't he?

13 A. We had discussed it, yes.

14 Q. He had convinced you of that?

15 A. I know that he was always afraid of it.
 16 I'm not sure he convinced me of it because I
 17 didn't really believe -- I -- my way of thinking,
 18 I believe good in all people, so I had a hard time
 19 believing it, but I knew he did.

20 Q. So he was setting up his defense even
 21 then?

22 A. No.

23 MR. McALLISTER: I object, Judge. That is
 24 totally argumentative, and this witness couldn't
 25 answer it anyway.

1 husband was the primary breadwinner. Is that
 2 the -- or "money bringer," is that the term you
 3 used?

4 A. Yes.

5 Q. And you said that in relation to why
 6 you had asked him for alimony; is that correct?

7 A. Yes.

8 Q. Do you recall saying yesterday that the
 9 ranch and the horses are your dream?

10 A. Yes. It's my dream, but my husband and
 11 I worked on it together.

12 Q. If your husband is convicted and in
 13 custody, there is nobody to pay for your dream, is
 14 there?

15 A. My dream is done as of June 11th, no
 16 matter what.

17 Q. Ma'am, yesterday, you discussed a
 18 little bit about money or silver that was missing
 19 from your home. You didn't report the silver
 20 missing until after your husband's arrest, did
 21 you?

22 A. I didn't discover the missing of the
 23 silver until after my husband's arrest.

24 Q. You didn't report it until after his
 25 arrest, did you?

1 A. No, I didn't.
 2 Q. Do you recall making a report to the
 3 Bonner County Sheriff's Office?
 4 A. Yes, I do.
 5 Q. And that was in September of 2010; is
 6 that correct?
 7 A. Yes, it was.
 8 Q. Do you recall in that report saying
 9 that the coins were last seen in April or May of
 10 2010?
 11 A. Yes.
 12 Q. When, specifically, did you realize the
 13 silver was missing?
 14 A. It was sometime within -- between the
 15 13th and the following week of June, somewhere in
 16 there. I don't exactly remember the exact date.
 17 Q. When was the last time you had done an
 18 accounting, yourself, of the silver?
 19 A. I started doing an accounting of the
 20 silver from what I knew was in the -- in that
 21 master bedroom closet after I realized that there
 22 was the potential of silver missing.
 23 Q. When was that?
 24 A. In June and through July.
 25 Q. Specifically, where was the silver

1 gone.
 2 Q. Do you know that, in July, he also
 3 asked your son to make sure that it was reported
 4 and that it was very important?
 5 A. I don't know about that.
 6 Q. Do you recall telling the Bonner County
 7 Sheriff's Office that you should have had 9,047
 8 silver coins?
 9 A. I'm not exactly sure what you're --
 10 MS. WHELAN: Your Honor --
 11 THE COURT: Rephrase the question.
 12 MS. WHELAN: Is the screen on for the
 13 jurors?
 14 THE COURT: It is.
 15 MS. WHELAN: Will you turn it off, please.
 16 THE COURT: I'll turn it off.
 17 BY MS. WHELAN:
 18 Q. When you spoke to the Bonner County
 19 Sheriff's Office in September, did you tell them
 20 that you had -- by your accounting, that you
 21 should have 9,047 silver coins?
 22 A. That I should have? I still -- I'm
 23 really not sure what --
 24 Q. And I appreciate that. Maybe I'm
 25 asking it poorly. But I'd just ask if you could

1 missing from?
 2 A. The silver was missing from areas that
 3 we would put silver out in outer buildings -- such
 4 that we didn't keep our silver all in one place --
 5 and from the master bedroom. Of course, I knew
 6 that that was seized by the government.
 7 Q. Would you agree that you had a large
 8 amount of silver bars, coins, and other items at
 9 the house?
 10 A. Well, yes.
 11 Q. And you had gold, as well?
 12 A. We did not invest our savings into
 13 gold.
 14 Q. Did you have any gold at the house?
 15 A. Not other than jewelry.
 16 Q. Do you recall telling the Bonner County
 17 Sheriff's Office in September that the coins were
 18 last seen in April or May of 2010?
 19 A. Yes.
 20 Q. That's because -- the report that you
 21 made was because your husband told you to report
 22 it, wasn't it?
 23 A. He asked me to report it after I went
 24 and looked at the other places in all our
 25 outbuildings to discover all of the silver stashes

1 look at your screen. I'm going to --
 2 THE COURT: Don't repeat anything that's on
 3 the screen. It's only being shown, I think, to
 4 refresh your recollection.
 5 BY MS. WHELAN:
 6 Q. Do you see where I pointed, ma'am?
 7 A. I'm sorry. I thought you were talking
 8 dollar amount, and that number was not --
 9 Q. I'm sorry if I was --
 10 A. -- computing with me.
 11 Q. I understand.
 12 A. That looks about right. I just -- that
 13 looks about right. I don't remember the exact
 14 amount at this time.
 15 Q. It was --
 16 A. I did the calculations at that time.
 17 Q. It was a pretty specific number,
 18 though, wasn't it?
 19 A. Yes.
 20 Q. And you told them, when you made that
 21 report, that the FBI had returned 6,180 silver
 22 coins. Do you recall saying that?
 23 A. I had -- I had -- I recall saying the
 24 amount that the FBI had returned to me, yes.
 25 Q. And, actually, on July 29th of 2010,

1 the FBI had returned almost 7,000 coins to you,
2 hadn't they?

3 **A.** When I recounted and went through
4 everything, it was -- it's the number that was on
5 there.

6 **Q.** Ma'am, is that your signature at the
7 bottom of that page right in front of you?

8 **A.** Yes.

9 **Q.** And, again, this is just offered to
10 refresh your recollection. Please don't testify
11 from it.

12 Do you see here where you -- you signed
13 that you received 5,750 one-ounce coins?

14 **A.** Yes.

15 **Q.** And 750 --

16 **THE COURT:** Counsel, wait, wait. This is,
17 again, not an exhibit admitted.

18 **MS. WHELAN:** Yes. I realized as soon as I
19 went down that road, Judge. I'm sorry.

20 **BY MS. WHELAN:**

21 **Q.** Did you receive 750 silver dollars from
22 the FBI? Do you recall?

23 **A.** Yes.

24 **Q.** And did you receive 500 JFK half-
25 dollars?

1 **A.** I'm trying to do the calculation here.

2 Sorry. Two bags of 25 rolls.

3 **THE COURT:** Well, just -- do you recall?
4 Testify from your own memory. If your memory
5 is -- if you don't recall, you can use this to
6 refresh your memory.

7 And, Counsel, I don't know that we're
8 here to establish -- let's --

9 **THE WITNESS:** I count -- that two bags had
10 always confused me. I -- you know -- and then I
11 kept, you know -- I did get confused on that part.
12 I think I assumed that -- I think I mis- --
13 undercalculated the two -- the two bags.

14 **BY MS. WHELAN:**

15 **Q.** When you --

16 **A.** Because I wasn't sure if there --
17 because I forgot if there -- because I didn't know
18 if there was 25 in -- per both bags or 25 in each
19 bag, and I -- and I missed on that.

20 **Q.** Ma'am, when you reported the silver as
21 missing, you didn't actually know if it was
22 missing, did you?

23 **A.** It was missing.

24 **Q.** You didn't know if it was in the
25 custody of the FBI, though, did you?

1 **A.** Well, no, I didn't. Because --

2 **Q.** But, during the course of that, you
3 made sure in that police report to put that Larry
4 Fairfax was your suspect, didn't you?

5 **A.** After I confirmed that the FBI hadn't
6 taken silver out of any of the other buildings and
7 it was only out of the master bedroom, that is
8 when I suspected Larry Fairfax, yes.

9 **Q.** In the report, you made sure to mention
10 Larry Fairfax, didn't you?

11 **A.** Because I believe Larry Fairfax was the
12 one that stole the silver, yes.

13 **Q.** You also told the deputies, though,
14 that the silver that you thought was missing could
15 be with the FBI?

16 **A.** Well, yes.

17 **Q.** You were trying to establish this idea
18 that your husband told you that Larry Fairfax may
19 have stolen from you to help his defense, weren't
20 you?

21 **A.** No. I was telling the truth of what I
22 knew.

23 **Q.** And part of that truth was based upon
24 things that your husband told you?

25 **A.** I based my investigation on things that

1 my husband had told me, and then I investigated.

2 **Q.** So your conclusion was, in part, based
3 upon things that your husband told you?

4 **A.** Only because my investigation confirmed
5 it.

6 **Q.** And those were calls from jail where he
7 was trying to make sure that this was set up;
8 correct?

9 **A.** No.

10 **Q.** Ma'am, yesterday we discussed the
11 difficult times that you had in your marriage in
12 2000. And I apologize that we need to go into it
13 again. Again, I will try to be brief.

14 Do you recall getting an email from
15 your husband on June 13th of 2000 which included a
16 copy of a poem or missive entitled "Don't Get
17 Married"?

18 **A.** I remember there being a poem, but I
19 don't recall -- that was ten years ago. I don't
20 recall that -- what it said or what the poem was.

21 **Q.** Ma'am, I'm going to ask you to look --

22 **THE COURT:** The jury monitor -- the jury
23 projector, again, is not on, so you may show
24 something to the witness if you wish.

25 **MS. WHELAN:** Thank you.

1 BY MS. WHELAN:
 2 Q. What's been marked and identified as
 3 United States Exhibit 103. Can you see what's --
 4 I don't want you to testify from it, but can you
 5 see what's at the top of it?
 6 A. Yes.
 7 Q. And is that your email address? Or was
 8 it back then?
 9 A. It must have been back then.
 10 Q. Now, I want to ask you just to look at
 11 this exhibit. In looking at that, do you recall
 12 getting that from your husband?
 13 A. I don't recall this. I'm not -- you
 14 know, he wrote it, but that -- that wasn't the
 15 poem that I was thinking about.
 16 Q. But you do agree that this was sent to
 17 your email in 2000?
 18 A. Well, I agree. I just don't recall it.
 19 MS. WHELAN: Your Honor, I'd move for the
 20 admission of Exhibit 103 and ask permission to
 21 publish parts of it to the jury.
 22 MR. McALLISTER: Your Honor, I object. I
 23 think if she doesn't recall it, there is no
 24 foundation that it's authentic in any way.
 25 MS. WHELAN: Judge, she said it was from her

1 Q. Your husband has had many emails;
 2 correct?
 3 A. Yes.
 4 Q. Do you remember one "Bobleep.com"?
 5 A. Yes.
 6 THE COURT: Counsel, you said that he has
 7 had many emails. Do you mean email addresses?
 8 MS. WHELAN: I do. Sorry.
 9 BY MS. WHELAN:
 10 Q. He's had very many email addresses;
 11 correct?
 12 A. Yes.
 13 Q. Looking at this, just the top part of
 14 this email, would you agree that this is an email
 15 that you received from your husband?
 16 A. You know, I don't recognize this email.
 17 I mean, I don't recall it. That particular email
 18 from my husband, I don't recall it. But I can't
 19 say it wasn't one of his, because he has had many.
 20 But it's just not one that I remember, and it's
 21 one that he hasn't used at least in the last
 22 several years.
 23 Q. Okay. Looking at just the addresses --
 24 not the content, not whether you recall receiving
 25 it, but just the addresses and then that first

1 email.
 2 THE COURT: Well, at this point, I'll have
 3 to sustain the objection. I'm not sure the
 4 witness has adequately identified it to lay a
 5 foundation.
 6 BY MS. WHELAN:
 7 Q. Mrs. Steele, in the "To" line of
 8 Exhibit 103, what does it say? Can you look at
 9 that?
 10 A. I'm sorry. Which line?
 11 Q. The "To" line ma'am, right here.
 12 A. Well, it's from Edgar Steele address --
 13 email -- I don't even remember that email address
 14 from him, actually. I have never seen a
 15 "Pop.net," but -- and then my email address.
 16 Q. Ma'am, during this time in your life,
 17 you and your husband were communicating through
 18 email; is that right?
 19 A. Emails and phone calls and when he was
 20 home.
 21 Q. And I think you previously said that
 22 the email address of who you -- of you, which is
 23 what I asked you, the "To," that is your email
 24 address; correct?
 25 A. Yes.

1 paragraph, would you agree it's an email you
 2 received from your husband?
 3 A. Because of the addresses, I have to
 4 agree, but I don't recall this particular one.
 5 MS. WHELAN: Your Honor, I would move for
 6 the admission of Exhibit 103.
 7 MR. McALLISTER: Same objection in addition
 8 to the time, Your Honor.
 9 THE COURT: The time being a relevance
 10 objection?
 11 MR. McALLISTER: Yes, Your Honor. Lack of
 12 foundation, lack of relevance, outside the scope
 13 of the events in this case.
 14 MS. WHELAN: Your Honor, if we were to
 15 discuss the relevance, I --
 16 THE COURT: No. All right. I'm going to
 17 overrule the objection. The witness has -- on the
 18 relevance issue, the court has discussed that at
 19 sidebar yesterday and this morning before the jury
 20 came in as to the basis for the ruling. It's
 21 related to that same issue that we discussed.
 22 In addition, in terms of foundation,
 23 the witness's last comment, I think, is sufficient
 24 to lay the foundation. It's for the jury,
 25 obviously, to determine whether this was, in fact,

1 authored by Mr. Steele or not, but I'll -- that's
2 an issue for the jury to decide.

3 I think there is enough foundation
4 under Rule -- I think it's 901, to admit the
5 exhibit. So the exhibit will be admitted.
6 Counsel, I'm concerned, though, that
7 the only thing that should be admitted would be
8 the statements which at least have some indication
9 they may have been authored by Mr. Steele. I
10 can't see the entire exhibit. So that's the only
11 portion of the exhibit that would be admitted --
12 and, of course, anything that he forwarded as part
13 of that communication.

14 So my problem is I can't see the entire
15 exhibit.

16 MS. WHELAN: But whatever he forwarded is
17 also admitted?

18 THE COURT: Yes. Now, if you will be
19 careful and limit it just to the text and then
20 this attachment, I'll publish it now to the jury,
21 but I don't want to go beyond that because I don't
22 know what else is there. Are you ready?

23 MS. WHELAN: Could I have just one second?

24 THE COURT: Yes.

25 MS. WHELAN: Your Honor, all that is

1 admitted actually go back to the jury room. And
2 if there is any need for redactions, we can deal
3 with that before the exhibits go back to the jury
4 room.

5 Counsel, I'm turning off the jury
6 projector while you're looking at it --

7 MS. WHELAN: I'm done.

8 THE COURT: -- just to avoid any inadvertent
9 publication to the jury of something that's not
10 been admitted.

11 MS. WHELAN: Judge, the pages are only the
12 attachment, and I was just looking to get to the
13 next page. I had erroneously put up the first
14 page.

15 So would the court publish it to the
16 jury, Your Honor?

17 THE COURT: I'm sorry. Was this an
18 additional portion?

19 MS. WHELAN: It's just -- it's just the next
20 page of the --

21 THE COURT: I'm sorry. Yes. I'm sorry. I
22 didn't understand.

23 BY MS. WHELAN:

24 Q. Now, Mrs. Steele, there is a line in
25 this missive or poem that he emailed you that

1 contained in the subsequent pages is merely the
2 attachment. There are no other dialogues or
3 exchanges.

4 THE COURT: All right. Well, with that
5 assurance, I'll published it to the jury. And
6 Exhibit 103 is admitted.

7 (Government's Exhibit 103 admitted and
8 published.)

9 BY MS. WHELAN:

10 Q. Mrs. Steele --

11 MS. WHELAN: Judge, I'd like to just leave
12 it up there for the jury. I don't want to ask her
13 to read this. It's my prerogative --

14 THE COURT: You can publish it to the jury
15 however you wish.

16 MS. WHELAN: Okay. Thank you. I'm going to
17 leave it up there for a few seconds, and then
18 we'll move to the next page. The jury will have
19 this with them, correct, Judge, so we don't need
20 to take up --

21 THE COURT: Yes. But, again, as part of --
22 after the evidence is submitted, before the
23 exhibits are sent back to the jury room, Counsel
24 will have an opportunity to review them carefully
25 to ensure that only those portions that I have

1 says, "That it's the kids she'll use, should
2 things get nasty, to tear your guts out. If you
3 think that Cupcake won't do this, you're crazy.
4 Not all -- true, she may not. Not all women do or
5 not to the same degree, but you won't know until
6 it's too late, and the courts will do anything she
7 wants." And then, "Your ex will warm to calling
8 all the shots. She may cancel your visitation now
9 and then." And then it goes on.

10 In the divorce complaint that you had
11 filed, you were seeking to have the children with
12 you the majority of the time?

13 MR. McALLISTER: Objection. Asked and
14 answered.

15 THE COURT: Counsel, I'll give you some
16 leeway, but probably just this one question, and
17 then we move on.

18 You may answer the question.

19 THE WITNESS: That was in the decree, and I
20 was --

21 THE COURT: Not the decree.

22 THE WITNESS: The --

23 MS. WHELAN: Complaint.

24 THE COURT: The petition or complaint. I
25 just --

1 THE WITNESS: Complaint, petition. Sorry.
2 Because I was taking that under the advisement of
3 the attorney that I had, but it wasn't -- I always
4 knew it was going to be shared custody, and he
5 could see our children as much as he wanted, and
6 the children would be with me.

7 It was primarily because of schooling
8 and their activities. But outside that, he -- I
9 wanted the -- our children to have time with him.

10 BY MS. WHELAN:

11 Q. In the complaint, however --

12 A. Yes.

13 MS. WHELAN: Judge, could we turn off the
14 jury projector now?

15 THE COURT: Yes.

16 BY MS. WHELAN:

17 Q. Ma'am, would you agree with this
18 statement: That regardless of the stability of
19 your marriage or any issues between you and the
20 defendant, you were both primarily concerned about
21 your children?

22 A. Very definitely, yes.

23 Q. You both love your children, and you
24 have never doubted his love for your children;
25 correct?

1 A. Yes.

2 Q. I'm going to make a mark on this right
3 here and here. Can you read where -- not out
4 loud, just to yourself -- what I've marked, ma'am.

5 A. Yes.

6 Q. Does looking at that help refresh your
7 recollection of how your husband viewed the ranch?

8 A. Yes.

9 Q. And he told you it didn't fit into his
10 future -- this is back in 2000 -- didn't he?

11 A. And that would be a correct statement
12 since, at that time, we were going through divorce
13 proceedings. Separately, it wouldn't fit into his
14 future.

15 Q. Ma'am, I would ask that you then
16 look -- the ranch just wasn't in his future
17 because of the divorce. It was because he saw it
18 as a waste of money, and it was your thing and not
19 his; isn't that correct?

20 A. He knew it was taking a lot out of our
21 money. So, you know, yes. But he never said no.

22 Q. Your husband didn't want to be at the
23 ranch anymore. He wanted to be in California;
24 isn't that right?

25 A. During that time, yes --

1 A. I have never doubted his love for our
2 children at all.

3 Q. And the ranch was a place for you guys
4 to raise your children?

5 A. Yes.

6 Q. Your husband viewed it as a symbol,
7 though, of wasted money, didn't he?

8 A. He knew in reality it was not a
9 money-maker, but he knew it was my dream and
10 supported it.

11 Q. The ranch didn't fit into his future,
12 did it?

13 A. I honestly can't answer that yes or no.

14 Q. Ma'am, if --

15 MS. WHELAN: And the jury screen is off,
16 yes, Judge?

17 THE COURT: It is off.

18 BY MS. WHELAN:

19 Q. Looking at what's been marked as
20 United States' Exhibit 109, you see that --
21 without testifying about it -- it is a letter
22 addressed to you back in June of 2000; correct?

23 A. Yes.

24 Q. It is a letter -- a typed letter but
25 it's signed by your husband; correct?

1 Q. Thank you.

2 A. -- but he came back.

3 Q. We discussed about your husband going
4 onto Match.com. You also created a profile on
5 Match.com. Do you remember what your user name
6 was?

7 A. I don't remember the full name. I
8 think I used "Jenny" or "Jennifer" for the first
9 name.

10 Q. Do you recall having an email address
11 at that time of "Horsedancer_2000@Yahoo.com"?

12 A. Sounds like something I would use. I
13 don't remember what I used.

14 Q. I'm going to ask -- this has been
15 marked as United States' Exhibit 106. Looking at
16 that, does that recall what your specific user
17 name was on the website?

18 A. It looks like it. I don't -- you know,
19 I don't remember. I thought it was Jennifer. I
20 didn't know -- I don't recall those numbers.

21 Q. Would you dispute that you were
22 "Jennifer 2819"?

23 A. Well, looking at it now, you know -- I
24 know I did it. If this is the exact one, I don't
25 recall, because I put -- I put that -- I've put

1 that behind me when we reconciled.

2 Q. I would ask you: Do you recall what
3 the defendant's user name was?

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

5 Q. Showing you what's been marked for
6 identification purposes as United States' Exhibit
7 104. Can you see that?

8 A. Yes. And that was his ID. That
9 refreshes my memory.

10 Q. And what was his user ID on Match.com?

11 A. "Burbman."

12 Q. Ma'am, looking at that, is that an
13 accurate picture of your husband that you've seen
14 before?

15 A. Yes, I've seen that picture several
16 times.

17 Q. Have you seen that picture?

18 A. Yes.

19 Q. That is of your husband?

20 A. Yes.

21 Q. Have you seen that picture?

22 A. Yes.

23 Q. Would you agree that these are accurate
24 printouts of pictures he used on the website as
25 Burbman?

1 women. These were the best pictures he had. And,
2 therefore, we believe it's relevant. And we do
3 have the exhibits, which I think are 100 and 101,
4 which were used during the Tatyana deposition and
5 the Brent Smith --

6 THE COURT: So the argument is that, because
7 he was using the same flattering photographs in
8 2000, when he was going through possible divorce
9 proceedings with Mrs. Steele, that when he uses
10 the same photos in 2010 -- 2009, 2010 in
11 contacting females in the former Soviet Union,
12 that this proves what?

13 MS. WHELAN: Judge, it's the same MO: being
14 dishappy in your marriage, feeling ignored, going
15 through health issues, looking for other women.
16 However, this time, instead of getting caught by
17 her because she put her profile on, he learned
18 from the other experience, and he tried to tell
19 her it was for a case. And the emails we have
20 don't show that.

21 And I think it is relevant under 401,
22 and it is not cumulative under 403.

23 THE COURT: It's not cumulative. That's not
24 the issue. And cumulative is -- I think
25 cumulative is 403.

1 A. Yes.

2 MS. WHELAN: Your Honor, I would move for
3 the admission of Exhibit 104.

4 MR. McALLISTER: I object, Your Honor. May
5 we approach?

6 THE COURT: Well, at this point, I don't see
7 the relevance, Counsel. I don't know that I need
8 to --

9 MS. WHELAN: I'd like to approach to discuss
10 that.

11 THE COURT: All right.

12 (Sidebar commences as follows:)

13 THE COURT: What are dates of these?

14 MS. WHELAN: This was back in 2000.

15 This is the relevance: These pictures
16 are the exact same pictures that were used on the
17 websites that he used on his profile in 2010. The
18 testimony is that, at this time, they're having
19 difficulties in their marriage. He was looking to
20 try on other women.

21 She says that he was well -- she was
22 well aware of the fact that he was emailing these
23 women and knew what was going on. We believe it's
24 relevant. It's more likely than not that he was
25 using the same pictures because he was looking for

1 Mr. McAllister?

2 MR. McALLISTER: Judge, we have turned a
3 murder case into a divorce case, apparently, when
4 there was no divorce.

5 The prosecutor in this case has been
6 doing nothing but trying to impeach this witness
7 with documents that are 11 years old. It's not
8 important to this case.

9 If she wants to argue some kind of
10 motive that he wanted to kill his wife, it's --
11 you know, she's got to have a basis to do that.

12 MS. WHELAN: It wouldn't be important,
13 but --

14 MR. McALLISTER: Excuse me.

15 THE COURT: Just a moment. Let counsel
16 finish.

17 MS. WHELAN: Sorry.

18 MR. McALLISTER: We are so far afield, and
19 you have allowed her from the beginning -- and I
20 didn't object in the beginning, but I am
21 now -- you have allowed her to impeach her over
22 issues that have nothing to do with this case.
23 And, you know, if the government wants to prove
24 that as a motive, let them bring in the witnesses,
25 but don't do it by trying to impeach the witness

1 or claiming -- as a matter of fact, I don't know
2 that it's impeachment. She said, you know, she
3 knew about the emails.

4 If these were last year or --

5 THE COURT: Counsel, I think your argument
6 is getting -- the question now is whether we admit
7 these. Not the emails; that's yesterday's news.
8 We're now talking about this exhibit, which is
9 apparently his profile on this dating site.

10 At this point, Counsel, I'm going to
11 sustain the objection on relevance grounds. I
12 understand the argument, but it seems to me the
13 fact that he used the same pictures in 2000 as he
14 did in 2010 is just -- is really a stretch, and I
15 think its relevance is becoming very thin.

16 And then I'm concerned about, not
17 cumulative, but, you know, under Rule 403, kind of
18 confusing the issues.

19 Now, I don't agree with
20 Mr. McAllister's statement that the divorce ten
21 years prior is not relevant. I think it clearly
22 is relevant in terms of the statements made by
23 Mr. Steele, what he was aware of at the time in
24 terms of what the consequences of the divorce
25 would be, but this is a different issue.

1 life and that he wasn't feeling -- every time he
2 came home, he wasn't feeling comfortable there.

3 And he was acting different. Things
4 didn't seem the same as they had been over the 15
5 years, so I started feeling like something was up.
6 So I started looking into his computer, and I came
7 across some emails which indicated to me that he
8 was looking for other women.

9 And I connected it up with the websites
10 or website. I think there was one; there might
11 have been a second one. And that's how I knew
12 that he was communicating with other women on the
13 Internet.

14 Q. You were computer-savvy enough to go
15 into his computer and see what he was doing?

16 A. Yes. He never had denied me access to
17 his computer.

18 Q. Ma'am, I just asked if you were
19 computer-savvy enough to go into his computer.

20 A. To pull up his email account, yes.

21 Q. And that was back in 2000?

22 A. Around -- yes, 2000.

23 Q. So you created -- excuse me. Strike
24 that.

25 Your husband didn't tell you that he

1 You have laid the foundation. It may
2 be at a later point, after I've seen whatever the
3 communications are he may have had with the woman
4 in the Ukraine or otherwise, that I may
5 reconsider. But at this point, on relevance
6 grounds, I'm going to sustain the objection.

7 You can renew the proffer at a later
8 point. The foundation has been laid. I'm not
9 concerned about that. I think the witness has
10 identified this sufficiently, but I think the
11 relevance right now has just not been established.

12 Okay. That's my ruling.

13 (Sidebar concluded.)

14 THE COURT: At this point, I'm going to
15 sustain the objection to Exhibit 104. It may be
16 proffered at a later point in time, but that will
17 be the court's ruling at this point.

18 BY MS. WHELAN:

19 Q. Ma'am, how did you discover that your
20 husband was on Match.com?

21 A. He was coming home from California and
22 acting different than I -- than he had over the
23 last 15 years of our marriage. He was being
24 honest with me on how he was not happy being at
25 home, and he didn't know what he wanted out of

1 was on a dating site?

2 A. No, he didn't.

3 Q. You created a fake profile to -- that
4 you thought would match what you had seen as his
5 likes to try to be matched up with him; correct?

6 A. Some of the likes in my -- well, some
7 of his likes, yes. My likes were -- I put a lot
8 of my own in that.

9 Q. One of the things you did is you talked
10 about bagpipe music, which was something he
11 specifically had put in; correct?

12 A. Oh, he loves bagpipe music.

13 Q. And you knew that that would create a
14 match?

15 A. I didn't know it would create a match.

16 Q. You suspected it would create a match?

17 A. I was looking to see if it would create
18 a match.

19 Q. You wanted to create a match so that
20 you could have him email you, and then you could
21 confront him with his betrayal?

22 MR. McALLISTER: Judge, I object to the form
23 of that question. "Confront him"? I object to
24 the form.

25 THE COURT: Rephrase.

1 BY MS. WHELAN:
 2 Q. You wanted to --
 3 THE COURT: Counsel, on reflection, I -- I'm
 4 going to overrule the objection. I think the
 5 witness can characterize it how she wishes to, but
 6 I think the characterization was not overly
 7 argumentative.
 8 Go ahead and answer -- or rephrase now.
 9 THE WITNESS: Can you reask the question
 10 now, please?
 11 BY MS. WHELAN:
 12 Q. Certainly, ma'am. You created your own
 13 match so that the two of you would be matched --
 14 A. Possibly.
 15 Q. -- and so that you could confront him
 16 with what you knew he was doing?
 17 A. One, it was to try to confirm. I
 18 didn't know if mine would be a match, but I tried
 19 to make my profile such that it would be something
 20 he would respond to. And -- and -- I mean, yes.
 21 I mean --
 22 Q. During this --
 23 A. -- but I didn't know.
 24 Q. During this time in your marriage, both
 25 you and the defendant were dishonest with each

1 Q. And Mrs. Steele, isn't it true that you
 2 previously reviewed those emails at my office on
 3 March 8th or 9th, 2011?
 4 A. Yes.
 5 Q. And I had asked you to come in so that
 6 you wouldn't be surprised at trial with them,
 7 didn't I?
 8 A. Yes, but I knew what they were before I
 9 went in. I just agreed to meet and come in and
 10 look at them.
 11 Q. And we didn't visit. I didn't want you
 12 to be embarrassed or surprised at trial; correct?
 13 A. I wasn't going to be embarrassed
 14 because I know about them.
 15 MS. WHELAN: Your Honor, at this time, we
 16 are moving for the admission -- excuse me -- of
 17 Government's Exhibit 76, which contains with it a
 18 902 certification, which have been reviewed by
 19 this witness and provided, of course, to defense.
 20 THE COURT: Is there any objection?
 21 MR. McALLISTER: Relevance, Your Honor.
 22 THE COURT: Counsel, I need to see the --
 23 because I --
 24 MS. WHELAN: Here, let me --
 25 THE COURT: Well, perhaps it would be easier

1 other, weren't you?
 2 MR. McALLISTER: Judge, I'm going to object
 3 to the form of that question, as well.
 4 THE COURT: Overruled. You may answer.
 5 THE WITNESS: Yes, there was some dishonesty
 6 there on both sides.
 7 BY MS. WHELAN:
 8 Q. You have indicated that you knew that
 9 your husband, the defendant, was writing to -- had
 10 been on a Ukrainian dating site. You knew that;
 11 right?
 12 A. Yes.
 13 Q. Are you aware that if you look at just
 14 women he emailed at least ten times or exchanged
 15 at least a hundred instant messages, there are
 16 well over 14,000 messages?
 17 A. Well, I'm not aware of how many. I
 18 know that there were a lot.
 19 Q. So you --
 20 A. I didn't count each one.
 21 Q. Did you know he was specifically
 22 writing to a 25-year-old woman named Tatyana
 23 Loginova?
 24 A. I became aware of that towards, I don't
 25 know, the end -- around the spring.

