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**IN THE
SUPREME COURT OF THE UNITED STATES**

**IN RE GERALD ROSS PIZZUTO, JR.,
Petitioner.**

**ON PETITION FOR EXTRAORDINARY WRIT AND ORIGINAL PETITION
FOR WRIT OF HABEAS CORPUS**

**APPENDIX TO THE PETITION FOR EXTRAORDINARY WRIT AND
ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS**

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INDEX TO APPENDIX

APPENDIX A:	Testimony of James Michael Rice, March 22, 1986, <i>State of Idaho v. Pizzuto</i> , Idaho County District Court No. 22075.....	App.001–197
APPENDIX B:	Prosecution’s Closing Argument Rebuttal, <i>State of Idaho v. Pizzuto</i> , Idaho County District Court No. 22075	App.198–208
APPENDIX C:	Pronouncement of Sentence, <i>State of Idaho v. Pizzuto</i> , Idaho County District Court No. 22075.....	App.209–222
APPENDIX D:	Affidavit of James M. Rice, September 28, 2005.....	App.223–226
APPENDIX E:	Affidavit of Julie Kaschmitter, October 21, 2005.....	App.227–232
APPENDIX F:	Third Supplementary Discovery Compliance, February 18, 1986, <i>State of Idaho v. Gerald Ross Pizzuto</i>	App.233–290
APPENDIX G:	Judgment of Conviction, June 4, 1986, <i>State of Idaho v. James Michael Rice</i> , Idaho County District Court No. 22089.....	App.291–293
APPENDIX H:	Final Discharge of James Michael Rice, December 25, 1998.....	App.294
APPENDIX I:	Motion to File Successive Petition for Writ of Habeas Corpus, March 2, 2011, <i>Pizzuto v. Blades</i> , 9th Cir. No. 11-70623.....	App.295–358
APPENDIX J:	Discovery Compliance, August 30, 1985, <i>State of Idaho v. Rice, et al</i> , Idaho County District Court Nos. 22089, 22076, 22077, 22075.....	App.359–360
APPENDIX K:	Fourth Supplementary Discovery Compliance, February 18, 1986, <i>State of Idaho v. Pizzuto</i> , Idaho County District Court No. 22075.....	App.361–362
APPENDIX L:	Report of Randy D. Baldwin, Attempted Evidence Recovery.....	App.363

APPENDIX M: Second Supplementary Discovery Compliance,
February 7, 1986, *State of Idaho v. Pizzuto*,
Idaho County District Court No. 22075.....App.364–366

APPENDIX N: Seventh Supplementary Discovery Compliance,
March 3, 1986, *State of Idaho v. Pizzuto*, Idaho
County District Court No. 22075.....App.367–368

1 to withdraw this particular exhibit from evidence for your
2 convenience, it's a long statement and rather than having you
3 read it all they will simply present those portions they feel
4 will be relevant to the testimony of this witness.

5 That will explain to you perhaps at a later time
6 why you don't have this in the jury room and your notes
7 request that it in fact was admitted. With that, Counsel, you
8 may inquire.

9 MR. BOOMER: Thank you, Your Honor.

10 JAMES MICHAEL RICE,

11 called as a witness on behalf of the State, after first being
12 duly sworn upon his oath to tell the truth, the whole truth,
13 and nothing but the truth, testified as follows, to-wit:

14 DIRECT EXAMINATION

15 BY MR. BOOMER:

16 Q Would you please state your name for the record?

17 A My name is James Michael Rice.

18 THE COURT: We'll start now, Mr. Rice, because it
19 happens with all the other witnesses, it will become necessary
20 to turn on the air conditioner and it's real hard for the
21 jurors to hear, so if you could, please speak up, it would
22 help.

23 A Okay.

24 THE COURT: Thank you.

25 Q (Mr. Boomer:) Give us your name again, please?

1 A My name is James Michael Rice.

2 Q And where are you originally from?

3 A Orland, California.

4 Q Lived in California most of your life?

5 A Yes, I have.

6 Q Tell us a little bit about your background;

7 first of all, are you married?

8 A Yes, I am.

9 Q Do you have any children?

10 A Three children.

11 Q And what are their ages?

12 A Tami is ten, Chris is nine and Mike is two.

13 Q You have lived in California most of your life?

14 A Yes, I have.

15 Q And whereabouts in California?

16 A In Santa Cruz, California or in Orland, California.

17 Q Uh-huh, what type of town is Orland, California?

18 A It's a farming town, very small. There's

19 probably two thousand people in this town yet there is about

20 five thousand people around the farming community.

21 Q Okay, what sort of work if any did you do while

22 living in Orland, California?

23 A I had my own tree service and forty hours a week

24 I roofed houses for commercial roofing or I hauled hay, but

25 my steady job was roofing, and I take care of my tree service

1 on the weekends.

2 Q Okay, did you become acquainted while living in
3 Orland, California, with someone known to you as William Odom?

4 A Yes, I have.

5 Q Would you describe for the jury how you became
6 acquainted with William Odom, or Bill Odom?

7 A I met him just before -- it was just before
8 Thanksgiving in '85, and we had his wife and him and his child,
9 his first child over for dinner one night, and we went over to
10 their house for dinner the next night. About two months later,
11 I noticed that Bill Odom didn't have a job, I asked him to work
12 for me. I paid my employees a hundred dollars a day for the
13 tree service and after the first day I decided that Bill Odom
14 -- well, Bill Odom couldn't throw a rope ten feet in the air.

15 Q Couldn't what?

16 A A rope, and it's necessary to have a ground man
17 who can throw a rope, so I let him work one day and I couldn't
18 use him.

19 Q Did you remain friendly, though, with Bill Odom
20 even though the job situation didn't work out?

21 A Yes, for a while: I guess we were friends the
22 whole time that I've known him, but -- or distant friends,
23 or at least sometimes I wouldn't see him for two months, some-
24 times I wouldn't see him for a week, but I wouldn't say we
25 were close friends, no.

1 Q Okay, did you guys party together?
2 A Yes, sir.
3 Q Did you ever get into trouble with your wife
4 over that?
5 A One time I did, I came home at four o'clock in
6 the morning.
7 Q Okay, do you know whether or not Bill Odom ever
8 got in trouble with his wife over that?
9 A I don't know if he got in trouble over that
10 incident, but I have stopped him and his wife from fighting a
11 couple of times in my house.
12 Q Okay. Did you ever become acquainted with a
13 person known to you as Jerry Gilbertson?
14 A Yes, I have.
15 Q And did you later find out he had a different
16 last name?
17 A Yes, sir, I did.
18 Q And that would be Jerry Pizzuto?
19 A Yes, sir.
20 Q Would you point out the person that was originally
21 known to you as Jerry Gilbertson, for the benefit of the
22 record?
23 A He's sitting on the far right-hand side of
24 both attorneys, and I don't know what type of suit he is
25 wearing, but he's sitting on the right-hand side of Mr.

1 Chenoweth and his other lawyer.

2 Q Okay, all right. When did you first meet Jerry
3 Gilbertson?

4 A I met him, I believe, it was just two days before
5 we started to move Bill and his wife up here.

6 Q Describe the circumstances around how you
7 happened to get involved in helping Bill Odom to move to Idaho?

8 A I was over at a friend of mine's house, his
9 name is Carlos Baltazar (PH), we're on the same ball team and
10 just after the game we were sitting there talking, we were
11 just talking and there was a knock on the door and Bill Odom
12 came in and prior to that he was up here in Idaho, supposedly
13 working but he produced a check that I thought was almost
14 four thousand dollars, and asked me if I can cash it for him.
15 I told him, no, I didn't know where you would cash a check
16 like that.

17 Q Why would he ask your assistance in cashing a
18 check that, I presume, was written to him and not to you?

19 A He had no I.D. at all and me and my wife we
20 never kept a bank account we always kept our cash at the house
21 and I just didn't know where to cash it for him.

22 Q Uh-huh.

23 A And I asked him where he got the money and he
24 said his grandfather died and he just got back from Idaho,
25 himself, Bill Odom did, and I asked him what he was doing up

1 here and he said he was working in the apples, he said he was
2 making nine dollars an hour picking nine crates of apples or
3 -- ten crates of apples from four o'clock in the morning until
4 about two o'clock in the afternoon and was making ninety-nine
5 dollars a day.

6 And we talked about ten or fifteen minutes and in
7 that conversation he told me he was going to move his family
8 up here and he asked me if I would help him move up here, he
9 would pay me fifty dollars to drive his car or his truck up
10 here, he was going to buy a car and a truck after he cashed
11 his check.

12 Q Well, why did he need any help driving if he had
13 his wife and he?

14 A Lene doesn't drive and Bill doesn't have any
15 drivers license or I.D.

16 Q Okay.

17 A I was going to bring -- he asked me if I was
18 going to come that I bring my tools with me to work on his
19 automobiles, I know enough about mechanics to keep a car going,
20 but no major things.

21 Q Did he mention anything about working in the
22 apples?

23 A Yes, well, I asked him about it -- I told him I
24 wasn't busy on my tree service and I called my boss and took
25 two weeks off of work.

1 Q This is off of your roofing job?

2 A Yes, and this is after I thought about it for a
3 little bit and told him I could call my boss and take off a
4 couple of weeks from work, and asked him if he could get me
5 a job in the apples so it wouldn't be a complete waste of my
6 time.

7 Q Okay.

8 A And he said anybody can work in the apples, so
9 I thought about it again, and he brought up the subject of
10 Idaho being the Gem State, and I've always wanted to pan for
11 gold and stuff like that and he told me there was gold and
12 rubies and sapphires up here. So, I decided to come up here.

13 A couple of days before that, before I even saw him,
14 me and my wife got into a little argument.

15 Q Uh-huh.

16 A Well, me and my wife got into a little argument.

17 Q Uh-huh.

18 A Well, it wasn't a big one and it wasn't a small
19 one, because she felt I wasn't spending enough time with the
20 family, which I wasn't, I was working seven days a week and
21 I was playing baseball two nights a week. So, two days before
22 Bill came back from Idaho, we had a ball tournament and after
23 the game they had a trophy for the team that drank the most
24 beer and I got drunk and when I got home we got in an argument
25 because she had dinner waiting for me for three hours, and we

1 got in a big argument. The next morning, I woke up and my
2 wife was up at her girlfriend's house and I called her and
3 she told me it would be best if we -- if she would stay over
4 there for a few days to see how her mind was working and
5 stuff, plus, my wife was pregnant -- well, she almost died
6 just a couple of days ago.

7 Q From that pregnancy?

8 A Yes.

9 Q Okay.

10 A And so we decided we would go ahead and stay
11 away from each other for a couple of days and I told her that
12 Bill Odom had asked me to come up here with him. Well, my
13 wife never really liked Bill Odom, because some of the things
14 that had happened between his wife and him and some other
15 people, and so that's basically why we were never real close.
16 I don't know if a man is supposed to be the boss of the
17 family or not, me and my wife share the responsibility of that
18 and I admired her for it, for telling me to stay away from
19 him, which I did, for a while, but after a while we just
20 casually saw each other, we went fishing one time, I took my
21 son and he took his son.

22 Q Okay. Mr. Rice, you mentioned you had three
23 children and the youngest was two, but you also -- I'm a little
24 up in the air here, you mentioned your wife was pregnant and
25 had some difficulties just recently: what is the circumstances

1 there?

2 A We don't have no baby.

3 Q Was the baby lost or what did you do?

4 A It was lost to me and my wife, but we had to give
5 him up for adoption because of my wife's health and, well,
6 because of my problems that I'm in and stuff. He went to a
7 good home.

8 Q Okay. I'm sorry, I didn't mean to upset you,
9 I just wanted to ask --

10 A That's all right.

11 Q Mr. Rice, let me move on here. I take it by your
12 testimony that you agreed to come to Idaho with Mr. Odom to
13 help drive one of the vehicles?

14 A Yes, sir; just before -- well, just before we
15 started packing the truck, I changed my mind, I wasn't going
16 to come. Then, I thought, well, I had already told him I would
17 come up here, and plus, I knew Bill didn't have a licence and
18 I knew he didn't know anything about mechanic work and I felt
19 bad about changing my mind, I had already taken two weeks off
20 from work, this was about eleven o'clock at night and I had
21 already taken my clothes and fishing pole back to my house, and
22 I went ahead and brought them back over there and decided I
23 would come up here.

24 Q Okay, and you testified earlier that you met
25 Jerry Pizzuto, or Jerry Gilbertson, as you knew him then,

1 at some point in preparations for leaving for Idaho?

2 A Yes.

3 Q Describe the circumstances and when you met him?

4 A After Mr. Odom had asked me to come up here and
5 stuff, I thought about it and I said I would, this was before
6 I changed my mind, then I changed my mind again. I went over
7 to Bill's house to ask him what all I should bring; is it cold
8 up here -- I didn't know nothing about anything out of
9 California or Phoenix, Arizona where I have lived before.
10 Well, he told me it gets real cold at nighttime, but in the
11 daytime it's blistering hot, so I went back home and got all
12 my stuff that I was going to bring up here and I packed it and
13 inbetween this time, he introduced me to Jerry. But while
14 Bill was up here he asked me to check on his wife, Lene, that
15 he has a friend of his staying there at the house. And one
16 night when I went and checked up on Lene, it was about ten
17 o'clock at night, she came the door and I asked her if
18 everything was okay, if she needed anything, she said no and
19 I just got a glimpse at Jerry, I never was introduced to him.
20 But when I did go see what all I should bring, Bill introduced
21 him to me.

22 Q Okay, I don't think I've asked you this, but
23 what time of year or what month or day, if you can recall,
24 did you eventually leave for Idaho?

25 A We left July 16th.

1 Q Mr. Rice, that's a bit early for apple harvest
2 in Idaho, isn't it?

3 A Yes, sir; like I said, I didn't know nothing
4 about Idaho, and while in California we'd get two crops of
5 oranges a year, we get -- oh, some times the farmers can
6 harvest three crops of hay.

7 Q So, you didn't know, at that time at least, when
8 harvesting of particular crops was on in Idaho?

9 A No, sir; I thought the only thing Idaho had
10 was potatoes.

11 Q Okay. So, I take it you and the Odom family
12 and Jerry Gilbertson, or Jerry Pizzuto, I'll refer to him as
13 Jerry Pizzuto from now on, did leave for Idaho on the 16th
14 of July, last summer?

15 A Yes, sir.

16 Q Just describe in general the trip up, who rode
17 with who, how long did it take you to get here?

18 A Lene and Jerry rode in the car, Bill bought a,
19 I believe it was a '72 or '73 Buick Skylark, and he bought a
20 1970 Ford pickup, it was light blue in color. I rode with
21 Bill and Jerry and Lene and the kids rode in the same car. We
22 went up through Grass Valley, California, it's just south of
23 Nevada, Reno, just before we got into Nevada, Bill Odom got
24 pulled over by the police and they found out he had no license,
25 no insurance or stuff like that, that's why I took over the

1 driving of the pickup. But we drove like that all the way
2 up to Winnemucca, Nevada, just outside of Winnemucca on your
3 way to Oregon, Bill was getting upset with Jerry because we
4 couldn't keep up with the truck, so Bill had me pull over and
5 him and Jerry switched, Jerry was riding in the truck with me
6 now and Bill was going to drive the car.

7 Q I take it after stopping in Winnemucca you
8 eventually arrived in Idaho?

9 A Yes, sir; I believe the next day.

10 Q Okay.

11 A The next evening as a matter of fact.

12 Q And where did you finally stop for the evening
13 when you got to Idaho?

14 A We stopped in Donnelly and we rented motel rooms
15 at the first motel we came to on the left-hand side just
16 before a grocery store, and spent the night there.

17 Q And spent the night there, what did you do the
18 next day?

19 A We spent two nights there.

20 Q Okay. Did you eventually make the acquaintance
21 of Phillip Odom and Margaret Odom?

22 A No, sir, I never met them. But we went over to
23 their house -- the first time we went over there, there was
24 nobody home, and then we went down to a creek, I assume it was
25 a creek and we stayed there for a while and then Bill Odom and

1 his wife went back up to his uncle's house and they were
2 there and they visited for a while, I guess, and they came and
3 said they were going to sleep there for a couple of nights.
4 They said that me and Jerry could sleep in the car.

5 Q Is that what you did?

6 A Yes, that's what we did.

7 Q Okay, all right. Did you eventually make any
8 plans to go camping with the Bill Odom's and Pizzuto?

9 A Yes, I did; I believe Jerry and I slept in the
10 car for two or three nights, I'm not sure.

11 Q That's fine.

12 A And in the process of doing that, in the time of
13 doing that, Bill was looking for a home for him and his wife
14 to rent and live in, to stay up here in. And they had a couple
15 of choices in a home, it fell through, I guess, and just
16 shortly after that Bill told Lene, asked her if she wanted to
17 go camping and he suggested a couple of places. He suggested
18 a place called Ruby Meadows, and somewhere along the Snake
19 River, I can't remember, Secesh or Secesh River, something
20 like that.

21 Q Okay, do you know whether or not Ruby Meadows is
22 close to the Secesh River?

23 A No, sir, I don't.

24 Q Okay.

25 A I knew there was a fire up there somewhere.

1 Q Okay, that's fine.

2 A After talking a while, Bill Odom had told me that
3 Ruby Meadows had got its name from rubies and I felt like a
4 kid, I liked rubies, I never had one, so I told him: "Let's
5 go up there, then." Well, there was a fire up at Secesh or
6 something like that so went -- before we went to Ruby Meadows
7 stored their stuff in a storage place inside McCall, and
8 after that -- well, Lene had stayed at his uncle's house and
9 after that we went to a sporting goods store in McCall, I don't
10 recall the name of it, and Bill Odom decided that we can go
11 hunting and panning and camping all in the same place.

12 Q Uh-huh.

13 A So, we went into the sporting goods and he was
14 going to buy a rifle for hunting, he was going to buy a big
15 rifle, but he decided he didn't want to pay that much money
16 for it. So, he wound up getting a .22 caliber rifle, semi-
17 automatic rifle and the man behind the counter asked Bill for
18 his identification. Bill acted like he was getting it, but he
19 didn't have one and he told the guy he didn't have one. And
20 the guy said: "Well, I can't sell you a gun."

21 Q So you --

22 A Well, I wound up using my identification card
23 and my credit cards for identification and we purchased the
24 gun.

25 Q How much did -- how much did Odom pay for the gun?

1 A Oh, I believe he paid sixty-five dollars, I
2 can't be sure, though.

3 Q Okay, all right. So, I take it you eventually
4 proceeded up towards the Ruby Meadows area?

5 A Yes, I did.

6 Q Did you talk about going any other places up
7 there?

8 A Not at that time, no.

9 Q Okay, describe how you proceeded to Ruby Meadows?

10 A We went through McCall, and the direction I'm
11 not sure of, but you have got to go around the lake to the
12 back side, I don't know if it's the back side or what, but
13 you go around the lake and we drove for about thirty-five to
14 forty minutes and we seen the sign that said Ruby Meadows,
15 and it was on the right-hand side of the road. So, we turned
16 in to Ruby Meadows, this was in the evening time when we were
17 getting there, and we drove for about twenty minutes on a dirt
18 road, had a lot of ruts and holes in it and we finally got to
19 a spot down on the Meadows themselves and we set up camp.

20 Q Were you all in the same vehicle?

21 A Yes, sir; we were.

22 Q And what vehicle was that?

23 A We were in the truck.

24 Q Bill Odom's truck?

25 A Yes, sir.

1 Q Okay, so you set up camp down in the Meadows; was
2 it anywhere near a body of water?

3 A Yes, sir, just about a hundred and fifty yards
4 to our left-hand side from our campsite there was a pond.

5 Q Okay.

6 A And the creek ran through the pond and on down.
7 Shortly after that, Bill Odom and I went fishing, did some
8 panning before dark, and we drank a few beers and that ended
9 that evening.

10 Q Okay, did you take quite a bit of beer with you?

11 A I think we took -- well, a case of Budweiser,
12 a case of -- half a case of Old Milwaukee, it was.

13 Q Okay, did you eventually at some point leave
14 that original camp and move to some other location?

15 A Yes, sir. The next morning Bill and myself woke
16 up and got dressed and he asked if I wanted to go hunting. I
17 said: "Sure."

18 Q Had you ever been hunting before?

19 A Yes, I had been hunting for birds.

20 Q Okay.

21 A And we went up, we went straight, as we were
22 driving into our campsite, we walked straight up to the ridges
23 and we started hunting and we saw a grouse, I believe it's a
24 grouse, we call them pheasants, but he shot the grouse and we
25 plucked the feathers and we hung it up the tree, and then we

1 went on hunting again. We got, oh, we were gone for a good
2 three or four hours and then we came back, but the route we
3 came back, we had circled just about every ridge there and we
4 came through the back way, I would call it a back way, but
5 while we were coming through there, there was a rough guess of
6 five cabins, three or four of them -- well, three of them I
7 would believe was in ruins and two of them were suitable for
8 people to stay in, but one didn't have a door and one did.
9 So, when we got back to camp we told --

10 Q What did you do with the grouse, was that still
11 hanging in the tree?

12 A It was still hanging in the tree.

13 Q All right, did you eventually return and get it
14 or something?

15 A Yes, Bill went and got it.

16 Q Bill did?

17 A Yes.

18 Q I want to interrupt you here for a minute, it
19 may seem very insignificant to you, but Bill went and got the
20 grouse?

21 A Yes, sir.

22 Q And who cleaned the grouse?

23 A I did.

24 Q Okay, do you remember who cooked the grouse?

25 A I did.

1 Q Okay, did Jerry Pizzuto ever touch that grouse
2 other than to eat it?

3 A Well, he touched it just before I cooked it, yes.

4 Q What did he do with it?

5 A He just held it and squeezed it, I guess, I don't
6 remember exactly what he done but just shortly after that
7 there --

8 Q Just took a look at it?

9 A Yeah, but shortly after that I just went ahead
10 and fire-fried it.

11 Q How did you fire-fry it?

12 A I put it on a stick and stuck him in the fire,
13 done it that way. I had some foil around him, as a matter of
14 fact, that's how we used to do our doves and pheasants and
15 stuff like that.

16 Q Okay, that's fine. I'll change the subject and
17 get back to what you were talking about. You said you came
18 back after finding these cabins and talked to someone about it.
19 Just take it from there and tell us what you did?