1 if you just approach, and we can -- I just need to
 2 have an explanation of exactly what it is you're
 3 offering.
 4 (Sidebar commences as follows:)
 5 MR. McALLISTER: Did you say 96?
 6 THE COURT: 76.
 7 MR. McALLISTER: Okay.
 8 THE COURT: And the dates of these
 9 communications, I'm assuming, are all --
 10 MS. WHELAN: They're from January, Judge, of
 11 2010 to June of 2010. I think --
 12 THE COURT: And the only objection is
 13 relevance?
 14 MR. McALLISTER: Judge, and to the volume
 15 here. There must be -- I don't know how many
 16 emails are attached. I think this would -- under
 17 403, I think this would exclusively confuse the
 18 issue in the case.
 19 And there is really no need to put this
 20 in. She's -- she's testified that she was aware
 21 of the fact that he was communicating, working on
 22 a case, writing a book about this. And to put all
 23 these in is -- it's confusing. It's misleading.
 24 THE COURT: Okay. I'll overrule the
 25 objection. The exhibit will be admitted. It

1 appears -- again, the government has made clear as
2 to its theory as to what Mr. Steele's motive was,
3 and I think this is certainly corroborative of
4 that.

5 In terms of volume, I'm assuming we're
6 not going to go through each page.

7 MS. WHELAN: No. I have highlighted certain
8 pages, Judge. And, also, as -- well, there are
9 14,000 pages of different -- and --

10 THE COURT: So this isn't all of them?

11 MS. WHELAN: No. That's -- this is -- this
12 is very few.

13 THE COURT: Okay. Well, I'll overrule the
14 objection, and we'll admit the exhibit.

15 (Sidebar concluded.)

16 THE COURT: Exhibit 76 will be admitted and
17 may be published to the jury.

18 (Government's Exhibit 76 admitted and
19 published.)

20 MS. WHELAN: Thank you, Your Honor.

21 BY MS. WHELAN:

22 Q. Ma'am, looking at this page of Exhibit
23 76, do you recognize those?

24 A. Yes.

25 Q. What are those?

1 A. Words similar to that, in that exact
2 form, but that he would be saying that he was
3 divorced and that he was very interested in that
4 and that -- that our marriage was not what it was,
5 that that's what he was going to be using for his
6 ruse to get those women to respond. Yes, I did.

7 Q. Your husband lied to these women,
8 didn't he?

9 A. He was setting up a ruse, and he knew
10 that was the only way he could figure out what
11 they were doing.

12 Q. Ma'am, he sent this to a young,
13 25-year-old Ukrainian woman, and he lied to her,
14 didn't he?

15 MR. McALLISTER: Judge, I'm going to object
16 as argumentative. There is no proof of that at
17 this point.

18 THE COURT: Rephrase.

19 MS. WHELAN: I think maybe I can do
20 something else.

21 BY MS. WHELAN:

22 Q. Did your husband ever show you that
23 this is who Tatyana Loginova was?

24 A. That looks like one of the many
25 pictures of different girls that he showed me.

1 A. Those are pictures of my husband.

2 Q. Are those the same pictures that he
3 used on Match.com?

4 A. Yes, and the same pictures he used
5 later for his case.

6 Q. Ma'am, are they the same pictures that
7 he used on Match.com?

8 A. Yes.

9 Q. Ma'am, are you aware that -- excuse me.

10 Would you agree that your husband told
11 Ms. Loginova he was on the website to find only
12 one thing?

13 A. I'm not particularly aware of that
14 particular one, but it fits with what he was
15 doing.

16 Q. "I'm only here for one thing, to find
17 my second half, a girl I cannot live without. I
18 will settle for nothing less than pure and
19 complete love this time. I settled for less once
20 before and now know better. It was good. It
21 lasted a long time and produced the greatest
22 children in the world, but I deserve more. I will
23 not have another American woman. Never again."

24 Did your husband tell you he was
25 emailing this young woman those words?

1 Q. So you would have --

2 A. I can't -- they're -- all -- all the
3 girls I saw were pretty like this and very similar
4 in body structure and face. I can't -- you know,
5 off -- I can't remember her particularly because
6 of one -- seeing it once or twice.

7 Q. According to you -- excuse me. Let me
8 move on.

9 Would you agree that your marriage to
10 your husband produced the greatest children in the
11 world?

12 A. Absolutely.

13 Q. And did you know that he felt he had
14 settled for less than pure and complete love when
15 he married you?

16 A. That's not true.

17 Q. It's what he wrote.

18 A. To who?

19 Q. Ms. Loginova.

20 A. Yes, because he was setting up a ruse.

21 Q. Ma'am, that's what he told you, that he
22 was setting up a ruse?

23 A. And that is the truth.

24 Q. What he told you; correct?

25 A. Yes, it's what he told me, and it is

1 the truth.

2 MS. WHELAN: Your Honor, I would move to
3 strike. I know it's a delicate area, but she has
4 no idea what his intentions were. It's --

5 MR. McALLISTER: Objection, Judge.

6 THE COURT: I'm going to allow -- the
7 witness can -- the witness has testified as to her
8 belief in that, and I think that's what she is
9 indicating. So I'll allow the response to stand.

10 But I would caution the witness to
11 phrase it in terms of her own belief and not
12 suggest knowledge as to what Mr. Steele's intent
13 was or was not, since that would be speculation.

14 Proceed.

15 BY MS. WHELAN:

16 Q. Ma'am, you indicated yesterday that you
17 weren't aware that your husband intended to go and
18 meet these girls. You agree, though, that he
19 wrote that he intended to come over for a visit
20 that summer and that he wanted to meet the various
21 girls that he had established contact with.

22 Were you aware that your husband was
23 asking Ms. Loginova to travel to Kiev to meet him?

24 A. Yes.

25 Q. You were aware of that?

1 it's particularly the email that was funny. It's
2 just that we would laugh and -- about that we
3 didn't know that it was coming from a pretty young
4 girl; that it could be anybody on the other side.

5 And please don't take -- please forgive
6 me. But, I mean, we would laugh and say if it was
7 a fat, old man sitting there writing these emails
8 and that he was actually communicating with.

9 Q. There is nothing sexual in tone of this
10 email? It's just a young girl's words; correct?

11 A. I don't see anything sexual about it,
12 unless I'm missing --

13 Q. Ma'am, I'm asking you to take a look at
14 this. And while reading it might be difficult,
15 would you agree that the words written by your
16 husband sound like a lovesick teenager?

17 A. Yes.

18 Q. Looking at this email from March of
19 2010, again, it was your understanding from your
20 husband, based upon what you said yesterday, that
21 between his aortic aneurysm in November and just
22 before his arrest, he had stopped communicating
23 with these women. That wasn't true, was it?

24 A. You know, he told me that early on. At
25 what point he picked it back up -- I knew he was

1 A. I was aware that that was going to be
2 part of it. Particularly, you know, that's
3 something that I -- I learned from one of his
4 later letters that I saw, one letter that I saw
5 when I was in your office. That was the one
6 thing. But it followed with what I knew he was
7 going to be doing.

8 Q. Ma'am, you indicated yesterday that you
9 and your husband would sometimes sit together and
10 laugh at the emails that were sent. Looking at
11 this page from Ms. Loginova -- can you see that if
12 you put your glasses on? I don't know how to --

13 A. It's --

14 Q. I'll try to make it better for you,
15 ma'am.

16 Does that help?

17 A. There.

18 Q. Can you read that?

19 A. Yes, I can.

20 Q. What's funny about that email from this
21 young woman?

22 A. What's funny about it?

23 Q. You said you and your husband would sit
24 and laugh at emails. What's funny about it?

25 A. Well, what was funny is -- I'm not sure

1 going to be picking it back up, so I was going
2 based off after his aortic aneurysm. And I knew
3 he would be continuing with this case at some
4 point when he felt better. So I don't --

5 Q. In this --

6 A. He was not lying to me. I knew he
7 would be continuing.

8 Q. You didn't believe he was lying to you?

9 A. He was not lying to me.

10 MS. WHELAN: Your Honor, I would ask the
11 court for some assistance here. We previously
12 discussed this with the witness.

13 THE COURT: Again, I think the witness is
14 expressing her own views. I'm going to allow it
15 to stand. Go ahead and proceed.

16 BY MS. WHELAN:

17 Q. My question, though, was: You didn't
18 believe he was lying?

19 A. He was not lying to me.

20 THE COURT: The question is: What did you
21 believe?

22 THE WITNESS: Yes, I believed he was not
23 lying to me.

24 BY MS. WHELAN:

25 Q. In this email, he tells Ms. Loginova he

1 has a genuine crush on her, doesn't he?
 2 A. Yes.
 3 Q. He compliments her smile and her eyes
 4 and her voice?
 5 A. Yes.
 6 Q. He discusses part of your family. He
 7 talks about your son Rex in this email?
 8 A. Yes.
 9 Q. He tells this young woman that he is
 10 "worried that Rex's mother will want to come and
 11 spend a few days at the ranch because that's where
 12 Rex is spending his whole spring break."
 13 That doesn't cause you concern?
 14 A. No, because I knew this was a ruse.
 15 Q. Then he was lying to Ms. Loginova,
 16 wasn't he?
 17 A. He was setting up a ruse, the same way
 18 the FBI agents did on my husband's arrest.
 19 Q. He was lying to Ms. Loginova, wasn't
 20 he?
 21 A. Just the way the FBI did on my
 22 husband's day of arrest, yes.
 23 MR. McALLISTER: Objection. Move to strike
 24 as nonresponsive.
 25 THE COURT: Sustained. I'll strike the last

1 BY MS. WHELAN:
 2 Q. Mrs. Steele, your husband didn't need
 3 to fall in love to do research for a book, did he?
 4 A. He wasn't falling in love with them.
 5 Q. He didn't need to tell Ms. Loginova
 6 about your son or about what was -- where he lived
 7 in order to do research for a book, did he?
 8 A. He didn't have to, but it -- but
 9 putting some reality into it makes it easier for
 10 him to -- to seem more real.
 11 Q. He didn't need to share a picture of
 12 Missy's kittens for his research, did he?
 13 A. If they talked about the kittens, why
 14 not?
 15 Q. He didn't need to send a letter from
 16 the jail to Ms. Loginova expressing his love and
 17 wanting to have babies with her for research for
 18 his book, did he?
 19 A. If he was continuing -- wanting to
 20 continue on the case, not knowing what his future
 21 was and not break it, why not?
 22 Q. Ma'am, he could have made himself to be
 23 anybody in the world and made up fictional
 24 children, but he reported things about what was
 25 going on in your family, with your children, and

1 response.
 2 Listen to counsel's question and answer
 3 the question directly, if you can.
 4 BY MS. WHELAN:
 5 Q. Your husband was lying to Ms. Loginova?
 6 A. He was setting up a ruse.
 7 THE COURT: The question is: Was Mr. Steele
 8 lying to the -- Ms. -- I'm not sure how you
 9 pronounce the name.
 10 MS. WHELAN: Loginova.
 11 THE COURT: -- Loginova?
 12 THE WITNESS: He was setting up a pretend
 13 story.
 14 BY MS. WHELAN:
 15 Q. Which was not true?
 16 A. Yes, it was not true.
 17 Q. So it was a lie?
 18 MR. McALLISTER: Judge, I object. That's a
 19 conclusion on the prosecutor's part at this point.
 20 THE COURT: I think it's a question.
 21 You may answer it.
 22 THE WITNESS: In your terminology, yes, it
 23 was a lie. It was not a lie, in my belief; it was
 24 a ruse. It was a story he was telling to get her
 25 to respond and figure out the bride scam.

1 his life, didn't he?
 2 MR. McALLISTER: Object to the form of
 3 that --
 4 THE WITNESS: Yes, he used --
 5 THE COURT: Just a moment.
 6 MR. McALLISTER: Object to the form of that
 7 question, if it was a question.
 8 THE COURT: Let's rephrase it, Counsel. I
 9 think it needs to be stated more as a question,
 10 and it appeared to be somewhat compound, as well.
 11 BY MS. WHELAN:
 12 Q. He could have pretended to be anybody
 13 on the Internet, couldn't he?
 14 A. He could have, yes.
 15 Q. He didn't -- he could have pretended to
 16 have children and given them fictional names
 17 instead of giving them real names, couldn't he
 18 have?
 19 A. Yes, he could have, but he didn't
 20 and --
 21 Q. Do you know what an intimacy request
 22 is, ma'am?
 23 A. Not exactly, but I'm sure it's taking
 24 it to the next step of emails.
 25 Q. And your husband didn't tell you that

1 he had made an intimacy request with Ms. Loginova,
2 did he?

3 **A.** I know -- I don't know -- I know he was
4 trying to set up a chat or conference. You know,
5 what it's called, I don't know. But I knew about
6 chat and so forth.

7 **Q.** But he didn't --

8 **A.** Or I don't know -- I know it as Skype.
9 I don't know what it is over international.

10 **Q.** But he didn't tell you that he was
11 asking for an intimacy request, did he?

12 **A.** Is the chat the same as intimacy? I
13 don't know of the difference.

14 **Q.** In order to do research on this case,
15 he didn't have to provide his contact information
16 outside of the dating website, did he?

17 **A.** No, he didn't have to.

18 **Q.** Yesterday you indicated that your cat
19 had kittens, you thought at the end of May or
20 June. He didn't need to send pictures of those to
21 a young woman, did he?

22 **MR. McALLISTER:** I'm going to object at this
23 point, Judge, on relevance grounds.

24 **THE COURT:** Well, I think it's also been
25 asked and answered. I think the question was

1 **Q.** He told you --

2 **A.** -- with Loginova.

3 **Q.** -- he was doing research for a book in
4 case you found out or went into his computer, just
5 like you had in 2000? So he told you about it
6 because of that, didn't he?

7 **A.** No. He told me about it because -- he
8 told me about it because he knew of the past. He
9 told me about it because he wanted to discuss it
10 with me and how I felt about it and what he was
11 doing. Because he wanted me to know what he was
12 doing all the way through it so I would -- I would
13 know that it was not like before.

14 **A.** And that's exactly what I did know. It
15 was not like 2000. And this was nothing but
16 research, trying to bring down the bride scam and
17 finding -- discovering that there was a lot of
18 criminal activity in it, and that he saw that
19 there was a book to write in it because there was
20 such a criminal activity in scamming Americans out
21 of thousands of dollars.

22 **Q.** That's what your husband told you he
23 was doing, wasn't it?

24 **A.** Yes, he told me that, and it was the
25 truth.

1 asked earlier.

2 **BY MS. WHELAN:**

3 **Q.** But you would agree, based upon his
4 testimony -- your testimony, that this is roughly
5 the time that Missy had her kittens?

6 **A.** It was -- yeah, it's roughly around
7 there. We also had another cat that was pregnant.
8 It was around there, yes.

9 **Q.** Ma'am, it was your husband who asked
10 Ms. Loginova for her address; correct? She wasn't
11 trying to get his address, was she?

12 **A.** I can't testify to that. I don't know
13 exactly how that went.

14 **Q.** Mrs. Steele, wouldn't you agree that
15 your husband was on the dating website for the
16 exact reason he stated, which was to find his
17 "second half," a girl he couldn't live without?

18 **A.** This was the Russian girl? And please
19 reask the question.

20 **Q.** Mrs. Steele, wouldn't you agree that
21 your husband was on the dating website for the
22 exact reason he stated in his emails to
23 Ms. Loginova?

24 **A.** No, that's not the reason he was on the
25 website --

1 **Q.** Again, ma'am, that's what your husband
2 told you?

3 **A.** Yes. And I believe it, and I know it's
4 the truth.

5 **MS. WHELAN:** Move to strike the last part.

6 **THE COURT:** Sustained. I'll strike the last
7 comment. The witness's statement that she
8 believed it, however, will stand.

9 **BY MS. WHELAN:**

10 **Q.** Mrs. Steele, in the spring of 2010,
11 your husband felt neglected by you, had fallen out
12 of love, and was looking for a new wife to have
13 more kids with, but he had to get rid of you and
14 didn't want a divorce --

15 **A.** No.

16 **Q.** -- is that true?

17 **MR. McALLISTER:** Well, I object to the
18 question, Judge, as to the form, compound nature,
19 and the fact that it's pure argument.

20 **THE COURT:** Sustained.

21 **BY MS. WHELAN:**

22 **Q.** Mrs. Steele, you don't want to believe
23 that your husband wanted you murdered, do you?

24 **MR. McALLISTER:** Objection to the form of
25 the question.

1 THE COURT: Overruled.
 2 BY MS. WHELAN:
 3 Q. You don't want to believe that, do you?
 4 A. I don't believe it. And, no, I didn't
 5 believe it, but I understood that I had to find
 6 out and make sure and look at the evidence with a
 7 clear mind and let the evidence prove whether he
 8 was or not. But, no, I did not believe it.
 9 Q. And you don't want to believe it?
 10 A. At this point, I don't believe it.
 11 It's not about what I want. I want to know that I
 12 am safe and I make the right decision, because
 13 this is my life.
 14 Q. Ma'am, your husband was writing to
 15 Ms. Loginova in January, February, March, April,
 16 May, and June. He had not ceased writing, had he?
 17 A. No. And it was for the case, whether
 18 -- he told me he had stopped, which was right
 19 after his aneurysm, and then he picked it up --
 20 Q. Mrs. Steele --
 21 A. -- because he was going to pick it up
 22 as he felt better.
 23 Q. Mrs. Steele, this is all based upon
 24 what your husband told you?
 25 MR. McALLISTER: Objection, Your Honor.

1 BY MR. McALLISTER:
 2 Q. Mrs. Steele, have you ever been to
 3 Assistant United States Attorney Traci Whelan's
 4 office?
 5 A. Yes.
 6 Q. And on what occasions did you go there?
 7 A. On September 21 -- I'm sorry --
 8 September 20th and then on March 7th.
 9 Q. All right. I want to begin with your
 10 visit with Ms. Whelan on the 20th. At that point
 11 in time, you were described by the government as
 12 the "victim" in this case; correct?
 13 A. Yes.
 14 MS. WHELAN: Your Honor, I'm going to
 15 object: one, to relevance; and, two, I think -- I
 16 have no idea where counsel is going -- relevance.
 17 THE COURT: Well, I don't know where you're
 18 going, Mr. McAllister, but I don't see the
 19 relevance. What the government has characterized
 20 Ms. Steele as or what they have not would not seem
 21 to be relevant.
 22 If you somehow quickly tie this into
 23 something relevant, I'll allow you some leeway.
 24 But if that's your question, I think we ought to
 25 just move on.

1 That misstates the testimony of this witness.
 2 THE COURT: I'm going to allow the
 3 answer -- or the question to stand, but the
 4 witness can clarify if her assumptions are based
 5 upon anything else.
 6 Why don't you rephrase the question for
 7 the witness.
 8 BY MS. WHELAN:
 9 Q. Ma'am, this is based upon what your
 10 husband told you, isn't it?
 11 A. It is based on conversations we have
 12 had and what he told me.
 13 Q. And in 2000, he was discovered on
 14 Match.com by you going into his computer?
 15 A. Yes. And that was different.
 16 MS. WHELAN: Move to strike the last
 17 portion.
 18 THE COURT: Yes. I'll strike the last
 19 response. But the witness's answer that, yes --
 20 her answer in the affirmative concerning what
 21 occurred in 2000 will stand.
 22 MS. WHELAN: Mrs. Steele, I don't have any
 23 other questions.
 24 THE COURT: Mr. McAllister.
 25 CROSS-EXAMINATION

1 BY MR. McALLISTER:
 2 Q. Well, when you went to Ms. Whelan's
 3 office, you had been told that you had certain
 4 rights as a victim; correct?
 5 MS. WHELAN: Your Honor, I'm going to object
 6 and move for a sidebar.
 7 THE COURT: All right.
 8 (Sidebar commences as follows:)
 9 THE COURT: If -- I think it is not relevant
 10 if you're going to make some showing or argue the
 11 government has breached its duty towards victims
 12 in this case. It's not relevant to any issue in
 13 the case, but I don't know where you're going.
 14 MR. McALLISTER: I am making such an
 15 argument. And I'll represent to the court that
 16 this witness will testify that she was at
 17 Ms. Whelan's office, provided her --
 18 MS. WHELAN: Can we lower our voices?
 19 MR. McALLISTER: -- provided her with
 20 evidence in the case, and Ms. Whelan laughed at
 21 her. And that offended her greatly.
 22 And she has conducted -- what was
 23 brought out by Ms. Whelan is that she came to her
 24 office to review letters. And Ms. Whelan even
 25 said, "Oh, I did this because I was concerned

1 about you."

2 And I'm entitled to put that in the
3 proper perspective.

4 THE COURT: But why is it relevant?

5 MR. McALLISTER: It's relevant because she
6 raised the issue in this case, and I think the
7 jury has to --

8 THE COURT: Raised what issue?

9 MR. McALLISTER: Raised the issue about
10 coming to her office and reading letters. She has
11 raised that issue.

12 THE COURT: Okay. Well, I'm going to
13 sustain the objection. I don't see any relevance
14 to -- this interaction between the victim and the
15 U.S. Attorney's Office, to me, is just not
16 relevant to any issue in the case.

17 You know, I think there is no
18 allegations of government misconduct. And, even
19 if there were, it simply takes the jury's eye off
20 of the ball as to what the issues are in the case.

21 Now, I'll give you some leeway. You
22 can develop some of this if you're going to get
23 back into something that is relevant. But simply
24 putting into evidence any conflict between the
25 U.S. Attorney's Office and Ms. Steele is just not

1 Q. And, actually, it's not a tape. It's a
2 recording; correct?

3 A. Yes.

4 Q. But those were the words that were
5 used?

6 A. Yes.

7 Q. And, in fact, you told him that they
8 didn't want you to listen to the recording, that
9 you wanted to listen to the recording; correct?

10 A. Yes, I did.

11 Q. As a matter of fact, from the first
12 time that the FBI told you about this so-called
13 crime, you wanted to hear the recordings; correct?

14 A. Yes, I wanted to hear the recordings --

15 Q. Did you --

16 A. -- immediately.

17 Q. -- think or believe that your husband
18 was intimidating you in that phone call?

19 MS. WHELAN: Objection, relevance.

20 THE WITNESS: No.

21 THE COURT: Just a moment. Give me --
22 Counsel, I want to -- give me a moment. I want to
23 review something.

24 Ladies and gentlemen, I'm going to
25 allow the witness to respond. I'm going to

1 relevant.

2 MS. WHELAN: Judge, I think that what you
3 need to have the background on, as well, is that,
4 through her attorney, Mrs. Steele made a formal
5 complaint. Our office had to handle that. She
6 has been advised that the complaint has been
7 dismissed.

8 THE COURT: Well, that's the additional
9 reason. It then creates a sideshow for the jury
10 that the jury is going to get caught up in, and
11 it's just not relevant to the proceedings.

12 So that's my ruling.

13 (Sidebar concluded.)

14 THE COURT: The objection is sustained.

15 BY MR. McALLISTER:

16 Q. Mrs. Steele, I'm going to direct your
17 attention to the recording that was made of a
18 phone call between you and your husband on the
19 15th of June. Do you recall hearing that in the
20 courtroom?

21 A. Yes.

22 Q. And do you recall that, in the phone
23 call, he told you to "tell them it's not my voice
24 on the tape"; correct?

25 A. Yes.

1 overrule the objection, but I -- what --

2 Ms. Steele's subjective belief, however, is not
3 directly relevant. It's only -- again, perhaps
4 it's the circumstantial evidence that we talked
5 about on the first day of trial.

6 Ms. Steele is married to Mr. Steele for
7 a period of time, and I think her experience --
8 having been married to Mr. Steele, that her
9 subjective belief may be indicative of
10 Mr. Steele's intent, which is the only thing
11 that's really relevant here, not what affect it
12 had upon Mrs. Steele but only what intent he had
13 in making the statements that he did.

14 And given the fact that she was married
15 to Mr. Steele for many years, that her subjective
16 belief may give the jury some indication as to
17 what Mr. Steele's intent was based upon the fact
18 that she was married to him for many years and had
19 a relationship, sometimes the -- well, I'm going
20 to leave it at that. I'm going to allow some
21 leeway here and allow the witness to respond.

22 BY MR. McALLISTER:

23 Q. Mrs. Steele, at the time of June 15th,
24 when your husband had been jailed, you had been
25 married 25 years; correct?

1 A. Yes.
 2 Q. And you had had many, many
 3 conversations with him, I assume, over the 25
 4 years?
 5 A. Yeah. Thousands. Maybe even --
 6 Q. And when he made this telephone call
 7 from the jail to you, he didn't know -- he hadn't
 8 listened to any recordings; correct?
 9 A. No, he hadn't.
 10 Q. And you hadn't listened to any
 11 recordings; correct?
 12 A. No, not at that point.
 13 Q. You asked for them, had you not?
 14 A. I had asked to hear those tapes. I was
 15 asking to hear those tapes on June 12th, the day
 16 after his arrest.
 17 Q. Okay. And no one provided you access
 18 to them; correct?
 19 A. Not at that point, no.
 20 Q. Okay. And you were asking FBI Agent
 21 Sotka; correct?
 22 A. Yes, I was.
 23 Q. And he didn't allow you to listen to
 24 the recordings; correct?
 25 A. He kept telling me that he couldn't --

1 he had done this, I needed -- I needed to know
 2 that ugly truth if he had, because my life was at
 3 stake, and first and foremost is my life. That is
 4 why.
 5 Q. All right. Now, when did you actually
 6 get a chance to listen to the recordings?
 7 A. Ten days later, on the 21st of June.
 8 Q. All right. And after listening to the
 9 recordings, did you change any opinion about your
 10 husband?
 11 A. It ended up confirming my beliefs in my
 12 husband.
 13 Q. All right. Did the FBI tell you that,
 14 in fact, someone named Larry Fairfax had placed
 15 the explosive device on your vehicle?
 16 A. I found that out the night of June
 17 15th -- late that night of June 15th, after they
 18 had arrested Larry Fairfax. That's when I knew.
 19 Q. All right. And did you understand when
 20 you were -- well, did you want to see all the
 21 evidence in the case?
 22 A. Yes, I did.
 23 Q. All right. And have you, as of this
 24 day, seen all of the evidence?
 25 MS. WHELAN: Objection, Your Honor.

1 couldn't meet with me and -- and telling me why he
 2 couldn't meet with me and the reasons. And I kept
 3 trying to say I wanted to hear them immediately.
 4 I wanted -- I was willing to jump in my car and
 5 could be there in nine hours because he is telling
 6 me that he has tapes.
 7 MS. WHELAN: Your Honor, I'm going to object
 8 to hearsay as to what Special Agent Sotka said.
 9 THE COURT: Sustained.
 10 BY MR. McALLISTER:
 11 Q. All right. Why did you want to listen
 12 to the recordings?
 13 A. Because I didn't believe my husband did
 14 the crimes that they were telling me that he did.
 15 But, at the same time, it's an F -- it's FBI
 16 telling me that my husband had done this. They
 17 had me scared, telling me that there were two
 18 people out there to run me off the road.
 19 We have had threats in the past. You
 20 know, I needed the truth. I needed -- even though
 21 I strongly believe my husband did not do this, I
 22 knew that, because my life was at risk, I had to
 23 look at the proof and let the FBI prove to me that
 24 my husband had done this.
 25 Because if, from everything I believed,

1 Foundation.
 2 THE COURT: Sustained.
 3 BY MR. McALLISTER:
 4 Q. Did you review FBI reports, witness
 5 interviews, statements?
 6 A. Yes.
 7 Q. All right. You were concerned about
 8 Larry Fairfax's activities; correct?
 9 A. Yes.
 10 Q. Let me take you back to when you left
 11 for your mom's house. I believe that was on --
 12 well, I'll ask you: Do you recall the date that
 13 you left your husband and traveled to Oregon City
 14 to see your mom?
 15 A. Just prior to the arrest?
 16 Q. Okay.
 17 A. I mean, is that when you're referring
 18 to?
 19 Q. No. I'm referring -- I believe -- I'm
 20 trying to ask --
 21 A. I mean, the last time before his
 22 arrest?
 23 Q. Yes.
 24 A. That was May 28th.
 25 Q. All right. And can you tell us a

1 little bit about your mom. How old is she?
 2 **A.** Seventy-nine.
 3 **Q.** Is she in good health?
 4 **A.** No.
 5 **Q.** How many times have you been called to
 6 assist her in Oregon City?
 7 **A.** Oh, ten times. I -- I have lost count.
 8 It's been so many times.
 9 **Q.** What is she suffering from?
 10 **A.** Pancreatitis, a cyst on a pancreatitis,
 11 hernia, a lymph node which was diagnosed as
 12 lymphomic [sic] which blew into lymphonic [sic] --
 13 sorry -- but cancer, has been going under chemo.
 14 Plus, she fights diabetes, which makes all of
 15 these procedures hard.
 16 I mean, it was like it just kept going,
 17 one thing after the other, on top of each other.
 18 We'd just get her feeling where we thought she was
 19 on the road to recovery, and she would be hit with
 20 something else.
 21 **Q.** All right. And when you went to your
 22 mother's house on -- in May, she was -- needed
 23 you; correct?
 24 **A.** Yes.
 25 **Q.** Okay. Do you recall that the FBI came

1 there supposedly going to run you off the road;
 2 correct?
 3 **A.** Yes.
 4 **Q.** Okay. And did the FBI agents, the two
 5 of them that were present, remove your cell phone?
 6 **A.** I'm not sure they removed it. They
 7 asked me for it, and I handed it to them.
 8 **Q.** Okay. Were you in any way
 9 uncooperative that morning?
 10 **A.** Other than not believing my husband, I
 11 cooperated and followed everything that they asked
 12 us to do.
 13 **Q.** Okay. After -- well, what did you do
 14 the rest of that day?
 15 **A.** The FBI agents were there until about
 16 10:30, 10:45, at which point they assured my mom
 17 and I that we were no longer in danger, that the
 18 two men were -- were --
 19 **MS. WHELAN:** Objection. Hearsay.
 20 **THE COURT:** Sustained.
 21 **BY MR. McALLISTER:**
 22 **Q.** All right. Despite the fact that
 23 someone may have told you you weren't in danger,
 24 did you think you still were?
 25 **A.** Yes.

1 to your mother's house on the early morning of
 2 Friday, June 11th?
 3 **A.** Yes, I do.
 4 **Q.** Okay. And the FBI agents there advised
 5 you that your life might be at risk; correct?
 6 **A.** Yes.
 7 **Q.** And did they search your vehicle?
 8 **A.** No, not -- no.
 9 **Q.** Did they look under --
 10 **A.** They didn't tell me they did. They
 11 didn't search my vehicle, no.
 12 **Q.** Okay. But they told you you were in
 13 danger; correct?
 14 **A.** Yes. They said there were two men out
 15 there waiting to run me off the -- run us off the
 16 road.
 17 **MS. WHELAN:** Objection. Hearsay. Move to
 18 strike.
 19 **MR. McALLISTER:** I think it's offered,
 20 Judge, in response to what's already been
 21 presented by the FBI.
 22 **THE COURT:** Well, I'll sustain the
 23 objection. Strike the last response.
 24 **BY MR. McALLISTER:**
 25 **Q.** You learned that there were two men out

1 **Q.** Why?
 2 **A.** Because we'd had many threats to our
 3 lives in the last ten years. And I didn't -- I
 4 knew something was wrong. I wasn't sure if there
 5 was other people out there to get me.
 6 I didn't -- I didn't feel like I had
 7 the facts to know that I was still safe. I wasn't
 8 sure that this wasn't somebody coming after my
 9 husband, and they were using me to get him.
 10 I didn't know. I was scared because my
 11 life was being threatened.
 12 **Q.** You were informed that your husband had
 13 been arrested; correct?
 14 **A.** Yes, I had.
 15 **Q.** Were you able to get back to the Coeur
 16 d'Alene area?
 17 **A.** I did on the 13th.
 18 **Q.** And how did you get back?
 19 **A.** I had -- I made arrangements for a
 20 friend of mine to drive me back, because I was in
 21 no condition to be making a 425 -- 40-mile trip
 22 back home.
 23 **Q.** Okay. And when you returned home -- or
 24 excuse me. When you returned to the Coeur d'Alene
 25 area, did you go to your home?

1 **A.** For about a half-hour, 45 minutes with
2 my friend, but I left and went back to Coeur
3 d'Alene at -- well, I had to take her to the
4 airport because she had to fly home, and then I
5 went to stay in Coeur d'Alene and meet my son.

6 **Q.** All right. Why didn't you stay at your
7 house?

8 **A.** I did not feel safe there. I didn't
9 know that my life wasn't still in danger. I did
10 not feel --

11 **Q.** And on the Sunday telephone recording
12 between you and your husband, what did he tell you
13 about staying at home?

14 **A.** He told me he didn't want me staying at
15 home, and he felt that it was safer for me not to
16 be home. He also told me he didn't even want to
17 know where I was. He strongly recommended that I
18 didn't stay at home, that I was making the right
19 decision.

20 **MR. McALLISTER:** Your Honor, are we at a
21 point that would be convenient to break yet?

22 **THE COURT:** We could do so. We're about ten
23 minutes early, but we could take the break now if
24 we need to.

25 **THE WITNESS:** Please.

1 **Q.** And in that conversation -- well, let
2 me ask the question this way: Have you had a
3 chance to review an actual transcript of what is
4 heard on the recording?

5 **A.** Yes.

6 **Q.** Do you recall your exact words when
7 the -- after your husband asked you about the
8 recording, what you wanted to do?

9 **A.** Yes. I don't know if I could repeat it
10 word for word, but --

11 **Q.** All right. Well, let me ask the
12 question this way: If I showed you a copy of the
13 transcript, would you know your exact words?

14 **A.** Yes.

15 **MR. McALLISTER:** Your Honor, if I could
16 refresh the witness's recollection as to her exact
17 words.

18 **THE COURT:** Yes. I have turned off the jury
19 screen.

20 **BY MR. McALLISTER:**

21 **Q.** Do you see on the monitor a typed
22 transcript of the conversation?

23 **A.** Yes, I do.

24 **Q.** All right. Do you see the part that is
25 indicated as "Cyndi"?

1 **THE COURT:** All right. Let's take a --
2 we'll take the recess at this time. Let's take 20
3 minutes at this point. We will reconvene at 25
4 minutes after.

5 I'll again admonish the -- actually, I
6 guess 10:30. I'll admonish the jury not to
7 discuss the case among themselves or with anyone
8 else, nor should they form or express any opinions
9 about the case until it is submitted to them.

10 We'll be in recess.

11 (Recess.)

12 (Jury present.)

13 **THE COURT:** I'll note the jury's presence.
14 Ms. Steele has retaken the witness stand.

15 I'll remind you, you are still under
16 oath.

17 You may continue your cross-examination
18 of the witness, Mr. McAllister.

19 **MR. McALLISTER:** Thank you, Your Honor.

20 **BY MR. McALLISTER:**

21 **Q.** Ms. Steele, before the recess, I
22 believe I was asking questions about June 13th,
23 2010, recorded conversation that you had with your
24 husband while he was in jail.

25 **A.** Yes.

1 **A.** Yes.

2 **Q.** All right. What did you say?

3 **A.** I said, "They weren't the ones
4 insisting that I listen to the tapes. I asked to
5 hear the tape" -- should have been "recording."
6 "It is my choice whether I want to hear them or
7 not."

8 **Q.** All right. And what were you telling
9 your husband? Who was "they"?

10 **A.** "They" referred to the authorities. I
11 probably meant the FBI because that's who -- that
12 was the only authorities that I was aware of that
13 I had any contact with at the time.

14 **Q.** Okay. Did this discussion with your
15 husband influence your testimony in any way?

16 **A.** No.

17 **MS. WHELAN:** Objection. Relevance.

18 **THE COURT:** Sustained. I'll strike the last
19 response.

20 **BY MR. McALLISTER:**

21 **Q.** After this discussion, did you, in
22 fact, make further efforts to listen to the
23 recording, which were called "tapes"?

24 **A.** Yes.

25 **Q.** What did you do?

1 **A.** I had obtained an attorney and was
 2 asking him to make arrangements for me to listen
 3 to the tapes, since they hadn't been provided to
 4 me yet -- or a chance -- the chance to listen to
 5 the tapes hadn't been provided to me yet.
 6 **Q.** Were the actual recordings ever
 7 provided to you?
 8 **A.** On the 21st of June.
 9 **Q.** No. I meant did you actually get a
 10 disk, or did you ever physically get the
 11 recordings?
 12 MS. WHELAN: Objection. Relevance.
 13 THE WITNESS: No.
 14 THE COURT: Just a moment. The objection is
 15 what?
 16 MS. WHELAN: The objection is relevance.
 17 THE COURT: Well, again, at this point, it
 18 is irrelevant. But if you're going somewhere else
 19 with this that leads us to something relevant,
 20 Mr. McAllister, I'll give you some leeway. If
 21 that was your only question, I'll sustain the
 22 objection and direct you to move on.
 23 BY MR. McALLISTER:
 24 **Q.** Well, you finally, on June 21st, had an
 25 opportunity to listen to the recordings; correct?

1 earlier that you had a friend drive you back to
 2 the Coeur d'Alene area on Sunday, June 13th;
 3 correct?
 4 **A.** From Oregon, she drove me up to Sagle
 5 and then back to the airport. And then from the
 6 airport, I actually drove myself because she had
 7 to fly home.
 8 **Q.** Okay. And you stayed with your son Rex
 9 that night in a motel or hotel in the Coeur
 10 d'Alene area; correct?
 11 **A.** Yes, I did.
 12 **Q.** All right. And on the 14th, there
 13 was -- you were intending to appear at a hearing
 14 in this case; correct?
 15 **A.** Yes.
 16 **Q.** And it got postponed until the next
 17 day, Tuesday, the 15th?
 18 **A.** Yes.
 19 **Q.** All right. If you could tell us,
 20 Mrs. Steele, what did you do on June 15th?
 21 **A.** June 15th, my son and I prepared to
 22 check out of the hotel room. I think at that
 23 point, we were still trying to ensure that my
 24 husband had his counsel in place so he would have
 25 representation at his hearing.

1 **A.** Yes, I did.
 2 **Q.** Where did that take place?
 3 **A.** That took place at my attorney's
 4 office.
 5 **Q.** All right. And who provided the
 6 recordings to you?
 7 **A.** Mr. - I'm sorry -- Agent Sotka, and I
 8 believe it was -- I believe the other person at
 9 that meeting was Agent Don Robinson.
 10 **Q.** All right. Now, your husband at that
 11 point had been in jail for ten days; correct?
 12 **A.** Yes.
 13 **Q.** And you continued to have conversations
 14 with him; correct? On the telephone?
 15 **A.** With my husband?
 16 **Q.** Yes.
 17 **A.** Not after the 15th of June.
 18 **Q.** Okay. So there was no further contact
 19 before you listened to the recording; correct?
 20 **A.** No, there was not.
 21 **Q.** All right. Did you -- how many times
 22 did you ask for the recordings?
 23 **A.** I don't remember, but I -- I wanted to
 24 hear those recordings.
 25 **Q.** All right. I believe you testified

1 And then we checked out of the hotel,
 2 which was, I believe, right around 11:00. His
 3 hearing wasn't until -- 4:30 is the time that
 4 comes to my mind; that might be off by a half-hour
 5 or so.
 6 And we had time to spare. I didn't
 7 have time to run home or really do anything, so I
 8 decided that I was going to get the -- do
 9 something productive to keep my mind preoccupied
 10 and get my oil changed in my car. Because I had
 11 been traveling a lot. The oil change in my car
 12 was overdue.
 13 And so I decided to take my car in, get
 14 the oil changed. My son had his car there, so he
 15 was actually headed to Schuck's or some automotive
 16 place because he had a headlight out, and we were
 17 concerned for him going back that night because he
 18 had to get back to college to -- because he had a
 19 job down at school or -- at school.
 20 So he went one way, I went the other
 21 way, and we were going to meet back up and have
 22 some lunch and then go to my husband's hearing.
 23 **Q.** All right. And during this time, you
 24 went to have the oil changed; correct?
 25 **A.** Yes.

1 Q. And what happened after you went to the
2 facility to have the oil changed?

3 A. Well, they had me pull my car into the
4 bay. It's one that sits underneath. And I went
5 out to sit in the -- they have -- they have you go
6 out and sit in the waiting room while they change
7 your oil.

8 And they first came in, and they showed
9 me my air filter and said it was pretty dirty, and
10 I told them to change it. And then it was a
11 few -- a minute or so later, one of the mechanics
12 came in and asked me to come with him because he
13 had something to show me.

14 At that point, I'm going, "What's wrong
15 with my car? What is this going to cost me? Am I
16 going to know whether it's important to have
17 fixed?" And that was all I needed on top of
18 everything else. I was expecting it to be a hole
19 in my oil pan or whatever.

20 And so I followed him. And he actually
21 took me down the stairs that goes under the car
22 where they do their work of changing the oil. And
23 I'm walking -- the car is facing out this way, so
24 I'm walking down this way, so on the driver's
25 side.

1 that you believed that others were still out
2 there; correct?

3 A. Yes. I have -- I had feared -- I
4 feared -- I mean, I have always feared because of
5 our past threats, but that was bringing that home
6 to me that others could. And then my husband is
7 in jail, and then I see this five days -- four
8 days later, I find this bomb on my car.

9 Q. All right. Now, you indicated, I
10 believe, or Ms. Whelan used the phrase "people
11 coming after your husband." Do you recall that?

12 A. I have said that many times, yes.

13 Q. All right. Now, your husband is a
14 lawyer; correct?

15 A. Yes, he is.

16 Q. Is it fair to say that he represented
17 unpopular causes?

18 A. Yes.

19 Q. And is it fair to say that previous
20 threats on your life were made?

21 A. Yes.

22 Q. And, in fact, you've turned those over
23 in the past to the law enforcement authorities?
24 You've reported them; correct?

25 A. Yes.

1 And he has me turn around, and he
2 points to the area right under my -- the driver's
3 seat, and there I saw a pipe that was about that
4 big around (indicating) strapped to the bottom of
5 my car with green fuses running across, which
6 later I understood was headed towards my exhaust.

7 The mechanic said did I know what that
8 was. And I said, "It looks like a pipe bomb."

9 And then I went -- I think the -- I
10 don't recall the exact order of things being said,
11 but he asked me if I wanted him to remove it. And
12 I immediately said, "No. Don't touch it."

13 And I started muttering things about
14 that I just had threats on my life and that we
15 needed to get the car out of there.

16 Afterwards, I felt that I probably
17 shouldn't have even had them move the car, but I
18 can't say I was really -- I was shocked. I mean,
19 I was petrified to -- thinking about this bomb
20 that had been on my car.

21 Q. Let me interrupt at this point, if I
22 could, Mrs. Steele, and ask you this question:
23 Your husband was in jail at this point; correct?

24 A. Yes, he was.

25 Q. But you have indicated or testified

1 Q. All right. Who is it that he would
2 represent or has represented in the past that led
3 to threats being made on you or him?

4 MS. WHELAN: Objection. Relevance.

5 THE COURT: I'll give counsel some leeway.
6 I'm not sure I see the relevance, but you may
7 answer.

8 THE WITNESS: Aryan Nations. Actually, he
9 didn't represent the Aryan Nations. He was
10 representing Richard Butler. He has represented
11 the Christines. He has represented -- I can't
12 remember the gentleman's name, but various groups
13 like that or people like that.

14 BY MR. McALLISTER:

15 Q. And based upon those cases, you and
16 your family members received threats?

17 A. Yes, each of my children, and I
18 personally have, besides my husband.

19 Q. All right. At this point when it was
20 discovered on your vehicle, did you know where
21 Larry Fairfax was?

22 A. No.

23 Q. Okay. Were you concerned at all about
24 him?

25 A. Yes.

1 Q. Why?
 2 A. Because I knew he was involved in this
 3 case.
 4 Q. All right.
 5 A. And he had been -- and he had also been
 6 doing things that, before my husband's arrest,
 7 that was leading towards criminal activities. And
 8 so I didn't --
 9 MS. WHELAN: Objection.
 10 THE WITNESS: -- trust him.
 11 MS. WHELAN: Objection. Foundation,
 12 speculation. Move to strike.
 13 THE COURT: Sustained. I'll direct the jury
 14 to disregard the witness's response.
 15 Mr. McAllister.
 16 BY MR. McALLISTER:
 17 Q. Prior to June 15th, you had learned
 18 that Larry Fairfax had secretly entered your
 19 house; correct?
 20 A. Yes. I had learned that towards the
 21 end of May.
 22 Q. All right. But at this point in time
 23 you didn't know that any silver was missing, did
 24 you?
 25 A. Not at that point, no.

1 that he needed to get back to the oil change
 2 place, which he did. And so they were also
 3 interviewing him and myself.
 4 And then they wanted to take us to, I
 5 believe it was the Kootenai -- I don't know the
 6 exact name, but the Kootenai Police Department,
 7 somewhere around Kathleen Street. And so we were
 8 escort -- not escorted -- driven to the police
 9 station and where they further were asking us
 10 questions in relationship to what I had -- or the
 11 mechanic discovered on my car.
 12 Q. Did you get to the courthouse and to
 13 your husband's hearing?
 14 A. Yes, because I kept saying that I
 15 wanted to be at my husband's hearing.
 16 Q. Now, at that hearing, were you still
 17 quite scared?
 18 A. I was petrified, because I had no clue
 19 who put that bomb on my car.
 20 Q. All right.
 21 A. And, as far as I know, they did not
 22 know, either.
 23 Q. Okay. "They" meaning the law
 24 enforcement?
 25 A. Law enforcement.

1 Q. Okay. Now, the authorities were
 2 called, correct, at the oil-changing station?
 3 A. Yes. Somebody from the oil place had
 4 called. I had made a call; but, by the time I
 5 made the call to the authorities, they had said
 6 that authorities were already on the way.
 7 Q. Okay. And, in fact, the authorities
 8 were able to safely remove the device from your
 9 car; correct?
 10 A. They ended up removing it safely, but I
 11 really didn't know that until later in the day
 12 because I wasn't there for -- I wasn't present in
 13 that area for the whole removal.
 14 Q. Okay. Did you get your vehicle back?
 15 A. Very late that next night.
 16 Q. Okay. And what did you do on June 15th
 17 after the device was found?
 18 A. I was there at the scene for a while.
 19 Different authorities -- some were in police
 20 uniforms, and then I believe they were agents. I
 21 don't know if they -- I don't know what capacity
 22 they were in -- were interviewing me and were
 23 interviewing my son, who was also there.
 24 Because, by that time -- well, I had
 25 also called -- I had also called him and told him

1 Q. Did anyone offer you protection?
 2 MS. WHELAN: Objection. Relevance.
 3 THE COURT: Sustained.
 4 BY MR. McALLISTER:
 5 Q. I'll ask it this way: Did you seek
 6 protection?
 7 MS. WHELAN: Objection. Relevance. Judge,
 8 we had a sidebar about this.
 9 THE COURT: Well, I'm going to sustain the
 10 objection.
 11 BY MR. McALLISTER:
 12 Q. Were you provided any protection?
 13 A. No. I was told they would not protect
 14 me.
 15 MS. WHELAN: Objection. Relevance.
 16 THE COURT: Sustained. I'm going to caution
 17 the witness. The court has ruled previously, and
 18 I think it was pretty clear. The answer was,
 19 simply, "Were you provided --," yes or no. And
 20 you can answer that but nothing more.
 21 Mr. McAllister, go ahead. Put another
 22 question back before the witness.
 23 BY MR. McALLISTER:
 24 Q. What did you do after that evening?
 25 A. After my husband's hearing, we still

1 didn't -- they had also, at my son and my request,
2 had taken my son's car. So we had no
3 transportation, because I was concerned for all my
4 kids. And I had made calls for them to have their
5 cars checked out wherever they were. Some were --
6 and my mom's car.

7 And so we needed to go someplace. And
8 because I wasn't getting protection, I had --

9 MS. WHELAN: Objection.

10 THE WITNESS: Because I was not getting --

11 MS. WHELAN: Objection.

12 THE COURT: Just a moment. I'm going to
13 sustain the objection.

14 And I think we're getting into a
15 narrative response, as well, Mr. McAllister. If
16 you'll put a question back before the witness.

17 MR. McALLISTER: I will. I will.

18 BY MR. McALLISTER:

19 Q. Now, did you discover who, in fact,
20 actually put the bomb on your car?

21 A. Much later that night.

22 Q. All right. And how did you discover
23 that?

24 A. At first, they were going to allow my
25 son to have his car back later that night, when

1 they were finished checking it out. And between
2 my son and I -- and I don't remember exactly when
3 we talked to Agent Sotka and maybe another agent
4 about when that was going to happen. I think that
5 was about, I don't know, 9:00 -- 8:00, 9:00. Time
6 was not of that importance. It was getting late.

7 And we finally got -- well, we had
8 been -- we had been taken to -- we had asked to be
9 taken to ShopKo in Coeur d'Alene to drop us off.
10 And we were staying -- we were sitting in Shari's
11 and got a call and that Rex's car was ready
12 to -- for him to get it back. And they were going
13 to make arrangements to come and pick us up and
14 meet, and we told them where we were, and they
15 were going to come and pick us up.

16 And when they -- and I believe they had
17 told me that I, too, was going to get my car back,
18 contrary to what I was told earlier, that they
19 were, then, going to --

20 MS. WHELAN: Your Honor --

21 THE WITNESS: -- let me get my car back --

22 THE COURT: Just a moment. When I'm trying
23 to -- you need to understand, if there is an
24 objection, I have to rule on it before you --
25 before you can continue.

1 Mr. McAllister, again, I think we're
2 getting into narrative, which is why we're going
3 to be getting these kind of objections. So can
4 you put questions back before the witness?

5 BY MR. McALLISTER:

6 Q. Did you learn that Mr. Fairfax had been
7 arrested?

8 A. Yes.

9 Q. And you learned for the first time that
10 he admitted putting the device on your car?

11 A. Yes.

12 Q. Okay. Ms. Whelan asked you questions
13 earlier about the so-called Russian bride scam.
14 Do you recall that?

15 A. Yes.

16 Q. What is that?

17 A. It is where Russian women --

18 MS. WHELAN: Your Honor, I'm going to object
19 as to foundation. This witness can testify as to
20 what she believes it is, and with that --

21 THE COURT: Rephrase the question, Counsel.

22 BY MR. McALLISTER:

23 Q. What do you understand the Russian
24 bride scam to be, in your mind?

25 A. Russian brides setting up Internet

1 dating to try to encourage men of -- American men
2 to become interested in them, sending them --
3 eventually turning into sending them money, gifts,
4 and with the hopes that they can make a connection
5 to finally be sent money such that they end up
6 coming -- it's a way for them to either come to
7 the United States or to get the money and then
8 never come to the United States because all they
9 have been after is money.

10 Q. And your husband, in fact, had been
11 working on a project relating to the Russian bride
12 scam for a number of years; correct?

13 MS. WHELAN: Objection. Form of the
14 question.

15 MR. McALLISTER: Well, Judge, I'm entitled
16 to do that at this point.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. McALLISTER:

20 Q. All right.

21 A. Well, it started sometime in 2009, I
22 believe.

23 Q. Okay. And, in fact, he was successful
24 in finding out that the Russian bride scam at one
25 point was being operated from Florida; correct?

1 A. Yes.
 2 MS. WHELAN: Objection. Foundation.
 3 THE COURT: Sustained.
 4 BY MR. McALLISTER:
 5 Q. Did you learn that, in fact, the
 6 Russian bride scam was being operated out of
 7 Florida?
 8 A. Yes.
 9 MS. WHELAN: Objection. Foundation.
 10 THE COURT: Sustained.
 11 BY MR. McALLISTER:
 12 Q. All right. You were actually working
 13 with your husband on this project; correct?
 14 A. At times, yes.
 15 Q. Did he keep anything from you, to your
 16 knowledge?
 17 A. No.
 18 Q. All right. Now, Ms. Whelan asked you
 19 about whether or not your husband was lying, and I
 20 think your answer was "a ruse"?
 21 A. Yes.
 22 Q. Can you tell us what you mean by "a
 23 ruse"?
 24 A. That he was making up a story that
 25 would -- would convince these women that he was

1 that you and your husband laughed about them
 2 because they were probably written by fat, old
 3 men?
 4 A. Yes.
 5 Q. All right. Is this -- would you
 6 characterize this exchange of emails or letters as
 7 "cyberspace fantasies"?
 8 A. Very much so.
 9 Q. Why?
 10 A. Because it was -- I mean, it was a
 11 fantasy. I mean, it was a -- it wasn't -- it
 12 wasn't -- I mean, it wasn't true. It wasn't even
 13 true with what the girls were saying because they
 14 were out for money.
 15 MS. WHELAN: Objection. Foundation,
 16 speculation.
 17 THE COURT: Sustained.
 18 BY MR. McALLISTER:
 19 Q. All right. Based upon the work with
 20 your husband, did you determine whether or not he
 21 was a good writer?
 22 A. He is an excellent writer.
 23 Q. Could he write one of these
 24 communications, emails, letters and sound like a
 25 lovesick teenager?

1 real, so that he could figure out how these women
 2 were responding.
 3 And he was doing it with several of
 4 them and trying to -- to see the likenesses
 5 between the responses from each of these girls and
 6 to just -- to see how each one were coming back
 7 with a lot of the same -- it was like they had a
 8 playbook or a script that they were writing from
 9 and that there was a lot of similarities in how
 10 they were responding and not a lot of
 11 individuality in it.
 12 MS. WHELAN: Objection. Nonresponsive,
 13 Your Honor. The question was: Can you describe
 14 what "a ruse" is. I would move to strike.
 15 THE COURT: I think the response did go
 16 beyond the question.
 17 I'll instruct the jury to disregard
 18 anything beyond a mere description of what was
 19 meant by the word "ruse."
 20 Mr. McAllister.
 21 BY MR. McALLISTER:
 22 Q. When you reviewed these responses, you
 23 didn't think they were real, did you?
 24 A. No.
 25 Q. As a matter of fact, I think you said

1 A. Yes.
 2 Q. All right. Is it fair to say that you
 3 and your husband were committed enough that money
 4 was actually spent on small gifts that were sent?
 5 A. Yes. Because we -- he had discussed it
 6 with me before, and I -- I had no problem; told
 7 him, "Yes, go ahead."
 8 Q. In other words, you didn't object to
 9 the family's money being spent on this project?
 10 A. No, I didn't.
 11 Q. And you were aware of it?
 12 A. Yes, I was.
 13 Q. Okay. Now, you were asked a number of
 14 questions about the relationship between you and
 15 your husband in 2010. Do you recall that?
 16 A. Yes.
 17 Q. No divorce ever happened; isn't that
 18 true?
 19 A. That's true.
 20 Q. There was a period of separation, and
 21 you and your husband reunited; correct?
 22 A. Yes, we did.
 23 Q. And then Ms. Whelan said, "The ranch
 24 did not fit in his future." Do you recall her
 25 quoting your husband on that phrase?

1 A. Yes, I do.
 2 Q. And that wasn't true in 2000 -- that
 3 statement may have been true in 2000; correct?
 4 A. Yes.
 5 Q. But, in reality, he spent the next ten
 6 years living with you and your children at the
 7 ranch; correct?
 8 A. Yes, he did.
 9 Q. All right. Did he ever leave you
 10 during those ten years?
 11 A. No.
 12 Q. Did he ever not provide for you and the
 13 children?
 14 A. No.
 15 Q. Has he ever threatened you?
 16 A. Never.
 17 Q. Okay. Has he ever harmed you in any
 18 way?
 19 A. No.
 20 Q. The questions were put about the fact
 21 that, in your family, you stored silver in your
 22 house; correct?
 23 A. Yes.
 24 Q. And based upon an investigation, you
 25 decided to do an accounting of the silver;

1 about that; correct?
 2 A. Many times, because he was working with
 3 the -- as an attorney, was trying to work with the
 4 mortgage company to help her either get a
 5 modification or to -- to try to get the pending
 6 foreclosure resolved such that she could remain in
 7 her home and not lose her home.
 8 Q. Okay. In your 25 -- now 26 -- years of
 9 marriage, did your husband ever threaten your
 10 mother?
 11 A. No.
 12 Q. Did he ever talk negatively about your
 13 mother?
 14 A. He would complain sometimes, but never
 15 negatively. I mean, not -- you know, typical
 16 mother-in-law things. But most of the time, it
 17 was always positive and the respect he had for
 18 her.
 19 Q. Now, isn't it true that your husband
 20 told you to go to his mother's -- go to your
 21 mother, that she needed your help more than he
 22 needed when he was ill?
 23 A. During --
 24 MS. WHELAN: Objection. Hearsay.
 25 THE COURT: Rephrase.

1 correct?
 2 A. Yes.
 3 Q. And did you know that, prior to June
 4 11th, that your husband, in fact, was selling or
 5 cashing in silver?
 6 A. Yes, I did, because we had talked about
 7 it.
 8 Q. And what was your agreement about
 9 cashing in silver?
 10 A. Our agreement was that we were going to
 11 take our savings in silver and sell that silver so
 12 that we could pay and help my mom, so that we
 13 could pay off the extreme amount of medical
 14 expenses that we had from his procedures, so that
 15 we could pay off -- start paying off our credit
 16 card debt that we had incurred, and to pay our
 17 bills.
 18 Q. All right. You said help your mom.
 19 Did your husband actually go out of his way to
 20 help your mom?
 21 A. Yes. He paid -- he paid, at the end --
 22 towards the end of May, \$3,000 to get her house
 23 off the foreclosure list, because my mom was
 24 starting to struggle financially.
 25 Q. All right. And he talked with you

1 BY MR. McALLISTER:
 2 Q. Did you go to --
 3 THE COURT: Well, I'm sustaining the
 4 objection. I don't know that you can correct the
 5 problem by rephrasing it, but move on to another
 6 question or else approach the subject without
 7 reference to what Mr. Steele said.
 8 BY MR. McALLISTER:
 9 Q. Did you go to your mother's aid and
 10 assistance with your husband's blessings?
 11 A. Yes.
 12 Q. Okay. Did you discuss the fact that
 13 you had to help her with her medical issues and
 14 problems?
 15 A. We discussed it all the time.
 16 Q. Did he ever object to your leaving him
 17 to go to your mother's?
 18 A. He never objected -- he never objected.
 19 He was always sad to see me go, but he never
 20 objected.
 21 Q. All right. And when you were at your
 22 mother's, would you and your husband speak on the
 23 telephone?
 24 A. A lot of times.
 25 Q. Okay.