20 A Well, before we got back to camp, Bill decided
21 that we could move into these cabins while we were camping,
22 so we discussed it with Lene and Jerry and everybody agreed
23 that we go stay in the cabin, so we broke up camp and I believe
24 I walked to the cabin because I was carrying -- I don't remember
25 what I was carrying, but I was carrying something, I believe it

1 was a fishing pole, I didn't want to get it broke, I had a
2 nine-foot casting fly rod, so I just carried all of those down
3 there and shortly after that, they showed up.

4 Q Okay, I'm going to show you a photograph
5 about which cabin we're talking about. Showing you a photo-
6 graph of State's Exhibit 3, do you recognize the cabin shown
7 in that photograph?

8 A Yes, sir; this is the cabin we stayed in, this
9 is the first cabin you come to on the road from the Meadows
10 themselves.

11 Q Okay, also showing you State's No. 4, do you
12 recognize that cabin?

13 A Yes; that's the same cabin, I believe. No, sir,
14 that's not the same cabin, that's a different cabin.

15 Q Okay, did you see that cabin at a later time?

16 A Yes, I have.

17 Q Okay. That's the one in State's No. 4, I will be
18 asking you some questions about that later, okay?

19 A Okay.

20 Q So, you moved into the second cabin?

21 A The first cabin.

22 Q Excuse me, the first cabin, you were right, and
23 what did you do the rest of the day, as best you can recall?

24 A Jerry and Bill went fishing and Lene and I stayed
25 there, she watched the kids and I cleaned the cabin.

1 Q Okay.

2 A It took about an hour and a half, but we got
3 it clean and we had a trash pile just beside the cabin where
4 we pulled all the trash out to.

5 Q Do you recall anything else of any significance
6 during the rest of the day?

7 A Yes, Bill Odom and I went hunting again that
8 evening, I would say about three-thirty or four o'clock.

9 Q Uh-huh.

10 A We went out again, but we didn't stay out as long
11 as we did previous, the previous time we went hunting.

12 Q Okay. What day would this have been?

13 A This would be the 22nd, I believe we got there
14 on the 21st.

15 Q Okay. So, on the 23rd, that would have been
16 the day after you moved into the cabin?

17 A Yes, sir.

18 Q Do you recall anything significant about that
19 day?

20 A Again, Bill and I woke up in the morning and
21 went hunting, again.

22 Q Uh-huh.

23 A And we went on the same ridges but took a
24 different route this time.

25 Q Uh-huh.

1 A And we came in the same way, we were gone longer,
2 we were gone for about five hours, I think that morning. We
3 got back and we took the hubcaps off of his truck again and we
4 started panning with them.

5 Q Uh-huh.

6 A And I had started digging a hole just up the
7 road that I was using for panning and Bill told me that when
8 the dredges came through there that they would roto-till up
9 the bottom of the creek or whatever they were using their
10 equipment and sometimes they would throw gold stones and stuff
11 like that, it would never catch all of that it was supposed to
12 be getting out of there, so I had a hole down the road and
13 then I started digging another hole behind the cabin where we
14 stayed to see where I could get more profit from, which hole.
15 And I found a couple of rubies that day, I was happy, I had
16 never seen one before, but it was real because Bill knew about
17 it, so after I got those, I showed them to Lene and I believe
18 that evening, again, Mr. Odom and I went hunting, but we
19 didn't go out really just for hunting because we took our pans
20 and the shovel with us.

21 Q All right. Directing your attention to the
22 24th, do you remember anything -- do you remember what you did
23 that day? Just in general, you don't have to --

24 A Yes, sir; I believe we woke up just right after
25 the sun came up, it was real cold out, there was a lot of

1 frost and I left my pants outside because they were wet from
2 the night before from the creek and my shoes, I woke up and
3 they were froze stiff. So, we made a fire, we ate some, we
4 tried to make some pancakes and my clothes got fairly dry,
5 I changed into them. I had other pants in my belongings,
6 but they were bell-bottom type and you got stickers up inside
7 your socks, but I can blouse my straight legs.

8 Q Uh-huh.

9 A Shortly after that we went out and took the
10 shovel with us, two pans, a five gallon bucket, the .22 again.
11 We went hunting and eventually we panned a little bit and found
12 what I thought was an elk, but it turned out it was a deer.

13 Q Why did you think it was an elk?

14 A Jesus, we don't have deer that big in California.

15 Q Okay, you had never seen an elk before, I take it?

16 A No, sir; I never have.

17 Q Okay, you have never hunted big game before?

18 A Rabbits is the biggest thing I have ever hunted.

19 Q Okay, so you didn't know whether it was very
20 practical to hunt deer or elk with a --

21 A No, after I seen that deer, I knew darn good and
22 well that you're not going to kill that deer with a .22.

23 Q Okay. Anyway, did you do anything else signi-
24 ficant that day that you can remember?

25 A Yes, after we got back to camp, Bill Odom and

1 myself, we went to -- I don't know if this is McCall or not,
2 where the lake is, I believe it was the back side of the lake,
3 we stopped at a gas station, we went into town for supplies,
4 stopped at a gas station, filled up the truck and we went and
5 got some more beer and hot dogs and stuff like that. And the
6 truck wouldn't start, on the way into town Bill started
7 racing his motor and he blew off the exhaust manifold right
8 off of the header so it was too hot for us to fix it right
9 there, so the truck still wouldn't start about twenty minutes
10 later, we kept trying to push start it and this guy came up to
11 us, he was going to help us push it, so we push started it and
12 we learned he was on his way to Canada with his girl friend,
13 somewhere up in British Columbia, I can't remember where, I
14 hope that's Canada, but we talked to him and I showed him the
15 rubies I had found the previous day and he got excited about
16 them and we asked him if he had some jumper cables and he did.
17 So, we pushed the truck across the street, that's where their
18 vehicle was parked and just right after we jumped the truck,
19 I told Bill to leave it started because the battery was low and
20 it would charge it up. I told him to play the radio because
21 that also helps charge the battery up.

22 Q. Playing the radio would?

23 A. The generator, playing it to keep the generator
24 going. That's what I was told, I don't know.

25 Q. Okay, go ahead.

1 A So, while the truck was started we started
2 drinking a beer and we were drinking a beer with the people
3 that gave us a jump and this police officer showed up and Bill
4 said don't worry about hiding your beers because this guy is
5 a friend of mine, I grew up with him.

6 Q Did he introduce you to the police officer?

7 A Yes, he did. Steve, I believe, is his name, I
8 can't be sure.

9 Q Okay, that's fine.

10 A We talked and I told him that I saw his truck,
11 that same police truck he had on our way to Ruby Meadows, he
12 had a brand new four-wheel drive and we talked a few minutes
13 and then we headed on back to camp.

14 Q Okay, so you returned back to camp on the 24th?

15 A Yes.

16 Q Do you recall anything else significant about the
17 24th; had some beer?

18 A Yeah, right when we pulled into Ruby Meadows
19 driveway, I guess, is what it would be called, there was a
20 truck there and it had what looked to me, that thing had a
21 backend full of beer and stuff. I told Bill that we didn't
22 even need to go to town, we could have come here and bought
23 beer from these guys. So, we got on into camp and we leisured
24 around for a little bit, drank some beer and Bill had told
25 Jerry about the truck that was --

1 Q That had the beer in it?

2 A That had the beer in it. And he said: "If we
3 ever run out of beer, we can always go up there and get beer."
4 Just after that we just talked a little while and eventually
5 went to bed.

6 Q Okay. Now, what did Jerry say about getting the
7 beer?

8 A When Bill told him about the truck, Jerry said:
9 "That if we run out of beer, we can just go up there and get
10 beer."

11 Q Did he say about how he was going to get it or
12 how you could have gone and got it?

13 A No, sir.

14 Q Okay. Up to this point do you recall any
15 conversations in which you took part or overheard concerning
16 robbery, robbing people up in that Ruby Meadows area, between
17 any of the three of you?

18 A There was a conversation, but -- well, there
19 was -- I can't -- I think it was the day before on the 23rd
20 that Bill and I were coming back to camp from hunting and he
21 asked if I wanted to go up to a place called War Eagle, and
22 said that there was gold mines up there, he said we could go
23 up there and jump somebody's claim. I said, you mean go up
24 there and kill somebody and take their claim? And he told me,
25 yes, and I told him, no. And he asked me why and I told him:

1 "Well, you just can't go up there and kill somebody and take
2 their gold that they've worked for." I've had a job since I
3 was thirteen years old and everything I've had I've worked
4 for. I've been in trouble before, but that's my mistake.

5 Q Okay. And you didn't -- up to the 24th, while
6 at Ruby Meadows, you didn't hear Odom and Pizzuto talking about
7 robbing people out in the area?

8 A Not on the 24th, no. I heard Jerry --

9 Q Excuse me, just a moment. I'm sorry. While at
10 the Ruby Meadows area, did you hear Jerry talk about robbing
11 people?

12 A Yes, sir, I have.

13 Q When was that?

14 THE COURT: I guess I don't --

15 MR. BOOMER: Prior to the 24th --

16 THE COURT: I guess I don't understand your question,
17 Mr. Boomer. Perhaps you can restate it.

18 MR. BOOMER: Okay.

19 Q (Mr. Boomer:) While you were at the Ruby Meadows
20 area, did you ever hear Jerry talk about robbing people, any
21 people up there?

22 A Jerry has told us of --

23 Q Excuse me, just a moment. Let me check my notes,
24 Your Honor.

25 I want you to listen carefully to my question, Mr.

1 Rice; up to the 24th, had Jerry ever talked about or suggested
2 robbing people that were up in that general area, Ruby Meadows
3 area?

4 A He mentioned that he would like to rob people
5 up there before. Jerry's original plan was to go to
6 Washington just after he came here --

7 Q Okay, that's fine, Mr. Rice. I just wanted to
8 ask you about that specific item. Do you recall the events
9 of the 25th of July of last summer?

10 A Yes, I do.

11 Q And what do you remember about those events and
12 what happened that day?

13 A We got -- Bill Odom and myself got up early that
14 morning and we went hunting again. We came back about just
15 before noon and there was a creek right next to our cabin and
16 it had a pipe where the water drained through.

17 Q This was where you had been panning?

18 A Yes, that's where I had been panning, yes. So,
19 I started panning, this is just after we had got back from
20 hunting and I had found -- I don't know how it happened, but
21 I found eight more rubies and I showed them to Lene Odom,
22 but Bill Odom had asked me just after I had started panning,
23 he said: "Let's eat something and go back out hunting," you
24 know, he was getting pretty frustrated because he had shot no
25 game, I guess. He said -- I don't recall the color of the

1 meat, but he said he was wanting some good red steak, I think
2 he said.

3 Q Talking about getting a deer, in other words?

4 A A deer and an elk, yes.

5 Q Okay, about what time of day was this that -- I
6 take it that you eventually left camp with Bill Odom to go
7 back hunting?

8 A Yes, sir.

9 Q About what time of day was that?

10 A That was just -- when I did agree to go hunting
11 with him again, it was around twelve-thirty.

12 Q Okay.

13 A And as we were walking towards the pond again --

14 Q This big pond that you camped by the first night?

15 A Yes, sir.

16 Q Okay.

17 A There were two bear tracks and Bill told me they
18 were bear tracks, they looked like they were bear tracks to
19 me, and so we started walking towards the pond and just before
20 we came to a clearing, there was a yellow pickup with a white
21 topper shell on it. And we stopped, Bill Odom said -- he asked
22 me, told me, to go back to the camp and stay with the kids and
23 "Tell Jerry to come up here, he's going hunting with me."
24 Because Jerry was staying at the camp every time we went hunting,
25 we asked him to go with us but he said he didn't want to go

1 hunting, he stayed there and watched the kids. I started
2 walking back to the camp, which I thought was a good idea, I
3 wanted to pan anyway. Just as I was turning around and walking
4 I heard scuffling feet and I turned around and Bill was
5 following me. So, when I got back to the camp I told Jerry
6 that he was going hunting and I was staying there. And Bill
7 had relayed to him as well and I grabbed my pan and beer and
8 went over to where I was panning. Just a few minutes after
9 that, maybe a couple, maybe three minutes after that, Bill and
10 Jerry headed back down where the direction we came.

11 Q Let me interrupt your testimony at this point and
12 ask you, Mr. Rice, isn't it true that when you and Bill and
13 Jerry were all together in the area of the cabin, that there
14 was talk about robbing the people down at the pond?

15 A Yes, sir.

16 MR. CHENOWETH: Your Honor, object to the question as
17 immensely leading.

18 THE COURT: Overruled.

19 A There was, there was more talk about it when
20 they had come back later.

21 Q (Mr. Boomer:) Okay, what --

22 A I picked up bits and pieces from where I was
23 panning about the people down at the truck, but nothing real
24 -- really that I could make out as a threat to anybody.

25 Q Well, if they were talking about robbing people,

1 didn't you think that was a threat to somebody?

2 A Yeah, but like I said, I just heard bits and
3 pieces, I wasn't thinking they were going down there to rob
4 Mr. Crawford and the man who was with him.

5 Q Okay.

6 A And I got suspicious about twenty minutes later
7 when Bill Odom had come back up to the cabin by himself and he
8 wasn't carrying his rifle. Bill Odom had never let any of
9 us carry that rifle no where and he had come back up, he went
10 in the cabin and brought out some fish eggs. I asked him:
11 "Where's Jerry?" He said he was down there talking to the
12 two men who were fishing.

13 Q One of whom you later found out to be this
14 Mr. Crawford you have referred to?

15 A Yes, I found that out in the preliminary hearing.

16 Q Okay.

17 A I didn't think strongly about it, but I started
18 getting real weird feelings and especially when Bill came back
19 without the rifle, and the bits and pieces that I had heard
20 earlier. And so after he had left, Lene came over and was
21 standing by me while I was panning and I showed her some
22 rubies that I had found, and just fifteen minutes later,
23 maybe twenty minutes later, I heard a noise, I heard a truck
24 coming. It had a loud motor on it, so I stood up and I saw
25 it was a white truck coming. While it was coming, the creek

1 where I was panning, the little stream goes across the road
2 and you have to slow down because it would jar your axles or
3 your springs, so just before it got to the creek I came out
4 to where I was panning and the truck stopped and I talked to a
5 man that was in the truck, there was a lady right next to him.
6 I showed him the rubies that I had and I told him that I was
7 looking for gold, but I didn't know what I was looking for and
8 stuff and we talked for a couple of minutes and then they drove
9 on.

10 Q Okay, what kind of pickup did they have?

11 A It was a cream-colored Ford, had an air horn on
12 the top and running lights as well on the top of the truck.

13 Q Did the man tell you his name?

14 A No, sir.

15 Q Did he tell you where they were from?

16 A No, sir.

17 Q They took off then after you talked to them?

18 A Pardon?

19 Q They took off after that and left?

20 A Yes, they stayed in the same direction they were
21 heading and they went on up.

22 Q Okay, would they have headed up in the direction
23 of that second cabin that I showed you a photograph of?

24 A Yes, sir; they did.

25 Q Okay, what happened after that?

1 A Jerry and Bill came back up to the cabin where
2 we were staying.

3 Q Did you have a conversation with them or did
4 you --

5 A Heard a conversation.

6 Q I'm sorry?

7 A I was listening to their conversation that they
8 were having and Jerry had mentioned the fact that he wanted
9 that man's gun that was on his side, he said it was a 44
10 Magnum.

11 Q Which man?

12 A Later on I found out it was Mr. Crawford.

13 Q Okay.

14 A Through the preliminary, but Bill told him --
15 Bill said something about: "You didn't want that gun, it would
16 put a hole clean through you." Bill Odom had made the state-
17 ment saying: "It's a good thing that that truck came by when
18 it did because I had a bead on that guy." Right then and
19 there I knew they were going to kill those people, rob them or
20 I thought they were going to kill them, from what he said, he
21 had a bead on them.

22 Q Mr. Rice, there's been prior testimony in this
23 case, and I want to specifically ask you: Before Odom and
24 Pizzuto went down to the pond to approach those fishermen,
25 isn't it true that Jerry Pizzuto told you to go dig a couple of

1 graves?

2 MR. CHENOWETH: Your Honor, I object to that as being
3 a leading question.

4 THE COURT: Overruled.

5 A No, sir; it isn't true.

6 Q (Mr. Boomer:) Did you make any reference to going
7 and digging some graves before they returned after the white
8 pickup or the light-colored pickup had gone by?

9 A No, sir, I haven't.

10 Q Okay. So Odom and Pizzuto come back and they
11 talk about the -- one of the fisherman's .44 and the truck
12 going by and things of that nature. Before I ask this next
13 question, what was Lene doing, in general, during this period
14 of time, from the time that you had left to go hunting and
15 came back, and then the truck went by; what was she doing in
16 general?

17 A One of the children was sleeping in the middle
18 of the floor of the cabin and the other one was sleeping on a
19 sleeping bag. She was just leisuring around, more or less.
20 She was drinking Dr. Pepper, she would go sit by the fire or
21 she would just stay in the cabin or she would come over and we
22 would talk.

23 Q Okay, you don't whether or not she saw or heard
24 any or all of these statements that you have told us about?

25 A When Jerry and Bill were talking, after they had

1 come back, Lene was standing in the doorway.

2 Q Uh-huh.

3 A And she was closer to them than I was and I
4 believe I was about twenty feet from them.

5 Q Uh-huh.

6 A I can't say she did hear them or didn't, but I
7 would think that she did.

8 Q Okay, that's fine. I just wanted to know where
9 she was in general. Was there any talk after that, and this
10 is a yes or no question, was there any talk after that
11 concerning the light-colored pickup that had gone by the cabin?

12 A Yes, sir.

13 Q Okay, and where in relation to the cabin did that
14 conversation take place?

15 A Where was I or --

16 Q Yeah, where were you and where was anybody else
17 that was talking about this pickup that went by?

18 A I was just finishing cleaning out a pan and Jerry
19 had asked --

20 Q Where were you cleaning --

21 A And Jerry --

22 Q Excuse me, Mr. Rice, let me interrupt you.

23 A I'm sorry.

24 Q Where were you cleaning out the pan?

25 A At the stream right next to our cabin.

1 Q The little stream?

2 A Yes, sir.

3 Q All right, and who was present when Jerry came
4 up to you and talked about it?

5 A Jerry didn't come all the way up to me, he walked
6 about halfway, Bill Odom was behind him and I believe Lene Odom
7 had just gone back into the cabin, I can't be sure.

8 Q Okay, and what did Jerry say or ask of you?

9 A He asked me: "Where did that white truck go that
10 came up here?" And I told him it was just a man and a lady in
11 there and it went up the road.

12 Q Uh-huh.

13 A I guess they were going to do some panning. Well,
14 the back of their truck was loaded pretty well with barrels,
15 that's all I could see, barrels.

16 Q Okay.

17 A Anyway, I told him where they went, I told him I
18 talked to them a couple of minutes and showed them my rubies.
19 I believe about five minutes later, maybe not even that long,
20 Jerry had taken the rifle and said: "I'm going to go hunting,
21 I'm going to get me some meat," and then he was gone.

22 Q Which direction did he go?

23 A He went more or less in the same direction as
24 the truck went, yet he went in the wooded part, he didn't go
25 up the road, he kind of half-mooned it, I guess in the direction

1 of where the people went.

2 Q How far up the road was he when you last saw
3 him? I'm referring to the road that the pickup went down.

4 A Maybe ten yards.

5 Q Okay. What did you do and anyone else do that
6 was left at the camp after Pizzuto had headed up towards
7 where the Herndons had gone?

8 A Just after he had done that, I had finished that
9 pan, my bucket was empty so I went over -- Bill was sitting on
10 the steps of the cabin, I grabbed me a beer and I sat down
11 next to him. We was just having light conversation for a few
12 minutes and then Bill had said that: "Jerry scares me, I don't
13 trust him, he scares me," and I --

14 MR. CHENOWETH: Your Honor, I would ask that the
15 question and answer be stricken from the record as conversation
16 taken place outside the presence of this defendant.

17 THE COURT: The motion is granted, the jury will
18 disregard what Odom told Mr. Rice at that moment.

19 You may proceed.

20 Q (Mr. Boomer:) So, I take it that you had a
21 conversation with Mr. Odom?

22 A Yes, sir; I did.

23 Q Don't tell me the contents of that conversation,
24 but you had a conversation with Bill Odom?

25 A Yes, I did.

1 Q You sat there and talked a while?

2 A Yes, sir; it was between I would say twenty and
3 twenty-five minutes.

4 Q Okay, was Mr. Odom doing anything with his
5 pickup at that time?

6 A No, sir; I fixed his exhaust manifold for him.

7 Q Uh-huh.

8 A He had a couple of spark plugs that needed
9 adjusted, needed to be regapped and I done that for him.

10 Q Okay. How long did you sit there talking to
11 Odom drinking a beer? I guess you said twenty or twenty-five
12 minutes?

13 A Yes, sir; it could have been maybe thirty, I
14 didn't have a watch.

15 Q Okay, so what did you do after -- well, what did
16 you do after having a conversation with Odom?

17 A Odom said --

18 MR. CHENOWETH: Your Honor, before we answer that
19 question again, again he's stating a conversation taking place
20 outside the presence of the defendant.

21 THE COURT: Well, I don't know that -- of course, it's
22 difficult to say because I don't know what the response is
23 going to be.

24 MR. BOOMER: I think the response is going to explain
25 why he did --

1 THE COURT: Well, why don't you go ahead and answer and
2 we'll see what we'll do.

3 A Mr. Odom said: Let's go up and get the gun
4 from Jerry and you and me go back up on the ridges.

5 THE COURT: Now, do you have any objections to that?

6 MR. CHENOWETH: No.

7 THE COURT: Fine.

8 Q (Mr. Boomer:) Did you think you would be able
9 to find Jerry?

10 A I didn't know, no, if the man's gone hunting, I
11 didn't expect we would find him.

12 Q Okay.

13 A I didn't understand why we wanted to go up and
14 get the gun if he was hunting, at that time. But -- well, we
15 took the truck and started driving up in the direction he
16 had headed, that he had walked, we were on the road.

17 Q Uh-huh.

18 A Right when we left I began yelling Jerry's name,
19 you know, every few yards or so that we drove we were driving
20 real slow and I yelled Jerry's name, and no Jerry came around.
21 But after we got up about a hundred and fifty maybe two hundred
22 away from the cabin we were coming into sight of Cabin No. 2
23 and I kept yelling Jerry's name still.