1 A. Numerous times.

2 Q. Have you had a chance, prior to
3 testifying today, to review the telephone records
4 or bills for the phone in your house and your
5 husband's cell phone?

6 A. Yes.

7 Q. Okay. And did you spend a lot of time
8 verifying the calls and the numbers that were
9 reflected on it?

10 A. Yes.

11 Q. All right.

12 MR. McALLISTER: Your Honor, at this time I
13 would offer Defendant's Exhibit 2000, which has
14 previously been provided to the government.

15 THE COURT: Any objection?

16 MS. WHELAN: Your Honor, the objection is
17 there are many other numbers on there other than,
18 I think, what Mr. McAllister is going to.

19 He did provide an exhibit that covers
20 January to June. And if he is going to use part
21 of it, I'd ask that the entire exhibit that he
22 provided us be admitted.

23 MR. McALLISTER: I don't have any problem
24 with that, Judge, but I do want to focus on the
25 relevant months.

1 THE COURT: You have it on the screen?

2 MR. McALLISTER: I do, Your Honor.

3 THE COURT: I'm publishing it to the jury.

4 BY MR. McALLISTER:

5 Q. Now, Mrs. Steele, Exhibit 2000, there
6 is a telephone number, 208-290-2700. Do you know
7 whose number that is?

8 A. That's my husband's cell phone number.

9 Q. All right. And can you tell us what
10 your cell phone number is?

11 A. 208-290-2701.

12 Q. All right. And these records will
13 reflect times that you and your husband spoke to
14 each other on your phones; correct?

15 A. These reflect when we spoke on our cell
16 phones, yes.

17 Q. And in your review of the records,
18 isn't it true that most of those conversations
19 occurred when you were away from home?

20 A. Most of them would, yes.

21 Q. All right. And when you were home,
22 there aren't a lot of calls; correct?

23 A. Well, no.

24 Q. Okay. Because you talked to each
25 other?

1 THE COURT: All right. So all of the --
2 we're in agreement, then, that the entire exhibit
3 as marked will be admitted without objection?

4 MS. WHELAN: His exhibit is not the entire
5 exhibit.

6 MR. McALLISTER: Well, I have provided the
7 entire exhibit, and we can remark it.

8 THE COURT: I have used the word "exhibit."
9 The entire document. The exhibit is only part of
10 a larger document, and the government is
11 requesting that the entire document be provided.
12 And there is no objection to that?

13 MR. McALLISTER: That's correct.

14 THE COURT: All right. Then we'll admit
15 Exhibit 2000, and the government may mark as a
16 separate exhibit the entire document and cover
17 that either on redirect -- recross with this -- I
18 guess redirect with this witness, or through
19 another witness.

20 All right. Exhibit 2000 will be
21 admitted and may be published to the jury if you
22 have a copy of it to show them.

23 (Defendant's Exhibit 2000 admitted and
24 published.)

25 MR. McALLISTER: I do, Your Honor.

1 A. At home, yes.

2 Q. I want to direct your attention to May
3 of 2010. I'll direct your attention to -- well,
4 first of all, I'll direct your attention to
5 10:30 a.m. on May the 15th. Do you see that call?

6 A. Yes, I do. Yes.

7 Q. And do you see that the call lasted for
8 some 27 minutes?

9 A. Yes.

10 Q. Do you recognize the number that was
11 called?

12 A. Well, it's 20 -- it's 290-2701. It's
13 my cell phone number.

14 Q. All right. And does that help you
15 determine whether or not you talked that day with
16 your husband?

17 A. Yes.

18 Q. All right. And that was at 10:30 a.m.;
19 correct? According to the record?

20 A. According to the record, yes.

21 Q. And then there is another call at
22 7:30 p.m.; correct?

23 A. Yes.

24 Q. Also between your number and your
25 husband's number; correct?

1 A. Yes.
 2 Q. And then, directing down the page,
 3 there is another call on 5/18; correct?
 4 A. Can you move it up just a little?
 5 Q. I'm sorry. Yes. There is actually a
 6 copy there in front of you if you need a paper
 7 copy, if it's easier.
 8 THE COURT: Counsel, you might zoom in a
 9 little bit to help the jury read it. It's fairly
 10 small print.
 11 THE WITNESS: Okay. Oh, wait a minute. I'm
 12 on -- it's probably easier for me here because I
 13 can't find it on here.
 14 BY MR. McALLISTER:
 15 Q. That's fine. Whatever is the most
 16 efficient way.
 17 Directing your attention again to
 18 May -- well, I believe I was talking about May the
 19 15th at 2:05 -- actually, it's at 5:03 p.m. Do
 20 you recognize that telephone call?
 21 A. Yes, I do. That's my -- and that's my
 22 cell phone number.
 23 Q. All right. And continuing down the
 24 page, is there another call of 33 minutes between
 25 your husband and you?

1 A. We were talking about my mom's house
 2 and mortgage and trying to figure out what the
 3 next steps were to help her.
 4 I was relying on my husband because of
 5 his attorney background, and he -- and earlier on,
 6 it was decided that, because of my mom's health
 7 issues -- because she lived on, oh, one-third of
 8 an -- I don't know. She had a large place, a
 9 large house, living by herself that -- and she --
 10 and with her agreement that we needed to sell the
 11 house, and he was trying to help me with that,
 12 what we should -- you know, economy was bad.
 13 Q. Let me interrupt at this point. It was
 14 common when you were at your mother's house, away
 15 from your own house, to call your husband;
 16 correct?
 17 A. Or he would call me. It just depended.
 18 Q. Right. But this took place on June the
 19 10th in the evening; correct?
 20 A. Yes.
 21 Q. All right. Now, did you also go
 22 through the records looking for telephone calls
 23 with Larry Fairfax?
 24 A. I went through every single phone
 25 number on this -- I identified every single phone

1 A. Yes, on May 20th.
 2 Q. All right. Now, isn't it true that
 3 there is sort of a pattern in these records that
 4 your husband only spends time on the phone in any
 5 lengthy discussion, like more than five minutes,
 6 with you or the children or relatives?
 7 A. Yes.
 8 Q. All right. Let's go to June -- June
 9 the 10th. Are you able to recognize the call for
 10 32 minutes on June the 10th?
 11 A. For 32 minutes? I thought -- that
 12 doesn't --
 13 Q. I'm sorry?
 14 A. Doesn't it say "43"?
 15 Q. Yes, it does. My mistake.
 16 On June the 10th, there is a call to
 17 your cell phone at 9:23 p.m., and it took 43
 18 minutes, or you were billed for 43 minutes;
 19 correct?
 20 A. Yes.
 21 Q. All right. Now, this is the day before
 22 your husband's arrest; correct?
 23 A. Yes, it is.
 24 Q. What were you talking about for 43
 25 minutes?

1 number on this except for two that were either
 2 disconnected or I couldn't figure out -- it was
 3 just one number I could not come up with.
 4 Q. Was this part of your investigation
 5 into the facts of this case?
 6 A. Yes, it was.
 7 Q. All right. Isn't it true that the
 8 Fairfax number, there is rarely a call longer than
 9 one minute?
 10 A. That's about anything that I could find
 11 with Fairfax.
 12 Q. Okay. Let me go back to the silver
 13 again, because I failed to ask you one question.
 14 You're aware of the fact -- and you've
 15 done an accounting, I believe -- on how much
 16 silver was cashed in prior to your husband's
 17 arrest; correct?
 18 A. Yes.
 19 Q. And at the time of -- and what was that
 20 number, approximately?
 21 A. Well, it was \$55,290.80.
 22 Q. All right. And at the time of his
 23 arrest, how much of that was still in your bank
 24 account?
 25 A. It was \$37,000. I'm -- that -- I don't

1 have the exact number, but it was \$37,000.
 2 **Q.** Did you have -- did your husband use
 3 this money for anything? Well, I'll ask --
 4 **A.** Well, not the 37,000, but the
 5 difference between 55,000 and odd dollars and the
 6 37-, he used that for my mom's mortgage; he used
 7 that to start paying off -- he was using that to
 8 start paying off our -- or his medical expenses;
 9 he was using that to pay our bills, which ran
 10 about \$10,000 a month. And, also, we were going
 11 to start trying to get our -- our credit card debt
 12 paid off.
 13 **Q.** All right. Did you find any evidence
 14 anywhere that he had given Larry Fairfax \$10,000?
 15 **A.** No.
 16 **Q.** Or \$10,000 in silver coins?
 17 **A.** No.
 18 **Q.** All right. Directing your attention to
 19 November the 21st, 2009, you were with your
 20 husband; correct?
 21 **A.** Give me the date again.
 22 **Q.** I believe it's November the 21st --
 23 **A.** Yes.
 24 **Q.** -- 2009; correct?
 25 **A.** Yes.

1 **Q.** All right. And did he remain in the
 2 intensive care unit for nine days?
 3 **A.** It was longer than that, but that is
 4 how long he was on the respirator.
 5 **Q.** Okay. And did he actually remain in
 6 the hospital for a month?
 7 **A.** He was checked out on December 9th, so
 8 it wasn't quite a month.
 9 **Q.** All right. And at that time he
 10 returned home, you actually had to have help to
 11 care for him, like nursing help; correct?
 12 **A.** Yes. The first night he went home,
 13 I -- because I could not get home -- back home
 14 from taking care of my mom who was in the
 15 hospital, I had called my son. He excused himself
 16 from college and went up. And then I made
 17 arrangements for a live-in home nurse to come and
 18 be with him until I could get home.
 19 **Q.** All right. And your husband, after
 20 this near-death event, I believe, in your words,
 21 was not the same person; correct?
 22 **A.** Not during that time. He was -- you
 23 know, he was hallucinating and -- and not
 24 remembering things. And he was extremely weak.
 25 He was not at all like himself during that time.

1 **Q.** And your husband became extremely ill
 2 that day; correct?
 3 **A.** It was -- he almost died that day.
 4 **Q.** All right. And he was basically rushed
 5 to the hospital and diagnosed with what I believe
 6 is called a descending aortic aneurysm; correct?
 7 **A.** I always get the "descending" and
 8 "ascending" mixed up, but that sounds correct.
 9 **Q.** All right. And essentially what this
 10 is that he was bleeding internally. He had -- he
 11 had a life-threatening illness; correct?
 12 **A.** Yes. Because when the aortic -- when
 13 the aortic burst, blood was flowing around his
 14 heart and restricting it.
 15 MS. WHELAN: Your Honor, I'm going to object
 16 as to foundation.
 17 THE COURT: Sustained.
 18 MR. McALLISTER: All right.
 19 BY MR. McALLISTER:
 20 **Q.** As a result of him being taken to the
 21 hospital, did he get placed on a heart-and-lung
 22 machine?
 23 **A.** Yes. I believe I always referred to it
 24 as a "respirator," but it was a heart-and-lung
 25 machine when they did the operation.

1 **Q.** And did you understand that this was
 2 the result of the medication that he was taking?
 3 **A.** Very much so, because the doctors
 4 explained that this was very common in patients
 5 that had suffered what he had.
 6 MS. WHELAN: Your Honor --
 7 THE COURT: Just a moment.
 8 MS. WHELAN: Object as to hearsay.
 9 THE COURT: I'll sustain the objection as to
 10 the witness's description of what the doctors told
 11 her. The jury is instructed to disregard that.
 12 Proceed.
 13 BY MR. McALLISTER:
 14 **Q.** On May the 5th of 2010, did your
 15 husband have another medical emergency?
 16 **A.** May?
 17 **Q.** 5th.
 18 **A.** May 5th, yes, he did.
 19 **Q.** All right. And was this the result of
 20 a nosebleed that would not stop?
 21 **A.** Yes.
 22 **Q.** And did it result in a second
 23 operation?
 24 **A.** Yes, it did.
 25 **Q.** And this was actually relating to

1 surgery on his nose or his face; correct?

2 **A.** Well, it was -- my understanding is
3 that it's -- was behind his nose, but they had to
4 go up through his cheek and under his lip and --
5 or up under his cheek and through the bridge --
6 bridge of his nose.

7 **Q.** And after the operation, he came home.
8 He was also prescribed painkillers; correct?

9 **A.** Yes, he was.

10 **Q.** And what did you observe in May?

11 **A.** He was in a lot of pain and, you know,
12 wasn't -- wasn't thinking real clearly, was having
13 times when he would speak, grabbing -- grasping
14 words that he has never had problems with. He was
15 struggling with remembering things that he never
16 used to have problems remembering.

17 **Q.** All right. And as of the time you left
18 for your mother's house, which I believe was on
19 May the 27th, was he back to normal yet?

20 **A.** I wouldn't say he was back to normal,
21 but he was definitely on his way to that. You
22 know, he was still having some pain from -- from
23 the surgery, but he was on his way.

24 **Q.** Was he well enough to do the chores and
25 what needed to be done around the ranch?

1 her opinion was that a vet should probably be
2 called in. And I let my husband know, and he
3 called a vet.

4 **Q.** All right. At any point since the
5 arrest of your husband on June 11th and
6 Mr. Fairfax's confession, has anyone offered you
7 help or protection?

8 **MS. WHELAN:** Objection, Your Honor.
9 Relevance.

10 **THE COURT:** Sustained.

11 **MR. McALLISTER:** Thank you.

12 **THE COURT:** Redirect?

13 **MS. WHELAN:** Thank you.

14 **REDIRECT EXAMINATION**

15 **BY MS. WHELAN:**

16 **Q.** Mrs. Steele, you testified that on the
17 12th of June, you wanted -- you talked to Special
18 Agent Sotka, and you wanted to listen to the
19 tapes. But you weren't in Idaho on the 12th of
20 June, were you?

21 **A.** No, but I --

22 **Q.** And on -- and you indicated that you
23 hired an attorney to represent you; correct?

24 **A.** Yes, I did.

25 **Q.** And are you aware that, once somebody

1 **A.** He was trying, but he would get real --
2 real tired quickly and couldn't -- couldn't do it,
3 you know, like he used to be able to.

4 **Q.** And isn't it true that, on June 9th of
5 that week, he called you, concerned about one of
6 your horses; correct?

7 **A.** I don't think it was June --

8 **Q.** I'm sorry. I chose that date; might
9 have been my mistake. But you tell us what --
10 what you understood.

11 **A.** I returned to Oregon around the 28th.
12 It was sometime after that that I had received a
13 call from my husband, and he was telling me that
14 one of the horses was hurt. He was trying to
15 describe it to me. He was trying to get a sense
16 of whether a vet needed to be called in, if he --
17 because he wasn't -- it was one of the those that
18 he felt was sort of iffy, because we don't call a
19 vet in all the time. There is times we can doctor
20 them ourselves and save us the vet bill.

21 And, you know, without being there I
22 couldn't tell him, so I asked him to -- I either
23 asked him to -- I probably called. I called a
24 friend of mine that was a horse person and asked
25 her to go over and see what her opinion was. And

1 has an attorney, you can't have contact with them
2 unless you go through their attorney?

3 **A.** I hadn't hired the attorney at that
4 point.

5 **MS. WHELAN:** Objection, Your Honor.

6 **THE COURT:** Well, let's get a time frame for
7 the question.

8 **BY MS. WHELAN:**

9 **Q.** After June 12th and upon coming back to
10 Idaho, you notified Special Agent Sotka that you
11 intended to hire an attorney; correct?

12 **A.** I don't remember when I had told him
13 that.

14 **Q.** Are you aware that when someone hires
15 an attorney or indicates they are hiring an
16 attorney, that contact can only go through the
17 attorney and not the person?

18 **A.** After I hired -- I am aware of that
19 after I hire an attorney, yes.

20 **Q.** And are you aware of the time issues in
21 arranging a meeting with your attorney?

22 **A.** Please ask that again.

23 **Q.** Are you aware of the time issues in
24 scheduling a time for you to listen to the tapes
25 that had to be worked through your attorney?

1 A. No, I'm not.
 2 Q. Well, there has been this dialogue
 3 about how you didn't get to listen to the tapes,
 4 but it had to be arranged with an attorney, didn't
 5 it?
 6 A. After I hired the attorney.
 7 Q. Yes. Additionally, the other agent
 8 that had to be there, since you're a female, is a
 9 female agent. So the agent that was at that
 10 meeting was Special Agent Janecko; correct -- Gail
 11 Janecko?
 12 A. I remember a female being at the
 13 interview I had with the FBI.
 14 Q. Mrs. Steele --
 15 A. I -- I might have them mixed up, but
 16 I -- I believe the female was at the July 9th
 17 interview.
 18 Q. On June 15th, you were trying to help
 19 your husband, weren't you?
 20 A. On June 15th?
 21 Q. You were trying to -- I believe you
 22 testified you were trying to hire counsel for him.
 23 A. Despite what -- despite anything, he
 24 deserved counsel, and I was trying to help him
 25 obtain counsel. Yes.

1 you asked Special Agent Sotka to crawl under your
 2 car and look to reassure you that it was safe;
 3 correct?
 4 A. I had asked him to check out my whole
 5 car. I don't remember particularly just saying
 6 the underneath, but I did want my car rechecked
 7 because I was concerned. I might -- my life has
 8 been being threatened. I was concerned, yes.
 9 Q. And he did that?
 10 A. Yes, he did.
 11 Q. You've talked about this Russian bride,
 12 I think, scam. American men go to this dating
 13 website voluntarily; correct?
 14 A. Yes.
 15 Q. And nobody makes them go there?
 16 A. No.
 17 Q. Do you have any siblings, Mrs. Steele?
 18 A. No.
 19 Q. You're an only --
 20 A. I had -- well, I had a half-sister that
 21 I didn't know, and she has since passed away. She
 22 was my father's daughter from another marriage.
 23 Q. You are your mother's only child?
 24 A. Yes, I am.
 25 Q. And your husband had -- when you called

1 Q. Between June 15th and -- June 11th and
 2 June 15th, you were trying to secure counsel for
 3 your husband?
 4 A. Yes.
 5 Q. You were trying to secure counsel for
 6 yourself?
 7 A. I hadn't really decided to secure
 8 counsel until around the 15th.
 9 Q. Because, from years ago, your husband
 10 had convinced you that if this happened -- excuse
 11 me -- had convinced you that a setup could happen?
 12 A. I -- he had -- he had spoke of those
 13 concerns, but he did not have me convinced.
 14 Q. And you testified on -- with Mr.
 15 McAllister that, in late May, you became aware
 16 that Larry Fairfax had gone -- I think it was
 17 either gone or broken into your house. You
 18 weren't there, were you?
 19 A. No, I wasn't.
 20 Q. That was something your husband told
 21 you?
 22 A. Yes.
 23 Q. On the telephone?
 24 A. Yes.
 25 Q. After the incident with the pipe bomb,

1 and talked to your husband or your husband called
 2 you, you discussed chores that needed to be done
 3 around the place, didn't you?
 4 A. Sometimes.
 5 Q. You discussed what type of things you
 6 had going on out there in Oregon?
 7 A. Yes.
 8 Q. You said you went through all of these
 9 phone numbers prior -- during your investigation
 10 and that you looked for phone numbers of Larry
 11 Fairfax to check those out.
 12 THE COURT: Counsel, what are we showing?
 13 This is Exhibit 2000, I believe?
 14 MS. WHELAN: This is Defense Exhibit 2000.
 15 THE COURT: Just a moment. And the
 16 highlighting is highlighting you've done on your
 17 copy; correct?
 18 MS. WHELAN: On my copy, yes.
 19 THE COURT: All right. Ladies and
 20 gentlemen, disregard the highlighting. Counsel
 21 can use that by way of emphasis, but it won't be
 22 on the original.
 23 Go ahead, Ms. Whelan.
 24 BY MS. WHELAN:
 25 Q. And, actually, I've put a piece -- can

1 you see where I'm moving this little piece of
 2 paper, Mrs. Steele?
 3 **A.** Yes.
 4 **Q.** Okay. (208) 610-0698 is Larry
 5 Fairfax's phone number; correct?
 6 **A.** Yes. It's his cell phone number.
 7 **Q.** And, according to these records, your
 8 husband did, in fact, call you on the 10th and
 9 speak to you at night?
 10 **A.** Yes.
 11 **Q.** And prior to that, he had had
 12 conversations with Larry Fairfax at about
 13 6:00 p.m. on the 10th, too, didn't he?
 14 **A.** Yes.
 15 **Q.** And that's consistent with the tape of
 16 June 10th, isn't it?
 17 **MR. McALLISTER:** I'm going to object to
 18 that, the form of that question, Judge.
 19 **THE COURT:** Rephrase, Counsel.
 20 **BY MS. WHELAN:**
 21 **Q.** Were you in the courtroom when those
 22 tapes were played?
 23 **A.** Yes.
 24 **Q.** Did you overhear Mr. Fairfax make a
 25 phone call to your husband at approximately

1 I didn't recall being asked that.
 2 **Q.** When law enforcement first contacted
 3 you on June 11th at your mother's house, you spoke
 4 with Special Agent Sotka on the telephone;
 5 correct?
 6 **A.** Yes, I did.
 7 **Q.** He provided you with some information,
 8 and it was then that you gave up your cell phone
 9 or they took it -- it was characterized as
 10 different ways -- correct?
 11 **A.** You know, he was explaining it to me.
 12 At that point, I wasn't even thinking about my
 13 cell phone. The agent that testified yesterday
 14 that was at my house had sat down, and he asked me
 15 for my cell phone, and I immediately gave to him.
 16 **Q.** It wasn't until you spoke to Special
 17 Agent Sotka that you --
 18 **A.** There was nothing mentioned --
 19 **THE COURT:** Just a moment. Wait for the
 20 question to be finished before you start the
 21 answer.
 22 Ms. Whelan.
 23 **BY MS. WHELAN:**
 24 **Q.** It wasn't until you spoke to Special
 25 Agent Sotka that you gave your cell phone to

1 6:00 p.m. on those tapes?
 2 **A.** I believe I did. I think that was when
 3 he was driving.
 4 **Q.** And this record substantiates that,
 5 doesn't it?
 6 **A.** Yes.
 7 **Q.** Mrs. Steele, you were not in town on
 8 May 5th when the nosebleed happened, were you?
 9 **A.** I was by 6:00 that night because I came
 10 home and got there before he went into surgery.
 11 **Q.** Looking at this exhibit, there are
 12 repeated calls to or from your cell phone to your
 13 husband's cell phone on the 6th of May; is that
 14 correct?
 15 I know it's hard to see these
 16 highlights right here. Can you see that?
 17 **A.** Yes.
 18 **Q.** And those are calls in between the two
 19 of you; right?
 20 **A.** Yes.
 21 **Q.** Mrs. Steele, you never told law
 22 enforcement that you were helping your husband
 23 with an investigation into the dating website, did
 24 you?
 25 **A.** I don't recall if I did mention that.

1 Special Agent Heckendorn, did you?
 2 **A.** I hadn't given it up yet. I -- it was
 3 when -- I gave it up when I was asked for it.
 4 **Q.** And it was after you spoke to Special
 5 Agent Sotka?
 6 **A.** Yes.
 7 **MS. WHELAN:** Your Honor, may I have one
 8 moment, please?
 9 **THE COURT:** Yes.
 10 **BY MS. WHELAN:**
 11 **Q.** Mrs. Steele, Mr. McAllister asked you
 12 some questions about how your husband was doing
 13 after the surgery. In January, February, March,
 14 and April, you were able to communicate with him?
 15 **A.** I was able to communicate with him
 16 either phone or when I was home. I mean, I was
 17 there.
 18 **Q.** You didn't have trouble understanding
 19 him?
 20 **A.** No.
 21 **Q.** And he was clearly able to use the
 22 computer and send emails?
 23 **A.** Yes.
 24 **MS. WHELAN:** Thank you. Nothing else.
 25 **THE COURT:** Any recross?

1 MR. McALLISTER: No, Your Honor.
 2 THE COURT: All right. You may step down.
 3 Thank you.
 4 MS. WHELAN: May this witness be excused,
 5 Your Honor? I mean, I don't know if she's --
 6 THE COURT: From the government's -- yeah.
 7 Certainly, I assume, still subject to perhaps
 8 recall.
 9 You may step down.
 10 THE WITNESS: Thank you.
 11 THE COURT: Call your next witness.
 12 MS. WHELAN: Kevin Mitchell, Your Honor.
 13 THE COURT: Mr. Mitchell, please step before
 14 the clerk, Ms. Gearhart, and be sworn, and then
 15 follow directions from there.
 16 KEVIN MITCHELL,
 17 having been first duly sworn to tell the whole
 18 truth, testified as follows:
 19 THE CLERK: Please state your complete name
 20 and spell your last name for the record.
 21 THE WITNESS: Kevin Everhard (phonetic)
 22 Mitchell, M-I-T-C-H-E-L-L.
 23 THE COURT: You may inquire of the witness,
 24 Ms. Whelan.
 25 DIRECT EXAMINATION

1 off for the jury?
 2 THE COURT: It is now.
 3 MS. WHELAN: Thank you, Your Honor.
 4 BY MS. WHELAN:
 5 Q. I'm going to ask you to look at -- I'm
 6 going to show you the exhibit sticker first. Hang
 7 on. I'm going to move it.
 8 Do you see the exhibit sticker right
 9 there in front of you?
 10 A. Yes.
 11 Q. It's Government's Exhibit 90 for
 12 identification.
 13 Now I would ask you to look at what's
 14 on it without telling me. But do you recognize
 15 it?
 16 A. Yes.
 17 Q. And does it fairly and accurately show
 18 something that you use in your business?
 19 A. Yes.
 20 Q. Is that your signature at the bottom?
 21 A. Yes.
 22 Q. And does that fairly and accurately
 23 depict something that you gave to the defendant?
 24 A. Yes.
 25 MS. WHELAN: I'm going to ask for the

1 BY MS. WHELAN:
 2 Q. Mr. Mitchell, I'm going to ask you to
 3 speak either loudly or right into that microphone
 4 for me, please.
 5 A. All right.
 6 Q. Sir, what do you do for a living?
 7 A. I'm a coin dealer. I have a coin shop
 8 up in Coeur d'Alene.
 9 Q. And how long have you had that coin
 10 shop?
 11 A. We have been open seven years as a
 12 retail shop.
 13 Q. What's the name of your shop?
 14 A. CoiNutz.
 15 Q. Where is it located?
 16 A. Sunset Avenue, Coeur d'Alene.
 17 Q. Sir, do you know Edgar Steele?
 18 A. I do.
 19 Q. And how do you know him?
 20 A. He came into our store to sell some
 21 silver.
 22 Q. Do you recall what month that was?
 23 A. I think it's April of last year.
 24 Q. I'm going to ask you --
 25 MS. WHELAN: Your Honor, is the projector

1 admission of Exhibit 90.
 2 MR. McALLISTER: No objection.
 3 THE COURT: Exhibit 90 will be admitted and
 4 published to the jury.
 5 (Government's Exhibit 90 admitted.)
 6 MS. WHELAN: Your Honor, the government will
 7 also move for the admission of 90A -B, -C, and -D,
 8 which I provided to Mr. McAllister. If he has no
 9 objection, I'll move those, as well.
 10 MR. McALLISTER: No objection.
 11 THE COURT: All right. Let's just include
 12 them all -- well --
 13 MS. WHELAN: I can make them all "90." I
 14 didn't know what the court wanted.
 15 THE COURT: Okay. It's hard for me to keep
 16 track of sublettered exhibits when there is no
 17 room on the exhibit list, but that's fine.
 18 Exhibits 90A, -B, -C, and -D will be
 19 admitted.
 20 (Government's Exhibits 90A, 90B, 90C,
 21 and 90D admitted.)
 22 MS. WHELAN: Thank you, Your Honor.
 23 BY MS. WHELAN:
 24 Q. What is Exhibit 90? It's up on the
 25 screen now, so you can tell us.

1 A. A check.
 2 Q. And who is it a check to?
 3 A. Edgar Steele.
 4 Q. How much was it?
 5 A. \$10,626.
 6 Q. And that was on April 21st, 2010?
 7 A. Yes.
 8 Q. Looking at what's been admitted as
 9 Government's Exhibit 90A, is that another check?
 10 A. Yes.
 11 Q. Again, to Mr. Steele?
 12 A. Yes.
 13 Q. For how much?
 14 A. \$12,110.
 15 Q. And was -- what was -- what did you
 16 purchase from him?
 17 A. We purchased silver -- silver bars,
 18 rounds.
 19 Q. And that's the purpose of both this
 20 check and the check previous?
 21 A. Yes.
 22 Q. And I note in the "memo" or the "for"
 23 line, you wrote "silver." Is that what you wrote?
 24 A. Yes.
 25 Q. And, again, Exhibit 90B, is that

1 A. No.
 2 Q. Can you explain to the jury how that
 3 works?
 4 A. If we have a customer that comes in
 5 with a larger amount of precious metals and they
 6 want to sell it immediately and get the funds
 7 immediately, then we roll it through our
 8 wholesaler, and they will get less money because
 9 we have to do the funds quickly.
 10 If we can spread it out over a little
 11 bit at a time so we can retail some of it out and
 12 take time on the money, then we can pay them a
 13 little bit more for the silver. So a lot of
 14 customers would rather wait a few weeks, make a
 15 little more money. But if somebody is closing on
 16 a piece of property or something, they need the
 17 money right away, then they tend to do it, you
 18 know, in one check or one time.
 19 So this was broken out into a few
 20 checks so as the silver was sold, then I could let
 21 him know, "Cash that one," "Cash that one," "Cash
 22 that one," until they're all done.
 23 Q. And did you do that?
 24 A. Yes.
 25 MS. WHELAN: Your Honor, could we turn the

1 another check?
 2 A. It is.
 3 Q. For how much?
 4 A. \$5,699 -- it looks like 20 cents.
 5 Q. Exhibit 90C. Can you tell us what that
 6 is?
 7 A. Same. Check for \$9,000.
 8 Q. For the purchase of silver?
 9 A. Yes.
 10 Q. To Mr. Steele?
 11 A. Yes.
 12 Q. And Exhibit 90D, that is also to
 13 Mr. Steele?
 14 A. Yes, it is.
 15 Q. And that was for the purchase of
 16 silver?
 17 A. It was.
 18 Q. And it's your handwriting, so I'm going
 19 to ask you how much it was for.
 20 A. It is. \$17,810.
 21 Q. I note that all of those checks are
 22 dated April 21st, 2010.
 23 A. Yes.
 24 Q. Were they all to be cashed at the same
 25 time?

1 projector off for the jury?
 2 THE COURT: Yes.
 3 MS. WHELAN: Ms. Rocca, could you put on
 4 Exhibit 104 -- 102. Sorry.
 5 BY MS. WHELAN:
 6 Q. Do you see that?
 7 A. Yes.
 8 Q. What is that?
 9 A. That's a picture of a bunch of silver.
 10 Q. Does it have any relevance to what
 11 you're talking about?
 12 A. It does. It's actually the silver that
 13 Mr. Steele brought to us.
 14 Q. And where is that -- who took that
 15 picture?
 16 A. I took that picture. It's at our shop.
 17 And it was just kind of a fluke that I took the
 18 picture, but my daughter is there in the sweater
 19 there.
 20 Q. What did you take the picture with?
 21 A. My cell phone.
 22 Q. And why did you take the picture?
 23 A. My daughter was counting out -- we just
 24 wanted to count to make sure that our count was
 25 right on the silver. As she did, it looks like

1 she was trying to design it or make it look
 2 pretty. And as I walked by, I said, "Oh, that's
 3 kind of cool. Let me take a picture." So I took
 4 a picture.
 5 Q. Did you bring that cell phone down with
 6 you to Boise?
 7 A. I did.
 8 Q. Did you show this to me yesterday?
 9 A. I did.
 10 Q. And --
 11 A. I didn't remember it until yesterday.
 12 Q. Does it fairly and accurately show the
 13 silver that Mr. Steele cashed in?
 14 A. I think it -- I think it does. I think
 15 it is all the total of what he brought us.
 16 MS. WHELAN: Move for the admission of
 17 Exhibit 102.
 18 MR. McALLISTER: Object under Rule 403 and
 19 late disclosure, as well.
 20 THE COURT: I'll overrule the objection and
 21 allow it based upon the representation that
 22 counsel just received it yesterday and didn't know
 23 of its existence. The objection is overruled.
 24 The exhibit will be admitted.
 25 (Government's Exhibit 102 admitted.)

1 compare to -- I'm sorry.
 2 A. Yep.
 3 Q. Let me hit undo.
 4 -- these?
 5 A. Those are 100-ounce bars, so they have
 6 a hundred troy ounces in them. So you can see
 7 there is -- two, four -- six of those. So that's
 8 600 ounces.
 9 Q. And what's underneath them?
 10 A. Those smaller bars are assorted-sized
 11 bars. They're -- they're usually hand-poured or
 12 machine-made, and they will be weighed out in all
 13 different sizes. So they're usually stamped with
 14 what they are. We can't see the numbers on them,
 15 but they will be -- they will be odd numbers, like
 16 four-and-a-half ounces or seven ounces or whatever
 17 they come out to.
 18 Q. Thank you.
 19 MS. WHELAN: Ms. Rocca, could you take that
 20 down.
 21 Judge, may I put it back to the ELMO,
 22 please?
 23 THE COURT: I'm sorry?
 24 MS. WHELAN: The -- thank you. Ms. Gearhart
 25 knew what I meant.

1 THE COURT: That's 102?
 2 MS. WHELAN: Yes, Your Honor.
 3 BY MS. WHELAN:
 4 Q. Now, Mr. Mitchell, I just have a couple
 5 of questions for you. And if you touch the
 6 screen, it will make lines on it or arrows,
 7 depending on how you touch it. Okay?
 8 A. Okay.
 9 Q. It's the one right in front of you. So
 10 I'm going to point to something and ask you what
 11 it is.
 12 A. Okay.
 13 Q. Now, that looks different than the
 14 coins in the background.
 15 A. Right.
 16 Q. What is the difference there?
 17 A. The pile in the front there, those are
 18 10-ounce silver bars. So there is ten troy ounces
 19 in each bar, and usually we'll stack them ten
 20 high. And if you look down the front there, you
 21 can probably count ten. So that would make a
 22 hundred ounces per pile. And there is -- two,
 23 four, six, eight -- ten of those. So there is a
 24 thousand ounces in that pile of ten-ounce bars.
 25 Q. How does what I just made that arrow to

1 BY MS. WHELAN:
 2 Q. Now, sir, these are copies that you got
 3 from your bank; correct?
 4 A. Yes.
 5 Q. And on this last check, the 17,810,
 6 looking at this, can you see that this check was
 7 deposited June 10th?
 8 A. Yes.
 9 MS. WHELAN: Your Honor, those are all the
 10 questions I have for this witness.
 11 THE COURT: Cross?
 12 MR. McALLISTER: No, Your Honor.
 13 THE COURT: All right. You may step down.
 14 You may step down.
 15 MS. WHELAN: May Mr. Mitchell please be
 16 excused?
 17 THE COURT: I assume so.
 18 Mr. McAllister, any objection?
 19 MR. McALLISTER: None.
 20 THE COURT: Mr. Mitchell, you're excused and
 21 released from any subpoena. Thank you for being
 22 here.
 23 Call your next witness.
 24 MR. HAWS: The government calls Josh Young.
 25 THE COURT: Mr. Young, would you please step

1 forward here before Ms. Gearhart, be sworn as a
2 witness, and then follow her directions from
3 there.

4 JOSHUA YOUNG,

5 having been first duly sworn to tell the whole
6 truth, testified as follows:

7 THE CLERK: Please state your complete name
8 and spell your last name for the record.

9 THE WITNESS: Joshua Young, Y-O-U-N-G.

10 THE COURT: You may inquire of the witness,
11 Mr. Haws.

12 MR. HAWS: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. HAWS:

15 Q. Mr. Young, where do you live?

16 A. Post Falls, Idaho.

17 Q. And where do you work?

18 A. I work for Walmart.

19 Q. Where did you work in the summer of
20 2010?

21 A. Fastlane.

22 Q. Fastlane?

23 A. Yes.

24 Q. And what kind of business is Fastlane?

25 A. It's a Quick Lube.

1 Q. Do you happen to recall June the 15th
2 of 2010?

3 A. Yes, I do.

4 Q. Were you working that day?

5 A. Yes, I was.

6 Q. Is there anything that makes you
7 remember that you were working that day?

8 A. Yes, there was.

9 Q. What was that?

10 A. A piece of galvanized pipe underneath
11 the lady's car.

12 Q. Okay. Let's start at the beginning.
13 What -- about what time did this happen?

14 A. Noonish, I'm guessing. I don't
15 remember the exact time.

16 Q. Do you recall what kind of a car it
17 was?

18 A. It was a Mitsubishi SUV.

19 Q. Color?

20 A. Black.

21 Q. And what was the service on that car?
22 Was that just standard oil change, lube job?

23 A. As far as I know. She come in for an
24 oil change, and, you know, we were in the process
25 of changing the oil in it.

1 Q. And does it have another name that goes
2 with it, Quaker State Quick Lube?

3 A. Well, Quaker State -- it was like a
4 Quick -- it was a Q-Lube. You know, they sell
5 Quaker State oil. The actual name of the company
6 is "Fastlane."

7 Q. Is it proper to call it "Quick Lube" or
8 "fast lube"? Is one more proper than the other?
9 Are they interchangeable?

10 A. Well, the actual name of the company is
11 "Fastlane."

12 Q. Fastlane. And where is that located?
13 Where is Fastlane located in Coeur d'Alene, Idaho?

14 A. On 95 and Bosanko.

15 Q. Bosanko Avenue?

16 A. Yes.

17 Q. It's an intersection with Highway 95?

18 A. Yes.

19 Q. And what was your responsibility when
20 you worked there? What kind of job did you do?

21 A. I was a lube tech.

22 Q. What does a lube tech do?

23 A. Basically, I changed oil. You know, I
24 checked the underhoods. I checked all the gear
25 boxes. I serviced the car.

1 Q. Did you work on that car?

2 A. Yes, I did.

3 Q. What's the first thing you did,
4 Mr. Young?

5 A. I checked the underhood. I checked the
6 fluids under the hood while the other gentleman
7 was putting her information into the computer.

8 Q. Did you change the air filter?

9 A. We did not have the air filter in
10 stock. We ordered one for it, and it was on its
11 way when all of this stuff happened.

12 Q. Okay. Before we go on, let me show you
13 what's been admitted as Exhibit 28.

14 Ms. Rocca, if you would put that up for
15 us.

16 Do you know -- do you know what
17 Exhibit 28, this photograph, shows, Mr. Young?

18 A. That's the Mitsubishi SUV.

19 Q. And is that at the Quaker State or the
20 Fastlane, whatever the name of this business is?

21 A. Yes, it is.

22 Q. That's how you remember it on that
23 date?

24 A. Yes.

25 Q. Ms. Rocca, would you please put up

1 what's been admitted as Exhibit 29.
 2 Showing you Exhibit 29, another
 3 photograph.
 4 A. That's the same vehicle.
 5 Q. Same place?
 6 A. Yes.
 7 Q. Bosanko Avenue and Highway 95?
 8 A. Yes.
 9 Q. Is that Bosanko Avenue that's visible
 10 right there in the background, that street behind
 11 the car?
 12 A. Yes.
 13 Q. Okay. That's how the vehicle appeared
 14 on that day?
 15 A. Yes.
 16 Q. Let me show you -- take that down,
 17 please, and put up Exhibit 30.
 18 THE COURT: Counsel, I published this to the
 19 jury. These are all admitted exhibits. If you're
 20 going to move into any that are not, please let me
 21 know.
 22 MR. HAWS: I'll do that, Your Honor.
 23 BY MR. HAWS:
 24 Q. Admitted Exhibit No. 30, what is that,
 25 Mr. Young?

1 After you looked under the hood and checked on the
 2 air filter, then you went down underneath the car?
 3 A. Yes.
 4 Q. Down in the pit?
 5 A. Down to the pit, yes.
 6 Q. So you were in the pit, and you looked
 7 to talk to somebody up above?
 8 A. Yes.
 9 Q. And you noticed the galvanized pipe?
 10 A. Yes.
 11 Q. Where was that galvanized pipe located
 12 or placed on that vehicle?
 13 A. On the -- on the frame rail between
 14 the -- like the passenger door and the driver's
 15 front door, kind of in the middle.
 16 Q. The passenger door, you mean the back
 17 door or the front -- between the back door and the
 18 front door?
 19 A. Yes.
 20 Q. On the left side?
 21 A. Yes, on the driver's side.
 22 Q. Where the post is that separates the
 23 two compartments?
 24 A. Yes.
 25 Q. Okay. Describe approximately what this

1 A. That's the same black SUV in the
 2 parking lot.
 3 Q. Parking lot of the Quaker State?
 4 A. Yes.
 5 Q. And that's Bosanko Avenue running in
 6 front of it?
 7 A. Yes.
 8 Q. I see some yellow tape there. Do you
 9 know what that represents?
 10 A. That's the caution tape that the police
 11 put up.
 12 Q. Was this, then, after the vehicle had
 13 been removed from the bay?
 14 A. Yes.
 15 Q. Okay. Let's go back to when you were
 16 working on the vehicle inside.
 17 You can take that down, please,
 18 Ms. Rocca.
 19 When you were working on the vehicle
 20 inside, after you checked the oil [sic] filter,
 21 what did you do -- what did you do next?
 22 A. I turned to my left to talk to the
 23 gentleman upstairs and noticed, you know, a piece
 24 of galvanized pipe.
 25 Q. Okay. Excuse me. Let me stop you.

1 looked like. What kind of a galvanized pipe was
 2 it?
 3 A. A piece of galvanized pipe with, like,
 4 two caps on it, you know, screwed on, and a green
 5 -- what looked to be like a firecracker fuse.
 6 Q. A pyrotechnic fuse or a hobby fuse?
 7 A. Yes.
 8 Q. Okay. Did that -- what did you do
 9 then? Did that surprise you?
 10 A. Yes, it did.
 11 Q. And so what did you do?
 12 A. I got the other gentleman to come down
 13 and take a look, and then we discussed that we
 14 should get, you know, the lady and have her come
 15 down and observe what we saw.
 16 Q. Did you know who that lady was? Had
 17 she been a customer before?
 18 A. Never seen her before.
 19 Q. Did she go down into the pit underneath
 20 the car with you?
 21 A. Yes, she did.
 22 Q. Did you show her the -- this galvanized
 23 pipe?
 24 A. Yes, I did.
 25 Q. And did she make a request of you at

1 that time?
 2 A. Just to leave it alone.
 3 Q. Okay. Did you -- did you, at that
 4 time, shoot a picture with your cell phone?
 5 A. Yes, I did.
 6 Q. I'd like to show you what's been
 7 admitted as Exhibit 27. What is Exhibit 27?
 8 A. That is the piece of galvanized pipe
 9 that was underneath the car.
 10 Q. And that's the cell phone photograph
 11 that you took of that --
 12 A. Yes, it is.
 13 Q. -- that device?
 14 A. Yes.
 15 Q. And does that photograph show the frame
 16 that it is attached to, the frame of the car?
 17 A. Yes, it does.
 18 Q. Could you touch that on the screen?
 19 A. Right there.
 20 THE COURT: Circle it with your finger.
 21 THE WITNESS: (Witness complied.)
 22 BY MR. HAWS:
 23 Q. Could you see how it was attached to
 24 the car?
 25 A. It looked like they had attached it

1 Q. Was that a Kootenai County detective?
 2 A. Yes, it was.
 3 Q. Do you know his name?
 4 A. I know his first name. I don't
 5 remember his last name.
 6 Q. What do you remember his first name to
 7 be?
 8 A. Mario.
 9 Q. How did you know him, or how do you
 10 know him?
 11 A. We went to school together years ago.
 12 Q. And so you showed him the picture from
 13 your cell phone?
 14 A. Yeah. They asked if I could email it
 15 to them, and I told them that I could not. I
 16 could, you know, send it as a text message. So he
 17 asked if I could send it to his phone, and he
 18 would email it to his computer.
 19 Q. And so that's what you did?
 20 A. Yes.
 21 Q. At some point when the vehicle was
 22 underneath the -- or while the vehicle was still
 23 in the pit and you were underneath it, at some
 24 point, did you take the fuse wires and tie them up
 25 to the emergency brake cable?

1 with a magnet. They wrapped the -- wrapped it
 2 with some electrical tape.
 3 Q. Was there also wire on there?
 4 A. Yes.
 5 Q. After you discovered -- strike that.
 6 After you took this picture with your
 7 cell phone, what's the next thing that you or the
 8 people at the Quick Lube did?
 9 A. I believe we pushed it out of the shop.
 10 Q. Out into the parking lot?
 11 A. Yes.
 12 Q. Where it's shown in the previous
 13 pictures I showed to you?
 14 A. Yes.
 15 Q. Did anybody call the police?
 16 A. Someone did. I'm not exactly sure who
 17 was actually the initial person to call.
 18 Q. Did law enforcement arrive?
 19 A. Yes, they did.
 20 Q. Did fire trucks arrive?
 21 A. Yes.
 22 Q. Did you send this photograph to anybody
 23 in law enforcement?
 24 A. Yes. I sent it to one of the
 25 detectives that happened to show up on the scene.

1 A. Yes, I did.
 2 MR. HAWS: Okay. No further questions.
 3 THE COURT: Cross?
 4 MR. McALLISTER: None, Your Honor.
 5 THE COURT: All right. You may step down.
 6 I assume the witness can be excused?
 7 MR. HAWS: Ask that he be excused,
 8 Your Honor.
 9 THE COURT: Any objection?
 10 MR. McALLISTER: No objection.
 11 THE COURT: All right. Thank you,
 12 Mr. Young, for being here. You are excused and
 13 released from any subpoena.
 14 The government may call its next
 15 witness.
 16 MR. HAWS: Call Mark Fox.
 17 THE COURT: Sir, would you please step
 18 before the clerk and be sworn, and then follow
 19 Ms. Gearhart's directions from there.
 20 MARK CHRISTOPHER FOX,
 21 having been first duly sworn to tell the whole
 22 truth, testified as follows:
 23 THE CLERK: Please state your complete name
 24 and spell your last name for the record.
 25 THE WITNESS: Mark Christopher Fox, F-O-X.

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

2 MR. HAWS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. HAWS:

5 Q. Mr. Fox, where do you live?

6 A. At Liberty Lake, Washington.

7 Q. And where do you work?

8 A. East Spokane County Sheriff's Office.

9 Q. So you're a law enforcement officer?

10 A. Correct.

11 Q. What is your title?

12 A. Deputy sheriff. I'm a detective
13 corporal.

14 Q. All right. Does that make you a
15 supervisor?

16 A. Yes.

17 Q. And so you supervise other detectives
18 at the Spokane County Sheriff's Office?

19 A. I supervise patrol officers.

20 Q. Or patrol officers. I'm sorry.

21 And how long have you worked at Spokane
22 County Sheriff's Office?

23 A. Since '94.

24 Q. So a total of --

25 A. Seventeen years.

1 Q. And in your work as a deputy sheriff
2 and on the bomb squad, have you had to deal with
3 pipe bombs?

4 A. Several.

5 Q. Is it a common form of event that you
6 deal with on the bomb squad?

7 A. Yes.

8 Q. Approximately how many instances of
9 explosives does the bomb squad in Spokane County
10 deal with on an average year?

11 A. Anywhere from 80 to 130. I believe
12 last year we had 87 calls.

13 Q. Okay. Who is the supervisor of the
14 bomb squad?

15 A. We have several. It's a joint unit
16 between the city and county. On the county side,
17 we have a lieutenant, sergeant, and a corporal;
18 and then we have another technician, as well.

19 Q. Do you recognize the name Mike
20 Kittilstved?

21 A. Yes.

22 Q. And let me take you back to June 15th
23 of 2010. Do you remember that day?

24 A. Yes.

25 Q. Were you involved in something on that

1 Q. -- 17 years?

2 And as a supervisor of patrol officers,
3 do you operate in a marked car?

4 A. I drive an unmarked usually.

5 Q. Okay. Do you have other duties besides
6 that of a patrol supervisor?

7 A. Yes.

8 Q. What are your other assigned duties?

9 A. I'm also on the bomb squad.

10 Q. The bomb squad. How long have you been
11 on the bomb squad?

12 A. Since 2001.

13 Q. What are your duties in connection with
14 the bomb squad?

15 A. I'm a bomb technician.

16 Q. What does a bomb technician do?

17 A. I render bombs and other devices safe.
18 I burn up old dynamite, old explosives. I pick up
19 commercial explosives, countercharge them. Our
20 primary responsibility is, like, if there is an
21 IED, improvised explosive device, we render those
22 safe.

23 Q. "Improvised explosive device," is that
24 another term for a pipe bomb?

25 A. It could be, yes.

1 day that relates to this case?

2 A. Yes, I was.

3 Q. And approximately what time did you get
4 involved in that?

5 A. About, I would say, 12:45-ish to 1:00.

6 Q. So late lunch hour?

7 A. Correct.

8 Q. And where were you at that time?

9 A. I don't know where I was.

10 Q. But you were out in the field --

11 A. Working at the time or I was at home.

12 Q. Where did you go when you received the
13 call?

14 A. I went to the hangar, which is where we
15 store our bomb trucks.

16 Q. So you got ready to go out and respond
17 on this call?

18 A. Correct.

19 Q. Where was this call? Do you know?

20 A. Bosanko Avenue and Highway 95,
21 Coeur d'Alene.

22 Q. In Idaho?

23 A. Correct.

24 Q. Kootenai County?

25 A. Correct.

1 Q. Is that part of your area? Is there a
2 mutual assistance or something that -- between
3 Spokane County and Kootenai County?
4 A. Yes. We cover from Canada to Kamiah
5 over to Ellensburg and pretty much over to
6 Montana.
7 Q. Okay. Who were the members of the bomb
8 squad that responded on June 15th of 2010?
9 A. Sergeant Mike Kittilstved, myself, and
10 George Yingst.
11 Q. And Kittilstved was the --
12 A. He was the sergeant.
13 Q. -- sergeant commander?
14 A. Correct.
15 Q. Okay. Did you, in fact, arrive at
16 Bosanko and Highway 95?
17 A. Yes.
18 Q. And when you arrived there, did you
19 observe a vehicle?
20 A. Yes.
21 Q. Ms. Rocca, if you would put up Exhibit
22 No. 29 for me. It's been admitted.
23 Showing you Exhibit No. 29 in this
24 proceeding. Do you recognize what's shown in that
25 picture?

1 remotely if we can.
2 Q. All right. And when you -- who was
3 operating the robot?
4 A. Sergeant Kittilstved.
5 Q. And did the -- did the robot approach
6 the car?
7 A. Yes, it did.
8 Q. Which side?
9 A. The driver's side.
10 Q. And was the robot successful in
11 removing the device?
12 A. No, it was not.
13 Q. What happened next, then?
14 A. I went down there and attached a rope,
15 a thing we call in our trade as "an endless loop."
16 Basically, it's wrapping a rope around the device,
17 and then I strung the rope out from under the car,
18 attached it to a carabiner and attached it to the
19 robot in an attempt to pull the device out from
20 under the car.
21 Q. All right. Let's back up a little bit.
22 Did you have any protective clothing on when you
23 did this?
24 A. Yes. I had an SRS5 bomb search suit
25 on.

1 A. Yes.
2 Q. And how do you recognize it?
3 A. That was the vehicle that was described
4 as having the pipe bomb under the driver's side
5 door.
6 Q. And is that the vehicle, then, that
7 you -- that you provided service on that day?
8 A. Correct.
9 Q. Okay. When you arrived at that
10 location -- and we're going to call
11 Mr. Kittilstved here in a moment, so we'll go into
12 some of the other details.
13 I would like to get with you to the
14 subject of an attempt that was made with a robot.
15 Do you remember that?
16 A. Yes.
17 Q. Does the bomb squad have some kind of a
18 robot to try to deal with these bomb situations?
19 A. Yes, we do.
20 Q. And why do you use a robot?
21 A. Because it increases our safety.
22 Q. So you use a mechanized device to try
23 to do things so that human beings are not exposed
24 to the dangers?
25 A. Right. We try to do everything

1 Q. Does that cover your hands?
2 A. No.
3 Q. Why?
4 A. Because it's hard to cover your hands
5 when you need them to manipulate things, if you,
6 in fact, have to do that.
7 Q. Covered the rest of your body?
8 A. Yes.
9 Q. Did you have a helmet or any kind of a
10 head protection on?
11 A. Yes. I had the helmet that goes with
12 the suit.
13 Q. When you approached the vehicle, how
14 did you approach it? How were you able to get to
15 it?
16 A. I walked down there.
17 Q. Did you get down on the ground?
18 A. Yes.
19 Q. And did you look underneath the
20 vehicle?
21 A. The first time when I knew the position
22 where the bomb was under the driver's passenger
23 door, I pretty much looked under there until I
24 could see the pipe, and then I reached up there
25 without exposing myself totally under the car and

1 wrapped the loop around the pipe.
 2 **Q.** Approximately where was the pipe
 3 located on that vehicle, the pipe bomb? Is
 4 that -- was it a pipe bomb?
 5 **A.** Yes.
 6 **Q.** You could see that it was a pipe bomb?
 7 **A.** Yes.
 8 **Q.** Where was it located?
 9 **A.** Pretty much right underneath like where
 10 the handle is on the driver's door.
 11 **Q.** Would you use your finger and draw a
 12 circle on that area on the screen there.
 13 **A.** (Witness complied.)
 14 **Q.** So approximately where that line is
 15 between the front door and the back door?
 16 **A.** Yes, up there along the frame.
 17 **Q.** Okay. So you reached under there
 18 solely for the purpose of attaching the "endless
 19 loop," you called it?
 20 **A.** Correct.
 21 **Q.** What is the endless loop made of?
 22 **A.** This one in particular was made of
 23 rope, a small-diameter rope.
 24 **Q.** And the objective is to put the endless
 25 loop on -- and I think you described it earlier --

1 them that I needed a metal one. We also have some
 2 that are like wire ropes that are a lot stronger
 3 than our regular rope endless loops. It's
 4 basically a piece of braided cable.
 5 **Q.** And were you able to obtain a piece of
 6 braided cable or --
 7 **A.** Yes.
 8 **Q.** -- wire rope?
 9 **A.** Yes.
 10 **Q.** And what was the thickness of that?
 11 **A.** It was also about quarter of an inch.
 12 **Q.** And were you able to attach the wire
 13 rope to the pipe bomb?
 14 **A.** Yes, I was.
 15 **Q.** Did you have occasion to look further
 16 underneath the car or look -- take an additional
 17 look underneath the car before you began to try to
 18 pull it off with the iron rope?
 19 **A.** Yes, I did. The wire rope was a little
 20 stiffer and hard to get on the pipe than the
 21 regular rope had been. So I had to climb under
 22 there a little farther so I could get the rope
 23 attached to it.
 24 **Q.** What was impeding you from being able
 25 to put the wire rope on?

1 for what purpose?
 2 **A.** So I could attach it to the robot,
 3 leave the area, and then have the robot remove the
 4 device from the car.
 5 **Q.** And did the robot pull on the endless
 6 loop?
 7 **A.** Yes, it did.
 8 **Q.** And was the robot, using the endless
 9 loop, able to remove the pipe bomb?
 10 **A.** No, it was not.
 11 **Q.** What happened?
 12 **A.** The rope broke, and the device didn't
 13 move.
 14 **Q.** Can you describe the gauge of the rope,
 15 the thickness of the rope that you were using for
 16 that endless loop?
 17 **A.** Maybe a quarter to a half of an inch.
 18 I would say it's probably a quarter of an inch.
 19 **Q.** When the -- when the rope endless loop
 20 failed, what was the next option for the bomb
 21 squad?
 22 **A.** I got ahold of the guys. I was down
 23 there where the car was. They were in the truck.
 24 And we can communicate through our robot. It has
 25 a wireless transmitter and receiver on it. I told

1 **A.** The stiffness of the rope, and then
 2 when I got under there, I observed that there was
 3 also like baling wire underneath that they had
 4 used to secure the pipe and the magnet to the car.
 5 **Q.** Behind you, on the floor behind you or
 6 your chair, there are -- there is a box full of
 7 exhibits. I'll ask you, if you would, please, to
 8 turn around and you see if you can find Exhibit
 9 No. 84. And keep it down because it has not been
 10 admitted yet to the jury.
 11 I may have misled you there. Let's go
 12 to 84.
 13 Your Honor, if we can blank the screen
 14 for the jury. I want to show a picture of it.
 15 Ms. Rocca, if you'll put up Exhibit 84,
 16 please.
 17 All right. I was right the first time.
 18 Would you look at 84, please, outside
 19 of the view of the jury, and see if you can locate
 20 it.
 21 **A.** Does the exhibit have the marking on it
 22 as far as what it is?
 23 **Q.** Yes. It should have Exhibit No. 84
 24 sticker on there.
 25 **A.** Could you possibly check your exhibit

1 number again? I'm not seeing it.
 2 THE COURT: Mr. Severson, maybe you can
 3 help --
 4 MR. HAWS: It is 84. It's -- it may be in
 5 one of the other packaging containers there.
 6 MS. WHELAN: Your Honor?
 7 THE COURT: I'm sorry? Ms. Whelan?
 8 MS. WHELAN: I think we usually take a break
 9 somewhere around here.
 10 THE COURT: Yeah. We're about five minutes
 11 early. This might save time. We'll just take a
 12 recess at this point, and that will allow the
 13 witness -- if you could perhaps work with the
 14 witness and get lined up whatever exhibits you
 15 need to have him look at.
 16 MR. HAWS: We'll do that, Your Honor.
 17 THE COURT: Ladies and gentlemen, we'll
 18 again take a 15-, 20-minute recess. I'll again
 19 admonish you not to discuss the case among
 20 yourselves or with anyone else, nor should you
 21 form or express any opinions about the case until
 22 it is submitted to you.
 23 Also, the court would remind you of
 24 your obligation to follow the court's extended
 25 admonition concerning juror conduct as we

1 is?
 2 A. It's baling wire.
 3 Q. And have you seen that baling wire
 4 before?
 5 A. Yes.
 6 Q. Where have you seen it?
 7 A. It was used to attach the pipe and the
 8 magnet under the car.
 9 MR. HAWS: Your Honor, at this time I would
 10 move the admission of Exhibit No. 84.
 11 MR. McALLISTER: No objection.
 12 THE COURT: Exhibit 84 will be admitted. It
 13 may be shown to the jury.
 14 (Government's Exhibit 84 admitted.)
 15 MR. HAWS: Thank you, Your Honor.
 16 BY MR. HAWS:
 17 Q. Detective Fox, having been admitted, I
 18 would ask you now to examine Exhibit 84 and show
 19 it to the jury.
 20 A. (Witness complied.)
 21 Q. Those are the pieces of wire that
 22 you're referring to in your testimony?
 23 A. Correct.
 24 Q. That were holding the pipe bomb onto
 25 the car?