24 Q Now, the one you are referring to as Cabin No. 2,
25 that's the second --

1 A Yes, sir, it is.

2 Q That's the second picture that I showed you?

3 A Yes, sir.

4 Q Please continue.

5 A Still there was no Jerry and then we came into a
6 little clearing and I seen the white pickup.

7 Q The same one that had gone by earlier?

8 A Yes, sir, I kept yelling again and we turned, we
9 drove on past the Cabin No. 2, and we turned around.

10 Q Okay, did you see anything by what we are
11 referring to as Cabin No. 2?

12 A No, sir, I didn't see nothing there. And on our
13 way back, we started driving towards our cabin, No. 1, and I
14 was still yelling Jerry's name, and just right when we got
15 parallel to Cabin No. 2, I don't know why, but I looked over
16 to my left, I looked around and Jerry had stepped out into the
17 doorway of the Cabin No. 2 and he held up a pistol in his
18 hand, but it was in a holster, and I yelled to Bill to stop,
19 "There he is right there, he's got a gun in his hand." And we
20 stopped, Jerry came up to the truck. From then on my mind was
21 just gone, it wasn't gone to where I didn't know what was
22 happening, I was just getting scared and Jerry said: "Give me
23 half an hour and then come back up," and Bill said: "Okay,"
24 and we drove back.

25 Q You said your mind was getting scared at that

1 point?

2 A Yes, sir.

3 Q What did you --

4 A I thought right then and there that Jerry was
5 going to rob those people, that wasn't none of our guns, I
6 never seen that gun until he held it up. And right then and
7 there I knew he didn't go hunting for no game.

8 Q Did you see the rifle at that time?

9 A No, sir.

10 Q Did you see any other people at that time?

11 A No, sir, I did not. The cabin, as you look at
12 the door there you will see how dark it is, you can't see
13 three feet into the cabin from the road, but we went on down
14 to Cabin No. 1, I had jumped out of the truck and started
15 running around, I told Bill: 'We can't give that guy nothing,
16 we can't give that guy no kind of time.' I grabbed a knife and
17 I told him: "Let's run back up there." I looked at the knife
18 and I remembered that he now has two guns, I threw the knife
19 back down, I told Lene: "Grab that knife so the kids don't
20 get it, ' and I guess that she did. I probably should have
21 took that knife up there because now I don't have a weapon or
22 nothing. In my mind, I wanted to try to stop Jerry, I didn't
23 know if he had those people still alive or what in the cabin.
24 We got back up there and it took us probably two or three
25 minutes to get back up there.

1 Q How did you proceed to go back up to the cabin?

2 A We jogged, more or less, we ran, really, it wasn't
3 a fast run, it wasn't as fast as we could have ran.

4 Q Did you know what you were going to do when you
5 got up to the second cabin?

6 A No, sir, I didn't know what I was going.

7 Q Did you and Bill go back into the cabin you were
8 staying in before going up there?

9 A No, sir; this is before -- like I said, when I
10 jumped out of the truck, I started running around and Lene
11 asked: 'What's going on?' And Bill Odom said: "I think
12 Jerry is going to kill those two people." And shortly after
13 that is when we went up there.

14 Q Okay.

15 MR. CHENOWETH: Your Honor, again, I ask that that be
16 stricken from the record as being a statement made outside the
17 presence of the defendant. The jury should be so instructed.

18 THE COURT: All right, the motion will be granted. The
19 jury will disregard that last statement relative to what Bill
20 said to Lene concerning the people up there.

21 Q (Mr. Boomer:) There's been prior testimony that
22 at least one of you went into the cabin and got a beer?

23 A No, there was no beer involved.

24 Q Beg your pardon?

25 A No, sir, there was no beer involved, nobody went

1 and got a beer.

2 Q All right, you headed back up towards the
3 second cabin which we'll refer to, for convenience sake, Cabin
4 No. 2?

5 A Yes, sir.

6 Q Bill Odom was by your side, I take it?

7 A He was just a little bit behind me.

8 Q Okay, but anyway, you both ended up there at the
9 same time?

10 A Yes, sir.

11 Q You approached the second cabin, what did you
12 notice if anything, about the cabin, if you could see anything?

13 A I couldn't see nothing. I thought about going
14 to the white pickup and grabbing something so I could probably
15 go in there and try to stop Jerry, but I didn't, I just --
16 right when we got up there, you -- there's -- you could --
17 there was some noise going on, just right after we got there.

18 Q Uh-huh.

19 A And I froze, I just --

20 Q Where were you standing when you heard this
21 noise?

22 A Just right beside the cabin.

23 Q Where were you in relation to the back of the
24 pickup?

25 A Maybe thirty-five feet, forty feet.

1 Q Okay, you were in that general area, then, in
2 between the . . .

3 A Yes, sir.

4 Q Between the pickup and the cabin?

5 A Yes, sir.

6 Q Were you on the road?

7 A Yes, sir.

8 Q These noises that you heard, where were they
9 coming from?

10 A They were coming from the cabin, Cabin No. 2.

11 Q Okay, what kind of noise did you hear?

12 A Sounded just like when me and my wife would go
13 check watermelon, and you thump on them.

14 Q How do you thump a watermelon?

15 A By using my fingers, it was a hollow sound, but
16 it was a bashing hollow sound.

17 Q How many times did you hear that sound?

18 A I heard it about four, Bill said he counted about
19 six --

20 MR. CHENOWETH: Your Honor, again I would ask that that
21 be stricken from the record as being a statement outside the
22 presence of the defendant.

23 THE COURT: The motion will be granted. The jurors
24 will disregard what Mr. Odom thought and simply consider what
25 the defendant says here.

1 Q (Mr. Boomer:) Tell me what you heard, Mr. Rice,
2 not what Mr. Odom said about what he heard?

3 A I heard four times, that thump.

4 Q Okay, and how rapid a succession did they come?
5 Were they interspersed or -- just describe as best you can?

6 A They weren't too far delayed apart: Bump, bump,
7 bump, bump.

8 Q About like that?

9 A Yes.

10 Q You knew in your mind what was going on in there,
11 didn't you?

12 A I knew, yes.

13 Q Okay, what happened next?

14 A Jerry came walking out of the cabin carrying the
15 gun and a hammer. He was carrying the rifle and a hammer. I
16 don't know why, but I looked down and Jerry had the man's boots
17 on. I knew they weren't his, his were black. He gave the
18 rifle to Bill Odom and a wad of hundred dollar bills. He told
19 him there was nine hundred dollars there and Bill took the
20 rifle and he put it -- he took the rifle and the money and put
21 the money in his pocket. I was still frozen, all of a sudden
22 for some reason I grabbed the rifle from Bill and, I said:
23 "I'm going back down to the cabin," where we were staying. I
24 started walking and I heard some noise coming from the cabin.

25 Q What kind of noise did you hear coming from the

1 cabin? How did it sound to you?

2 A It sounded like a deep snort and some scuffling.

3 Q What did you do?

4 A Walked up to the cabin and I went inside.

5 Q What did you see?

6 A A lady with a blood spot on the back of her
7 head. The guy had stopped his snorting, I guess, and his feet
8 were shaking on the floor in rapid succession. He had blood
9 on his face and blood on the side of his head. He had a bare
10 chest, I don't know where his shirt was.

11 Q What did you do?

12 A I dried my eyes and shot him in the head.

13 Q Why did you do it?

14 A I didn't want him to suffer.

15 Q Did you think he was already dead, or dying?

16 A He wasn't breathing, I looked at his chest and
17 I had taken first aid for eighty hours of class and I knew
18 when somebody wasn't breathing, and when a body goes into
19 shock the heart beats very rapidly, or very very shallow, it
20 all depends on the type of shock. And he wasn't breathing and
21 after I walked out of the cabin I went ahead and let my stomach
22 have its course and I started walking back down to the cabin
23 where we were camping.

24 C What do you mean about "letting your stomach take
25 its course."?

1 A I got sicker than a dog.
2 Q Did you throw up?
3 A Yes, sir.
4 Q Did you keep on walking?
5 A Until I was stopped.
6 Q Okay, who by?
7 A Jerry Pizzuto.
8 Q What did he say to you?
9 A He said that I was going to dig a hole and help
10 them bury the people.
11 Q Okay, were you down by the cabin at that time,
12 in the area?
13 A You mean our Cabin No. 1?
14 Q Yes.
15 A I was maybe half way.
16 Q Okay. How did Jerry proceed to catch up with
17 you?
18 A I don't know, I don't know how he approached me,
19 running or walking, fast or what.
20 Q Okay. He told you you were going to dig a hole?
21 A I said I wasn't.
22 Q Okay.
23 A He said I was.
24 Q What was your state of mind at this point, in
25 fact, after coming up to the cabin the second time and hearing

1 the noises from the cabin, what was your state of mind?

2 A I was scared to death.

3 Q Okay.

4 A I just needed to get out of there, leave.

5 Q Okay. What did you do after Jerry told you to
6 dig another hole and you told him you weren't going to dig
7 another hole?

8 A I received a shovel and I was going to dig a hole.

9 Q How did you receive the shovel?

10 A Jerry Pizzuto gave me the shovel.

11 Q Okay.

12 A And as I was walking back to the cabin, I took
13 the shovel and threw it off the side of the road, I threw it
14 to my left-hand side as I was walking back down. And I was
15 asked why I done that and I told Jerry: "because I've already
16 got a hole there," you know, it was the place where I was
17 digging -- it was a place where I had been pulling sand out
18 and putting it in a five gallon bucket, panning it, and I said:
19 "If I'm going to have to dig a hole, that's as good a place,"
20 and then I proceeded to go back down to the cabin.

21 Q Okay. What did you do after getting back to the
22 cabin?

23 A I started going nuts, I started running around.
24 Told Lene what happened, I put Bill Odom's rifle down.

25 Q Did you tell her all of the details or do you

1 remember?

2 A I told her what I had heard and I told her what
3 I had done and I told her what I had to do, about digging the
4 grave, so I went back and started digging the grave.

5 Q Whereabouts was this grave that you dug? Where
6 was it in relation to this place you had been digging earlier?

7 A It was in the same spot.

8 Q Okay. Did it take you too much longer to get
9 that done?

10 A No, sir, the ground was really aromatic, it was
11 really soft and -- well, I dug two feet and my senses started
12 coming back, I threw the shovel down and went back to the
13 cabin.

14 Q When did Odom and Pizzuto come back to the cabin?

15 A About fifteen or twenty minutes later, they came
16 up, they were yelling because I didn't dig the hole big enough
17 or deep enough, they told me to go back down and dig it deeper,
18 and I did. And then I came back to the cabin, they had gone
19 back to Cabin No. 2, and when I got back from digging the grave,
20 I told Lene: "We need to leave, we need to get out of here."
21 Then and there I told her to start packing that stuff in the
22 truck and I put my stuff in the truck first and then I just
23 started loading the truck with whatever I could grab, I was
24 putting it in Bill Odom's truck.

25 Shortly after I started loading the truck, Jerry and

1 Bill come back to Cabin No. 1 and Bill Odom said: "There's
2 nothing to worry about, we've got everything cleaned up, she's
3 buried where they can't recognize her," or "where they can't
4 recognize the grave," and they had the man in the back of the
5 truck.

6 Well, just after I had finished -- just after I had
7 finished digging the grave, put about a thirty-five pound
8 boulder maybe sixty feet from the grave in a direct line to
9 the grave.

10 Q Where was that in relation to the main road?

11 A The boulder?

12 Q Uh-huh.

13 A Right on the side of it.

14 Q Okay, and where -- why did you do that?

15 A I had it in my mind that I was going to call the
16 police the first chance I got, myself, I didn't want to go
17 back up there.

18 Q I think you said the man's body was still in the
19 back of the pickup?

20 A Yes, sir.

21 Q Which pickup?

22 A Mr. Herndon's pickup.

23 Q Okay, what happened in relation to that?

24 A When they got back up there and told me all of
25 this about her grave being unnoticeable and stuff, Jerry said

1 that: "You're going to help us bury the man." I told him:
2 "' No, I'm not, I'm not going to touch his body, I'm not going
3 to help you bury nobody." And he said: "Yes, you are," and
4 I told him: "No, I'm not." And he made a motion to his back
5 pocket to where he was holding that weapon that he had taken
6 from Mr. Herndon.

7 Q What kind of weapon?

8 A It was a 9 millimeter .380 Baretta semi-automatic.

9 Q Okay, did it have anything on it, around it?

10 A At that time, it was still in the scabbard.

11 Q Okay.

12 A But other than that, I don't know.

13 Q Okay, that's fine; continue.

14 A I don't know what he done, but just after that
15 I was sitting down and I had knelt my head down and Bill had
16 jumped up, he was also sitting down, and he jumped up and
17 said a couple of curse words and said: "Never mind, I'll go
18 help you bury them."

19 Q Okay.

20 A And just before they left, Bill looked at me and
21 said: "You're going to come with us and help us lift the man
22 off the truck because he's real heavy."

23 Q Did you go help them?

24 A Yes, I did.

25 Q Where did you go?

1 A We went up just past Cabin No. 2 to the left-hand
2 side, there was a dirt road. It's not a dirt road, it's an
3 old turnout, I think.

4 Q Kind of overgrown?

5 A Yes, sir.

6 Q Did you go down that road?

7 A Yes, sir, we do, for about fifty yards.

8 Q Okay, what did you see by the time you came to
9 where you stopped?

10 A There was a big mound of dirt about six feet
11 high, maybe ten feet in length.

12 Q What did you do while you were at that mound of
13 dirt, what did you and the rest of the people do?

14 A We sat the man on the ground and while he was
15 being covered up, I didn't know what possessed me to do it,
16 but it almost was a stupid move, but I took the fifty-five
17 gallon drum and sat it right next to the grave.

18 Q Okay, how was the man buried? You said he was
19 sat on the ground and then covered up?

20 A Yes, sir; just covered up.

21 Q Okay, was he wrapped in anything?

22 A Yes, sir, he was wrapped in a blue tarp. I
23 believe it was a blue tarp.

24 Q Did you help that body, that tarped body off the
25 truck?

1 A Yes, sir; I did.

2 Q Did you notice whether or not you got any blood
3 on yourself?

4 A No, I did not.

5 Q You didn't notice it or --

6 A I did not get any blood on me.

7 Q Okay. When you were in the cabin and you shot
8 the man, did you notice whether or not you got any blood on
9 you at that point?

10 A No, sir; I didn't get any blood on me, I was two
11 feet inside the door to the right, I was about five feet from
12 him. Their heads were facing -- you would walk into the cabin
13 and you turned right, you can't turn, there's only two feet of
14 space to walk.

15 Q Were their heads facing to the left of the cabin
16 or the right of the cabin as you walk in?

17 A To the right, they were both just about up
18 against the far wall that their bodies were lying, she was on
19 her stomach and he was on his back.

20 Q Okay. Did you step in between them when you
21 fired the shot?

22 A No, sir; I did not. I was about maybe a foot
23 away from his feet.

24 Q Okay. Mr. Rice, there's been prior testimony in
25 this action that there is the apparent presence of blood on

1 some articles of your clothing. Do you have any idea how that
2 could have gotten there?

3 A No, sir; everything I wore is in the police
4 station down in Orland, California, that day, everything I
5 wore, including my sleeping bag and as far as I know it is
6 still there.

7 Q Okay. After Jerry came out of the cabin, I'm
8 digressing somewhat, but after Jerry came out of the cabin
9 which has been referred to as Cabin No. 2, carrying the rifle
10 and wearing some different foot gear, handing some money over
11 to Mr. Odom, what were his actions, what was he acting like?

12 A Like every day life, he -- Mr. Odom asked him,
13 asked him what he did.

14 Q What did he say?

15 A He said: "Put them to sleep," is what he said.
16 Just before I went into the cabin, Jerry had told me they were
17 dead, there was no need for me to go in there looking in the
18 cabin, yet I did anyway.

19 Q Did he tell you how he -- did he tell you at that
20 time or do you recall him telling you at that time how he had
21 gotten the drop on these people, how he had carried this out?

22 A Afterwards, yes, he did tell us how he did it.

23 Q What did he say?

24 A He said that when he got up there near where the
25 people's truck was, he didn't see anyone. So, he yelled for

1 them, he yelled: "Is there anybody around?", and a couple of
2 minutes later he said the guy came out of the cabin and he
3 walked up towards Jerry and Jerry said he had the rifle over
4 his shoulder, but I believe his hand was on the trigger
5 mechanism. And as the guy approached him, Jerry asked him
6 how it was going, the guy said: "Okay." and Jerry asked him
7 if he had run into any highwaymen lately, and the man said:
8 "No." Jerry said that's when he brought his rifle down and
9 leveled it at the man and said: "You have now." He said the
10 man told him: "Hey, cool it, I've got a gun in my back pocket."
11 And Jerry said that he had taken the man's gun from him and
12 that's all I heard of the conversation.

13 Q Okay, did he tell this story or a similar story
14 about how he had done this on other occasions after it took
15 place?

16 MR. CHENOWETH: Your Honor, I would object to this
17 question, the question was what he told you on other occasions,
18 and there's no adequate foundation for this question and it
19 may not be admissible.

20 THE COURT: What do you mean by "it?"

21 MR. BOOMER: Let me rephrase the question, Your Honor,
22 I'm not sure -- I can't remember my exact words.

23 Q (Mr. Boomer:) Without -- just answer this
24 question yes or no, Mr. Rice. Did Pizzuto tell you at any
25 later times -- or excuse me, -- did Pizzuto tell you at other

1 times, other than just once, of how he had gotten the drop on
2 the Herndons?

3 A Yes, sir, he did.

4 Q And do you recall when these other times were,
5 without telling me the substance of the conversation at this
6 point?

7 A Well, one of them was later at some hot springs
8 somewhere in Donnelly, I don't know the name of them, but he
9 told us there that night, plus, he had told me again, not the
10 whole story but just parts of it while on the way to Cascade.

11 Q Okay, do you recall having a conversation with
12 him and Bill Odom while in the motel at Cascade concerning this
13 subject?

14 A Yes, sir.

15 Q Okay, and to the best of your recollection, was
16 he saying pretty much the -- basically the same thing?

17 A Yes, sir.

18 Q Do you recall any other details without telling
19 me the details at this point, do you recall any other details
20 about how he did this?

21 A No, sir.

22 Q That's fine. So, you helped unload the man and
23 get him buried?

24 A Yes, sir.

25 Q Okay, was he covered with very much dirt?

1 A No, sir; not at all.

2 Q You returned to the cabin after that?

3 A Yes, sir.

4 Q Cabin No. 1?

5 A 1, Bill and I walked and Jerry followed us.

6 Q How did he follow you?

7 A In the pickup.

8 Q What did you all do after that?

9 A After we got back to the cabin, just right when

10 we got back to the cabin we were standing behind Mr. Herndon's

11 pickup. For some reason, Jerry took out Mr. Herndon's gun,

12 took it out of the scabbard and he checked the slots where the

13 bullet was to go in and he started pointing the gun at me,

14 waving it around and just -- I was -- I danced on my own free

15 will, I felt like there was a bee swarm after me, I didn't know

16 what to do, how to move, or where to go. And I asked him to

17 put it away, if it goes off -- I've seen what a .9 millimeter

18 does to a block of an engine in a car, and shortly after that

19 Bill Odom took the gun from him, or he handed it to Bill Odom

20 and Bill Odom took the clip out of it and he started waving it

21 at my feet.

22 Q Bill Odom did?

23 A Yes, and I told him to put the gun away, you know.

24 I was scared to death, then, I thought maybe I was going to get

25 killed right there. So, he lowered the gun, I started walking

1 back toward where the cabin was, I was going to complete the
2 loading of our stuff on Bill's truck. Lene told Bill prior to
3 that that we were going to get out of there. Just after that,
4 we went into the cabin, I was getting ready to pick up some
5 more stuff and Bill and Jerry came in and Bill Odom had taken
6 the money -- Lene was going through the lady's purse at that
7 time, but Bill Odom had taken the money out of his pocket and
8 he made three stacks of one hundred dollar bills.

9 Q This was in the cabin?

10 A Yes, sir; it is.

11 Q Okay.

12 A There was one thousand and twenty dollars from
13 Bill's pocket, and he put it out in three piles.

14 Q Did you add some money to that pile?

15 A No, sir; I never.

16 Q Are you sure of that?

17 A Yes, sir. I didn't have -- I brought forty-five
18 dollars with me from California and I had twenty dollars left
19 when we got to Ruby Meadows. Bill told me he would take care
20 of me and my board.

21 Q Okay, then what?

22 A I wasn't going to accept the money, I wasn't going
23 to take it and Jerry was standing right behind me and I saw
24 Lele's face when I looked up and I knew right then and there
25 I better take the money, so I did take the money.

1 And just after Bill Odom passed it out and he had some left
2 and Lene Odom asked: "Where's mine?" So, Jerry took the
3 money from Bill and gave it to Lene.

4 Q Okay.

5 A And after that I continued to load the truck and
6 there were some things in Mr. Herndon's truck and Jerry
7 started getting in his tool box. I'd brought a tool pouch
8 with us, a United States Army Medical Bag and I had some of
9 my tools from home in there, some sockets and stuff like that
10 and Jerry had filled my tool bag. He said that he can use the
11 tools and after that there I was told to help load. I thought
12 this was an air compressor or something, but I guess it was
13 some kind of a pump that was in the Herndon's truck and I was
14 going to help load that into Bill Odom's truck but they
15 changed their minds they didn't want it in there and then
16 Jerry said that we can make money with the chain saw, they
17 both knew that I've got a tree service and I've got a lot of
18 equipment and Bill said something about cords of wood going
19 for fifty dollars and Jerry said: "We can make a lot of money
20 with that chain saw." so I put the chain saw in Mr. Odom's
21 truck.

22 And from then on, I just started loading all of our
23 stuff into Bill Odom's pickup.

24 Q Let me digress and cover another point that I
25 meant to mention to you: This hammer that you saw in Jerry's

1 hand, did you see it just the one time?

2 A Yes, sir.

3 Q You didn't see it again?

4 A No, sir.

5 Q Did you notice whether or not it had any blood
6 on it at the time you saw it?

7 A Yes, sir; it did.

8 Q Okay, where was that blood located?

9 A Around the head of the hammer.

10 Q Okay.

11 A Up to maybe an inch back.

12 Q Okay, did you notice whether or not Jerry had
13 any blood on him, could you tell?

14 A No, I didn't notice.

15 Q You didn't notice any?

16 A No, sir.

17 Q Did you notice any blood on him at a later time?

18 A No, sir.

19 Q Did you notice any blood on Bill Odom at a later
20 time?

21 A No, sir.

22 Q Okay. Did you notice any blood on the money
23 when that was being passed out?

24 A No, sir.

25 Q So, you have both pickups loaded?

1 A Yes, sir.

2 Q And you assisted on that?

3 A Yes, sir. I brought a roofing tarp with me that
4 I covered Bill's truck with on the way up, it's twenty-five by
5 twenty-five foot, it would cover over a roof of a house so I
6 covered the truck up and I tied it. We had some twine, we
7 had a roll of twine, it would resemble shoestrings, but it
8 would be -- it's just one ball of twine and I used that to
9 tie the tarp around the truck.