1 discussed on the first day of trial.
 2 We'll be in recess.
 3 (Recess.)
 4 (Jury present.)
 5 THE COURT: For the record, I'll note that
 6 all jurors are present.
 7 Is it Detective Fox or --
 8 THE WITNESS: Detective Corporal.
 9 THE COURT: I'm going to go with detective.
 10 THE WITNESS: Whatever you would like to
 11 call me is fine.
 12 THE COURT: Detective Fox, I'll remind you
 13 you are still under oath.
 14 Mr. Haws, you may resume your direct
 15 examination of the witness.
 16 MR. HAWS: Thank you, Your Honor.
 17 BY MR. HAWS:
 18 Q. Just before the break, Detective Fox,
 19 we were looking for Exhibit No. 84. Did you
 20 locate that?
 21 A. Yes, I did.
 22 Q. And have you had a chance to examine
 23 Exhibit 84?
 24 A. Yes, I have.
 25 Q. Can you describe for the record what it

1 A. Correct.
 2 Q. Was the robot able to -- well, let's
 3 back up.
 4 When you reached underneath the car,
 5 did you undo those pieces of wire, Exhibit 84?
 6 A. Yes, I did.
 7 Q. With your hand?
 8 A. Correct.
 9 Q. And once you were -- were you able to
 10 just undo them without a tool?
 11 A. Yes.
 12 Q. Once you undid the wires, then what
 13 happened?
 14 A. The pipe bomb started coming off of the
 15 frame rail of the car.
 16 Q. Was there anything else attaching it to
 17 the car at that time besides the wires?
 18 A. No. There was a magnet on the pipe.
 19 Q. Did it come off with the magnet?
 20 A. Yes, it did.
 21 Q. And were you able to -- able to handle
 22 that device?
 23 A. Yes, I was.
 24 Q. What did you do with it?
 25 A. I sat it down on the ground as

1 carefully as I could, and then I took the rope
 2 that was tied around it and attached it to our
 3 robot.
 4 **Q.** Can you comment on the weight of that
 5 pipe when you took it down off the frame of the
 6 car?
 7 **A.** It was heavy.
 8 **Q.** Heavier than an empty pipe would be?
 9 **A.** Yes.
 10 **Q.** When you -- did you then attach the
 11 wire rope to that device?
 12 **A.** I believe I attached it before.
 13 **Q.** Before. So did the robot help remove
 14 the device off the car?
 15 **A.** No. I did that by hand.
 16 **Q.** But you dropped it down to the ground?
 17 **A.** Correct.
 18 **Q.** But you didn't take it away from the
 19 car; is that correct?
 20 **A.** Correct.
 21 **Q.** Did -- was the robot used to approach
 22 the car and the pipe bomb then, after it was down
 23 on the ground?
 24 **A.** Yes.
 25 **Q.** Okay. Who was operating the robot

1 **Q.** Was it securing the fuse inside of
 2 the -- inside of the end cap of the bomb?
 3 **A.** From -- I couldn't see the inside,
 4 obviously. But, from the outside, yes, it looked
 5 like it was being used to secure the fuse onto the
 6 pipe.
 7 **Q.** Was the black tape wrapped around the
 8 end cap?
 9 **A.** Yes.
 10 **Q.** Did you participate in the next part of
 11 this -- of this operation, when the pipe was
 12 actually removed and rendered safe?
 13 **A.** I participated in closing up our
 14 containment vessel that it was put in.
 15 **Q.** At some point, the pipe bomb, then, was
 16 removed using the robot?
 17 **A.** Correct.
 18 **Q.** And then how was the pipe bomb placed
 19 into a containment vessel?
 20 **A.** With the robot.
 21 **Q.** And then what did you do?
 22 **A.** Then, once the robot placed it in
 23 there, it backed away, and I went up and secured
 24 the containment vessel for transport.
 25 **Q.** Were you part of the transport?

1 again?
 2 **A.** Sergeant Mike Kittilstved.
 3 **Q.** Kittilstved. When you set it down on
 4 the ground underneath the car, was -- was there
 5 any kind of fusing attached to that pipe bomb?
 6 **A.** Yes, there was.
 7 **Q.** What kind of fuse was it?
 8 **A.** A pyrotechnic fuse.
 9 **Q.** Color?
 10 **A.** Green.
 11 **Q.** Did you do anything with that fuse?
 12 **A.** No, I did not.
 13 **Q.** You simply sat the bomb down on the
 14 ground?
 15 **A.** Yes.
 16 **Q.** Were you able to observe where the
 17 pyrotechnic fuse was attached to the pipe bomb?
 18 **A.** Like towards the end cap that would be
 19 to the rear of the vehicle.
 20 **Q.** Did you see any other material on the
 21 pipe bomb besides the magnet and the pyrotechnic
 22 fuse?
 23 **A.** Black tape.
 24 **Q.** And where was the black tape?
 25 **A.** Like where the fuse went into the pipe.

1 **A.** Yes.
 2 **MR. HAWS:** Okay. I have no further
 3 questions for Detective Fox.
 4 **THE COURT:** Cross-examination?
 5 **MR. McALLISTER:** None, Your Honor.
 6 **THE COURT:** You may step down, Detective
 7 Fox. Thank you.
 8 I assume the witness can be excused and
 9 released from any subpoena?
 10 **MR. HAWS:** Ask that he be excused,
 11 Your Honor.
 12 **THE COURT:** Thank you, sir.
 13 Call your next witness.
 14 **MR. HAWS:** Thank you. Sergeant Mike
 15 Kittilstved.
 16 **THE COURT:** Sir, would you please step
 17 before the clerk and be sworn.
 18 **MICHAEL KITTILSTVED,**
 19 having been first duly sworn to tell the whole
 20 truth, testified as follows:
 21 **THE CLERK:** Please state your complete name
 22 and spell your last name for the record.
 23 **THE WITNESS:** My name is Michael Kittilstved
 24 K-I-T-T-I-L-S-T-V, as in Victor, -E-D.
 25 **THE COURT:** You may inquire of the witness.

1 MR. HAWS: Thank you, Your Honor.
 2 DIRECT EXAMINATION
 3 BY MR. HAWS:
 4 Q. Sergeant Kittilstved, where do you
 5 work?
 6 A. For the Spokane County Sheriff's
 7 Office.
 8 Q. You're a sergeant there?
 9 A. I am.
 10 Q. How long have you been a sergeant at
 11 Spokane County Sheriff's Office?
 12 A. I've been a sergeant since September of
 13 2003, and I was employed in 1995.
 14 Q. At the Spokane County Sheriff's Office?
 15 A. Yes.
 16 Q. So a total of 15 years of experience in
 17 law enforcement?
 18 A. Yes.
 19 Q. And your title is sergeant. What are
 20 your duties?
 21 A. My full-time duties is I'm a sergeant
 22 in the investigative division for the sheriff's
 23 office, also known as the detective division.
 24 Q. Do you have any specific
 25 responsibilities with regard to any task forces?

1 geographic area basically from Okanogan County,
 2 which, in eastern Washington is the -- borders
 3 British Columbia and is about halfway through the
 4 state of Washington, all the way to the Montana
 5 western border. And we cover down to Oregon. So
 6 we handle pretty much all of eastern Washington
 7 and all of north Idaho.
 8 Q. Does that include Kootenai County,
 9 then, in north Idaho?
 10 A. Yes.
 11 And part of the responsibilities of our
 12 team is handling old, deteriorated commercial
 13 explosives and disposing of those properly;
 14 handling homemade explosives; firework disposals;
 15 as well as rendering safe IEDs, also bombs.
 16 Q. By "IED," you mean?
 17 A. An IED is a common term we use for
 18 "improvised explosive device." Most people would
 19 commonly refer to it as a "bomb," but I think in
 20 recent times, people refer to them as "IEDs" more
 21 often.
 22 Q. So would a pipe bomb be an IED?
 23 A. Yes, sir.
 24 Q. Approximately how many incidents do
 25 you -- are you involved in during the year as part

1 A. I do.
 2 Q. Would you explain that?
 3 A. I supervise our Safe Streets gang
 4 enforcement unit, also our gang task force. It's
 5 a multiagency task force that operates for eastern
 6 Washington dealing primarily with gangs and gang
 7 enterprises.
 8 Q. Do you have any other responsibilities
 9 besides investigative duties and directing the
 10 Safe Streets task force?
 11 A. I do.
 12 Q. What are those duties?
 13 A. I'm also a supervisor of the Spokane
 14 bomb squad.
 15 Q. How long have you been the supervisor
 16 for the Spokane bomb squad?
 17 A. I've been supervisor for the bomb squad
 18 since 2008, but I was a technician on the team
 19 from 2001 to 2003, when I was promoted to
 20 sergeant.
 21 Q. So how many years is that in experience
 22 with the bomb squad, then?
 23 A. About -- over six.
 24 Q. What does the bomb squad do?
 25 A. Our primary responsibility covers a

1 of the bomb squad?
 2 A. Personally, I respond to anywhere from
 3 25 to 40 incidents per year. Generally,
 4 supervisors go on every call. There is several
 5 supervisors on our team. There's two sergeants
 6 and two lieutenants. But the team responds, on
 7 average -- in the modern era, in the last ten
 8 years, an average of 80 to 120, 130 calls a year.
 9 Q. You indicated, then, that you handle --
 10 dispose of explosives if somebody finds explosives
 11 on their property?
 12 A. Yes, sir.
 13 Q. Old dynamite, things like that?
 14 A. Yes, sir.
 15 Q. Do you also, then, have contact with
 16 IEDs people call in about?
 17 A. Yes, I do.
 18 Q. And so how many times have you been
 19 involved in incidents involving pipe bombs,
 20 per se? Can you estimate that for us?
 21 A. Exact number would be difficult, but I
 22 can tell you that pipe bombs are -- of all the
 23 IEDs we deal with, pipe bombs are the most common
 24 and the most numerous device we deal with.
 25 Q. Is there a great variety to what a pipe

1 bomb consists of and how it's made?

2 **A.** They are pretty -- pretty consistent.

3 You have what they call a "pipe nipple." It's a
4 straight length of pipe with two end caps.

5 Sometimes they use PVC or plastic pipe, or they
6 can use galvanized or any type of metal pipe.

7 **Q.** You see both?

8 **A.** Yeah. We have seen all types.

9 There is also a black -- black piping,
10 you know, like sewer pipe. You can use that.
11 Pretty much anything where you have end caps and a
12 middle section.

13 **Q.** So is that why they're called
14 "improvised explosive devices"?

15 **A.** Right. There is no legitimate, legal
16 use for a pipe bomb, that I know of.

17 **Q.** What kind of training have you had with
18 regard to explosives and pipe bombs?

19 **A.** The main course that we attend is a
20 course sponsored by the Department of Justice at
21 Redstone Arsenal in Huntsville, Alabama. That's
22 where you obtain your Hazardous Devices Technician
23 certification.

24 In addition to that -- that's just --
25 that's like the equivalent of kind of the police

1 academy for bomb techs. That's just the beginning
2 of quite a bit of extensive training we receive
3 both in-house that we train twice a month.

4 Actually, our unit trains three times a month.

5 Most teams twice, three times a month, as well as
6 other extended multiweek trainings throughout the
7 U.S.

8 **Q.** You mentioned that basic training that
9 was put on by the Department of Justice. Which
10 agency within the Department of Justice puts that
11 on?

12 **A.** The FBI is the primary agency.

13 **Q.** Have you had training with the Bureau
14 of Alcohol, Tobacco, and Firearms, ATF?

15 **A.** Yes.

16 **Q.** How many hours total in training does
17 the basic course cover?

18 **A.** When I went, it was five weeks long,
19 sir.

20 **Q.** And how many hours of training -- well,
21 if you can estimate, do you have any estimate as
22 to how many hours of training you have spent on
23 bomb squad issues?

24 **A.** Conservatively, I have well over 2,000
25 hours of training.

1 **Q.** Do you recall an incident that occurred
2 on June the 15th of 2010?

3 **A.** I am [sic].

4 **Q.** And how did you receive notification
5 about that incident?

6 **A.** I received a phone call from ATF Agent
7 Todd Smith. He knows that I'm on the bomb squad
8 and a supervisor and would be a first call for a
9 response. Call the supervisor, obviously, first.

10 **Q.** And where was that incident reported
11 from?

12 **A.** The incident was occurring at Highway
13 95 and Bosanko in Coeur d'Alene.

14 **Q.** Are you familiar with that area of
15 Coeur d'Alene, Idaho?

16 **A.** I've been through there, yes.

17 **Q.** And have you been to Highway 95?

18 **A.** Yes.

19 **Q.** Would you describe Highway 95 for the
20 jury, what kind of thoroughfare it is?

21 **A.** It's a multilane main arterial, very
22 busy road. It's not like a back highway or
23 anything. There is multiple businesses that line
24 it and a very populated urban area, I guess.

25 **Q.** And Bosanko Avenue, what kind of a

1 street is that?

2 **A.** Bosanko is more of a side street
3 intersecting in with the main highway.

4 **Q.** Located on the corner at the
5 intersection of Bosanko and Highway 95, was there
6 a business that you responded to on the 15th of
7 June of 2010?

8 **A.** Yes.

9 **Q.** Which corner was that located on?

10 **A.** The southwest corner.

11 **Q.** What's located there? What kind of
12 business was it?

13 **A.** It's a Quick Lube, Quaker State oil
14 change, fast-lube kind of place.

15 **Q.** When you arrived -- well, let's back
16 up.

17 When you received the notification,
18 were you placed in charge of the -- were you the
19 supervisor designated for this incident?

20 **A.** I was.

21 **Q.** And what did you do in order to
22 mobilize?

23 **A.** Well, the first thing I did was find
24 out which bomb techs I had working on duty that
25 were available to immediately respond. I

1 contacted Corporal Fox, Detective Fox, as well as
2 Deputy Yingst. They were both on duty. And I had
3 them respond to our -- the locations where we keep
4 our vehicles, our response vehicles.

5 I also made some phone calls to my
6 superiors to let them know about the call we were
7 going on, since we were going to be leaving the
8 county.

9 **Q.** Is there a place where you rendezvous
10 on a call to get ready?

11 **A.** Yes. We keep our vehicles in several
12 different locations. And I responded with
13 Corporal Fox to one of those locations, and we
14 rode together over in a vehicle.

15 **Q.** What equipment did you get ready to
16 respond to this -- to this call?

17 **A.** We -- we brought two vehicles. The
18 first one is -- we call it an "EVI." It's a
19 Freightliner, kind of like a big moving van, so to
20 speak. It looks like that. However, the inside
21 carries all our specialized equipment as well as
22 the robot.

23 The other vehicle we brought was a Ford
24 Excursion, just a standard Ford Excursion. We
25 have a slide-out container inside that contains

1 the area or any vehicles that might try to pull
2 into the business for an oil change, not knowing
3 what was going on.

4 **Q.** Law enforcement from -- which agencies
5 responded from law enforcement?

6 **A.** The ones I know for sure that were
7 there was -- I believe Idaho State Patrol was
8 dealing with traffic control because it was state
9 highway. Kootenai County Sheriff's Office, Coeur
10 d'Alene P.D., as well as Coeur d'Alene Fire
11 Department.

12 **Q.** Were federal officials there?

13 **A.** Possibly. I know that Agent -- or
14 Special -- or Task Force Officer Mark Todd was
15 there, and he works with the North Idaho Violent
16 Crimes Task Force, which is -- he is a
17 credentialed federal officer; however, he works
18 for the Coeur d'Alene Police Department.

19 **Q.** Did you observe a vehicle at that
20 location?

21 **A.** I did.

22 **Q.** And was that the suspect vehicle or the
23 vehicle that had the pipe bomb on it?

24 **A.** Yes.

25 **Q.** Describe that for the jury.

1 our bomb suits and other standard equipment.

2 That vehicle also brought out a trailer
3 that contained -- it's called the "total
4 containment vessel." A lot of people have seen
5 it. It kind of looks like a diving bell, so to
6 speak. And it's a very thick-walled, steel, round
7 orb that we can use to safely transport a certain
8 amount of explosives in safely.

9 **Q.** What does "EVI" stand for, then?

10 **A.** I'm not sure what the "EVI" stands for.
11 I think that's the company that manufactures it.

12 **Q.** I see. What does "TCV" stand for?

13 **A.** "Total containment vessel."

14 **Q.** So the three of you were operating two
15 vehicles. Responded to Bosanko Avenue?

16 **A.** Yes.

17 **Q.** Approximately what time?

18 **A.** Around 1:00.

19 **Q.** What did you find when you arrived
20 there?

21 **A.** When we pulled up in the area, the
22 first thing we saw were, you know, numerous fire
23 apparatus, fire vehicles, police vehicles in the
24 area. Crime scene tape was up surrounding the
25 business, presumably to keep pedestrians out of

1 **A.** It was a dark Mitsubishi Endeavor. I
2 believe it was a 2004. It was a -- you know, a
3 smaller SUV.

4 **Q.** Where was it located?

5 **A.** It was parked on the north side of the
6 business in the parking lot out in the open -- not
7 like in a parking space or anything -- facing
8 westbound.

9 MR. HAWS: Ms. Rocca, if I could get you to
10 put up Exhibit No. 28, which has been admitted
11 into evidence.

12 Your Honor, if we could show that.

13 THE COURT: Yes.

14 BY MR. HAWS:

15 **Q.** Showing you what's been marked for
16 identification as Exhibit 28. Do you recognize
17 what's depicted in that photograph?

18 **A.** I do.

19 **Q.** What does it show?

20 **A.** The 2004 Mitsubishi Endeavor.

21 **Q.** And where does it show it?

22 **A.** It's in the parking lot facing west on
23 the north side of the business.

24 **Q.** And is there some kind of yellow tape
25 across the front of that -- those premises?

1 A. Yes.
 2 Q. Was that in place when you arrived?
 3 A. I believe so, yes.
 4 Q. Let's take that down and put up Exhibit
 5 No. 29, please, also admitted.
 6 Showing you what's been admitted here
 7 as evidence Exhibit No. 29. Does that show the
 8 same vehicle?
 9 A. Yes.
 10 Q. Looking from the other side of it?
 11 A. Yes.
 12 Q. So looking at the driver's door. And
 13 was that the area that you were told that the pipe
 14 bomb was located?
 15 A. Yes. They told me it was directly
 16 underneath the driver's seat on the undercarriage.
 17 Q. And then let's take that down. And
 18 admitted photograph -- admitted Exhibit No. 30,
 19 another photograph.
 20 Look at Exhibit 30. Does that show the
 21 location, as well?
 22 A. Yes.
 23 Q. And does it show the same yellow tape?
 24 A. Yes.
 25 Q. The yellow tape appears to be on the

1 the size of the device?
 2 A. While I was en route, I received an
 3 email to my phone or a text message from Sergeant
 4 Tull, who I had -- after I had talked to Agent
 5 Todd Smith, who had told me about the incident and
 6 wanted me to respond, I received a phone call from
 7 Sergeant Tull, who was the incident commander on
 8 scene with Coeur d'Alene P.D.
 9 And I asked him if they had any
 10 pictures of it. Quite often, they might. And he
 11 did, and he sent me a photograph that was taken by
 12 the mechanic while he was underneath the vehicle
 13 when he started to change the oil and discovered
 14 the item.
 15 Q. Well, this would be a good time to show
 16 you what's been admitted as Exhibit No. 27.
 17 If you'll put that up, Ms. Rocca.
 18 What is Exhibit 27?
 19 A. That is the picture that was taken by
 20 the mechanic while the item was underneath the
 21 vehicle.
 22 Q. As a -- as a trained bomb squad
 23 commander, when you arrive at a location like that
 24 with a car like that and see that type of a device
 25 on a cell phone picture, what do you see in that

1 far side of the street closest to the business,
 2 the Quaker State lube business. Do you see that?
 3 A. Yes.
 4 Q. Was traffic going through that location
 5 on Highway -- on Bosanko Avenue when you arrived?
 6 A. No. They -- I believe they had a
 7 patrol car stopping traffic from 95 onto Bosanko,
 8 so they couldn't turn off. But they obviously
 9 pulled and let us pull down in the area.
 10 Q. Was traffic still circulating
 11 southbound on Highway 95 when you arrived?
 12 A. Yes.
 13 Q. And did you have any kind of
 14 conversation with law enforcement officers, the
 15 law enforcement incident commander?
 16 A. Yes. That was Sergeant Tull from the
 17 Coeur d'Alene Police Department. And we discussed
 18 the situation and the size of the device. And it
 19 was my recommendation that traffic be stopped on
 20 Highway 95 when we began our operation for safety
 21 reasons for those people driving on 95.
 22 Q. Was Highway 95 stopped, the southbound
 23 flow?
 24 A. Yes.
 25 Q. Now, how did you know anything about

1 picture that governs your reaction and decisions
 2 you make as the commander there?
 3 A. It has every indication to me to be an
 4 actual device. It looks like it's securely
 5 fastened to the car. It didn't just happen upon
 6 it. It -- a metal pipe is obviously, for us,
 7 between -- of all the types of ways you could make
 8 a pipe bomb, galvanized pipe is more dangerous due
 9 to the fragmentation of it. It's hard metal
 10 compared to plastic.
 11 You can clearly see two fuses.
 12 Q. Would you please put a circle around
 13 where those fuses are.
 14 A. (Witness complied.)
 15 Q. And in relationship to the pipe bomb,
 16 where are they?
 17 A. It appears they're going into an end
 18 cap, which is very common -- a common location for
 19 a person who builds these to insert the fuse
 20 because they drill through the end cap. It's
 21 easier to drill through the flat end rather than
 22 through the sidewall.
 23 Q. Now, you didn't know when you saw that
 24 picture exactly how it was attached, but that's
 25 what occurred to you?

1 A. Yes.

2 Q. What else did you see in that picture
3 that would be important for you, as an incident
4 commander?

5 A. Well, obviously, I'm trying to
6 determine how this is attached to the vehicle.
7 There has to be some type of attachment method.

8 And you can see -- on my cell phone
9 picture, it wasn't as clear as this, but I could
10 clearly see the electrical tape. And that
11 indicated to me that either they had taped it up
12 with electrical tape -- which was probably
13 unlikely, because electrical tape isn't
14 necessarily that strong by itself -- but that
15 there might have been some other methods, like a
16 magnet, which we have seen used throughout the
17 U.S. and internationally to attach pipe bombs to
18 cars.

19 Q. Point to the electrical tape that's on
20 that device that you're referring to.

21 A. It's this black tape here (indicating),
22 as well as here.

23 Q. Okay.

24 A. Actually, this tape goes further back
25 if you can follow it.

1 attempted to move the fuse or tried to pull it out
2 of it. And at that point -- you know, I can't
3 remember exactly what he said, but it was
4 something to that --

5 Q. That he had moved the fuse?

6 A. Yeah, he had done something with the
7 fuse.

8 Q. What's the first thing you began to do,
9 then, to handle the situation?

10 A. The first thing that we do is brief
11 the fire -- well, we come up with a plan as a
12 team. And the three of us there put our heads
13 together with how to deal with it based on our
14 training and experience in dealing with these
15 things. Then we run it by the incident commander.
16 And we had a meeting with them and the fire
17 department.

18 One of the other things we needed to do
19 was brief the fire department on how to respond if
20 one of my bomb techs got hurt and how to get them
21 out of the bomb suit and respond for first aid and
22 how to do that safely, if there was an accidental
23 explosion.

24 As soon as all those briefings are done
25 and we're ready to go downrange, we decided to

1 Q. Were you able to determine -- before
2 you began to deal with this pipe bomb, were you
3 able to determine the size of it, the dimension of
4 it?

5 A. Just looking at the vehicle and based
6 on what Sergeant Tull had told me about contact
7 with the finder as well as looking at the picture,
8 I immediately believed it was a rather large pipe
9 bomb compared to what we usually deal with.

10 Q. Okay. Let's take down that exhibit.
11 And let me ask you a couple of other questions
12 here before we move to the next subject.

13 Did you actually speak with Josh Young,
14 the technician who found the pipe bomb?

15 A. I did, briefly, yes.

16 Q. Did he give you any additional
17 information?

18 A. No. He said that he found it. He went
19 and contacted the lady who brought the car in to
20 ask her about it. He had told me something about
21 offering to remove it for her, and she told him
22 no.

23 And that he had also -- I don't
24 remember exactly what he told me, but something
25 about he had -- he had dealt with the fuse and

1 send the robot down, trying to stay remote.

2 Q. Let's stop there for just a second, and
3 let me ask you a question.

4 So there was an overall incident
5 commander for the police. There was somebody in
6 charge of fire units. You were in charge of the
7 bomb unit; is that correct?

8 A. That's correct.

9 Q. Where did you station your vehicles in
10 relationship to the black Mitsubishi?

11 A. We were in another business lot or some
12 type of a parking lot west of there a couple
13 hundred yards.

14 Q. Were you able to use your -- did you
15 think that you would be able to use your robot to
16 go from there over to the black Mitsubishi?

17 A. Yes.

18 Q. Okay. So what is the next step you
19 took?

20 A. Well, and one thing I forgot is that,
21 in addition to briefing everybody on how we were
22 going to respond, we requested Highway 95 be shut
23 down.

24 Q. I believe you stated that earlier.

25 A. We talked about that earlier. And so

1 that occurred. And once that occurred, then we
2 went -- I sent the robot downrange, and I operated
3 the robot.

4 **Q.** Is there a perimeter you were looking
5 to establish for this type of an incident?

6 **A.** Our typical guidelines on something are
7 300 feet plus. I wanted it to be more, based on
8 the size of the device and the fragmentation
9 hazard; if it exploded, the fragmentation that
10 come from the pipe out into the open area.

11 There was a bank just north of, across
12 Bosanko in a parking lot. They were -- I think
13 they had not let any new customers in, but they
14 were in the process of trying to -- you know, it
15 was midday. They were trying to deal with money
16 in the tills and everything.

17 So I asked them, if they insisted on
18 staying in the bank, to stay on the opposite side
19 away from the windows.

20 **Q.** How close is the Quick Lube to Highway
21 95 itself?

22 **A.** Oh, maybe 30 yards. A hundred feet.

23 **Q.** So then what was your next decision?

24 **A.** We took the robot downrange. We had
25 our perimeter set. It was safe to approach. So I

1 the device using the grip or the claw on the front
2 of the robot. However, because the car was so low
3 and the angle, I was not able to do that.

4 However, I was able to get the camera,
5 which is mounted up on the front of the arm,
6 underneath and inspect the bottom of it, not just
7 for that device but to see if there are other
8 devices there that we weren't aware of.

9 **Q.** You mentioned a camera. Does it also
10 take a video of what's happening?

11 **A.** Yes. We -- there is three cameras on
12 the robot. And -- actually, four cameras. And it
13 does have -- when it sends the wireless signal
14 back to our truck, we're able to record it onto a
15 VHS tape.

16 **Q.** Did you record a video on this
17 occasion?

18 **A.** I did.

19 **Q.** So let's continue with your -- your
20 description of how you positioned the robot. And
21 you said you placed it next to the driver's side
22 door?

23 **A.** Yes.

24 **Q.** And were you able to use the claw of
25 the robot to remove the pipe bomb?

1 ran the robot down using a wireless system and --

2 **Q.** Let's explain that for the jury. How
3 do you -- describe this robot.

4 **A.** The robot we use is a standard-issue
5 robot for bomb squads of the U.S. and U.S.
6 military. It's made by a company called REMOTEC.
7 It's called an ANDROS F6A Robot. It weighs about
8 550 pounds. It can drag a 200-pound man in an
9 80-pound bomb suit out of an area in case, you
10 know, they get stuck or fall down or something and
11 can't get out and it's not safe for us to
12 approach. It's a very strong robot.

13 **Q.** Do you operate it remotely?

14 **A.** Yes.

15 **Q.** Who was operating it on this occasion?

16 **A.** I was.

17 **Q.** And where do you operate it from? From
18 the vehicle?

19 **A.** Yes.

20 **Q.** So you got the robot out, you activated
21 it, you brought it over toward the Mitsubishi?

22 **A.** Yes.

23 **Q.** And were you able to position it?

24 **A.** Right. I positioned it in such a way I
25 was trying to -- the plan was to try and remove

1 **A.** No.

2 **Q.** Why not?

3 **A.** The vehicle was too low. And the
4 angle, the robot arm was not able to reach up and
5 grab onto it.

6 **Q.** So what was your next alternative, as
7 being the person in charge of that scene, of the
8 bomb scene?

9 **A.** We decided to try to attach a rope to
10 it and attach that to the robot in attempt to,
11 once again, stay remote and pull it off. However,
12 in order to put the rope on there, I would have to
13 send a bomb tech down in a bomb suit to lay on the
14 ground and attach that rope to the device.

15 **Q.** Did you decide to do that?

16 **A.** I decided that -- well, we decided that
17 that would be the best course of action. And
18 Detective Fox volunteered to do that.

19 **Q.** He volunteered?

20 **A.** Yes.

21 **Q.** This -- this rope you're talking about,
22 a term has been used here about an "endless loop."
23 Is that what you're referring to?

24 **A.** Right. It's just a piece of rope that
25 we can tie -- you know, it's basically just like a

1 circle, and it's tied, you know, knotted at the
2 end. And it's just a way to loop it around the
3 pipe and back into a carabiner -- which people use
4 for their keys or for rock climbing or whatever --
5 and hook that onto the robot.

6 **Q.** What did you do to make sure that a
7 member of your team was safe in getting near that
8 bomb?

9 **A.** I kept the video cameras on him while
10 he was downrange, so I could not only communicate
11 with him, but, you know, we could keep an eye on
12 him.

13 **Q.** Did he have a special suit?

14 **A.** He had on -- it's called an SRS5 search
15 suit. It's actually a midlevel bomb suit. The
16 large bomb suit probably wouldn't have afforded
17 him the flexibility or the ability to lay down
18 like that and get to it. So he had to wear a
19 smaller suit, which offers less protection.

20 **Q.** Where was the robot when he approached
21 the vehicle?

22 **A.** It was just to the side of him, out of
23 his way.

24 **Q.** Were you able to see both him and the
25 robot?