10 Q Okay, did you proceed to leave Ruby Meadows?

11 A Yes, sir, we did.

12 Q And who rode in which vehicle, if you can
13 remember?

14 A I was asked to ride with Jerry, but I refused.

15 Q Who asked?

16 A Bill Odom did, he asked me to ride with Jerry
17 because there wasn't that much room in his pickup.

18 Q Okay, with him and his wife and kids, you mean?

19 A Yes, and I told him: "No, I'm going to go with
20 you guys," I told him I would hold Billy, his oldest son, and
21 Lene could hold Jacob and while we have all been in the truck
22 together before and I didn't see any reason why I couldn't.

23 Q Why didn't you want to ride with Jerry?

24 A I didn't want to ride with Jerry, in my own
25 opinion.

1 Q Excuse me, I'm going to have to ask you to
2 -- were you afraid of Jerry?

3 A I was scared, yes, I was.

4 Q Okay. Did you continue riding with the Odoms?

5 A No.

6 Q How long did you ride with the Odoms?

7 A For maybe four or five miles, six miles or so.

8 Q Did you get out at the main road?

9 A Yes, sir, that was after -- this was on the
10 main road.

11 Q Okay, five or six miles down the main road?

12 A Yes.

13 Q Okay, so at some point you changed and you rode
14 with Jerry?

15 A Yes, sir.

16 Q Why did you ride with Jerry at that time when
17 you were scared of him?

18 A I was still scared of him, but I puked on three
19 times by Bill and Lene's oldest son and I was smelling pretty
20 bad.

21 Q Okay, --

22 A And I told Bill that I would go ahead and ride
23 with Jerry, but don't get ahead of us, I told him to stay real
24 close, I didn't know if I was going to wind up jumping out of
25 the truck or not.

1 Q So, you continued on towards McCall, I take it?

2 A Yes, sir.

3 Q There has been prior testimony that at some point
4 you stopped in McCall, is that correct?

5 A Yes, sir; we stopped.

6 Q Do you remember that?

7 A Yes, we stopped at McCall and we parked side by
8 side, we were side by side after Bill Odom had got gas.

9 Q Uh-huh.

10 A As a matter of fact, Jerry got gas in the
11 Herndon truck as well, we got both trucks gassed up.

12 Q Do you remember the gas station or the type of
13 place you stopped?

14 A No, I don't.

15 Q Okay, you continued on?

16 A Yes, sir; we continued on.

17 Q Did you go to a hot springs that evening?

18 A Pardon me?

19 Q Did you wind up at a hot springs that evening?

20 A Yes, we did.

21 Q Is this the one you had gone to before?

22 A Yes, sir; it was.

23 Q Do you remember the name of it?

24 A No, sir; I tried to remember three or four times,
25 but . . .

1 Q That's fine, that's fine. So, you stayed at
2 this hot springs?

3 A Yes.

4 Q Do you remember how you slept out that night?

5 A Jerry had slept in front of the pickup, Bill
6 Odom slept by the driver's side door and I sat in the truck.

7 Q Okay.

8 A After we had put my blue tarp over both pickups.

9 Q Made a little tent of some kind?

10 A Yes.

11 Q Did you move on the next day?

12 A Yes, we did.

13 Q And which direction did you go, or do you really
14 know?

15 A I don't know the direction, no, but we stayed on
16 a dirt road, Bill Odom said he knew a perfect place to hide
17 Mr. Herndon's pickup. We drove for approximately forty-five
18 minutes on a back road towards Cascade.

19 Q All right.

20 A And all of a sudden we stopped and I was riding
21 with the Odom's again in their truck and we stopped and Bill
22 motioned Jerry to pull up beside him, he got out and got in
23 the truck with Jerry and they drove off into the woods. About
24 twenty minutes later, they came back with no truck.

25 Q Okay, did you all go into Cascade?

1 A Yes, we did.

2 Q Okay, there has been testimony that the four
3 adults and kids rented a motel room?

4 A Yes, sir.

5 Q Well, that's true, I take it?

6 A Yes, sir, that's true.

7 Q Checked into the motel?

8 A Yes, sir.

9 Q Do you remember who paid for the motel?

10 A Lene Odom did.

11 Q Okay, did Jerry leave the room?

12 A No, sir.

13 Q Do you recall the day of the week that was;
14 Thursday, Friday, Saturday?

15 A It was the 27th.

16 Q Okay.

17 A It might have been a Thursday, I believe it was
18 a Thursday, I can't be positive, but it might have been Friday.

19 Q You are not sure?

20 A I'm not sure.

21 Q It would have been --

22 A It was not a weekend.

23 Q It would have been the day after these people
24 got killed?

25 A Yes, sir.

1 Q All right, about what time did you check into
2 the motel, do you remember?

3 A It was in the morning, I would say around noon
4 or just before noon, I would imagine, because just right after
5 that we all went down to the town of Cascade and Bill Odom
6 bought breakfast for everybody and took it back to the hotel
7 and ate it.

8 Q Ate it in the motel?

9 A Yes, sir, we did.

10 Q All right. Do you remember what you did the
11 rest of the day?

12 A Sat around in the motel, I don't know if it was
13 by coincidence or not, up to this time I hadn't been left
14 alone by myself, not one time. In my own opinion, I think
15 Jerry knew that as soon as I got a chance, I was going to run
16 for it.

17 MR. CHENOWETH: I would ask that the witness not be
18 able to elaborate, Your Honor.

19 MR. BOOMER: Your Honor, I think this opinion that was
20 just offered explains additional actions, I mean, that's not
21 offering for the truth of what Jerry thought, but I'm offering
22 it to show what this man did, why this man was concerned about
23 Jerry.

24 THE COURT: I will sustain the objection. The jury
25 will disregard the last statement of the witness.

1 Perhaps we'll take a break now, ladies and gentlemen.
2 Please don't form or express any opinions about this case.
3 Don't talk about it between yourselves, don't permit anybody
4 to contact you on any subject matter connected with the trial.
5 If anyone does, please notify the Bailiff who will in turn
6 notify me.

7 Now, we are in recess.

8 (Thereupon the Court stood in recess, after
9 which the following proceedings were had,
10 to-wit:)

11 THE COURT: The record would reflect that the jury
12 has returned. You may proceed, Mr. Boomer.

13 MR. BOOMER: Thanks, Your Honor.

14 DIRECT EXAMINATION (cont.)

15 BY MR. BOOMER:

16 Q Mr. Rice, I think when we left off you were
17 talking about checking into a motel in Cascade and sitting
18 around there?

19 A Yes.

20 Q Did you watch any television or anything like
21 that?

22 A Yes, we did.

23 Q Is that about all you did?

24 A No, that evening -- ever since we left California
25 I've called my wife at just about every pay phone and I called

1 here that night and we talked for a good twenty minutes.

2 Q Without telling us what you told her, did you
3 tell her what you planned on doing?

4 A She asked me if I was coming home real soon and
5 I told her --

6 MR. CHENOWETH: Your Honor --

7 A -- as soon as I can.

8 MR. CHENOWETH: I will withdraw the objection.

9 Q (Mr. Boomer:) Is that eventually what you did?

10 A Yes, sir; it is.

11 Q And how did you proceed to get home?

12 A The next day I asked Bill Odom if I could go into
13 town and get breakfast. He said: "Yes," but Jerry said:
14 "No, I'll ride with you." I was going to leave then and go
15 to the police then, one of the two, but Jerry went with me
16 and so we went to the restaurant and ordered breakfast. I
17 found out previously that there was a bus that leaves at
18 6:30 at night going north and at 7:00 going south, I believe
19 those are the times. So, I asked the lady at the restaurant
20 where I could get a bus ticket and she told me right straight
21 across the street at a drug store. I think Jerry had just
22 come in behind me, so I told Jerry while the food was being
23 ordered that I was going across the street to get my wife a
24 postcard and send it to her. So, I went across the street and
25 I went into the store and asked if they could get me a bus

1 ticket to Chico, California, which is seventeen miles from
2 Orland. I asked for Orland, California, but they didn't have
3 a bus that went that far, so I got a bus ticket that goes to
4 Chico.

5 Q That's seventeen miles away from Orland?

6 A Yes, it is. And I don't know why I didn't ask
7 the girl to call the police, but I was more interested in
8 getting home. And just as I was putting the ticket in my
9 wallet, Jerry came in and asked me what I was doing. I told
10 him I bought a money order because our money orders in
11 California were normally green and this bus ticket was green.
12 So, I put it in my wallet --

13 Q What did you buy it with, Jim?

14 A I bought it with the money that I had received.

15 Q Okay.

16 A And Jerry had bought a roll of film and we went
17 back to the motel -- I mean to the restaurant, straight across
18 the street. And after that there we took the food back to the
19 motel --

20 Q This was breakfast?

21 A Yes, it was.

22 Q All right.

23 A I found out my bus was leaving at 6:30 and I
24 -- we had taken the food into the motel and I told Bill Odom,
25 I said: "I've got a bus ticket and I'm going home." Bill

1 Odom told me: "It's a good thing you are because I couldn't
2 stop Jerry --"

3 MR. CHENOWETH: Your Honor, I object to that testimony
4 as not being in the presence of the defendant, hearsay.

5 THE COURT: Well, the jury will disregard that last
6 statement by the witness relative to what Mr. Odom told him
7 concerning Mr. Pizzuto.

8 You may proceed.

9 MR. BOOMER: Thank you.

10 Q (Mr. Boomer:) So, you told Bill Odom that you
11 were going home?

12 A Yes, sir.

13 Q And describe how you eventually left?

14 A Well, I originally was going to walk into town
15 to take the bus, but Jerry went ahead and gave me a ride.

16 Q Okay.

17 A And Lene came with us. I asked Bill if Lene
18 could come with us because I knew Jerry wouldn't have done
19 nothing to me if Lene was there.

20 Q Okay.

21 A While they ordered supper, I was waiting for
22 the bus and it showed up fifteen minutes late, a quarter to
23 seven and I boarded the bus and left.

24 Q Okay, had you ever -- did you sit down in this
25 restaurant?

1 A Yes, sir.

2 Q Okay.

3 A I kept going from my seat to the door looking
4 out.

5 Q Okay, nervous?

6 A I was scared, Jerry told me he -- prior to this,
7 he had mentioned that he had a friend in Clear Lake, California
8 that blew up --

9 Q Excuse me, excuse me. I think this would be
10 hearsay and I don't want to get into that.

11 A Okay.

12 Q Had you ever sat down in this particular
13 restaurant before?

14 A Yes, sir.

15 Q Okay, do you recall any photographs being taken
16 around the time of your departure?

17 A Yes, sir; I do.

18 Q Okay.

19 A I remember Jerry took a picture of me in the
20 restaurant and a couple of other pictures and I believe he
21 took one of me as I was boarding the bus.

22 Q Okay. May I approach, Your Honor?

23 THE COURT: Yes.

24 Q Do you know if he had taken any pictures of you
25 in the restaurant at any other times, or do you recall?

1 A No, sir.

2 THE COURT: No, sir, what?

3 A No, sir, I don't.

4 THE COURT: No, sir, you don't?

5 Q (Mr. Boomer:) You don't recall for sure?

6 A Yes.

7 THE COURT: All right.

8 Q (Mr. Boomer:) Showing you State's Exhibit 10;
9 does that appear to be the restaurant?

10 A That's the restaurant.

11 Q You are not sure when this picture was taken?

12 A No, sir, I do not.

13 Q Okay, showing you State's Exhibit 9: do you
14 recognize the scene in that photograph?

15 A That's Jerry, just when I was getting in the
16 bus, Jerry called me and I turned around and he took a picture
17 of me.

18 Q Okay. May I pass these around, Your Honor?

19 THE COURT: Yes.

20 Q You seemed to be wearing a different shirt in the
21 photograph when you are sitting in the restaurant than when you
22 are getting on the bus, or did you notice that?

23 A I didn't pay much attention -- if I remember --
24 yes, I do, I was wearing my ball shirt in the restaurant, if
25 I remember what I just saw there, yes.

1 Q Okay, that would be the blue shirt?
2 A Yes, sir, the moose on the front of it.
3 Q Okay, so that must have been taken at a different
4 time?
5 A I believe it would have, yes.
6 Q All right. So, you left on the bus for Chico,
7 California?
8 A Yes, sir.
9 Q Do you know -- this is a yes or no question --
10 do you know whether or not Jerry knew your destination, other
11 than going home?
12 A Other than going home, no.
13 Q Okay.
14 A He thought I was going to -- well, he knew --
15 MR. CHENOWETH: Your Honor, I object to his testifying
16 as to what this defendant knew.
17 Q (Mr. Boomer:) Did you talk to Jerry or did you
18 talk to anyone else in the presence of Jerry so that he would
19 know where you were going to get off the bus?
20 A Mr. Odom knew and -- well, I told them all in the
21 motel room, I told them that my bus would not go to Orland
22 because they didn't have a bus that went there.
23 Q Okay, did you tell them where you were going
24 to go?
25 A Yes, sir.

1 Q Which was?

2 A I told them I was getting off in Chico,
3 California.

4 Q Okay, so you got on the bus and headed out
5 towards California, correct?

6 A Yes.

7 Q Did you stop along the way?

8 A Yes, sir.

9 Q The bus probably made lots of stops, I presume?

10 A Quite a few, yes.

11 Q Did you stop in the State of Nevada?

12 A Yes.

13 Q Were you laid over for a while or anything?

14 A I was laid over for I believe it was an hour and
15 fifteen minutes.

16 Q Okay, what did you do during that hour and
17 fifteen minutes?

18 A I washed two pairs of my socks, a couple of
19 t-shirts and a pair of pants at a coin-operated laundry mat.

20 Q Right in the bus station?

21 A No, sir; down the street.

22 Q Wash any other articles of clothing?

23 A No, sir.

24 Q You got back on the bus, I presume?

25 A Yes, sir.

1 Q Where did you get off the bus?
2 A I got off the bus a hundred miles from home.
3 Q Do you remember the name of the town?
4 A Yes, it was Roosevelt.
5 Q Roosevelt, California?
6 A Yes, sir.
7 Q You got off at Roosevelt rather than Chico?
8 A Yes, sir.
9 Q Is that because you were afraid of Jerry?
10 A Jerry was --
11 Q That's a yes or no?
12 A Yes.
13 Q And how did you proceed to get home to Orland?
14 A I hitchhiked.
15 Q Okay. Do you recall when you arrived in your
16 home in Orland?
17 A I arrived in Orland about 11:00 that evening.
18 Q Okay, where did you go?
19 A I went home.
20 Q Was your wife there?
21 A Yes, sir.
22 Q Did you talk to her?
23 A Yes, sir; I talked to her briefly, I didn't go
24 into detail.
25 Q Did you tell her anything about the killings up

1 in Ruby Meadows?

2 A Briefly, I didn't go into detail.

3 Q Did you tell her anything about the killings up
4 at Ruby Meadows, at that time?

5 A At that time?

6 Q At that time?

7 A Yes, I said there had been killings, I didn't
8 want my wife to know hardly anything at all about it because
9 it would get her involved as well.

10 Q Did you talk to anyone else that evening about
11 the killings up at Ruby Meadows?

12 A Before I got home, I called my mon and I told
13 her I had seen some killings and that I am in California and
14 that I am coming home.

15 Q All right, did you visit your mother after you
16 got home?

17 A No, sir; I called her and let her know that I
18 had gotten home.

19 Q All right. Did you know any members of the police
20 department at Orland?

21 A Yes, sir, we had been pretty good friends for a
22 long time. The Chief of Police, Mr. Bill Olney and Sergeant
23 Bob Boyles.

24 Q Okay, did you attempt, after arriving home in
25 Orland, did you attempt to phone the police department that

1 evening?

2 A Yes, sir; I did.

3 Q Okay.

4 A Our Police Department down there, you get a
5 recording after 11:30 or 12:00 at night and you are referred
6 to the County Sheriff.

7 Q Okay.

8 A Well, I didn't get an answer so I went ahead and
9 hung up and did it again in the morning.

10 Q Okay.

11 A I was calling Bill Olney, the Chief of Police,
12 and I found out that he was on vacation. So, I talked to
13 Sergeant Bob Boyles and told him that I had witnessed some
14 deaths in Idaho, and he said: "Don't say anymore, I'll be
15 over pretty soon."

16 Q Did he come see you?

17 A Yes, he did.

18 Q Did he interview you?

19 A Yes, sir; he interviewed me briefly at my house
20 and then I told him it's a real long story so we went to the
21 Police Department there, and then an interview there.

22 Q Okay. Were there any telephone calls made from
23 that police department while you were there in connection with
24 this case?

25 A Yes, sir; there were several.

1 Q Okay, did you take part in any of those phone
2 conversations?

3 A Yes, I did.

4 Q Do you remember talking to Sheriff Baldwin?

5 A Yes, I do.

6 Q Now, Jim, when you first talked to Bob Boyles,
7 you didn't tell him the whole truth about this incident, did
8 you?

9 A No, sir, I didn't.

10 Q In fact, you minimized your whole involvement
11 completely, didn't you?

12 A Yes, sir.

13 Q Why was that?

14 A Because I didn't kill anybody and I didn't want
15 to get all the way involved in it.

16 Q Okay.

17 A I had been trying to get away from it for four
18 days, I didn't sleep, I didn't eat, I didn't come outside. I
19 didn't want to get all the way involved in it. I knew later
20 that I was involved more than I realized I was involved.

21 Q All right. Did you later have a conversation
22 with any other members of the law enforcement -- I'm getting
23 ahead of myself, here.

24 When you first talked to Sheriff Baldwin, did you tell
25 him everything that you knew about what had happened up at

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Ruby Meadows?

A No, sir; I did not.

Q In fact, you told him you didn't know exactly where the bodies were, didn't you?

A Yes, I told him I didn't know exactly where they were on the first phone call.

Q Okay. In fact, you told him -- what did you tell him about where you thought they might be?

A I told him they might have thrown them in the creek or buried them in an old -- I don't know the name of what they call them, but where they used to mine, the digging hole, I guess, and I come out after the next phone call and I told him where I put the rock and I told him where I put the fifty-five gallon drum.

Q All right. About what time of day was that that you gave him those details?

A That was in the evening time.

Q Okay. Was it dark outside when that conversation took place, do you think?

A It was dark in California.

Q Okay. Do you remember talking to a man by the name of George Johnson with the State of California?

A Yes, sir; I do.

Q Okay. And at first did you tell him basically what you have told Sergeant Boyles?

1 A Yes, sir; I did.

2 Q Did he tell you that he thought you weren't
3 telling the whole truth?

4 A Yes, sir; he told me that there's no way somebody
5 can be involved in a crime -- he said there's no way that
6 someone can witness a crime as I did and not be involved in it.

7 Q Okay. So what did you tell him?

8 A Well, I stuck to my story right then for a little
9 bit and he goes -- well, he made a statement, he said: "Well,
10 let me tell you what I think happened."

11 MR. CHENOWETH: Your Honor, this is hearsay, anything
12 that the officer spoke to Mr. Rice.

13 MR. BOOMER: Well, it explains, Your Honor, it explains
14 why he later said what he said. I'm offering this just for
15 that purpose.

16 THE COURT: Ladies and gentlemen of the jury, this
17 particular conversation that Mr. Johnson had with Mr. Rice is
18 for the purpose of demonstrating why Mr. Rice later changed his
19 story and in order for him to do this it becomes necessary
20 to relate a conversation that Mr. Johnson had with Mr. Rice.
21 During this conversation Mr. Johnson was saying: "Let me tell
22 you what I think happened," and Mr. Rice is about to relate
23 this to you.

24 Obviously, what Mr. Johnson is about to tell Mr. Rice
25 isn't offered to prove that in fact that sequence of events

1 happened. It is simply used to show you what Mr. Johnson told
2 Mr. Rice to explain why Mr. Rice later said what he said.

3 For that limited purpose, the testimony may be
4 permitted.

5 MR. BOOMER: I'll try to rephrase my questioning,
6 Your Honor, so I don't get into those sensitive areas.

7 Q (Mr. Boomer:) Mr. Johnson told you something,
8 didn't he?

9 A Yes, sir; he did.

10 Q And as a result of what he told you, did you
11 tell him a different story?

12 A No, sir.

13 Q Did you add some details, however?

14 A Yes, I did.

15 Q Okay, and were those details truthful?

16 A No, sir.

17 Q Okay. The details, though, did indicate that
18 you had more involvement than what you had originally told him?

19 A Yes.

20 Q Okay. Is that a last statement of any kind that
21 you can recall that you gave while in California?

22 A Yes, sir.

23 Q At that point -- let me ask you -- let me ask you
24 your mental state at the time, how you were feeling while you
25 were down at the police station?

1 A I wasn't -- I was more shaky than I think I was
2 when I got home.

3 Q Okay, were you under arrest at that time?

4 A No.

5 Q When you went down to Sergeant Boyles, did you
6 go by yourself or did he take you with him or how did that
7 happen?

8 A I rode down with him.

9 Q Okay, but you weren't under arrest were you?

10 A No.

11 Q Okay. While you were down there and after making
12 those statements, did you make any requests as to where you
13 could be housed?

14 A Yes, sir, I asked him -- I had first taken my
15 wife and children over to a girl friend's house where they could
16 stay because of certain circumstances.

17 Q Okay.

18 A And I asked him if I could -- if I should go into
19 protective custody. And at that time, I didn't go in, I stayed
20 at my mom's house because nobody knew where she lived, and I
21 never came outside. The next day they came back to my house
22 and said that it would be a good idea if I went into protective
23 custody. So, we went to the Glenn County Jail in Willows,
24 California.

25 Q Okay, you had discussed that with them beforehand,

1 the possibility of going into protective custody?

2 A Yes, sir, I did.

3 Q How many days or hours or whatever after you
4 initially went into protective custody -- I take it you stayed
5 at the jail, then?

6 A Yes, sir.

7 Q How many days after that was it that you were
8 arrested?

9 A Two days, I believe.

10 Q Okay, were you later transferred to Idaho?

11 A Yes, sir; I was.

12 Q Had you had any phone conversations with Sheriff
13 Baldwin, other than the ones you had told us about prior to
14 your coming to Idaho?