1 **A.** At the --

2 **Q.** Were you able to observe both his
3 actions and the robot?

4 **A.** Yes.

5 **Q.** And did he lay down on the ground next
6 to the vehicle?

7 **A.** He did.

8 **Q.** Did you observe that?

9 **A.** Yes.

10 **Q.** And did you observe him placing the
11 endless loop on the -- on the pipe bomb?

12 **A.** Yes.

13 **Q.** You could see that with the robot
14 camera?

15 **A.** Yes.

16 **Q.** After he had placed the endless loop,
17 what happened next?

18 **A.** He attached it to the robot and he
19 cleared out of the area, around the corner of the
20 building. Once I made sure he was out of the
21 area, I drove the robot backwards in attempt to
22 pull it off. And it didn't move at all off the
23 car, the pipe bomb, but it did break the rope.

24 **Q.** And this was what kind of dimension on
25 the rope?

1 **A.** Probably quarter-inch nylon -- or, you
2 know, braided rope.

3 **Q.** So the robot was strong enough to pull
4 that back, and the pipe bomb was strongly enough
5 attached to the car that the rope broke?

6 **A.** Yes.

7 **Q.** What was your next alternative?

8 **A.** We wanted to try a stronger rope,
9 because I still didn't want somebody having to go
10 up and put their hand on it.

11 So he -- Deputy Yingst grabbed some
12 steel rope -- basically, the same thing, just made
13 out of steel, braided steel -- and brought that
14 down, and we attempted to do the same thing again.

15 **Q.** Was he able to position the steel rope
16 around the pipe bomb?

17 **A.** Yes.

18 **Q.** Did he have to do something before he
19 was able to put the steel rope around the pipe
20 bomb?

21 **A.** Yes.

22 **Q.** Did you observe what he did?

23 **A.** Yes.

24 **Q.** What did he do?

25 **A.** We were watching, and all of a sudden,

1 we saw him starting to untangle or untwist baling
2 wire from the device. And then he pulled it off
3 in his hand and he set it on the ground and
4 completed, you know, attaching the endless loop to
5 it.

6 **Q.** So there was enough play in the device
7 that it was able to drop from the frame down
8 onto -- he was able to set it from the frame down
9 onto the ground?

10 **A.** Yeah. Had he not, it would have just
11 fallen on the ground.

12 **Q.** Okay.

13 **A.** I mean, he started to pull it off. And
14 then once the magnetic bond broke, he set it on
15 the ground.

16 **Q.** So there were no other wires attaching
17 it?

18 **A.** Just the fuse going up to the frame.

19 **Q.** So there was fuse still visible
20 attached from the pipe bomb up to up underneath
21 the car?

22 **A.** Right, at least two pieces that we
23 could see.

24 **Q.** Okay. When he -- did he clear the --
25 clear the area there before you began to back up

1 the robot?
 2 A. Yes.
 3 Q. And what happened when you backed up
 4 the robot?
 5 A. I began backing it up, and it was just
 6 dragging on the ground. And I dragged it from
 7 underneath the car so I could grab it with the
 8 claw. As I started to drag it, the fuse that was
 9 attached to the end cap up to the car became kind
 10 of a tug-of-war between us and the fuse, and it
 11 actually was attached securely. It lifted the
 12 pipe bomb off the ground and then -- just a couple
 13 inches.
 14 And then the fuse broke at the end cap,
 15 broke loose, and the pipe bomb hit the ground, and
 16 we were able to pull it out from underneath the
 17 vehicle.
 18 Q. Did you have occasion later on to
 19 examine that fuse that was attached to the bomb?
 20 A. Yes.
 21 Q. You said that there were two of them?
 22 A. Yes.
 23 Q. Is fuse that strong to be able to hold
 24 resistance against the robot like you're
 25 describing?

1 Q. So he examined it further?
 2 A. Yes.
 3 Q. Physically, by getting underneath it?
 4 A. Yes.
 5 Q. Looking underneath it?
 6 A. Yes.
 7 Q. What was the second vehicle?
 8 A. That was -- we were told the victim's
 9 son's vehicle that was there. And as a
 10 precaution, we made sure that there was nothing
 11 underneath that vehicle, either -- or in -- you
 12 know, obvious.
 13 Q. So Corporal Fox did that himself?
 14 A. Yes.
 15 Q. And there were no other bombs that were
 16 seen?
 17 A. No.
 18 Q. What's the next step that the bomb
 19 squad took?
 20 A. When we started the operation, I
 21 advised them that it would be advantageous to
 22 start looking for a pit or a large field or
 23 somewhere where we could render the device safe
 24 and, you know, basically disassemble it.
 25 Q. Was there such a location?

1 A. Yes.
 2 Q. After the pipe bomb broke free from the
 3 fuse, what did you do then?
 4 A. We pulled it out, and then I grabbed
 5 onto the pipe bomb with the claw and secured it in
 6 the claw and lifted it up. And I drove it to our
 7 total containment vessel, which is the large ball,
 8 for lack of a better term, and put it inside a
 9 cardboard box and slid that inside the vessel.
 10 Q. Inside the containment vessel?
 11 A. Yes.
 12 Q. And then did anybody close the doors on
 13 the containment vessel?
 14 A. Corporal Fox did.
 15 Q. What was the next procedure?
 16 A. Then we went back down to the vehicles,
 17 and Corporal Fox looked at both vehicles to make
 18 sure there were no other devices there before we
 19 left the scene to deal with the one we had --
 20 Q. Let me stop you. You said "both
 21 vehicles."
 22 A. Yes.
 23 Q. The black Mitsubishi we have already
 24 talked about.
 25 A. Right.

1 A. Yes.
 2 Q. Where was that safe location?
 3 A. That was at Marie Road and Ramsey, I
 4 believe.
 5 Q. Ramsey Road?
 6 A. Yes.
 7 Q. And describe this location that was
 8 safe.
 9 A. It's a large -- I believe it's a
 10 county-owned gravel pit. And it's, you know, a
 11 hundred feet deep. It was a perfect location
 12 because it was close. It limited our travel time
 13 as well as it could withstand a detonation.
 14 If the device, while we were dealing
 15 with it, happened to -- we call it "high order."
 16 If it exploded as designed, this particular place
 17 would be able to take that without causing undue
 18 injury or property damage.
 19 Q. So it was a deep gravel pit?
 20 A. Yes.
 21 Q. Before we go to what happened at the
 22 gravel pit, I want to just finish up and show you
 23 a couple of admitted exhibits.
 24 If I could get Ms. Rocca to put up
 25 what's been admitted as Exhibit No. 31. It's a

1 photograph.
2 Ask you if you recognize what's shown
3 in Exhibit No. 31, Sergeant.

4 A. Yeah.

5 Q. What does Exhibit No. 31 show?

6 A. It's the -- on the right-hand side --
7 do you want me to circle it as I tell you?

8 Q. Yeah.

9 A. Okay. This right here (indicating)
10 would be the two fuses. You can't see the end of
11 it, but the end down here at the bottom would be
12 where it attached to the pipe bomb.

13 Q. Did anybody remove that fuse from the
14 vehicle?

15 A. I did not. I'm assuming somebody did,
16 but it wasn't the bomb squad.

17 Q. Do you know how it was attached to the
18 vehicle?

19 A. It looked like it was tied, but --

20 Q. Do you know whether the emergency brake
21 cable runs through that part of the vehicle?

22 A. I imagine it does. I couldn't tell you
23 which -- which line it is on there, but --

24 Q. That's fine. Would you point to the
25 catalytic converter.

1 placed the first circle.

2 A. Yeah.

3 Q. Where the tailpipe and the catalytic
4 converter come together, was there a piece of
5 twisted wire there?

6 A. I believe so, down here (indicating).

7 Q. Well --

8 A. And on the back side, as well.

9 Q. Okay.

10 A. Right there (indicating).

11 Q. Let's go to -- let's clear that, and
12 let's show the witness Exhibit No. 32, please.

13 Is that the wire that we were just
14 talking about between the catalytic converter and
15 the tailpipe?

16 A. Yes.

17 Q. Exhibit 32. Let's clear that and go to
18 Exhibit No. 33.

19 And what does Exhibit 33 show, if you
20 know?

21 A. It looks like one of the pieces of
22 baling wire that was underneath the car.

23 Q. Was this shot -- was this picture taken
24 from the robot camera?

25 A. No.

1 A. I believe this is it right here
2 (indicating).

3 Q. And that's part of the exhaust system
4 of a vehicle?

5 A. Yes.

6 Q. Gets hot when the vehicle is in
7 operation?

8 A. Yes.

9 Q. Would you indicate where the tailpipe
10 comes out of that catalytic converter?

11 MR. HAWS: Can we clear that and let
12 him -- can you clear it there on your screen,
13 please?

14 THE COURT: In the corner of the -- yeah.
15 Someone has done it.

16 THE WITNESS: I believe the tailpipe
17 continues on to the back from here, if I'm
18 oriented correctly on here.

19 BY MR. HAWS:

20 Q. Okay. And do you see a piece of baling
21 wire attached there, as well?

22 A. Yes. There is some here (indicating).
23 Sorry. There we go. There is a piece there, as
24 well as some here (indicating).

25 Q. Okay. I want to go back to where you

1 Q. Okay. You don't know whose hand that
2 is?

3 A. I do not.

4 Q. Okay. Do you remember seeing that
5 wire?

6 A. When we were inspecting the bottom of
7 the vehicle with the robot cameras, we saw several
8 of these.

9 Q. Okay. Let's go back to the bomb
10 disposal site down on Ramsey Road. Were you able
11 to drive down into the gravel pit?

12 A. Yes.

13 Q. What's the next procedure you used in
14 the gravel pit?

15 A. The first thing we did was make sure we
16 had a location we could disassemble the device
17 remotely using the robot again. It's the safest
18 way to do it.

19 We located a spot that appeared fairly
20 open. And the first thing we did was park the
21 Excursion, which was pulling the total containment
22 vessel. We pulled that down into the pit and
23 parked that near where we were to do the
24 disassembly.

25 Q. Now, you said "disassembly." Is that

1 -- is there another word for that?

2 A. We call it "render safe procedure," but
3 "disassembly" sounds more -- you know, I mean,
4 it's easier to understand.

5 Q. The objective was to render it safe?

6 A. Exactly.

7 Q. So, after you got it positioned, what
8 did you do then?

9 A. Then we parked the robot vehicle, the
10 EVI, the Freightliner -- we parked that in the pit
11 further away and set up a wireless system and
12 deployed the robot downrange, sent it down --

13 Q. Again, you were operating the robot?

14 A. Yes.

15 Q. Were you able to grasp the bomb and
16 then take it out?

17 A. Yes.

18 Q. And where did you place it?

19 A. I placed it in the -- in the pit on the
20 ground and set it down and prepared to shoot off
21 the end cap with a proprietary frangible round
22 that we use --

23 Q. Is that what you mean --

24 A. -- a disruptor.

25 Q. I'm sorry. Go ahead.

1 can you remove a threaded cap with a disruptor
2 you're talking about? What's the principle
3 involved?

4 A. The idea behind it is we don't want to
5 unscrew the end caps, because if there was any
6 powder in the threads, it could cause -- the
7 powder could initiate and cause it to explode, and
8 that would be very unsafe. And the only way to do
9 that generally would be by hand, and it's not
10 worth risking someone's life for that.

11 So the best procedure that we use is to
12 set up the disruptor using a laser sight or some
13 other way to aim it. And we shoot the projectile
14 at the pipe at such an angle that, when the dental
15 plaster hits the pipe, it starts to fragment and
16 spread out.

17 And it's going at such a high velocity,
18 it's able to travel along on the top of the pipe
19 and hits the end cap and pulls -- and basically
20 swipes the end cap off, away from the threads and
21 disassembles that end.

22 Q. So, even though it's a threaded end
23 cap, it peels it off?

24 A. Correct.

25 Q. Were you able to fire the disruptor

1 A. We use a disruptor. As part of our
2 render safe procedure for dealing with pipe bombs
3 is to shoot off the end caps. And we use a
4 certain frangible round, a -- it's -- well, the
5 disruptor itself is similar to a shotgun; however,
6 it can shoot several different types of
7 projectiles or water out of it to disassemble a
8 bomb. It has a breach similar to a shotgun. It
9 fits 12-gauge shells in there.

10 And so the particular round that we
11 use, which is standard on this, is called an "Avon
12 round." And it's actually dental plaster inside
13 of the round, inside of the shell.

14 Q. Why do you use dental plaster as a
15 projectile?

16 A. It doesn't spark. It has -- it's
17 proven its use over thousands of pipe bomb render
18 safe procedures. It has a low likelihood of
19 causing the pipe bomb to detonate when it hits it.
20 And the way it's designed is just exactly for
21 dealing with these.

22 Q. Okay. I want you to explain to the
23 jury, please, this pipe bomb is, you indicated, a
24 nipple, a straight piece of pipe that's threaded
25 with two threaded caps on it. How can you -- how

1 round?

2 A. Yes.

3 Q. And were you successful in disrupting
4 that pipe bomb?

5 A. Yes.

6 Q. What did you do -- what did you do
7 then? Let me back up.

8 Was the -- is the disruptor round done
9 remotely, also, using the robot?

10 A. Yes.

11 Q. Okay. What did you do then?

12 A. Then we wanted to make sure there is
13 nothing else inside the pipe. When the disruption
14 occurred and we were watching the video, the end
15 cap flew off. And I panned back with the camera
16 to survey the area, because it's a pretty violent
17 event, and it kind of throws the pipe around a
18 little bit.

19 And there was observable amount --
20 significant amount of black-colored powder on the
21 ground that wasn't there prior. Then I grabbed
22 onto the pipe using the claw, was able --
23 eventually able to grab it and rotate the claw.
24 And when I did that, a significant amount of
25 black-colored powder came out of the pipe.

1 Q. Do you have an estimate as to -- from
2 what you saw on the ground, what came out of the
3 pipe, and just the volume of the pipe -- about how
4 much powder there was?

5 A. It was a significant amount.
6 Definitely enough to initiate the device. It
7 could have been upwards of three-quarters full,
8 based on what I saw.

9 Q. So "enough to initiate the device"
10 means to explode it?

11 A. Yes.

12 Q. Okay. Let me ask you to look behind
13 you and find Exhibit No. 80. And it has been
14 admitted into evidence.

15 A. 80A?

16 Q. 80A, I believe, is the box. Is that
17 correct? It should be Exhibit No. 80.

18 A. Yes.

19 Q. Do you see it there?

20 A. I do.

21 Q. It's been admitted. So if you would
22 like to identify that, please, for the record.

23 A. This is the pipe that we took care of
24 that day.

25 Q. Approach the microphone just a little

1 Q. Would you look inside of Exhibit
2 No. 81.

3 A. (Witness complied.)

4 Q. What is Exhibit 81?

5 A. This appears to be the end cap that was
6 shot off the pipe.

7 Q. That's the one that you blew off with
8 the disruptor round?

9 A. Yes.

10 Q. Now, look inside that bag, and tell me
11 if there are some other pieces that went with that
12 end cap.

13 A. Yes.

14 Q. And what are those other pieces?

15 A. These are pyrotechnic fuses.

16 Q. And did you observe that end cap after
17 you had blown it off?

18 A. Yes.

19 Q. And what was the configuration of it
20 after you blew it off? Was it in the same
21 condition it is today?

22 A. Yes.

23 Q. Well, did it also have the fuses
24 attached to it?

25 A. I believe it did.

1 bit more.

2 A. Sorry. This is a pipe that we dealt
3 with that day.

4 Q. That's the one that you were just
5 describing that you disrupted?

6 A. Yes.

7 Q. Hold it up for the jury, please.

8 A. (Witness complied.)

9 Q. And turn it so that they can see how
10 that thread got disrupted and the end got blown
11 off.

12 A. You can see where the round impacted
13 right here. There is some -- like a skid almost,
14 a deformation of the regular pipe, how it looks.

15 And you can see where it spreads out
16 and fans out as designed, and it deforms this
17 thread because of that impact of that plaster --
18 dental plaster into the threaded end of the pipe.
19 And you can imagine, where you look at this end
20 cap, it goes along, grabs onto this end, uses that
21 almost like as a handle, and flips it off.

22 Q. Thank you. Could I get you to look
23 at -- find up there Exhibit No. 81. This also, I
24 believe, has been admitted into evidence.

25 A. Yes.

1 Q. How were they attached?

2 A. There is this piece of tape in there,
3 and they were underneath the tape attached to the
4 end cap, I believe.

5 Q. Now, you testified earlier that when
6 you used the robot to pull the bomb off underneath
7 the Mitsubishi, that the fuse broke. Did it break
8 there at the end cap, and that's why you only have
9 those short fuses?

10 A. It appears so.

11 Q. Let me ask you about whether you shot
12 another disruptor round.

13 A. I did.

14 Q. Using the robot?

15 A. Yes.

16 Q. And what was the target on that
17 particular disruptor round?

18 A. It was a black box that we suspected
19 was a magnet, but we weren't sure. And because
20 there is always a chance that there is a decoy or
21 a second device attached, I used a disruptor to
22 shoot that box, as well, to make sure it didn't
23 contain another device.

24 Q. Would you please look at Exhibit No.
25 82, but do not show it yet because it has not been

1 admitted.
 2 A. (Witness complied.)
 3 Q. Did you find Exhibit 82?
 4 A. Yes.
 5 Q. Can you describe for the record what it
 6 is?
 7 MR. McALLISTER: Judge, there is no
 8 objection to these exhibits.
 9 THE COURT: You're offering it?
 10 MR. HAWS: Yes. I'll move for admission
 11 right now.
 12 THE COURT: Exhibit 82 will be admitted.
 13 (Government's Exhibit 82 admitted.)
 14 MR. HAWS: Thank you, Your Honor.
 15 BY MR. HAWS:
 16 Q. Would you display that Exhibit No. 82
 17 to the jury, please.
 18 A. (Witness complied.)
 19 This is --
 20 Q. Speak into the microphone, if you
 21 could.
 22 A. I'm sorry. It's -- this is what was
 23 inside the plastic box. This is the magnet.
 24 Q. And that was the magnet that you shot
 25 the disruptor round at on June 15th --

1 A. Yes.
 2 Q. That was part of -- part of the remains
 3 of Exhibit No. 82?
 4 A. Yes.
 5 Q. Okay. Thank you.
 6 In your experience in dealing with pipe
 7 bombs, how would you characterize this particular
 8 one? Is it a large one? A small one? How would
 9 you characterize it?
 10 A. In my experience in dealing with these,
 11 it's the largest pipe bomb I've seen, that I have
 12 ever dealt with in the field.
 13 Q. Now, you indicated earlier, Sergeant
 14 Kittilstved, that the robot takes a video; is that
 15 correct?
 16 A. That's correct.
 17 Q. And did you preserve the video that
 18 was -- that was shot at the time that the robot
 19 was in operation?
 20 A. Yes.
 21 Q. And have you had an opportunity to look
 22 at Exhibit No. 79?
 23 A. I have.
 24 Q. And what is 79?
 25 A. 79 is a DVD copy of the VHS recording

1 A. Yes.
 2 Q. -- 2010?
 3 A. There is another part here. Sorry.
 4 The metal -- part of the metal casing that was on
 5 it.
 6 Q. Okay. Any other parts to Exhibit
 7 No. 82, just so we can make sure we have the
 8 complete thing for the record?
 9 A. I don't see anything else in here, no.
 10 Q. Okay. If you'll replace those.
 11 A. (Witness complied.)
 12 Q. And then I -- then I would like for you
 13 to look one more time back at Exhibit 80.
 14 A. Okay.
 15 Q. That's the pipe bomb?
 16 A. Yes.
 17 Q. Is there anything on the outside of
 18 that pipe bomb besides some -- what appears to be
 19 some electrical tape?
 20 A. There is --
 21 Q. Just show it to the jury, please.
 22 A. It looks like a part of the magnet is
 23 still attached.
 24 Q. That's part of the magnet that was
 25 blown off from the pipe bomb?

1 from the robot.
 2 Q. And have you recently reexamined it to
 3 make sure it's the same as when you took it from
 4 the video device of the camera?
 5 A. Yes.
 6 Q. Or of the robot? Pardon me.
 7 A. Yes, it is.
 8 MR. HAWS: I'd move the admission of Exhibit
 9 No. 79.
 10 THE COURT: Any objection?
 11 MR. McALLISTER: No, Your Honor.
 12 THE COURT: 79 will be admitted.
 13 (Government's Exhibit 79 admitted.)
 14 MR. HAWS: Your Honor, at this time, I would
 15 ask the court's permission to have the witness
 16 shown three brief clips from Exhibit No. 79 to
 17 illustrate his testimony here today.
 18 THE COURT: Are those marked separately?
 19 MR. HAWS: No, they are not. They are just
 20 part of it. We're just publishing --
 21 THE COURT: As long as you can identify
 22 which portions you're showing to the jury by
 23 reference to a time stamp or otherwise on the
 24 recording. And then, obviously, Mr. McAllister,
 25 if you wanted to show some additional portions,

1 you could do so, as well.
 2 Proceed.
 3 MR. HAWS: Thank you, Your Honor.
 4 BY MR. HAWS:

5 Q. Are you able to identify the footage or
 6 the time sequence that you're about to show?

7 A. Yes.

8 Q. The first one, please -- would you
 9 identify first for the record what -- where it's
 10 starting.

11 A. This is starting at 7 minutes and 52
 12 seconds into the operation.

13 As you're looking at it, this is the
 14 driver's door. We're underneath the driver's
 15 door.

16 THE COURT: I'm not sure that anything is
 17 coming up.

18 MR. HAWS: Well, he is
 19 describing prospectively, Your Honor.

20 THE COURT: He is describing something, I
 21 think, that's showing up on his screen that's not
 22 on anybody else's. That's what I -- so you may
 23 want to --

24 MR. HAWS: Has it started showing on your
 25 machine?

1 THE WITNESS: Correct.

2 THE COURT: I wonder if we could try putting
 3 it in the --

4 MR. HAWS: She does not have it timed, Your
 5 Honor. She has the exhibit, but it's not timed,
 6 and it would be very difficult to locate that in
 7 terms of time.

8 THE COURT: Well --

9 BY MR. HAWS:

10 Q. Do you have one other suggestion,
 11 Sergeant Kittilstved?

12 A. I guess if we gave her this particular
 13 DVD and told her the start and end times, if she
 14 sees it on her side.

15 Q. Do you have the start and end times
 16 written down there so we can tell her?

17 A. I do. I do.

18 MR. HAWS: Let's try that.

19 THE COURT: We will need to change the input
 20 source from -- thank you, Ms. Gearhart.

21 MR. HAWS: Your Honor, that may not work
 22 because her computer does not have a way of
 23 showing the time on it, so it would be difficult
 24 for us to find.

25 THE COURT: Well --

1 THE WITNESS: Yeah. It shows -- I can
 2 start --

3 MR. HAWS: We had this working earlier.

4 THE COURT: It's odd that we're seeing the
 5 "play" bar, if you will, and not the underlying
 6 video. I don't know --

7 THE WITNESS: Can I start it over and maybe
 8 just reset it?

9 THE COURT: Perhaps. Try that.

10 THE WITNESS: It will just take a second.

11 THE COURT: I will turn off the jury monitor
 12 until you have it resolved.

13 We're having the same problem.

14 MR. HAWS: It's showing up on your computer,
 15 but it's not playing?

16 THE COURT: It's not showing up --

17 MR. HAWS: I'm not getting a signal over
 18 here.

19 THE COURT: There is no signal coming to
 20 anyone except his own computer. I wonder if -- is
 21 that burned onto a disk or only --

22 THE WITNESS: It's onto a -- yeah, it's onto
 23 a DVD.

24 THE COURT: So it's a DVD inside your
 25 laptop?

1 MR. HAWS: Well, let's give it a try, and
 2 let's see if we can do it.

3 Could we take about a five-minute
 4 recess, Your Honor, in order to get this resolved?
 5 And then we have one other witness --

6 THE COURT: Yes.

7 MR. HAWS: -- that we'll have ready to go.

8 THE COURT: All right. Let's take a short
 9 recess. Ladies and gentlemen, I'll again admonish
 10 you not to discuss the case among yourselves or
 11 with anyone else, nor should you form or express
 12 any opinions about the case until it is submitted
 13 to you. And continue to follow the court's
 14 admonition concerning juror conduct as given to
 15 you on the first day of trial.

16 We'll be in recess.

17 (Recess.)

18 (Jury present.)

19 THE COURT: I'll note the jury is present.
 20 The witness has retaken the witness stand. And I
 21 know I won't get your name right, so I'll just
 22 remind you -- remind the witness that you're still
 23 under oath.

24 Let me see if I can get it right. Is
 25 it -- how do you pronounce it?

1 THE WITNESS: Kittilstved.
 2 THE COURT: Kittilstved. The "V" is silent?
 3 THE WITNESS: Yes, sir.
 4 THE COURT: All right. You may inquire.
 5 MR. HAWS: Thank you, Your Honor.
 6 BY MR. HAWS:
 7 Q. Sergeant Kittilstved, we had this
 8 operational during the lunch hour, right?
 9 A. Absolutely.
 10 Q. Not operational now?
 11 A. No.
 12 Q. With all the electronics minds we have
 13 in the room, we couldn't get it working?
 14 A. Correct.
 15 Q. But you can tell the jury certain
 16 footage that if they want to look at the video,
 17 they can?
 18 A. Yes.
 19 Q. The footage of what you would have
 20 shown them, do you want to just read that footage
 21 in, and then we'll conclude with your testimony?
 22 A. Certainly. The footage begins with the
 23 robot leaving the truck and heading down to the
 24 vehicle.
 25 The three areas that we noted that we

1 Q. So that's about a four-minute section?
 2 A. Correct.
 3 Q. And then the last section, what does it
 4 show that you wanted to show to the jury?
 5 A. The last section would start at 1 hour,
 6 12 minutes. And that is where we have
 7 transitioned to the disposal site, the gravel pit.
 8 And at that time, it shows me using the robot to
 9 remove the pipe bomb from the total containment
 10 vessel. And that particular segment would end at
 11 about 1 hour, 40 minutes; so it's about 28 minutes
 12 in length.
 13 And during that time, it shows me
 14 removing the pipe bomb from the vessel, taking it
 15 out into the pit, setting it on the ground,
 16 shooting it with the first disruption -- which
 17 took the end cap off -- grabbing the pipe, turning
 18 it over, rotating it. You can see the powder on
 19 the ground. And then lining up and taking the
 20 second shot on the magnet, which at that time we
 21 didn't know was just a magnet. And then that
 22 would be the conclusion.
 23 Q. So the portion that shows the powder on
 24 the ground and the powder coming out of the pipe
 25 would be around the 1 hour, 40 minute --

1 were going to show, starting at 8 minutes and 52
 2 seconds, the camera on the front of the robot and
 3 the claw is doing a panning and zooming and
 4 changing the iris to observe underneath the
 5 vehicle and records -- you can see the baling wire
 6 on the catalytic converter on the front and the
 7 rear.
 8 And then the next --
 9 Q. How far does that extend?
 10 A. That's only about 10, 15 seconds. So I
 11 would say that ends at zero-nine minutes.
 12 The next section would be -- start at
 13 34 minutes, 15 seconds. And that shows Corporal
 14 Fox in the bomb suit underneath the vehicle. And
 15 it shows him unhooking the baling wire and shows
 16 the fuse visible from the pipe up to the vehicle,
 17 the two fuses.
 18 Then it shows him set it down, and I
 19 pull away from -- when I grabbed onto the rope,
 20 onto the steel rope, the second rope, pulling away
 21 from the vehicle and the fuse breaks free of the
 22 pipe and then pull it out --
 23 Q. Where does that section end?
 24 A. That section would end at about 38
 25 minutes.

1 A. That particular section you're talking
 2 about would be at about 1 hour, 27 minutes, about
 3 40 seconds.
 4 Q. Okay. Thank you very much.
 5 MR. HAWS: We apologize to the jury and the
 6 court that we couldn't get the electronics
 7 working. It would have been a nice show. We
 8 could have given popcorn, too.
 9 Thank you very much, Sergeant
 10 Kittilstved.
 11 Nothing further from the government.
 12 THE COURT: Any cross?
 13 CROSS-EXAMINATION
 14 BY MR. McALLISTER:
 15 Q. Was the pipe or any of the components
 16 ever tested for fingerprints?
 17 A. That was not part of my responsibility
 18 in this case.
 19 Q. Do you know if anyone did?
 20 A. I do not.
 21 MR. McALLISTER: Thank you.
 22 THE COURT: Redirect?
 23 MR. HAWS: No redirect. And ask that the
 24 witness be excused, Your Honor.
 25 THE COURT: Officer Kittilstved, you may

1 step down. Thank you.
 2 Call your next witness.
 3 MR. HAWS: Thank you, Your Honor. Call
 4 Brennan Phillips.
 5 Would you step forward, please, sir.
 6 THE COURT: Sir, if you will please step
 7 before the clerk and be sworn, and then follow
 8 Ms. Gearhart's directions from there.
 9 BRENNAN SHERMAN PHILLIPS,
 10 having been first duly sworn to tell the whole
 11 truth, testified as follows:
 12 THE CLERK: Please state your complete name
 13 and spell your last name for the record.
 14 THE WITNESS: Brennan Sherman Phillips,
 15 P-H-I-L-L-I-P-S.
 16 THE COURT: You may inquire, Mr. Haws.
 17 MR. HAWS: Thank you, Your Honor.
 18 DIRECT EXAMINATION
 19 BY MR. HAWS:
 20 Q. Mr. Phillips, where do you live?
 21 A. King County, Washington.
 22 Q. Who employs you?
 23 A. The Bureau of Alcohol, Tobacco,
 24 Firearms and Explosives.
 25 Q. "ATF," as we normally say?