15 A Yes, well, he called me three or four times at
16 my mother's house during the middle of the night, early in the
17 morning and we had conversations. That's when I told him where
18 to look for the bodies and what to look for, the markers that
19 I had put down.

20 Q Okay.

21 A And they found the bodies while I was at the
22 police station with Mr. Johnson, or just prior to being with
23 Mr. Johnson.

24 Q Okay, all right. Do you recall being transported
25 from the State of California to the State of Idaho?

1 A Pardon me?

2 Q Do you recall being transported, then, by
3 Lieutenant Blubaum of the Idaho County Sheriff's Department?

4 A Yes, I do.

5 Q And he brought you up here to the Idaho County
6 Jail, didn't he?

7 A Yes, sir.

8 Q Had you told him or any of the jailors that were
9 checking you in what you wanted to do as far as talking to
10 Sheriff Baldwin when you got here?

11 A I don't believe I did, I said I would like to
12 talk to Sheriff Baldwin.

13 Q All right, and did you in fact talk to Sheriff
14 Baldwin later on?

15 A Yes, sir, I did.

16 Q Do you remember what you told him?

17 A Yes, sir.

18 Q Did you tell him at first that you wanted to
19 clear up some things that you had told him before?

20 A Yes, sir; I did.

21 Q Okay. And did you eventually tell him, and
22 granted it's not word for word, but did you eventually tell
23 him essentially what you've told the jury here today?

24 A Yes, sir; I did.

25 Q Did you at first?

1 A No, sir.

2 Q Isn't it true that at first you denied shooting
3 Del Dean Herndon?

4 A Yes, sir; I did.

5 Q Why did you do that, Jim?

6 A I was scared, again, I didn't want to get too
7 much involved.

8 Q Now, Jim, you pleaded guilty to some charges as
9 a result of this action, haven't you?

10 A Yes, sir; I have.

11 Q And what charges did you plead guilty to?

12 A I pled guilty to two charges of second degree
13 murder.

14 Q And why did you do that?

15 A Because I didn't kill somebody and yet I am
16 involved and if I hadn't had lost my head, I could have done
17 something different, I might have been able to stop all of this
18 before it happened.

19 Q Do you understand the legal principles involved
20 when somebody aids and abets or assists in some way?

21 A Yes, sir.

22 Q In any type of crime?

23 A Yes, sir; I do.

24 Q And that was explained by your attorney's during
25 the course of this proceeding?

1 A Yes, and the Judge, too.

2 Q I take it, then, you feel that your actions
3 constituted something like that?

4 A Yes, sir; they do.

5 Q Okay, and you feel responsible to some extent,
6 at least, for the deaths of two innocent people?

7 A Yes, sir; I do.

8 Q Okay, what is your understanding, Mr. Rice, of
9 the maximum penalty you could receive for aiding and abetting
10 in the killing of Berta Herndon?

11 A I could spend the rest of my life in prison.

12 Q Okay. What is your understanding, Mr. Rice, of
13 the maximum sentence you could receive for aiding and abetting,
14 at least, and in shooting Mr. Herndon.

15 A The same, I could spend the rest of my life in
16 prison.

17 Q Do you understand what the terms "fixed," means
18 in relation to a sentence?

19 MR. CHENOWETH: Your Honor, I object to this line of
20 questioning concerning sentencing this gentleman, it is of no
21 consequence and he had already testified to what he pled guilty
22 to. So, what he is understanding of his sentencing is of no
23 value to this process.

24 THE COURT: Sustained.

25 MR. BOOMER: Very well. No further questions.

1 THE COURT: Cross-examination.

2 MR. CHENOWETH: You want me to start, Your Honor?

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. CHENOWETH:

6 Q Mr. Rice, you say you lived in California most of
7 your life and you have lived in Orland a good part of it?

8 A Yes, sir, I have.

9 Q And that you have a tree service there?

10 A Yes, sir; I have.

11 Q And you use that for weekend work?

12 A Yes, sir, sometimes I use it when I get off work
13 from roofing, too.

14 Q Do you think of yourself as a productive person?

15 A Very much.

16 Q Have you been on welfare or any type of aid from
17 the government at any time?

18 A Yes, sir.

19 Q When was that?

20 A That was before my tree service got all the way
21 started and -- well, my wife got pregnant, we had to get
22 Medi-Cal for medical expenses and we received food stamps.

23 Q Any other form of welfare that you have received?

24 A No, sir.

25 Q You and Bill Odom did drugs together, didn't you?

1 A I done amphetamines with Bill Odom two times.

2 Q Do you do other drugs?

3 A No, sir, I do not.

4 Q Do you do amphetamine?

5 A I've done it two times.

6 Q Only two times in your life?

7 A No, sir; I done it -- I did probably a couple of
8 times when I was in junior high school.

9 Q So, you've done it four times in your life?

10 A I can't be accurate in saying four times, no.

11 Q Isn't it true that the problems that you had with
12 your wife arose around several things. One, that you and Odom
13 were drinking and carousing and sometimes doing drugs, a lot,
14 and your wife didn't like it?

15 A No, sir; it's not.

16 Q You're only out two times with Bill Odom?

17 A I didn't say I was only out with Bill two times.

18 Q How often were you out with Bill Odom?

19 A Bill Odom used to take both of our sons fishing
20 on occasion, and we never went out and partied together. We
21 -- our wives and us would either go to his house or they would
22 come to our house.

23 Q So, you didn't party with Bill Odom except the
24 two times that you had mentioned?

25 A No, I said that we did not go out to party, we

1 would occasionally go over to each others house. We would
2 drink beer and listen to the stereo, play cards, pinochle,
3 rummy -- or not pinochle, but we would play spades or rummy or
4 dominoes.

5 Q So, I don't mean to pressure you, but you did
6 not go out to bars with Bill Odom except the two times you
7 have mentioned?

8 A Yes, sir.

9 Q Oh, you did?

10 A That's true.

11 Q Oh, that's true?

12 A That's true.

13 Q And isn't it true that part of your problem with
14 your wife and with this particular child that you have just
15 had is that it's not your child?

16 A No, sir, that is not true.

17 Q Did you ever tell anybody that that was true?

18 A I had received information from my mother that
19 she does not think it was my child, but the blood tests proved
20 that it was my child and when two people conceive a child,
21 they both know, that was my child.

22 Q The blood tests were taken of this child after
23 it was born?

24 A Pardon me?

25 Q You just took some blood tests of this child after

1 it was born?

2 A The child, yes, it had had blood tests -- he has
3 had blood tests and they have given him several kinds of tests
4 on account of my wife's illness.

5 Q Did they give him a blood test to determine who
6 the father was?

7 A No, sir.

8 Q So, you don't know one way or the other?

9 A Well, I know his blood type and it's the same as
10 my wife's and mine.

11 Q When you decided to come north to Idaho with the
12 Odoms, you said that he asked you to drive his car up here,
13 or his pickup?

14 A Either one.

15 Q Fact is, most of the way you didn't drive?

16 A I would say most of the way I did drive.

17 Q But only after Bill Odom was pulled over for
18 something and didn't have a driver's license?

19 A yes, sir, that was just outside of Grass Valley,
20 California, in between Boom Town and Grass Valley.

21 Q Up to that point before he was pulled over, he
22 did drive?

23 A Yes, sir.

24 Q Okay, did you think he needed you for driving
25 purposes?

1 A Not only for that, but for working on his truck
2 and helping him move, really. My dad was a professional mover
3 for twenty-two years and quite often I would go out and help
4 him. I loaded most of the truck myself.

5 Q We're talking about a pickup, aren't we?

6 MR. BOOMER: Can the witness explain his answer, Your
7 Honor? May he be allowed that latitude, Counsel? He's right
8 in the middle of an answer and Mr. Chenoweth is --

9 THE COURT: Okay, that's fine, I'm sure Mr. Chenoweth
10 intends to let him finish his answers and perhaps we can be
11 careful about that.

12 MR. BOOMER: Thank you.

13 THE COURT: You may proceed wherever we are.

14 Q (Mr. Chenoweth:) Did you want to finish your
15 answer, Mr. Rice?

16 A Well, like I said, I loaded most of the truck up
17 because I've gpt a lot of experience in doing that, you must
18 level out all of your things in the truck, if you've got to
19 much weight on the axle you can break an axle, so I leveled it
20 out and we proceeded on.

21 Q Were talking about a pickup now?

22 A Yes, we are.

23 Q How tall was that pickup loaded? Was it loaded
24 above the cab or below the cab?

25 A It was loaded probably four inches above the cab.

1 Q And it had furniture on it?

2 A Yes, sir.

3 Q Okay. Did Odom tell you why he didn't have a
4 driver's license?

5 A No, sir; I never knew.

6 Q You and Odom have been buddies for quite a while,
7 haven't you?

8 A We've been more or less friends, I would say, yes.
9 since November of '84 or '85. I can't remember exactly the
10 date, but it was near Thanksgiving, it was in '84, because '85
11 -- January of '85 was when I had him working for me that one
12 day.

13 Q And you've done a lot of evenings together and
14 spent a bit of time with him over that period of time?

15 A Quite a few, yes.

16 Q Okay, you and he have a good relationship?

17 A Sometimes. We didn't see eye to eye on a lot of
18 things, like for instance, some of the people that he used to
19 hang around with, I never did hang around with them and I told
20 him if he kept hanging around with them, those people, there
21 name is Skidmore and their reputation is like the Hatfields
22 and the McCoys.

23 Q Did you ever have any trouble with a drug dealer
24 down there where you didn't pay for your drugs?

25 A Never had a drug dealer, I've never had a problem.

1 Q Where did you get the amphetamine that you took
2 twice when you were with Bill?

3 A Bill Odom had them.

4 Q Did you drink a lot of beer with Bill?

5 MR. BOOMER: Which occasions, Counsel?

6 MR. CHENOWETH: Throughout this whole period of time?
7 From the time that you met him --

8 A Adding it together I would say we probably
9 consumed quite a bit of beer over the year and few months that
10 I've known him.

11 Q Did you have any money with you when you left
12 Orland in the pickup?

13 A I had forty-five dollars.

14 Q And you expected to work up in the orchards at
15 ninety-nine dollars a day?

16 A Yes, sir; I did.

17 Q Was Odom a bossy fellow, that is, did he try to
18 control what people were doing?

19 A Yes, he would even give Jerry orders, -- well, I
20 wouldn't say orders, but he would tell Jerry what to do and
21 stuff like that.

22 Q Did he tell his wife what to do?

23 A Oh, yes, Lene would do what Bill asked her to do.

24 Q Without questioning him?

25 A Probably without questioning, but not without a

1 scowl.

2 Q Did Jerry do what Bill Odom told him to do?

3 MR. BOOMER: Your Honor, can we have some specifics
4 rather than these broad generalities? Otherwise I would submit
5 to the Court that it's irrelevant.

6 THE COURT: Well, I'll let him answer. Do you
7 understand the question?

8 A Yes, sir. And yes, he did.

9 Q (Mr. Chenoweth:) And did he tell you what to do?

10 A A few times.

11 Q Was Odom the leader of the group?

12 A I wouldn't call him the leader, I would say he
13 knew where we were going, you know, and well, yes, probably to
14 an extent I would say he was probably the leader, I would say.

15 Q Is Odom the one that told Jerry to ride with
16 Lene and the children?

17 A Yes, sir.

18 Q And he told you to ride with him?

19 A Yes, sir.

20 Q Until, of course, you had to drive?

21 A Pardon me?

22 Q Until the point where you had to drive?

23 A Why, he didn't mention nothing about that. I
24 just drove when the police pulled him over.

25 Q How far did you drive before he took the pickup

1 back from you?

2 A Just before Reno. He went ahead and drove and
3 he said he knew exactly where we were going to eat. So, I
4 went ahead and let him drive and that's where we got separated
5 on the freeway, we lost Jerry and Lene and we found them later,
6 about twenty minutes later, I guess, and we went to the
7 restaurant. And it was a restaurant with a casino attached to
8 it and after we had left the restaurant and casino we drove
9 for about five miles out of Reno heading towards Idaho and we
10 stopped off just beside the railroad tracks and went to sleep
11 that night.

12 Q But from the time you have just spoken about when
13 Bill Odom took over the wheel of the pickup, again, he drove
14 from there on forward, didn't he, on through this whole series
15 of events?

16 A Yes.

17 Q So, you only drove a short distance?

18 A I drove probably about two hundred miles.

19 Q Did you gamble while you were at Reno?

20 A Yes, sir; I did.

21 Q Whose money did you use?

22 A Bill Odom gave me a twenty dollar bill, he said
23 it was part of what he was going to give me for driving the
24 car.

25 Q Okay. You have stopped for the night somewhere

1 in Nevada and then you started on up the road the next morning,
2 I presume?

3 A Yes, sir.

4 Q And how far did you get that day?

5 A Oh, we went all the way to -- we went all the
6 way into Idaho. We went -- I believe we went all the way to
7 Donnelly that day, I believe, got in that night, got in, I
8 believe it was shortly after midnight, if I'm right, got into
9 Donnelly.

10 Q Where did you stay that night?

11 A In a motel.

12 Q Who paid for that, Bill Odom?

13 A Yes, sir.

14 Q And then you went to Bill Odom's uncle's house?

15 A Yes, sir.

16 Q Is that the next day?

17 A No, sir, we stayed at the motel two days.

18 Q What did you do at the motel?

19 A Watched t.v., and Jerry and I at one time went to
20 the bar and shot a couple of games of pool.

21 Q Did you or Odom attempt to locate his uncle that
22 day?

23 A Bill Odom did.

24 Q So, he left you at the motel?

25 A He left Jerry and I both, yes.

1 Q Next day you visited the uncle's home, but he
2 wasn't home?

3 A Right.

4 Q So you and Jerry went down by the river and
5 camped?

6 A Well, all four of us went down toward where the
7 creek was and later on that afternoon, Bill and Lene had gone
8 back to his uncle's and then Bill had come back by himself, if
9 I'm correct, and told Jerry and I that we were going to sleep
10 in the car, that we could sleep in the car right there at the
11 creek and nobody would bother us.

12 Q That's what Bill told you?

13 A Yes, he said there wasn't enough room in his
14 uncle's cabin for everybody.

15 Q So, you did what Bill told you?

16 A We did what he suggested, yes.

17 Q Okay. You bought a gun some time during this
18 period of time, didn't you?

19 A Yes, we did.

20 Q And you said that you used your identification
21 and bought the gun?

22 A Yes, sir.

23 Q .22 automatic?

24 A Yes, sir.

25 Q Did you buy any shells to go with it?

1 A Yes, sir.

2 Q And the purpose of buying the gun was so all of
3 you could go hunting?

4 A Yes, sir.

5 Q Did you know that you needed a hunting license
6 to hunt?

7 A No, I did not.

8 Q Aren't you familiar with the laws regarding
9 hunting licenses?

10 A Not in Idaho, I'm not. There's some in
11 California you don't need a hunting license for various game,
12 and no, I did not know.

13 Q Didn't you tell me earlier, or tell Mr. Boomer
14 earlier that it was your intent to shoot elk and deer and
15 things like that with the rifle?

16 A Yes, sir.

17 Q And that Mr. Odom had wanted to purchase a big
18 rifle, not a .22 caliber?

19 A He wanted to purchase a bigger rifle, yes, but he
20 didn't see any sense in paying three or four hundred dollars
21 for the rifle he wanted. So, he said he would settle for the
22 .22.

23 Q Did you discuss hunting big game at that time?

24 A We discussed elk and deer, yes we did.

25 Q You didn't think you needed a hunting license

1 for elk and deer?

2 MR. BOOMER: Your Honor, this is irrelevant --

3 A I didn't know.

4 MR. BOOMER: -- I would object -- excuse me, Mr. Rice.

5 THE COURT: I'll let him answer, Mr. Boomer. The
6 objection will be overruled.

7 MR. BOOMER: Okay.

8 A I didn't think about a hunting license.

9 Q (Mr. Chenoweth:) How about a fishing license,
10 do you have to have a fishing license in California?

11 A For salmon and trout, I believe you do.

12 Q Did you think about having a fishing license if
13 you wanted to go fishing?

14 A No, sir, I did not.

15 Q So, then, you decided after a couple of days you
16 would go on up to Ruby Meadows?

17 A Yes, sir.

18 Q And Bill Odom made that decision, didn't he?

19 A Yes, sir.

20 Q And so you went on out there?

21 A Yes.

22 Q And you took a bunch of beer out there along and
23 you camped beside the pond the first night?

24 A We camped about a hundred fifty yards maybe two
25 hundred yards from the pond, yes. We weren't directly by the

1 pond.

2 Q Did you fish and hunt that night?

3 A We fished, and we drank some beer too.

4 Q Okay, who fished?

5 A Bill Odom and I.

6 Q Did you catch any fish?

7 A No, sir.

8 Q Did you catch any fish at any time during this
9 visit to Ruby Meadow?

10 A I didn't, but Bill Odom did.

11 Q Who cleaned the fish?

12 A Bill Odom did, I believe.

13 Q Did you see him do it?

14 A No, sir.

15 Q Did you see Jerry Pizzuto clean them?

16 A No, sir.

17 Q Now, the first day you were out there, you got
18 out there late in the day and spent the night?

19 A Yes, sir.

20 Q During the next day, did you and Bill Odom go to
21 town the second day you were out at Ruby Meadows?

22 A I don't remember if it was the second day or the
23 third day, but we did go into town.

24 Q And you picked up some more beer and supplies?

25 A Yes, sir.

1 Q And during this next day after your arrival at
2 Ruby Meadows, I think you said that you and Bill hunted a lot
3 lot together leaving Lene with Jerry Pizzuto back at the camp?

4 A Yes, sir.

5 Q And by that time you had moved into the cabin?

6 A After we came back from hunting on the second day
7 we moved into the cabin, yes.

8 Q Whose idea was it to move into the cabin?

9 A Bill Odom's. It seemed a sensible suggestion
10 anyway.

11 Q You mentioned a grouse, but you called it a
12 pheasant. Do you know the difference between a grouse and a
13 pheasant?

14 A Our hen pheasant in California look pretty much
15 like a grouse and Bill Odom said they were of a pheasant
16 generation. Our pheasants are bigger than the grouse, but as
17 far as the breast section and everything, they're basically the
18 same, they look the same.

19 Q You said you saw a deer during your hunting
20 excursions with Bill Odom?

21 A Yes, sir.

22 Q Why didn't you shoot it?

23 A I have no idea, I never carried the gun. When I
24 saw that deer, I knew that that .22 wasn't going to bring that
25 deer down.

1 Q Did Bill Odom attempt to shoot the deer?
2 A No, sir. That deer just up and lit, it was gone.
3 Q Okay. Now, I think you testified that you went
4 into town with Odom and you met a police officer there in town
5 that was a friend of his?
6 A Yes, sir.
7 Q His name was Steve?
8 A Yes, sir.
9 Q Did you talk to him for a while?
10 A Yes, we talked to him for about ten minutes.
11 Q And then you picked up some more supplies and
12 beer and went back to Ruby Meadows?
13 A We picked the beer and stuff up before we saw
14 the police officer.
15 Q Some time during this time you testified that
16 Bill Odom talked about claim jumping people?
17 A Yes, sir.
18 Q Going up to a place called -- what did he say?
19 A War Eagle.
20 Q Okay, and did he say something about jumping
21 their claims and burying their bodies?
22 A Yes, sir; he did.
23 Q Tell us about that, please?
24 A He said that -- he said that we wouldn't have
25 nothing to worry about because if they don't find the bodies,

1 then they don't have a case.

2 Q Did you think that he meant to kill people up
3 there claim jumping, if he did it?

4 A I don't understand -- you mean, if we went up to
5 do that, would he have killed somebody?

6 Q Yeah.

7 A At that time, I didn't think so. I never seen
8 -- I never seen Bill really threaten anybody. I seen him and
9 his wife get in pretty good arguments and stuff like that, but
10 as far as other people, not really threaten somebody, I've
11 seen him threaten, but I haven't seen him threaten.

12 Q Well, you haven't been around Bill Odom except
13 visiting at his home, playing cards with his wife and so on,
14 but you haven't been around him when there's other people around,
15 have you?

16 A That's true.

17 Q You said something here and I wrote it down, you
18 said: "Everything I've had, I've worked for." Is that true?

19 A Yes, sir.

20 Q Okay.

21 A Except for the time when I was in trouble with
22 the police in California.

23 Q Well, now, you've been in trouble a couple of ...
24 times, haven't you?

25 A Yes, sir.

1 Q And you said in each case, you've worked for
2 whatever you got. Isn't it true that you've been convicted of
3 armed robbery?

4 A Yes, sir.

5 Q And that you've been paroled after serving some
6 amount of time?

7 A I served eighteen months.

8 Q Well, you didn't work for the money you took in
9 the armed robbery, did you?

10 A I didn't keep the money, either.

11 Q Where did it go?

12 A I took -- gave it to the person it belonged to.

13 Q Oh, tell us how that came about, this armed
14 robbery?

15 A I was just out of high school and a friend of
16 mine that was on our baseball team, we used to call him Crazy
17 Lunchwall because he would slam a baseball and it just went
18 sailing and he's down at Santa Cruz where there's a beach and
19 boardwalk and it's kind of like Disneyland, it's right off the
20 ocean and Lunch went with a prostitute while she was -- well,
21 she was a masseuse, I guess you would call her, and while he
22 was getting his massage or whatever he was getting, his wallet
23 came up missing. He told us about it at one of the ball games
24 just the next day and a couple of days after that we were all
25 at the boardwalk at Santa Cruz and he saw the lady with another

1 lady and a black guy was with them. And so we followed them
2 to the massage parlor, went in and we got the money back. We
3 got a hundred and twenty-five dollars, but we didn't get his
4 wallet.

5 Q Well, it says here armed robbery; what were you
6 armed with?

7 A We had a gun, a small hand gun.

8 Q Who had the gun in their hand?

9 A I held the gun.

10 Q And you stuck up these ladies?

11 A Yeah, I would say.

12 Q And you took their money?

13 A We took the money from the man.

14 Q And you were saying that all you are doing was
15 removing the money he had lost in his wallet the day before?

16 A Yes, we could have taken almost a thousand
17 dollars, but we only took a hundred and twenty-five.

18 Q But yet you were convicted of armed robbery?

19 A Yes, sir.

20 Q How long did you stay -- how long did you serve?

21 A I did eighteen months.

22 Q Did your friend who was with you serve, too?

23 A Yes, sir, he did. He later escaped and I believe
24 he was killed.

25 Q Well, you're also charged with another crime later

1 on, I think, it was burglary, wasn't it?

2 A I was charged with burglary, yes.

3 Q Were you ever convicted?

4 A No, sir, I was not.

5 Q Were you ever charged with any other crimes or
6 convicted of any other crimes?

7 MR. BOOMER: Your Honor, that's an improper question
8 in that particular form and I would object to it on that
9 ground.

10 THE COURT: Sustained.

11 A What?

12 THE COURT: Sustained means he's going to ask another
13 question.

14 A I'm sorry.

15 Q (Mr. Chenoweth:) Have you ever been convicted
16 of any other crimes prior to the armed robbery or after the
17 armed robbery?

18 A Any other crimes, yes, sir, I have.

19 Q What are they?

20 A I was convicted for receiving stolen property.

21 Q Do you remember being before this Court on the
22 23rd day of January, 1986?

23 A Yes, sir, I do.

24 Q Do you remember at that time that you entered a
25 plea, I think, to the charges of second degree murder?

1 A Yes, sir.

2 Q And you were asked some questions by the Judge,
3 and I'm going to ask you if you remember these questions.

4 When the Judge, Judge Reinhardt here in this courtroom asked
5 you this question at the bottom of page twenty-two: Let me
6 ask you, have you ever been charged with crimes before?

7 Answer: Yes, sir, I have. Question: What has that been --

8 MR. BOOMER: Your Honor, again, this is improper under
9 the rules and it's an improper question for the purposes of
10 this --

11 THE COURT: Do you want time to look at the rule or
12 are you familiar with it?

13 MR. CHENOWETH: I am familiar with it, Your Honor.

14 THE COURT: All right, want to approach, then?

15 (Thereupon Court and Counsel had an off-
16 the-record discussion outside the presence
17 of the jury, after which the following
18 proceedings were had, to-wit:)

19 THE COURT: Well, we might as well take a lunch break.
20 You're not to form or express any opinions about the case,
21 you're not to talk to anyone about the case. Don't let anybody
22 talk to you on any subject matter connected with the trial. If
23 anyone does, please notify the Bailiff who will in turn notify
24 me.

25 We'll be in recess until 2:00. Thank you.

1 (Thereupon the Court stood in lunch recess,
2 after which the following proceedings were
3 had, to-wit:)

4 THE COURT: We'll call the jury back in, now.

5 (Thereupon the jury panel re-entered the
6 courtroom, after which the following
7 proceedings were had, ti-wit:)

8 THE COURT: Good afternoon, ladies and gentlemen.

9 As a result of our last meeting with the lawyers there was a
10 dispute that arose concerning Mr. Rice's record and I believe
11 the parties are now prepared to recite a stipulation to the
12 Court that you'll receive as evidence in this case.

13 Mr. Boomer, is that correct?

14 MR. BOOMER: Correct, Your Honor. Your Honor, for the
15 purpose of this proceeding only, the parties will stipulate
16 that the witness, James Rice, has been previously convicted
17 of armed robbery and two counts of burglary.

18 THE COURT: Is that your understanding and stipulation,
19 Mr. Chenoweth?

20 MR. CHENOWETH: It is.

21 THE COURT: And do you so stipulate?

22 MR. CHENOWETH: Yes.

23 THE COURT: Ladies and gentlemen, another situation
24 where we have the lawyers are telling you something and this
25 time you can take that as evidence because it is a stipulation.

1 And that, of course, is in contravention of the general rule
2 that what the lawyers say does not constitute evidence.

3 With that, you may continue with your cross examination.

4 CROSS-EXAMINATION (cont.)

5 BY MR. CHENOWETH:

6 Q Mr. Rice, when we left for lunch, we were talking
7 about Ruby Meadows and we were talking about the fact that you
8 had arrived there on the night -- in the evening and you had
9 camped out overnight, and it's now the next day and you and
10 Bill have gone out hunting in the morning, early, and you are
11 back in camp, I think you said sometime three or four hours
12 later?

13 A Yes, sir.

14 Q And I don't recall whether you told me whether
15 you went to town or not?

16 A No, sir; we did not.

17 Q Did you hear Bill Odom on that day, on that day
18 now, did you hear Bill Odom talking about robbing anybody?

19 A No, sir.

20 Q It was the day before, the day that you talked to
21 him about claim jumping?

22 A No, sir; I believe it was not the second day we
23 were there, but the third day we were there. I can't be
24 sure, but I'm pretty sure it's not the second day that we were
25 there. It was during the time we were coming back from hunting

1 though.

2 Q You were walking along?

3 A Yes, sir.

4 Q That is, while you were walking, he was talking
5 about claim jumping?

6 A Yes, sir.

7 Q And I think you said that Mr. Odom never let the
8 rifle out of his sight?

9 A No, sir, he never did.

10 Q Did he keep it near him at night?

11 A Yes, sir.

12 Q And the only time that during these first few
13 days that you saw anybody have it was the time that you
14 testified that Jerry Pizzuto had the rifle?

15 Q No, sir; we were by the cabin one day and Bill
16 was shooting at a couple of cans on the ground and we each shot
17 the gun then, but as far as carrying the rifle anywhere, no,
18 we never did.

19 Q You were drinking a lot those first few days at
20 Ruby Meadows, weren't you?

21 A We were drinking quite a bit. Neither one of
22 us got drunk or in a staggering walk or anything, no.

23 Q How much did each of you drink a day -- we'll
24 start with the first full day that you were at Ruby Meadows,
25 not the night that you arrived, but the first full day you were

1 at Ruby Meadows, how much were you drinking, how much was Bill
2 drinking, how much was Lene Odom drinking and Jerry Pizzuto?

3 MR. BOOMER: To which we would object on the grounds
4 of relevancy, Your Honor.

5 THE COURT: I'll let the jury listen to it. You may
6 answer.

7 A Lene Odom didn't drink, she drank Dr. Pepper.
8 But the night we got there we had, I believe, a case and a
9 half of beer and we drank several apiece the same night we
10 arrived there. The next day, the full day on the next day
11 just before bedtime, I believe, the rest of the beer had been
12 gone.

13 Q Okay, how did that split around between the three
14 of you?

15 A I would say, maybe eight beers apiece in that
16 full day.

17 Q Did Jerry drink as much as you did?

18 A I don't believe so.

19 Q Did Bill Odom drink as much as you did?

20 A I believe Bill Odom drank a little bit more than
21 I did.

22 Q Okay, from your estimate, from your recollection,
23 as best as you can remember, about how many beers that second
24 day that Bill Odom had, that you had and that Jerry had.

25 A No, it's really hard to keep track of somebody

1 else's drinking when you're drinking yourself.

2 Q Well, you went through a case and a half in the
3 evening before and the next day?

4 A Yes, that's true.

5 Q Isn't it true that Jerry Lizzuto drinks very
6 little?

7 A I would not say he drinks very little. He
8 consumes his share, I would say, as much as he wants to, but
9 as far as drinking very little, I wouldn't say that at all.

10 Q Okay. But you said none of you were drunk on
11 that second day at Ruby Meadows?

12 A I've never seen -- as together, we've never been
13 drunk.

14 Q Okay. You testified that you heard Bill Odom
15 say: "I had a bead on that guy." Is that in reference to
16 the fisherman, a man named Mr. Crawford?

17 A Yes, sir, it is.

18 Q Do you know what he meant by that or did he
19 explain that any further?

20 A He didn't explain it any further, no.

21 Q Did Bill Odom say anything to you about if it
22 hadn't been for the pickup coming by, that being the Herndon's
23 pickup, that he would have robbed those people?

24 A No, sir, he did not say that to me. He was
25 talking with Jerry and Lene and I overheard him say that.

1 Q Okay, he didn't say that to you but he said it
2 to everybody?

3 A Yes, he said it loud enough to where everybody
4 could hear it.

5 Q Okay, can you repeat what Bill Odom said to all
6 of you?

7 A He said -- this was right after he mentioned
8 the fact that that gun that Mr. Crawford was wearing would put
9 a hole through Jerry, he said: "It's a good thing that pickup
10 came by when it did, because I had a bead on that guy."

11 Q Did he say anything further about robbing the
12 fishermen?

13 A No, I don't believe he did.

14 Q Did you ever dig a grave during this period of
15 time that Jerry Pizzuto and Bill Odom walked up to where the
16 fishermen were?

17 A No, sir, I did not.

18 Q Did you ever use the words -- when somebody said
19 that they were going to go up and rob the fisherman named
20 Mr. Crawford, you said: "Well, I'll go dig the grave, or
21 graves," at that time?

22 A No, sir; I did not.

23 Q You were saying what you were digging was really
24 a place to pan?

25 A Yes, sir, well, I dug those holes before this

1 ever occurred. As I would run out of sand in the five gallon
2 bucket, I would go to either hole to see which I could get
3 the best out of.

4 Q Mr. Rice, would you please come down here to the
5 board and show us where you were digging these holes?

6 (Thereupon witness exited the witness stand.)

7 Q And we will be referring to Exhibit 1-A of the
8 State, and if you'll take this pointer and we'll also get so
9 the jury can view this, if you will come alongside here, Jim,
10 thank you. Now, you were located on this display, aren't
11 you, this is Cabin No. 1 here?

12 A Yes.

13 Q Cabin No. 2 up there?

14 A Yes.

15 Q And this is the cabin you stayed in, Cabin No. 1,
16 is it not?

17 A Yes, sir, that's the indication.

18 Q Now, when you first came here, where did you
19 park the pickup, this black pickup -- I know it's not black,
20 but we are using for this hearing, where did you park this
21 pickup that belonged to the Odom's? Would you locate the
22 pickup, please?

23 A This road, Mr. Odom parked the truck -- well, it
24 was sitting up like this, just probably about ten foot from the
25 cabin. (Indicating.)

1 Q Okay, it won't stay there, so we'll -- well, it
2 will too. Now, you said you were panning for rubies?

3 A Yes, sir.

4 Q And where were you panning, this is a small
5 creek that goes --

6 A The creek does run exactly like this and just
7 right here there's a drainage ditch that's covered with dirt
8 over it, but at the very end of it you can see the pipe itself,
9 and the water flows through this side, through the pipe and
10 then on across the road down into the creek.

11 Q Where were you digging holes?

12 A Right on the road side of the pipe, which would
13 have been right in here. (Indicating.)

14 Q Okay, was that the only place you were digging
15 holes?

16 A That's not where I was digging holes, that's
17 where I was panning.

18 Q Okay, where were you digging holes?

19 A The place I was digging holes, I had a hole
20 approximately right here behind the cabin. (Indicating.)

21 Q You were showing a spot maybe ten or fifteen
22 feet behind the cabin?

23 A Yes. And I had another hole -- this is Cabin
24 No. 2, I had another hole right here, the creek is down here,
25 I had a hole just probably right up inside of here off to the

1 right-hand side of the road where I had been digging for sand.

2 Q Okay. Now, I'll represent to you that this red
3 pen here represents the site of the lady's grave. Did you
4 ever do any digging around there?

5 A If that's the site of the grave, that's where I
6 had the hole.

7 Q You were digging in the -- I've come up a little
8 too far here. Okay, so what you're saying is, you weren't
9 digging graves, you were taking sand and carrying it back down
10 here to the creek and washing the stuff out?

11 A Yes, sir, exactly.

12 Q Why did you go so far from the cabin to get
13 your dirt?

14 A That's where Mr. Odom had told me that when
15 people dredge, that the dredge would throw even gold out to
16 where it could not be confiscated by the people who are
17 actually doing the dredging. Sometimes the gold would just
18 fall out and that's where I would dig to see if something did
19 fall out.

20 Q Well, you weren't panning for gold, you were
21 panning for rubies, weren't you?

22 A Originally I was panning for gold until I found
23 rubies and then I was panning for anything.

24 Q Okay, aren't there dredge tailings right here
25 near the cabin where I'm pointing, which would be twenty or

1 thirty feet away from the front door of the cabin?

2 A I believe there is.

3 Q There's all kinds of dredge tailings down there,
4 aren't there?

5 A Yes, sir.

6 Q So, why did you choose walking way up here to
7 get your dirt for panning when you could have gotten this
8 similar dirt a few feet away?

9 A I could have gotten sand anywhere around in here,
10 I tried to go down there one time and the ground was still
11 muddy and saturated with water that I sunk down the first time
12 I went there, so I just went on up the road to where Bill had
13 showed me that one time.

14 Q Okay, is that where Bill Odom told you you should
15 dig?

16 A He suggested that I should, yes.

17 Q Now, while I've got you here, I'm going to skip
18 ahead a little bit, so you may not have to come back to the
19 display. You said you put a rock, I think you said a thirty-
20 five pound rock to mark the site of the lady's grave so that
21 you could come back later and find it, I think your testimony
22 was?

23 A Yes, sir; not that I could come back and find it
24 but so that the police could find it themselves.

25 Q Okay, where did you put that rock?

1 A I would say just about maybe right here. I don't
2 know what indicates this distance between there, but it's
3 about sixty feet further up the road as you're going to Cabin
4 No. 2, it was right alongside the road where the dirt on the
5 side of the road was built up, I had the rock sitting on top.

6 Q Wasn't there a little trail that ran from the
7 road straight down to that spot where the hole was for the
8 lady's grave?

9 A From the road, I don't believe so. I think the
10 trail you are indicating came around the trees, but it did go
11 up the road.

12 Q Uh-huh, and where was the trail in relation to
13 the rock?

14 A About maybe twenty feet.

15 Q Uh-huh. Would it have been a little simpler to
16 put the rock right here by the road right across from the lady's
17 grave?

18 A Yes, sir, it probably would have. I didn't want
19 to take -- I had taken too much time getting the rock to where
20 it was already, but it would have been a lot easier to put the
21 rock exactly on top of the grave, as far as that goes.

22 Q Uh-huh. Now, taking you to the second site up
23 here and I'll represent to you that there's been testimony that
24 would show that this pink pin stuck in this display is where
25 man was buried.

1 A Yes, sir.

2 Q Does that look like the right spot to you?

3 A Yes, sir.

4 Q And you said that you threw off a barrel. First,

5 I want to ask you about the barrel; was the barrel a painted

6 barrel or was it a rusty old barrel?

7 A It was both, you could recognize the paint on it,

8 but yet there was still rust on the barrel.

9 Q Okay, I think you said you threw that barrel

10 off right next to the man's grave?

11 A I was standing in the truck and I dropped the

12 barrel right next -- the man's grave was here and I dropped the

13 barrel just about right here, but it landed standing straight

14 up.

15 Q Okay, that's the last place you saw the barrel?

16 A Yes, sir.

17 Q And you said the purpose for leaving the barrel

18 there was to later find that grave?

19 A For the police to find it, yes.

20 Q Okay. I think that's all I needed the display

21 for, so let's go back to our seat.

22 (Thereupon witness complied with request.)

23 Q Going back for a moment to the time when Jerry

24 Pizzuto and Bill Odom went up to talk to the fishermen, you

25 said that Odom came back and had gotten some fish eggs and had

1 run back up there?

2 A Yes, sir.

3 Q Was this during the time you were over there at
4 the site of the woman's grave taking out dirt?

5 A No, sir, I was not.

6 Q Where were you during this --

7 A I was right next to the cabin, I was still
8 ranning.

9 Q You had already dug that hole over there where
10 the woman's gravesite eventually was?

11 A That hole, I dug the day before. When I dug the
12 hole, it was about -- I had started digging it shovel width and
13 and deep as I could get with the shovel, but the dirt kept
14 falling in. So, it was about this big around and maybe two and
15 a half feet deep.(Indicating.)

16 Q At no time did you imply to anyone, whether it be
17 Lene or Jerry Pizzuto or Bill Odom, you didn't imply at any time
18 that you were digging a grave?

19 A No, sir.

20 Q All right. The Herndon truck has stopped and
21 talked to you and you said there was a man that you spoke with?

22 A Yes, sir.

23 Q And a lady in the truck?

24 A Yes, sir.

25 Q And they drove on?

1 A Yes, sir.

2 Q And that sometime later, when Jerry Pizzuto and
3 Bill Odom came back to Cabin No. 1. And when they came back
4 to the cabin, I think you said that Bill Odom was carrying
5 the rifle?

6 A Yes, sir, he was.

7 Q And did you then have a conversation with all
8 three of you present?

9 A No, sir, I was still panning at the time when
10 they came up. After the Herndon's had left, I went on back
11 to resume my panning, and then they came up and that's when I
12 heard the conversation going on about the people in the pickup.
13 Mr. Crawford is the conversation I'm talking about and shortly
14 after that is when I heard Jerry ask about the people in the
15 pickup.

16 Q And then he said he was going hunting and walked
17 off into the woods?

18 A Yes, sir.

19 Q He didn't walk on the road, you said, but he
20 walked near it?

21 A Yes, sir.

22 Q Did he come up the road this way, and I'm
23 indicating up towards Cabin No. 2, did he come up to this
24 juncture here? (Indicating.)

25 A He was heading in that direction, but right there

1 to the left -- well, my left-hand side of Cabin No. 1, he went
2 right through the trees there.

3 Q You mean right through here?

4 A Up a little higher.

5 Q Right here?(Indicating.)

6 A Yes.

7 Q All right.

8 A No, see what I'm saying is right there on Cabin
9 No. 1 where the creek is.

10 Q Okay, you mean he walked through here?

11 A Yes, but he was in front of the cabin when he
12 left, but he cut across right through there.

13 Q Okay, so he was going out through this direction?

14 A Right.

15 Q And I presume he disappeared out of your sight?

16 A Yes, he did.

17 Q And then you and Bill sat there and drank some
18 beer and talked it over?

19 A Yes, sir, a few minutes after that. We had
20 conversation, we didn't talk anything over.

21 Q Did you hear any shots during this period of
22 time?

23 A No, sir.

24 Q Did you ever tell anyone that you heard shots
25 during this period of time?

1 A Yes, sir; I did.

2 Q Okay, do you remember who you told that?

3 A I told that to the officers back in California
4 when I was making a statement, the statement that I shouldn't
5 have made, and if I'm correct, I also told that to Randy Baldwin
6 on the phone, and up here.

7 Q Do you remember telling one of the police officers
8 at the Orland Police Department that you heard two small caliber
9 shots coming from the cabin and that you dropped your equipment
10 in the creek where you were panning and ran into the cabin?

11 A Yes, sir, I do.

12 Q And did you further go on to say that when you
13 got up to the cabin or on the road en-route to the cabin, you
14 saw Odom's pickup parked alongside of the roadway?

15 A I might have, I can't recollect if I did or not.
16 As I said, that statement wasn't true and I don't remember half
17 of what I said.

18 Q If it wasn't true, why did you say you heard
19 two shots?

20 A I don't know.

21 Q and why did you say that you saw Odom's pickup
22 along the road of the second cabin?

23 A I can't explain that, either. I was -- like I
24 said, when I made those statements I didn't want to get involved
25 and I was still basically scared of Jerry and I just wanted to

1 keep myself as far away as I could.

2 Q All right. Did you go on to say in your statement
3 to the Orland police that you ran on up to the cabin?

4 A Yes.

5 Q That would be Cabin No. 2?

6 A Yes, sir.

7 Q And did you also tell them that when you got to
8 the cabin, you went in, you saw -- before you went in, you
9 saw William Odom's pickup parked alongside the roadway there by
10 the cabin, that you ran up to the cabin and you found Del
11 Herndon lying in the center of the cabin facing towards the
12 door and when you arrived at the cabin, William Odom, Lene
13 Odom and the children were standing right outside the cabin
14 door?

15 A Yes, sir, I did say that.

16 Q You didn't say anything about Jerry Pizzuto, at
17 that point, did you, being there at the cabin, that is?

18 A I don't believe I did.

19 Q Okay, you said that the people at the cabin were
20 Bill Odom, Lene Odom and the children, is that correct?

21 A Yes, I believe so.

22 Q And this was taken on the 30th day of July, is
23 that correct?

24 A Yes.

25 Q That was about five days after the Herndon's died?

1 A Yes, that was either the 30th or the 28th, you
2 have the date, I'm not sure, I can't be positive to that.

3 Q Was your memory fresh five days after the
4 Herndon's died, was your memory fresh?

5 A My memory was fresh but my nerves were shot.

6 Q So, you're saying that Bill Odom and Lene Odom
7 and the children were outside that cabin door, is untrue now?

8 A I said it was untrue seven months ago, sir.

9 Q Okay. You also talked about a hammer during
10 your testimony?

11 A Yes, sir.

12 MR. BOOMER: Objection, Your Honor, that word "testi-
13 mony," I don't think -- I'm sorry, I'm being premature.

14 MR. CHENOWETH: He testified here in court a few
15 minutes ago about a hammer.

16 MR. BOOMER: I thought he was talking about a statement
17 down in Orland -- sorry.

18 Q (Mr. Chenoweth:) You testified about a hammer
19 here a little while ago, didn't you?

20 A Yes, sir.

21 Q And I think you said it was a curved claw hammer?

22 A Yes, I did. I don't know if I said it was a
23 curved claw hammer here today, but in my statements to the
24 police I did say it was a curved claw hammer.

25 Q Is that the way you remembered it was that it was

1 a curved claw hammer?

2 A Yes, sir.

3 Q And do you know what a ball pene hammer is, don't
4 you?

5 A Yes.

6 Q And you are a mechanic?

7 A No, I know about engines, I'm not a certified
8 mechanic.

9 Q I didn't ask you if you were certified.

10 A I'm sorry.

11 Q Are you a mechanic, do you work on mechanical
12 things?

13 A Yes.

14 Q And you know the difference between a ball pene
15 hammer and a regular conventional curved claw hammer?

16 A Yes, sir.

17 Q And the item you saw at Ruby Meadows was a
18 curved claw hammer?

19 A Yes, sir, it is.

20 Q When you made a statement in California about
21 the 28th or 30th to Officer Boyles of the Orland Police Depart-
22 ment, did you tell him that Odom fired a shot in the air and
23 that Odom told you, Rice, to, after sticking the muzzel of the
24 .22 in your right eye and told you that you should hit the
25 victims with the hammer?

1 A Yes, sir.

2 Q And then you did hit the victims with the hammer?

3 A I said that I did, yes.

4 Q That's the same claw hammer that we're talking
5 about?

6 A Yes, sir.

7 Q Okay, and now you say that your statement about
8 Odom putting the rifle to your head and telling you to hit
9 the victims with the hammer, that statement is not true?