1 Q. So you're an expert in the field of
 2 examining explosive devices?
 3 A. Yes.
 4 Q. What -- what's your civilian
 5 background, then? How long -- or what else do you
 6 do besides an EEO, explosives enforcement officer?
 7 A. Are you asking me about my ATF job,
 8 or you're asking --
 9 Q. Yeah.
 10 A. Well, I'm a bomb technician, a working
 11 bomb technician, just like the two gentlemen that
 12 appeared previously. I have the same background
 13 and have attended the same hazardous device school
 14 that they did.
 15 So, you know, within the ATF, we are
 16 working bomb technicians. We would go into the
 17 field, conduct render safe procedures in support
 18 of our operations and support of the state and
 19 local operations.
 20 Q. Have you been a technician longer than
 21 you've been an enforcement officer?
 22 A. Yes. All the ATF explosive enforcement
 23 officers are hired because they have previous
 24 experience. I was an army EOD, explosive ordnance
 25 disposal officer, so the acronym "EOD."

1 A. ATF, yes.
 2 Q. And what is your title?
 3 A. Explosives enforcement officer.
 4 Q. EEO, explosives enforcement officer?
 5 A. Yes.
 6 Q. And how long have you been an EEO?
 7 A. Since May of 2000, so the last 11
 8 years.
 9 Q. What does an explosives -- I'm getting
 10 tired. What does an EEO do? Tell me what that
 11 means again.
 12 A. The explosives enforcement officers of
 13 ATF, we are the subject matter experts on
 14 explosives, explosive devices, improvised
 15 explosive devices. We have special
 16 responsibilities within the Bureau to actually
 17 look at and examine explosives and explosive
 18 devices for regulatory purposes. So if somebody
 19 wants to import or build an explosive or an
 20 explosive weapon to enter into commerce, we would
 21 review that and make a determination.
 22 And then we do that on the criminal
 23 side, as well. We support all manner of ATF
 24 investigations into criminal bombings and arsons,
 25 as well as explosive accidents.

1 Basically, I was a U.S. Army bomb disposal
 2 officer.
 3 Q. Do you hold a rank in the military?
 4 A. I do. Well, I left active duty in
 5 2000, after ten years on active duty as an EOD
 6 officer. I stayed in the National Guard, and I'm
 7 lieutenant-colonel in the Washington National
 8 Guard.
 9 Q. So the entire extent of -- the entire
 10 extent of your experience in dealing with
 11 explosives, both in the military and in civilian
 12 life, how long have you done that?
 13 A. Twenty years.
 14 Q. Okay. Please place that microphone
 15 just a little bit closer to you. And, if you
 16 would -- sometimes you need to slow down a little
 17 bit for the reporter, if I can have you do that.
 18 A. Okay.
 19 Q. What's the process you use in going
 20 through a determination?
 21 A. Well, when we're -- we examine the
 22 evidence. So when we're doing a determination on
 23 a destructive device, we would obviously look at
 24 any reports; we would look at the physical
 25 evidence; and then make a determination based off

1 of the information from interviews, reports, and
2 the physical evidence, as well as any laboratory
3 reports.

4 Specifically, we're very interested in
5 the explosive examination done by a certified
6 chemist, typically an ATF chemist, but we'll use
7 FBI or state and local chemists, as well.

8 **Q.** In this case, did you examine the ATF
9 lab report of John Jermain?

10 **A.** I did.

11 **Q.** Did you examine any reports from the
12 investigating officers at the scene?

13 **A.** I did.

14 **Q.** Did you examine any photographs and
15 evidence from citizens, such as the lab -- the
16 technician at the Jiffy Lube?

17 **A.** Yes.

18 **Q.** And did you examine the pipe bombs
19 themselves?

20 **A.** I did.

21 **Q.** All of the physical evidence?

22 **A.** I did.

23 **Q.** Let me ask you specifically if you --
24 if you would, please, to turn and retrieve Exhibit
25 No. 80, which is up there at the stand.

1 Northwest. This is a fairly large one in
2 comparison to other devices we encounter here in
3 the Northwest.

4 **Q.** Okay. You have seen a lot of pipe
5 bombs before, I assume?

6 **A.** Oh, yes. Yes.

7 **Q.** Okay. Part of the end of that has been
8 disrupted; isn't that correct?

9 **A.** Yes. It was disrupted by the bomb
10 squad.

11 **Q.** Okay. Do you see, also, a piece of the
12 magnet still on there?

13 **A.** I do.

14 **Q.** And would you set that one down and
15 please look at the end cap, which is Exhibit
16 No. --

17 **A.** 81?

18 **Q.** -- Exhibit No. 81.

19 **A.** Yes.

20 **Q.** You have examined that before, I take
21 it?

22 **A.** I did.

23 **Q.** In conjunction with this determination
24 in this case?

25 **A.** I did.

1 **A.** (Witness complied.)

2 **Q.** This has been admitted into evidence,
3 so you can go ahead and show that to the jury,
4 please, and explain if this is something you did
5 examine.

6 **A.** Yes, I examined it.

7 **Q.** And this is a pipe bomb?

8 **A.** It is.

9 **Q.** Do you have any other comments about
10 this particular pipe bomb, either its
11 sophistication or its -- anything like that?

12 **A.** Well, I mean, the terminology or the
13 term that I would use to describe it, based on its
14 placement, would be a "UV IED" or "under-vehicle
15 improvised explosive device." And that's the
16 current terminology we use in the business to
17 describe the type of device. And that goes to its
18 placement and method of attack.

19 It's a two-inch nominal diameter pipe
20 about 12 inches long, so it's a fairly good-sized
21 device.

22 As pipe bombs go, you know -- as you've
23 heard previously, pipe bombs are a fairly common
24 device that we encounter here in the continental
25 United States and certainly in the Pacific

1 **Q.** And what is remarkable about that end
2 cap?

3 **A.** Well, the end cap has been disrupted,
4 and you can see this large hole in the end cap.
5 That's actually from the disruptive procedure.

6 The Avon round or the frangible round
7 that Sergeant Kittilstved described has actually
8 punched through the end of the pipe; as well as
9 there is a -- it's kind of a half of a circle
10 right here at the center of the pipe. That is
11 actually the fuse hole, so that would have been
12 drilled into the pipe. While it's been partially
13 broken, it still remains.

14 **Q.** Examine the rest of the contents of the
15 bag that that exhibit came in, please, because
16 there is another piece that goes with that. Do
17 you see it?

18 **A.** Yes.

19 **Q.** And what is that?

20 **A.** Well, there is tape here, some of the
21 remnants of the tape -- now, when I originally
22 examined it, there was quite a bit more tape, but
23 this is some of the tape that remains. And then
24 two lengths of green pyrotechnic fuse, which is in
25 this antistatic bag.

1 Q. Leave those there, because we're going
2 to refer to those again. But I would like you to
3 retrieve the pieces of fuse in this case.

4 Ninety-three? Eighty-three, Exhibit No. 83.

5 A. I have 83 here.

6 Q. Yes. What do you see in Exhibit 83?

7 A. There is lengths of green pyrotechnic
8 fuse.

9 Q. Have you seen that fuse before?

10 A. I have.

11 Q. And would you describe for the jury
12 what it is you're looking at in terms -- what's
13 distinctive about this fuse?

14 A. It's green pyrotechnic fuse, so it's
15 going to be a black powder, you know,
16 delay-burning fuse. This fuse has been broken.
17 And at the very ends of the fuse, both lengths
18 here, is discoloration from exposure to heat.

19 Q. So both lengths have been broken on one
20 end and discolored on the other?

21 A. That's correct.

22 Q. Okay.

23 MR. HAWS: Your Honor, I would ask that the
24 witness be able to get closer to the jury and be
25 able to show them the discoloration he is

1 you know, a brownish-blackish color.

2 Q. From your investigation of this case
3 and reviewing all the information and the items in
4 this case, can you tell the jury what your opinion
5 is as to why that's discolored?

6 A. Yes. In my opinion, this was in
7 contact with the exhaust system on the vehicle
8 where the wires on the exhaust system were
9 attached in an attempt to ignite the pyrotechnic
10 fuse as a means of initiation, a heat source to
11 ignite the black-powder fuse.

12 Q. Now, what you have in your hand is just
13 one length; is that correct? And isn't there
14 another envelope with another one?

15 A. There are two lengths. So part of the
16 design of the device was to build redundancy or
17 what we call "dual initiation." So, to ensure
18 that the device works properly, two lengths of
19 fuse were used.

20 And this is a common practice in the
21 explosive business. I use this practice in my own
22 work. I'll oftentimes use two means of initiation
23 when I'm setting up a charge, to make sure that it
24 works, to increase reliability.

25 Q. Replace the fuse that you had out a

1 referring to, if that's permissible.

2 THE COURT: Yes. Counsel, you can move down
3 if you want to, Mr. McAllister, to see what the
4 witness is showing to the jury. But, yes, you may
5 step down in front of the jury box and show the
6 jury what it is that you're trying to explain to
7 them.

8 MR. HAWS: Do you have your microphone
9 activated?

10 THE WITNESS: I do. Can you hear me? How
11 is that?

12 MR. HAWS: Great.

13 THE WITNESS: These are the two lengths of
14 fuse. Now, they have been sampled since I
15 examined them initially, so they cut some pieces
16 off to send in to the lab for sampling purposes.

17 But you have a length of green
18 pyrotechnic fuse. And this fuse basically has a
19 black-powder core to it with string that's wound,
20 and then that string is coated in a nitrocellulose
21 lacquer. It basically gives it some
22 waterproofing, and it burns -- burns as well with
23 nitrocellulose as a type of explosive.

24 You can actually see that the end here
25 has been discolored, blackened and turned kind of,

1 moment ago, and please put it back in its bag.

2 A. Yes, sir.

3 Q. And then take this one out of the bag
4 that you're just referring to. What's it marked?
5 It's got an identification number on it.

6 A. 83B and then 83A.

7 Q. So you were just referring to 83A; is
8 that correct?

9 A. Yes.

10 Q. Now, referring to 83B, would you please
11 remove the fuse that's in 83B.

12 A. (Witness complied.)

13 Q. Would you show that to the jury and
14 explain whether it's the same or similar to the
15 other fuse in 83A.

16 A. Yeah. Essentially the same type of
17 fuse, also discolored. You can see the
18 discoloration on the end there. Same green
19 pyrotechnic fuse as used in the other length.

20 Q. And so the discoloration means it got
21 hot?

22 A. That's correct.

23 Q. But it didn't get hot enough to ignite?

24 A. That's right.

25 Q. Hold that fuse up again for the jury,

1 please.
 2 **A.** (Witness complied.)
 3 **Q.** Now, there appear to be some sharp
 4 either kinks in it or some sharp bends in it. It
 5 almost looks like it might be half broken. Is
 6 that -- is that a misinterpretation on my part?
 7 **A.** Well, the fuse is -- it's not
 8 like -- it's a little bit -- I want to say brittle
 9 or a little bit resistant, a little bit stiff.
 10 And if you do crimp it, the nitrocellulose coating
 11 will break.
 12 **Q.** But this is not broken?
 13 **A.** It's not broken. It's just the
 14 nitrocellulose coating is a bit damaged at those
 15 locations. However, that's not going to stop it
 16 from burning.
 17 **Q.** That was my next question. If the fuse
 18 were ignited, it would burn through any of those
 19 types of crimped places; is that correct?
 20 **A.** That's right.
 21 **Q.** Another question while you have that
 22 up. I want you to assume that electrical tape
 23 were wrapped around the fuse --
 24 **A.** Yes.
 25 **Q.** -- and it was ignited on one end, and

1 about redundancy with regard to the fuse. Was
 2 there any other type of redundancy on this device,
 3 Exhibit No. 80, the pipe bomb taken off the
 4 Mitsubishi?
 5 **A.** Well, "redundancy" in the sense of the
 6 method of attachment. So this device used a
 7 magnet for attachment, and that's fairly common in
 8 the design of an under-vehicle improvised
 9 explosive device, some type of magnetic attachment
 10 to allow for quick placement of the device.
 11 But in this case, it was bound by
 12 heavy-gauge wire, which basically -- you know, to
 13 give it more redundancy, more reliability as far
 14 as keeping it attached to the vehicle in travel.
 15 **Q.** Now, did you have occasion to examine
 16 the videotape that was shot during the operation
 17 of the robot that Sergeant Kittilstved was
 18 referring to a moment ago?
 19 **A.** I did.
 20 **Q.** You heard his testimony?
 21 **A.** I did.
 22 **Q.** Did you hear him describe how the robot
 23 tried to pull the pipe bomb from underneath the
 24 car, and it was attached by its fuse --
 25 **A.** Yes.

1 the charge that it was to detonate was on the
 2 other side of the electrical tape wrapped around
 3 it.
 4 Would that stop the charge from -- or
 5 the fuse from burning through underneath that
 6 electrical tape?
 7 **A.** It would not. The fuse is made from
 8 black powder. Black powder has its own fuel and
 9 oxygen source. It's made up of fuel and oxidizer,
 10 like all explosives. It doesn't require an
 11 external source of oxygen. It doesn't require air
 12 for it to burn. It will burn -- you know, it will
 13 burn under water. It will burn under tape. In
 14 fact, within the confinement of tape, it will burn
 15 a little bit faster.
 16 **Q.** Thank you. If you would replace those,
 17 please, in 83A and 83B and retake the witness
 18 stand.
 19 **A.** Yes, sir.
 20 **Q.** You might turn off that portable mic.
 21 **A.** I just did.
 22 **Q.** Okay. Now, Mr. Phillips, you mentioned
 23 the word "redundancy" a moment ago.
 24 **A.** Yes.
 25 **Q.** And you began to explain to the jury

1 **Q.** -- to the car?
 2 **A.** Yes.
 3 **Q.** Have you reviewed that tape?
 4 **A.** Yes.
 5 **Q.** That video?
 6 **A.** Yes.
 7 **Q.** And the tension between the robot and
 8 the fuse underneath the car is sufficient to lift
 9 this pipe bomb off the ground; is that correct?
 10 **A.** It was.
 11 **Q.** And then it -- then it breaks --
 12 **A.** Yes.
 13 **Q.** -- the fuse breaks?
 14 Is fuse -- that suggests that the fuse
 15 is fairly strong in tensile strength, isn't it?
 16 **A.** It is.
 17 **Q.** Does that surprise you?
 18 **A.** No. There is actually a standard for
 19 that. The American Pyrotechnic Association
 20 standard says that pyrotechnic fuse needs to be
 21 strong enough to hold like a large firework item.
 22 So that's not uncommon, or it's not surprising.
 23 **Q.** From your examination of Exhibit
 24 No. 80, the pipe bomb off the Mitsubishi, how was
 25 the -- how were -- the two lengths of fuse that

1 went into the end cap of the bomb, how were they
2 secured?
3 **A.** Well, they were secured, you know, they
4 passed through the end cap, through the hole in
5 the end cap and then were dogged down with tape or
6 secured with tape, multiple wraps of tape. And
7 actually, the fuse lay along the surface of the
8 end cap and doubled back and were then taped with
9 multiple wraps, layers of tape. So it was
10 well-secured.

11 **Q.** It was well-secured. Secured well
12 enough that the fuse itself broke before the
13 electrical tape gave way; is that correct?

14 **A.** That's right. And when I examined this
15 device back in July, the fuse was still secured
16 underneath the tape and running into the inside of
17 the end cap.

18 **Q.** Based upon how well the two lengths of
19 fuse were secured to the end cap, based upon the
20 fact that there were two ignition sources or two
21 lengths of fuse, based upon the redundancy of the
22 way in which it was attached to the car, does that
23 tell you anything about the intent of the person
24 who placed the bomb on the car?

25 **A.** Well, certainly, there is a desire to

1 rapidly.

2 So, if you can imagine, the powder
3 starts to combust, burn, to explode inside the
4 pipe. The pipe is going to start to stretch until
5 it fragments. And at that point, you lose
6 containment. You lose the confinement on the
7 powder. And then the explosive event is going to
8 start to drop off.

9 So you want as much of that powder
10 burning, as much of the surface area of that
11 powder exposed to the explosion, to the thermal
12 event that occurs inside, to get as much of that
13 burning as rapidly as possible before the pipe
14 bursts.

15 **Q.** You mentioned "smokeless powder."

16 **A.** Um-hmm, yes.

17 **Q.** Are there different types of powder?

18 **A.** There are different types of explosive
19 powders.

20 **Q.** Sometimes people use the term "black
21 powder."

22 **A.** Well, black powder is very different
23 than smokeless powder as far as its makeup.

24 **Q.** Now, it's not necessarily just because
25 of the color; is that right? Because smokeless

1 make sure this thing works; to make sure it
2 doesn't fall off the vehicle, you know, while it's
3 moving down the highway; to make sure that the
4 fuse is ignited and the device functions as
5 designed.

6 **Q.** Assume that the pipe bomb that you have
7 before you, Exhibit No. 80 -- assume that it were
8 three-quarter full, just a -- that's -- there was
9 testimony in this case that it may have been
10 three-quarters full of powder.

11 **A.** Yes.

12 **Q.** What -- how does three-quarters of the
13 volume affect the detonation of the charge? In
14 other words, does it help for it to be packed in,
15 or does it help for there to be more or less
16 powder?

17 **A.** For optimal -- you know, for optimal
18 performance of the pipe bomb using smokeless
19 powder -- and that's the type of powder that we
20 have in this device -- it's advantageous to not
21 fill it completely, to leave a little bit of space
22 in there.

23 And what that does is increase the
24 surface area of the powder. So once the powder
25 starts to burn, you want it to burn very, very

1 powder can also be black?

2 **A.** That's right.

3 **Q.** So we're not talking about coloration
4 here; we're talking about different types of
5 powder?

6 **A.** Yes.

7 **Q.** This was not smokeless powder -- or
8 this was not black powder?

9 **A.** This was not black powder. It was
10 smokeless powder.

11 **Q.** Now, tell the jury the difference
12 between black powder and smokeless powder.

13 **A.** Black powder is made up of a mixture of
14 potassium nitrate, sulfur, and charcoal. It's the
15 oldest type of explosive, you know, all the way
16 back to the Chinese inventing it a millennia ago.

17 Smokeless powder is a relatively modern
18 invention. And the type of smokeless powder that
19 was used in this device is what we call a
20 double-base smokeless powder. So it's a mixture
21 of nitrocellulose and nitroglycerine, which are
22 explosive molecules. And it has considerably more
23 energy available.

24 **Q.** So that's double-base?

25 **A.** Um-hmm.

1 Q. Is there something also about the
2 morphology or the shape of the individual grains
3 of powder that you saw in this case that's worth
4 commenting on?

5 A. Certainly. Smokeless powders are made
6 in different sizes and different shapes, depending
7 on what you want to do with them, the performance
8 characteristics.

9 This used what we call a "disk
10 morphology powder." So they're like little
11 wafers. If you can imagine little round discs of
12 powder. And what that does is that creates a lot
13 of surface area, so the powder burns really,
14 really rapidly, which is desirable in a pipe bomb,
15 as opposed to other types of powders which have
16 less surface area.

17 And what that powder is really used
18 for, you know, its legitimate purpose is for
19 shotgun ammunition or for pistol ammunition, where
20 you need to drop energy really, really fast. And
21 you can imagine the short barrel of a pistol
22 versus a long barrel of a rifle, you want to have
23 your powder burn very, very rapidly to drop its
24 energy very, very quickly.

25 That's the same sort of thing you want

1 in a pipe bomb, is you want to be able to have
2 your powder burn, drop its energy very, very
3 rapidly before the pipe bursts.

4 Q. You mentioned that this powder is used
5 in shotgun shells and in pistol bullets --

6 A. Yes.

7 Q. -- is that correct? Pistol rounds?

8 Is it available commercially on the
9 market?

10 A. Of course. You know, your Second
11 Amendment right means you have the right to bear
12 arms, to include the small arms components
13 therein.

14 And smokeless powder is a component of
15 small arms, so it is unregulated. You can go into
16 your local store and buy smokeless powder. There
17 is no paperwork required to be filled out. It is
18 readily available.

19 Q. So this is the type of powder that's
20 used by reloading enthusiasts?

21 A. It is.

22 Q. Based upon the lab report and based
23 upon your experience and what you've seen in this
24 case, do you know what kind of powder this was or
25 who the manufacturer was?

1 A. You know, I observed it. It had yellow
2 flakes in it, and the lab confirmed that it's a
3 Hi-Skor 700X, which is a type of powder. It's
4 actually marketed by the Hodgdon Powder Company
5 under the brand name of IMR, Improved Military
6 Rifle powder.

7 Q. Okay. You're going pretty fast there.
8 So you said "Hi-Skor." Spell it.

9 A. It's H-I-S-K-O-R. And then it would be
10 700X.

11 Q. And where is it manufactured?

12 A. That's primarily manufactured in
13 Montreal -- outside of Montreal, Canada. And then
14 when they -- when their capacity becomes such that
15 they can't produce enough, their alternate
16 production facility is in Riordan Army Ammunition
17 Plant in Virginia.

18 Q. So if you could just tell the jury
19 whether or not this pipe bomb as you have
20 reconstructed it, the one that was underneath the
21 Mitsubishi, Exhibit No. 80, did it have all the
22 components of a destructive device?

23 A. Yes.

24 Q. Based upon your experience and training
25 and the composition and structure of this

1 particular device, assuming that it was
2 approximately three-quarters full of smokeless
3 double-base black -- explosive powder, do you have
4 an opinion as to the effect it would have had had
5 it exploded?

6 A. Yeah. Well-constructed pipe bomb,
7 very, very lethal, especially the placement of the
8 device. If the device had exploded while the
9 vehicle was in travel, obviously, you would have
10 had life-threatening injuries to the driver of the
11 vehicle or anybody else inside the vehicle as well
12 as anybody else on the road. And, of course, then
13 the subsequent car crash that would ensue after
14 this device functioned.

15 Q. Do pipe bombs, when they do explode,
16 also impact -- have an impact upon the gas tank of
17 a vehicle?

18 A. It could. I wouldn't expect the gas
19 tank to explode in a Hollywood sort of way, but it
20 could certainly cause a fire, which a fire can be
21 much more damaging than the initial explosion.

22 Q. Let me ask you to examine Exhibit
23 No. 85.

24 THE COURT: Counsel, we're getting close to
25 the end of the day.

1 MR. HAWS: And I'm almost through with mine,
2 Your Honor. I'll be through within three minutes
3 now.

4 THE COURT: All right.

5 BY MR. HAWS:

6 Q. Do you have Exhibit No. 85 in front of
7 you?

8 A. I do.

9 Q. What is Exhibit 85?

10 A. It's a -- it's another pipe of a little
11 bit larger size.

12 Q. 85 has been admitted into evidence, I
13 believe.

14 Would you go head and take it out and
15 just show it to the jury. And comment on any
16 similarities or dissimilarities between it and the
17 other pipe bomb, No. 80.

18 A. Yeah. Absolutely. The -- this pipe
19 has a coupler as opposed to just an internally
20 threaded end cap.

21 So in this device, you have -- you
22 know, we call these internally threaded end caps.
23 There's an end cap, and the threads are on the
24 inside of the cap. This has a coupler and then an
25 externally threaded cap on the end of that.

1 It is critical that you avoid reading
2 any news accounts, listening to any radio or
3 television accounts concerning the trial. As I
4 have instructed you, it would be wise simply to
5 avoid reading local newspapers, I think, for the
6 duration of the trial and to avoid local news.

7 Likewise, do not consult any outside
8 reference materials. That would include not only
9 written materials but also any electronic
10 information, such as websites, surfing the
11 Internet, blogs, chat rooms.

12 You simply cannot and must not seek or
13 obtain any information concerning the case or any
14 of the topics which you've heard testimony about
15 during the course of this trial. Do not visit any
16 site that may have been mentioned during the
17 testimony. Simply put the matter out of your
18 mind. Do not form any opinions. Do not discuss
19 the case with anyone, and do not allow anyone to
20 discuss the case with you.

21 Again, I'll direct everyone in the
22 courtroom to give the jurors the first opportunity
23 to leave the courthouse. They will proceed
24 directly to their vehicle.

25 And then when we reconvene Monday

1 Now, when I examined this, it was
2 exactly the -- as you see it here. There was not
3 a cap on the other end. And I was told that that
4 had been filled with powder at one point. The cap
5 had been removed and the powder dumped out.
6 Although, at the time, I did observe some flecks
7 of disk morphology smokeless powder when I
8 examined it back in July.

9 Q. Let me make sure I just understood you.
10 So when you examined it, there were still some
11 remnants of smokeless black powder inside of
12 Exhibit No. 85?

13 A. Disk smokeless powder, yes.

14 MR. HAWS: Okay. I believe those are all
15 the questions I have for Mr. Phillips.

16 THE COURT: Mr. McAllister.

17 MR. McALLISTER: I do have questions,
18 Your Honor, but I don't want to take it past 2:30
19 today.

20 THE COURT: All right. I guess we'll see
21 you Monday morning.

22 Ladies and gentlemen, we're going to
23 take the weekend recess. As we take the recess,
24 I'll admonish you to recall the court's extended
25 admonition concerning juror conduct.

1 morning at 8:30, please proceed directly to the
2 fifth floor jury assembly room.

3 Mr. Severson, there was an issue
4 considering another jury being --

5 LAW CLERK: We have actually asked them to
6 come straight to the sixth floor.

7 THE COURT: All right. There is another
8 jury being, I think, oriented for another trial
9 Monday morning, so the jury assembly room will be
10 tied up.

11 All right. Perhaps I'll have
12 Mr. Severson escort the jury out; then I'm going
13 to take up one matter with counsel very briefly.

14 Ladies and gentlemen, we'll see you,
15 then, Monday morning at 8:30.

16 (Jury absent.)

17 MR. HAWS: May the witness step down,
18 Your Honor?

19 THE COURT: Yes. Certainly.

20 Counsel, in anticipation of the Rule 29
21 motion -- which I'm assuming we'll hear Monday,
22 perhaps early in the day -- I would like counsel
23 to be prepared. The elements offense that we --
24 or the elements instruction that we read to the
25 jury on the first day of trial as part of what I

1 call the preproof instructions, I'm not sure I'm
2 uncomfortable with them, but I do need some
3 guidance from counsel, perhaps from the government
4 as to -- and it's an issue that I need to resolve
5 in terms of the Rule 29.

6 And that is: What is the predicate
7 offense, the underlying felony offense for Counts
8 2 and 3? Is it -- the offense charged in Count 1
9 deals with a time period -- I'm looking at the
10 indictment, in fact, as we speak -- extending from
11 December 2009 through June 11th, 2010.

12 And I'm going to want counsel to
13 explain whether your position is that there is an
14 ongoing criminal act that included -- incorporates
15 both what Mr. Fairfax testified to as the
16 attaching of the pipe bomb and then the travel to
17 Oregon to determine whether it had fallen off,
18 whether it then also incorporates the second trip
19 to Oregon to presumably involve Ms. Steele in a
20 fatal car accident.

21 My concern is that the -- there has to
22 be a predicate federal felony. And if we view
23 these as discrete acts, the preparation of the
24 pipe bomb relates to an act that I understand
25 occurred in Idaho. The acts related to the second

1 been told and what counsel has told Mr. Severson,
2 that perhaps the government will intend hopefully
3 to rest Monday morning.

4 MS. WHELAN: Yes, Your Honor.

5 THE COURT: Is that correct?

6 MR. HAWS: Yes.

7 THE COURT: Mr. McAllister, you'll
8 coordinate and perhaps, over the weekend, make
9 sure you're ready to go.

10 What I intend to do -- and I'm already
11 looking at the Rule 29 motion, so I'll be -- but I
12 generally like to keep those arguments fairly
13 short and sweet. So, you know, I'm thinking 15
14 minutes or so to argue it, since I'm already
15 looking at it, just told you where my concerns
16 are.

17 And, of course, you're all well aware
18 of the standard which would apply, a very --
19 somewhat of a low bar for the government to clear,
20 which is whether or not there is sufficient
21 evidence from which a reasonable jury could find
22 beyond a reasonable doubt that each element of the
23 charged offense has been proven. I don't make
24 credibility determinations; that's for the jury.
25 I just ask, if the jury believed everything that

1 trip to Oregon, which would clearly involve
2 interstate commerce -- but I think there is just a
3 concern. I need counsel to explain to me -- and
4 I'm sure Mr. McAllister is going to make argument
5 about this -- about how that all hangs together,
6 whether or not it is all one overall criminal act,
7 whether there are discrete criminal acts; one
8 related to the pipe bomb, the second to the second
9 trip to Oregon that's been testified to.

10 And, again, I'm not making any comment
11 whether it, in fact, occurred or did not occur. I
12 think that's for the jury to determine. I'm only
13 concerned what the evidence is for the jury to
14 deal with and then whether -- and if they are
15 treated as discrete acts, which of those discrete
16 acts is the predicate federal felony offense to
17 support Counts 2 and 3?

18 I don't know if that's clear, but
19 I'm -- what my concern is. I'm reluctant to give
20 any more guidance other than to say that I'm
21 scratching my head a little bit now, as we speak.
22 And I think counsel is going to need to be ready
23 to discuss that Monday when we take up the Rule 29
24 motion.

25 And I'm assuming, based on what I've

1 has been presented and then construes it in a
2 light most favorable to the government, could a
3 reasonable jury find the defendant guilty beyond a
4 reasonable doubt.

5 So I'm -- I'll just leave it at that.

6 All right. We'll be in recess, then, until 8:30
7 Monday morning.

8 (Court recessed at 2:38 p.m.)

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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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4

5 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

6 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

7 c e r t i f y :

8 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

9 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

10 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

11 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

12 s u p e r v i s i o n ; a n d

13 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

14 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

15 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 .

16 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

17 m y h a n d J u n e 2 4, 2 0 1 1 .

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21 _____ - s - _____

T a m a r a I. H o h e n l e i t n e r

22 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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