10 A Yes, sir, it is not true. As I have stated back
11 in the past.

12 Q Did you know at the time you made this statement
13 that you were incriminating yourself?

14 A No, sir, I did not. I didn't even have a notion
15 that I was, I wasn't even thinking of that.

16 Q Did Mr. Odom threaten you up there?

17 A No, sir; he did not.

18 Q Why did you say he did?

19 A I can't -- I don't know. Again, it's -- as I've
20 said, I didn't want to get involved.

21 Q Now, I think you have testified today that you and
22 Bill were back at the cabin and you walked up to see, or you
23 drove up, rather, to see what was going on, and to find Jerry?

24 A Well, we went up there to find Jerry, not to see
25 what was going on. As far as I was concerned, we were looking

1 for Jerry to get the .22 and go hunting up on the ridges.

2 Q And you came up the road, and I'll indicate for
3 you, from Cabin No. 1 you came up along this road, and you
4 correct me if I'm wrong any time during this, you came along
5 this right over here by the spot where you had been digging,
6 now known as a woman's grave, you came on up the road and you
7 came right along the road here by Cabin No. 2, is that correct?

8 A That's right.

9 Q And you were hollering the name "Jerry" out the
10 window?

11 A Yes, sir, I was.

12 Q And where was the truck when you first saw Jerry?

13 A Bill's truck?

14 Q You're riding in Bill's truck.

15 A Yes, where was Bill's truck when I first saw --
16 we had turned around.

17 Q Come up here and you turned around?

18 A Yes, sir.

19 Q Then you started back?

20 A Yes, sir; and we were just about -- the front of
21 Bill's pickup was past Cabin No. 2, yes, it was just past
22 Cabin No. 2 and Jerry had stepped to the door and just right
23 when we were passing Cabin No. 2 I told Bill: "There's Jerry."

24 Q Okay, you must have been looking out Bill's
25 side of the window, then, because the driver would be on the

1 left, wouldn't he?

2 A That's true, yes, I was looking on both sides.
3 As a matter of fact, I had my head out the window on the way up
4 there yelling for Jerry.

5 Q Okay, so you were in the passengers seat, so
6 you would be looking across the left, to your left, across the
7 driver and you saw Jerry step out?

8 A Yes, I did.

9 Q Did you stop?

10 A Yes, sir, we did.

11 Q And then you went on?

12 A No, sir; we stopped, Jerry held up -- was holding
13 up a gun in his hand and said: "Give me a half an hour and
14 come back," and Bill said: "Okay," and we left back down to
15 Cabin No. 1.

16 Q So, you drove back down here and parked the
17 pickup again?

18 A Yes, sir.

19 Q Where was the pickup parked this time?

20 A Bill parked the pickup just right how you've got
21 it there, same direction and everything.

22 Q All right. Now, did you decide to have a beer
23 and cigarette and talk it over?

24 A No, sir.

25 Q What did you decide to do?

1 A Right when we parked the truck I jumped out and
2 started running around and I grabbed a knife that we were using
3 for meat when we cut it and I got ready to run back up there
4 and Lene Odom stepped out of the cabin and said: "What's
5 going on?" Bill Odom said: "I think Jerry is going to kill
6 those people." After realizing what I had in my hand and
7 realizing that Jerry now had two guns, I threw the knife down
8 and told Mrs. Odom to take the knife so the kids don't get it.
9 Then I told Bill Odom prior to that that: "We can't give
10 Jerry no time at all, we've got to get back up there."

11 Q Were you in a rush to get back up there?

12 A Yes, I was.

13 Q Was Odom in a rush to get back up there?

14 A He wasn't in as much a rush as I was, he was ten
15 feet behind me.

16 Q Why didn't you drive the truck back up there?

17 A I have no idea.

18 Q Wouldn't it have --

19 A Well, it's probably my opinion that we would have
20 had to go all the way out of the area where we were to turn
21 the truck around.

22 Q You can turn the truck around right here in front
23 of the cabin, can't you?

24 A Yes, sir.

25 Q So, you wouldn't have to go out of the area to

1 turn the truck around?

2 A We did several times, I have no idea why we
3 didn't take the truck up there.

4 Q How long does it take to walk from Cabin No. 1,
5 even at a fast walk, from here to here? (indicating.)

6 A I would say five minutes.

7 Q Okay, how long would it take to drive it?

8 A Oh, two.

9 Q Okay. So, if you were in a big hurry, it would
10 make more sense to take the truck, wouldn't it?

11 A Yes, sir.

12 Q But you didn't?

13 A No, sir, we didn't.

14 Q You weren't in that big a hurry?

15 MR. BOOMER: Your Honor, I object to that question or
16 comment by counsel and ask that it be stricken.

17 THE COURT: It is a comment, Counsel, if you want to
18 ask another question you can.

19 Q (Mr. Chenoweth:) Okay, this time when you got
20 up to the cabin, you were walking side by side with Odom?

21 A No, sir.

22 Q You were ahead of him?

23 A Yes, sir, we were running.

24 Q Okay, you were ahead or was he ahead?

25 A I was ahead.

1 Q How far?

2 A About ten feet.

3 Q Okay, did you run straight to the cabin?

4 A No, sir; I did not.

5 Q Where did you run to?

6 A Just -- I passed the cabin just maybe ten feet
7 fifteen feet before I stopped.

8 Q Well, isn't it true that the pickup belonging to
9 the Herndon's was parked there near the cabin?

10 A It was parked past the cabin, yes, about -- in
11 yardage, probably twenty-five yards.

12 Q Is where I have it shown here about right where
13 it was parked?

14 A I would say so.

15 Q Okay, now, isn't it true that even though you
16 were in a hurry that you ran right by the cabin and you ran
17 right up here and you opened the driver's side of the pickup
18 and you took out the lady's purse?

19 A No, sir, that's not true.

20 Q That's a lie, then, if Odom said that, that's a
21 lie?

22 A Pardon?

23 Q If Odom said that then it's a lie?

24 A Nobody touched that purse as far as I know until
25 Lene Odom touched that purse and went through it.

1 Q Now, if you thought that Jerry was here in the
2 cabin with the victims and you were anxious to put a stop to
3 whatever Jerry was doing, why did you come up this road at a
4 run, and instead of running right on by the cabin, why didn't
5 you run right across here, take the shortest distance between
6 two points, and run from the road straight into the mouth of
7 the cabin?

8 A Like I said earlier, for a couple of seconds I
9 thought about getting something out of Mr. Herndon's truck and
10 going back into the cabin, but as I passed the cabin and I
11 stopped and that's when I started hearing the thunks on the
12 head.

13 Q What you assumed to be thumps on the head?

14 A Yes, sir, what I assumed to be thumps.

15 Q And Bill Odom was with you and you both ran right
16 on by the cabin?

17 A Yes.

18 Q Where did you go when you ran on by?

19 A We stopped right on the road.

20 Q Did you stop at the pickup or behind it or --

21 A No, we were maybe twenty yards from the pickup.

22 Q Okay.

23 A We were just right past the side of the cabin.

24 Q Well, would it be right about where I'm holding
25 the pointer at this point, where you stopped?

1 A Yes, sir, I think so.

2 Q Okay, you stopped right here, you and Bill?

3 A Yes.

4 Q What did you do?

5 A I froze.

6 Q Well, how long did you freeze?

7 A Until Jerry came out of the cabin.

8 Q Okay, the door is on this side of the cabin here,

9 isn't it?

10 A Yes, sir.

11 Q Jerry came out of the cabin. Did he come out of

12 the cabin and walk towards you?

13 A Yes, he did.

14 Q And you and Odom just stood there and waited

15 for him?

16 A Yes, sir.

17 Q What happened next?

18 A That was when Jerry had taken out -- he gave

19 Bill his rifle and had taken out the money and gave it to Bill

20 and told him there was nine hundred dollars there.

21 Q Okay. What did Jerry have in his hands?

22 A He had a hammer and a rifle when he came out of

23 the cabin.

24 Q He had a claw hammer in his hand?

25 A Yes, he did.

1 Q And you are saying that you saw it?
2 A Yes.
3 Q And I think you said it had blood on it?
4 A Yes, sir.
5 Q Where did you next see that hammer?
6 A I never saw it again after that.
7 Q Okay, so the three of you are standing there and
8 now Bill Odom has the rifle in his hands?
9 A Yes, sir.
10 Q And Bill Odom has got the money in his pocket?
11 A Yes, sir.
12 Q And the three of you are standing there?
13 A Yes, sir.
14 Q What happens next?
15 A That's when Jerry was asked what he had done,
16 what happened, and Jerry said he put them to sleep.
17 Q Okay, continue with what happened after he said
18 that?
19 A After he said that I grabbed the rifle from Bill
20 and said: "I'm going back down to the cabin."
21 Q You meant Cabin No. 1?
22 A Yes, sir.
23 Q Why did you need the rifle?
24 A I don't know, I just -- it was for protection or
25 whatever, I don't know. I just grabbed it and said: "I'm going

1 back to the cabin."

2 Q So, you started walking down the road from Cabin
3 No. 2, down towards Cabin No. 1?

4 A Yes, sir, I did.

5 Q And how far did you get down that road?

6 A Just a little bit further than where your stick
7 is, just about right there, I guess. (Indicating.)

8 Q Okay.

9 A That was after I came back out of the cabin.

10 Q Oh, after you came back out of the cabin?

11 A Yes, sir.

12 Q Okay, you missed that point. You were all three
13 standing here together, now, you and Odom and Pizzuto and as I
14 said, you've got the rifle in your hand now, Odom has got the
15 money in his pocket and your standing there, and so what did
16 you do next?

17 A That's when I started walking back to the cabin
18 and I got about right in there and that's when I started hearing
19 what was in the cabin.

20 Q Okay, so you ran over to the cabin, right?

21 A I walked over to the cabin, right.

22 Q Okay, what did you do?

23 A That's when I went in the cabin. I heard a noise
24 and that's when I went into the cabin.

25 Q Okay, and I think you said you saw Mr. Herndon

1 laying on his back and you saw Mrs. Herndon laying on her face?

2 A Yes.

3 Q And you saw that Mr. Herndon was still alive?

4 A I didn't say that.

5 Q What did you say?

6 A I said what brought me to the cabin was I heard
7 some snoring and scuffling. Once I got inside the cabin the
8 snort was gone but his feet were still moving.

9 Q He only snorted once?

10 A I only heard him once, yes.

11 Q You didn't hear any long snoring-type noises?

12 A No, sir.

13 Q Just heard one snort?

14 A Yes, sir.

15 Q And when you got there he was still kicking, as
16 they say?

17 A Yes.

18 Q And what did you do?

19 A That's when I shot him.

20 Q Would you demonstrate for us how you shot him?

21 A I stood at his feet and I pointed the gun at his
22 head and I pulled the trigger.

23 Q So the bullet, then, if you were standing at his
24 feet and you pointed the gun at him, did you see where he was
25 hit?

1 A With the bullet?
2 Q Yes.
3 A Yes, sir.
4 Q Where was he hit?
5 A Between the eyes, just above his eyebrows.
6 Q Okay, did he move?
7 A When I shot him?
8 Q When you shot him?
9 A No, sir.
10 Q Okay, now, if you were standing at his feet and
11 pointing a rifle at him, if I was to act like you and I'm
12 standing at his feet, you would be pointing the rifle about
13 like I'm pointing the stick at about a forty-five degree angle
14 to the ground, right?
15 A Yes.
16 Q How do you think the bullet would have -- if it
17 entered his forehead right between his eyes, where do you think
18 it would have hit the back of his skull?
19 MR. BOOMER: Objection, Your Honor, that calls for a
20 conclusion of an expert witness regarding possible deflections
21 and so forth of bullets and I don't think this witness is
22 qualified to answer.
23 THE COURT: Sustained.
24 Q (Mr. Chenoweth:) If you were to pick a line
25 from the barrel of the gun and you were to point it straight

1 through the head of Mr. Herndon, and if you hit him right
2 between the eyes, isn't it true that the bullet would end up
3 at a high point in the back of his head?

4 MR. BOOMER: Objection, Your Honor; same objection.

5 THE COURT: Sustained.

6 Q (Mr. Chenoweth:) Would you agree with me that
7 the angle that you were holding the rifle, if you were standing
8 at his feet, would be about as I have described, about a
9 forty-five degree angle?

10 A Yes, sir.

11 Q And you hit him right between the eyes?

12 A Yes, sir.

13 Q Didn't move after that, did he?

14 A He wasn't moving before that, just his feet were.

15 Q Did you notice Mrs. Herndon?

16 A Yes.

17 Q Discuss the position of her body; she was on her
18 face, I think you said earlier?

19 A She was laying on her face, her head was -- her
20 head was looking to the right, to the right-hand side of the
21 cabin wall and her hands were at her side and there was blood
22 on the back of her head.

23 Q She wasn't tied up?

24 A No, I didn't see her tied up. I didn't see
25 either one of those people tied up.

1 Q Okay, her hands were at her side?
2 A As far as I can remember, yes, they were.
3 Q Okay. Now, what did you do next?
4 A That's when I went out of the cabin and started
5 walking back towards Cabin No. 1.
6 Q All right, before you leave the cabin, will you
7 describe how Del Herndon was lying when you left the cabin?
8 Describe the position of his body?
9 A He was laying on his back.
10 Q Were his hands at his side?
11 A I believe they were away from his body, to his
12 side.
13 Q You mean if I could demonstrate for you, you
14 mean they were out like this? (Indicating.)
15 A Not so far, no, I would say about, maybe --
16 Q All right, please, if you would stand, Mr. Rice,
17 and pretend yourself to be Del Herndon laying on your back,
18 would you please describe what you saw of the body by showing
19 the jury the position he was in laying on his back? You don't
20 have to lay down, I'll just ask you to stand up.
21 A His arms were like this. (Indicating.)
22 Q Okay. Now, did you roll him over?
23 A I never touched him.
24 Q You never touched any of the bodies?
25 A No.

1 Q Okay.

2 A I refused to touch him.

3 Q Except you did help unload the body of Mr.

4 Herndon later at the gravesite?

5 A Yes, I did.

6 Q Was that the only time you touched him?

7 A Yes.

8 Q Was there any blood dripping out of the tarp

9 that was holding the body of Mr. Herndon?

10 A Not to my recollection, no.

11 Q Was there any blood on the tailgate of the

12 pickup or on the pickup bed belonging to the Herndons?

13 A Not that I can remember, no.

14 Q Okay, you came out of the cabin, you threw up

15 and you started walking back towards Cabin No. 1?

16 A Yes, sir.

17 Q Now, what was Bill Odom or Jerry Pizzuto doing

18 at this time?

19 A That's when I received the shovel from Jerry and

20 I was informed I was going to dig a grave.

21 Q So, what did -- was Bill Odom doing?

22 A I don't know.

23 Q So, you continued walking towards Cabin No. 1?

24 A Yes, sir.

25 Q And when you got to Cabin No. 1, what did you do?

1 A I told Lene Odom what had happened and I put Mr.
2 Odom's rifle on the shelf inside the cabin and then I went back
3 to where I had . . .

4 Q You had the rifle in your possession from the
5 time you took it until you went back to Cabin No. 1?

6 A That's true.

7 Q You had shells in the rifle?

8 A Yes, sir, I would assume there was a full
9 magazine.

10 Q So, you had protection?

11 A Yes, sir.

12 Q It was an automatic rifle?

13 A Yes, sir.

14 Q With that type of protection, why were you
15 afraid of anyone?

16 A I have no -- I don't know, I know as I think
17 about it you can't turn a rifle on a hand gun and win, it takes
18 a lot longer for a rifle to get on somebody than it does one
19 of those .9 millemeters.

20 Q What if you're some distance away from them?

21 A I would say in my opinion it would be the same.

22 Q It's not your opinion, then, that a rifle at a
23 distance is a better weapon than a pistol?

24 A I can't say nothing about that.

25 MR. BOOMER: Your Honor, I think that's an argumentative

1 question and really irrelevant.

2 THE COURT: I'll let him answer the question.

3 A I don't have a very good eyesight anyhow and it
4 depends on who is shooting the rifle and who's shooting a
5 pistol in my opinion, as to which is more accurate at any
6 distance.

7 Q (Mr. Chenoweth:) I think you said from your
8 testimony on questions offered by Mr. Boomer, that Pizzuto
9 came out of the cabin at the time he came out of the cabin
10 with the rifle and the hammer and he had Mr. Herndon's boots
11 on?

12 A Yes, sir; he did.

13 Q Where were his shoes?

14 A I have no idea.

15 Q Did you see them in the cabin when you went in
16 to shoot Mr. Herndon between the eyes?

17 A I don't believe I was looking for any shoes when
18 I went into that cabin.

19 Q But you're certain that he had the boots on?

20 A Yes, sir. I know that Jerry had black boots with
21 zippers on the side, on the instep part of the ankle and he
22 wasn't wearing those when he came out of the cabin.

23 Q He was wearing those boots that you think would
24 be Mr. Herndon's?

25 A Yes, sir.

1 Q What were you doing that day?

2 A That day I was wearing my tree climbing boots that
3 I brought with me. The previous day when I got my pants wet
4 from walking in the creek along with my tennis shoes that I
5 was wearing, I had put them by the fire and when I had went
6 to get them they were dry, but they were burned up, the whole
7 top part of the shoes were gone so I threw them in the trash
8 pile right next to the cabin, Cabin No. 1.

9 Q What else were you wearing?

10 A I was wearing Levi's. I don't remember the shirt
11 I was wearing, I think I was wearing a yellow Ferrari -- no,
12 I was wearing my loose shirt as a matter of fact, blue and
13 white one. And a belt, socks and boxers, that's it.

14 Q Were you wearing a hat?

15 A Yes, sir, I was, I'm sorry, I was wearing a hat.

16 Q What kind?

17 A It was a yellow, I think it was a Jet-Set hat,
18 yellow with the white advertising on the front with a jet
19 flying on it, as a matter of fact.

20 Q Were you wearing that pair of jeans that had
21 what appeared to be tar-like material, black material on them
22 that normally you find in roofing work?

23 A Yes, I think I was. I can't be sure, but I
24 believe, -- well, all of my Levi's I roof in, my wife don't
25 like it, but every new pair of pants I get I roof in.

1 Q Mr. Rice, I'm going to show you some clothes out
2 of State's Exhibit No. 65. Now, holding forth your observation,
3 if you would like to touch, you may, a pair of jeans.

4 A They're mine.

5 Q Are these the jeans you were wearing on the day
6 the Herndon's died?

7 A I can't be sure, like I said, I got quite a few
8 pants that have my working material on them.

9 Q Uh-huh.

10 A And I can't be honestly sure if these are the
11 pants I wore that day.

12 Q You took the pants you wore that day down to the
13 Orland Police Department, didn't you?

14 A They came to the house, yes.

15 Q And you gave them a set of pants that looked
16 something like that, didn't you?

17 A Yes.

18 Q And I can affirm to you that it's been stipulated
19 by the prosecution and the defense in this case that these
20 clothes are the same clothes that were given to the Orland
21 Police Department?

22 A Yes, okay, then, yes.

23 Q Then these are the pants you were wearing on the
24 day the Herndon's died?

25 A If it's been stipulated saying they were taken

1 from my house, yes.

2 Q I think you were asked if you got any blood on
3 these pants any time you were near this incidence and you said
4 no.

5 A I believe I did.

6 Q You did say no or you did have blood on them?

7 A Yes, I believe I did say, no.

8 Q Okay. Showing you now, 65-D, the pants were
9 65-A, I'm not showing you 65-D; is this the shirt you took
10 down to the Orland Police Department and said you were wearing
11 on the day on the Herndon's deaths?

12 A Yes, I believe it's one they picked up, yes.

13 Q This is not the one that says Moose shirt on it?

14 A No, it's not. That's the one they took from my
15 house.

16 Q Okay, well, my question is, is this the one you
17 were wearing on the day the Herndon's died?

18 A I thought I was wearing the moose shirt, but it
19 could be that shirt, I don't know.

20 Q You're not sure about that, then?

21 A No. I thought it was my moose shirt because I
22 wore that quite often, but yet, that could be the shirt that
23 I wore.

24 Q Okay, but it could also have been the moose shirt
25 you were wearing as well?

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A Yes.

Q So, did the Orland Police Department ask you for the clothes you had on the day the Herndon's died?

A Yes, sir.

Q And you gave them this shirt?

A I gave them that shirt and I believe I gave them something else as well, that could be very well the shirt that I wore that day.

Q Or it might not have been, either?

A Or it might not have been, that's true.

Q So, you could have given them the wrong shirt?

A Yes, sir.

Q Now, calling your attention to 65-C, these are a pair of white shorts. Are those the white shorts you had on that day?

A Yes, I would say so.

Q You want to examine them closer?

A No, sir.

Q Now, holding up what has been identified as 65-B; what is this?

A It's one of my working shirts.

Q Okay, did you give this to the Orland Police Department?

A Yes, I believe I did.

Q What did you tell them that you were doing with

1 this?

2 A I may have said I was wearing it.

3 Q On the day the Herndon's died?

4 A Yes.

5 Q So, you're not sure --

6 A What I did, I believe I gave them most of my
7 t-shirts that I took up there with me and a pair of Levi's.

8 Q Okay, so you could have been wearing this shirt,
9 this shirt or the moose shirt or any other shirt?

10 A I think so, I can't remember which shirt I was
11 wearing.

12 Q Now, what was Bill Odom wearing on the day the
13 Herndon's were killed?

14 A I don't know.

15 Q You had no recollection at all?

16 A He was wearing levi's and tennis shoes, I believe,
17 but as far as the shirt goes, I don't know.

18 Q Now, Mr. Rice, I'm going to call your attention
19 to State's Exhibit 66, and first, looking at a pair of jeans
20 that came out of 66-A; do these look like the jeans that were
21 worn by Bill Odom on the day the Herndon's died?

22 A They could have been, yes.

23 Q What kind of shirt was Bill Odom wearing that
24 day?

25 A I don't remember.

1 Q Was he wearing a pair of moccasins?

2 A I don't know if he had any moccasins.

3 Q So, you don't remember?

4 A I thought he was wearing tennis shoes, but I
5 could be wrong.

6 Q Could it have been moccasins?

7 A Yes, but I don't recall seeing any moccasins,
8 I don't recall him having a pair of moccasins.

9 Q What was Jerry Pizzuto wearing on that day?

10 A I believe he was wearing the same, I think he was
11 wearing levi's, and his black boots, but as far as the shirt
12 I have no idea.

13 Q Okay, was he wearing a t-shirt that day?

14 A I can't remember.

15 Q It was a warm day, wasn't it?

16 A Yes.

17 Q In fact, it was a hot day?

18 A Yes, it was hot.

19 Q And were you all wearing t-shirts?

20 A I can't say if we all were or not. I know the
21 shirt I had on was light that's why I thought it was my moose
22 shirt because it's a pretty aromatic shirt, and I don't know
23 if I wore my moose shirt or not.

24 Q Was anyone wearing a coat that day that the
25 Herndon's died, I mean, early in the day, during the time the

1 Herndon's died?

2 A I don't think so.

3 Q No one was wearing a coat?

4 A No, sir, I don't think so.

5 Q No one was wearing a windbreaker or a long-sleeved
6 zippered front windbreaker of any kind either?

7 A I don't think so. Like I say, I can't be sure,
8 I don't know.

9 Q Was it hot?

10 A Yes, sir.

11 Q Turning your attention to Exhibit 64, which I'll
12 hold out to you to be in evidence as to clothes Jerry Pizzuto
13 was wearing. Calling your attention to specifically 64-F,
14 which I show to you as a blue, sometimes referred to as a
15 nylon windbreaker with a lining. Was Jerry Pizzuto wearing
16 this when the Herndon's died?

17 A I can't say for sure, I don't know. If he was,
18 I wouldn't know why because it was a hot day that day.

19 Q Think back real hard and I'll give you a minute
20 to try to remember what Jerry had on?

21 A All I can remember is him wearing his black boots
22 and levi's, I believe, but as far as the shirt and jacket, I
23 have no idea.

24 Q Okay.

25 A I can't be sure, I wish I could, but I can't.

1 Q Is it fair to say this: This was a hot enough
2 day that more likely than not he wasn't wearing a coat?

3 MR. BOOMER: Objection, Your Honor, calls for a
4 speculation of the witness.

5 THE COURT: Sustained.

6 Q (Mr. Chenoweth:) You said he had the black
7 boots on that day that zipped up the side?

8 A Yes.

9 Q Are you sure of that?

10 A I believe I am.

11 Q Okay, as far as the rest of the clothes he was
12 wearing, the shirt he was wearing, you have no idea?

13 A No, sir.

14 Q Was he wearing a hat?

15 A I can't remember. I loaned him one of my hats,
16 but he lost it. I can't remember if he was wearing another
17 hat or not.

18 Q You just don't remember, huh?

19 A No, sir, I don't.

20 Q Now, you went back to Cabin No. 1, you had the
21 .22 rifle and you said you started talking to Lene. What did
22 you tell Lene?

23 A I told Lene what had happened.

24 Q Tell us what you told Lene?

25 A I told Lene that Jerry beat those people in the

1 head with a hammer and I told her I put the man out of his
2 misery with the rifle, and that Jerry had given Bill some
3 money, and I believe that's just about it.

4 Q Okay. What did you do next?

5 A That's when I put the rifle up and went back to
6 digging the hole.

7 Q If you worried about your safety, why did you put
8 the rifle up?

9 A I have no idea. My mind wasn't all the way clear
10 right there, neither was my nerves or anything as far as that
11 goes.

12 Q Were you alert enough to know the rifle allowed
13 you some protection?

14 A I suppose I could have been, yes. Why I put it
15 up, I don't know.

16 Q Okay, you put it up and where did you go?

17 A I went back up to where that peg tag is there on
18 board and started digging where the lady was buried.

19 Q Okay, where did you get the shovel?

20 A Jerry gave me a shovel before I even got back to
21 Cabin No. 1.

22 Q So, Jerry was coming down the road towards Cabin
23 No. 1?

24 A That was just after I had walked out of Cabin
25 No. 2, and started going back to Cabin No. 1, and Jerry had

1 given me a shovel and told me I was going to dig a hole.

2 Q Okay, as you are walking back, you had a rifle in
3 one hand and a shovel in the other?

4 A For about five maybe ten yards, then I threw the
5 shovel. We were a little further down than that, we were
6 almost down to where the red dot is. I would say just about
7 right there and that's right after that, that's where I threw
8 the shovel down to where I dug the grave, and Jerry asked me
9 why did I do that, and I told him: "Well, I've already got
10 a hole here, I might as well just dig it there."

11 Q Now, Jerry walked with you, then, down here?

12 A Yes, sir.

13 Q Now, I think earlier, didn't you say you walked
14 alone all the way down to Cabin No. 1?

15 A No, I didn't say that.

16 Q You walked with Jerry to here?

17 A I didn't walk with Jerry, Jerry followed me.

18 Q Well, when you follow someone, how close do you
19 follow?

20 MR. BOOMER: Objection, Your Honor, it's argumentative
21 and calls for speculation. It's just improper cross-examina-
22 tion.

23 THE COURT: Sustained.

24 Q (Mr. Chenoweth:) How close was he to you?

25 A When I notice him, he was maybe about twenty feet

1 behind me.

2 Q Was he running?

3 A No, he was walking at a faster pace than I was,
4 but he wasn't running.

5 Q So, you threw the shovel over the bank somewhere
6 where I'm pointing?

7 A Yes.

8 Q Somewhere --

9 A Well, if you would move the stick up a little bit,
10 right where I dug.

11 Q So, you're right here and you threw the shovel
12 over the bank? (Indicating.)

13 A Yes, sir.

14 Q Okay, then you continued on walking, you and Jerry?

15 A No, I continued walking, Jerry, I guess, went back
16 up to Cabin No. 2, yes, sir. And what happened up there at
17 that time, I have no idea.

18 Q You went on back up to No. 1, you put up the
19 rifle, you talked to Lene and then you came back up here to
20 the red pin which is the indicated spot of the lady's grave?

21 A Yes, sir.

22 Q And you started digging?

23 A Yes, sir.

24 Q How long did you dig?

25 A About ten minutes, threw the shovel down and went

1 back up to the cabin.

2 Q 1 or 2?

3 A Pardon me?

4 Q Cabin No. 1 or No. 2?

5 A Cabin No. 1.

6 Q Why did you decide to quit digging?

7 A Because I didn't want to dig it, I didn't want to
8 go no further, and I just didn't want to do it.

9 Q Okay. So, you went back to Cabin No. 1; was Lene
10 still there?

11 A Yes, sir.

12 Q What did you tell her to do?

13 A I told Lene that we should get out of here, I
14 told her to start packing whatever she can and I just started
15 grabbing things and putting them in Mr. Odom's pickup.

16 Q Were the keys in Mr. Odom's pickup?

17 A No, sir, I looked.

18 Q Okay, did you ask Lene if she had a set of keys
19 to the pickup?

20 A No, sir, Lene didn't have a set to the pickup,
21 she had two sets to the car and that was it. Bill Odom had
22 the sets to the pickup.

23 Q So, you started loading things up at Cabin No. 1?

24 A Yes, sir.

25 Q Into the Odom pickup?

1 A Yes, sir.

2 Q What happened next?

3 A Bill and Jerry came back and told me that the

4 grave wasn't near deep enough, they would never get the bodies

5 in the grave and they told me to go back and dig deeper, so

6 I did. I dug the grave deeper.

7 Q Did anybody walk back up there with you?

8 A No, sir.

9 Q So, you took the shovel again and you -- or you

10 threw the shovel down there at the grave site, you just

11 walked back to the grave site and started digging again?

12 A Yes, sir.

13 Q Where did Jerry go?

14 A Him and Bill Odom went back up to Cabin No. 2.

15 Q Were they driving or walking?

16 A No, walking.

17 Q Okay. Then what happened next?

18 A I went ahead and I dug a grave about maybe another

19 foot or eighteen inches, and then I went ahead and went back

20 to Cabin No. 1.

21 Q Did you take the shovel with you?

22 A No, sir, I left the shovel there.

23 Q Was Lene loading gear when you got back?

24 A No, she was packing.

25 Q Okay, did you speak to her?

1 A I might have said something briefly, but I just
2 went ahead and continued to load the truck.

3 Q Okay. Continuing, what happened next?

4 A As I was loading the truck, Jerry and Bill drove
5 down in the Herndon's pickup down to Cabin No. 1. Bill said:
6 "There's nothing to worry about, everything is cleaned out in
7 the cabin." The lady's grave, they buried the lady in the
8 grave that I dug and it can't be recognized.

9 Q Okay, continue?

10 A After that there, Jerry said I was going to go
11 with them and help them bury the man. And I told them, no,
12 no, I wasn't, I wasn't going to touch no dead body. He told
13 me I was a couple of times, I told him I wasn't, that's when
14 I saw him reach for his back pocket and I knew that the man's
15 gun was there and that's why I put my head down, what he done
16 after that, I did not see, but Bill jumped up and said a couple
17 of words and said: "I'll go with you and help you bury him."

18 Q Did they leave?

19 A Not at that time, no. They were just getting
20 ready to leave and Bill Odom said: "You're going to have to
21 come up here with us and help us set the man on the ground
22 because he's real heavy." So, then, I went ahead and went with
23 them and helped them set the man on the ground.

24 Q Okay, did you ride or walk?

25 A I walked.

1 Q Who drove?

2 A Jerry drove. Bill and I walked in front of the
3 pickup.

4 Q He backed the truck up, didn't he? Did he back
5 the truck up or did he drive it forward?

6 A He was backing the truck up until -- we were
7 walking behind the truck as a matter of fact, and he backed
8 the truck all the way up until he had room enough to turn the
9 truck around just up past to where, I believe, the lady's
10 grave is and Jerry got the truck stuck. So Bill Odom had
11 gotten in the truck and turned it around and, then, if I'm
12 correct, Jerry and I walked in front of the truck and Bill
13 went ahead and drove the truck to where your pink peg is, if
14 I'm correct.

15 Q Like that? (Indicating.)

16 A Yes, sir.

17 Q Okay, did you back -- did someone back the truck
18 up to the gravesite?

19 A Bill Odom backed it up in there, yes.

20 Q And then you rolled the body off?

21 A No, sir, we didn't roll it off, we just set it
22 down.

23 Q Okay, and you didn't see any blood around any-
24 where at that time?

25 A I wasn't looking for no blood, there could have

1 been blood, there could have been a lot of blood, I wasn't
2 looking for blood. I was looking to get out of there and
3 that was it. There could have -- I could have gotten blood on
4 my neck and not noticed it.

5 Q Okay, did you help bury the body?

6 A No, sir; I did not. What I did was, I stood in
7 the back of the truck and while their backs were to me, I took
8 -- that's when I took that barrel out and set it down beside
9 the pickup to where it was within five feet of the side of the
10 dirt where they were digging, where they were shoveling,
11 rather.

12 Q I'm going to hand you now what has been marked
13 as State's Exhibit No. 54, and ask you if this is the test
14 hole that later became the gravesite of the male victim?

15 A Yes, it is.

16 Q Where's the barrel?

17 A I do not see it, but it was right -- it was right
18 there.

19 Q You're sure you left it there?

20 A I'm positive I left it there.

21 Q And if it was where it was originally located,
22 it would be in that photograph?

23 A Yes, sir.

24 Q Okay, you're unloading the male victim, you're
25 unloading the barrel and they are covering up the body; then

1 what happened?

2 A After that there we went back to Cabin No. 1.

3 Q All in the same pickup?

4 A No, Jerry drove and Bill and I walked.

5 Q Okay. At any time during this process, did you,
6 Jim Rice, ask anybody: "Why did you kill the woman, I wanted
7 to have sex with her?"

8 A No, sir, I never did. Sex was the furthestest
9 thing from my mind, I never asked any questions like that,
10 I never insinuated any question like that.

11 Q Okay. If you thought the people were dead in
12 the cabin, why did you go in there?

13 A Because I heard that noise, that's the only
14 reason I went in there. Jerry told me the people were dead
15 and, well, he told Bill and I that he put them to sleep and I
16 heard a noise and that's when I went in.

17 Q All right, so you get back to Cabin No. 1; what
18 do you do?

19 MR. BOOMER: Your Honor, this has been asked and
20 answered.

21 THE COURT: Overruled, you can answer.

22 A That's when we got back, we were standing back
23 behind the Herndon pickup and that's when Jerry started
24 fumbling around with that gun and started pointing it at me.
25 And after he done it, Bill Odom took it, took the clip out and

1 started point it around my legs.

2 Q Why were you afraid of it if the clip was out?

3 A There was a bullet in the chamber.

4 Q How do you know?

5 A Because Jerry put one there.

6 Q How do you know that?

7 A Because, like I said earlier, Jerry made sure
8 there was a shell in the chamber. I didn't know if he was
9 playing or serious or what, but I know I was scared.

10 Q I think you said under direct testimony that you
11 did a dance for Mr. Odom?

12 A More or less a dance, yes. If you've ever been
13 chased by fifteen or twenty wasps, you can picture what I
14 was doing.

15 Q No, I can't, can you show us what you were doing?

16 MR. BOOMER: Object.

17 A No, I can't, but I can tell you that I was
18 moving my feet and arms.

19 Q (Mr. Chenoweth:) You were standing in one spot?

20 A No, sir.

21 Q Were you running around and around?

22 A No, I was not running around, I was moving around
23 in about a three foot space back and forth.

24 Q And Odom was holding the pistol on your legs or
25 feet?

1 A He was pointing it at both of them after Jerry.
2 Q What was he saying to you?
3 A He was saying nothing, he was smiling.
4 Q Okay.
5 A Maybe he thought it was a joke, but it wasn't much
6 of a joke on my behalf; I don't know.
7 Q You said that you and Odom were friends?
8 A Yes, sir.
9 Q Afraid of your own friend?
10 A At that time, yes, I was.
11 Q What happened next?
12 A After that is when we put the chain saw in the
13 pickup and I still can't remember if it was a pump or air
14 compressor that was going to be put into Mr. Odom's pickup,
15 but he changed his mind. I guess it was too much weight or
16 something, but in the process of that there, Jerry had taken
17 some tools and had put them inside my tool pouch. Well, I
18 had given my tools to Bill Odom because I have quite a collec-
19 tion of tools at home and I brought everything I had to spare,
20 so I went and gave Bill the tools and Jerry had filled the
21 pouch up.
22 Q You testified on direct that Pizzuto gave Odom
23 the pistol during some of this time?
24 A At one time, yes.
25 Q And was Pizzuto then unarmed?

1 A Yes.

2 Q Where was the rifle?

3 A In the cabin.

4 Q Okay. Did Odom keep the pistol?

5 A For about maybe a minute, then he gave it back to

6 Jerry, Jerry put the clip in it and put it in his waistband.

7 Q Was this about the time Lene was going through

8 Mrs. Herndon's purse?

9 A Yes, sir, I believe it was during the same time.

10 I didn't see her start going through the purse, but as we

11 went into the cabin when Bill started putting money out in

12 three piles is when I did see Lene looking through the lady's

13 purse.

14 Q Describe how Odom divided up the money?

15 A Put it in three stacks of hundred dollar bills.

16 Q Were you in the cabin at the time?

17 A Yes, sir, we all were.

18 Q Were all four of you plus the children?

19 A Yes.

20 Q Were you standing around in a group?

21 A No, sir; Jerry was the only one standing. I was

22 sitting down, Bill was squatting down and Lene was still going

23 through the purse, and the children, I guess, were sitting on

24 my sleeping bag.

25 Q Did you take any money out of Mrs. Herndon's purse

1 at any time?

2 A No, sir, I never went through her purse, I don't
3 believe I even touched her purse.

4 Q Did you take any money from the Herndon's other
5 than this money that Bill Odom gave to you that day when he
6 divided up the money?

7 A No, sir, I did not.

8 Q Did you take any other things from the Herndon's
9 besides the money?

10 A No, I did not.

11 Q Did you load some of the stuff from the Herndon's
12 pickup onto the Odom's pickup?

13 A I put the chain saw in the back, yes.

14 Q Did you tell Mr. Odom that he ought to have that
15 chain saw?

16 A No, sir, I did not. Bill Odom said that that
17 chain saw would make a lot of money cutting wood, he said that
18 we could get fifty dollars a cord. In California, we get
19 a hundred and seventy-five to two hundred for a cord.

20 Q So, did Mr. Odom request you to put the chain saw
21 in his rig?

22 A No, sir, Jerry did.

23 Q I think that you said that during the divvying
24 up of the money, Lene said: "Where's my money?"?

25 A Lene said: "Where's mine."

1 Q Did she mean -- was she referring to the money
2 as you were dividing it?

3 A That's the way I took it, yes.

4 Q Did you carry a knife that day?

5 A No, sir, I never had a knife. I had a knife in
6 my tool pouch, it's my Buck knife. The tip is broke off and
7 I use it for adjusting chains on my chain saws. I thought I
8 had taken it out of my pouch, but I didn't and I brought it
9 with me, because I use it on roofs to cut tarpaper with.

10 Q Well, where was the Buck knife on the day the
11 Herndon's died?

12 A It was still in the pouch?

13 Q Where was the pouch?

14 A In Bill Odom's pickup, the knife should still be
15 in the pouch, wherever the pouch is at.

16 Q Is it true that Bill Odom carried a knife on his
17 hip?

18 A Yes, it is.

19 Q Is it true that he had that knife that day?

20 A No, it's not.

21 Q Where was it?

22 A I believe, if I am correct, Bill lost that knife
23 the day before while we were hunting. I can't be sure, but he
24 may have had it that day, but I remember him saying that he
25 had lost it while we were hunting. I didn't see the knife and

1 he carried the scabbard on his side, but for a long time I
2 didn't see the knife. He said that he lost the knife.

3 Q Do you know whether or not Jerry Pizzuto had a
4 knife or not?

5 A Jerry never went no wheres without carrying a
6 knife.

7 Q What kind of a knife?

8 A He had a -- it wasn't a steak knife, it was a
9 kitchen knife, but it's the kind you cut meat with, it had a
10 real narrow blade on it, the blade was about seven inches
11 long and the handle was about three and a half or four inches
12 long. But he kept it in a -- he had a piece of cardboard cut
13 the shape of the blade and he kept it stuck inside to where
14 when he kept in the back of his belt or pocket, it wouldn't
15 stick him.

16 Q Did you ever see any rolls of twine in anyone's
17 pickup, twine or what looked to be like a lace?

18 A We brought a roll of lace with us, it was very
19 strong lace and that's what we had used -- I brought a hundred
20 foot rope with us -- I'm sorry, I brought a fifty foot rope
21 with us and I tied the tarp on the back. We took the table
22 legs off their dinette set and we put them as side rails on
23 the pickup and used that lace to go around the table legs and
24 intertwined them over and back over like that and criss-crossed
25 most of it.

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Q Describe the lace to me?

A It would look just like shoestring, but it was on a spool, is what it was on. And I guess we must have had a hundred and fifty foot of it, anyway.

Q Was it in Odom's pickup?

A Yes, it was.

Q And was it in the Odom's pickup the day the Herndon's died?

A I don't know, I don't know.

Q Would it have been in the pickup or the cabin the day the Herndon's died?

A As a matter of fact, it would have been in the cabin because I used some of it to string a partition up so that Lene and Bill could have some privacy when they slept.

Q Did you ever see Jerry Pizzuto with that roll of twine in his hand?

A No, sir, I never had.

Q Have you ever seen Bill Odom with it?

A When we were tying the truck up. As a matter of fact, I've seen Jerry with it, too, when we were tying the truck, tying the tarp on the truck. But as far as anything else, no.

Q Okay. Now, you got the trucks loaded and you started to leave the Ruby Meadows area?

A We got Odom's truck loaded, yes, and we started

1 to leave.

2 Q Now, you and Bill and Lene and their children all
3 rode in the Odom's truck?

4 A Yes, sir.

5 Q And you started up out of Ruby Meadows?

6 A Yes, sir.

7 Q And I'm going to call your attention now to a
8 diagram that's been drawn by the State and admitted into
9 evidence as --

10 MR. BOOMER: 1-B, Counselor.

11 Q (Mr. Chenoweth:) Thank you; State's Exhibit 1-B.
12 Can you see this?

13 A Yes, I can.

14 Q Now, if this is the large pond in the Ruby Meadows
15 area, and this is Cabin No. 1 and this is Cabin No. 2, and the
16 lady's gravesite would be about here? (Indicating.)

17 THE COURT: Before you keep going we have jurors who
18 can't see that, so why don't we have you back up a little
19 farther and we'll see how long you can hold that. Can all
20 the jurors see that exhibit? All right, you may proceed.

21 Q (Mr. Chenoweth:) Started here at Cabin No. 1 and
22 I'm going to quickly show you what I think to be the way out of
23 Ruby Meadows and you correct me if I'm wrong. You go towards
24 the big pond, you make a loop and you start up a hill, here?
25 (Indicating.)

1 A That's right.

2 Q And you go on out and you follow this road as
3 I'm showing you here, to the bottom of this exhibit?

4 A Yes, it goes to the main highway.

5 Q What?

6 A It goes to the main highway.

7 Q Yeah. And the three of you adults are in the
8 pickup and you've gone along this road and you turned here and
9 you started up the hill, is that right?

10 A That's right.

11 Q And Jerry's back here at the cabin?

12 A That's correct.

13 Q By himself?

14 A That's correct.

15 Q And he's got the Herndon's pickup?

16 A That's correct.

17 Q Now, did you suggest to the Odom's while you were
18 driving this distance here and starting up out, that they
19 ought to just leave Jerry there?

20 A Yes, I did. I wasn't the one driving, Bill Odom
21 was driving.

22 Q What did you say to Bill Odom?

23 A I told him we should leave Jerry that go talk
24 to his friend, that police officer, and right when I said that,
25 Jerry came running up the hill yelling.

1 Q Which hill, was he coming up this way across
2 the --

3 A Yes, he intercepted us right -- it looked like it
4 was planned, he intercepted us just like this, where we both
5 met at the same time. You couldn't drive fast on that road
6 anyhow because of the ruts and everything else.

7 Q Where did turn out that the Herndon's pickup
8 was?

9 A I don't follow you.

10 Q You went back to it, didn't you?

11 A Yes, sir.

12 Q Well, where was it when you went back to it?

13 A It was right in front of Cabin No. 1.

14 Q Right here?

15 A Yes, sir.

16 Q So, apparently from what you can gather, Jerry
17 ran down here somewhere up to the road above?

18 A Yes, sir.

19 Q While you were driving around?

20 A Yes.

21 Q Now, during this drive were you the one doing
22 the talking to the Odoms?

23 A I don't --

24 Q About what to do? Were you saying: "Let's get
25 out of here."?

1 A Yes, I said let's get out of here and go talk to
2 his friend, and right just about when I finished it, that's
3 when Jerry popped up.

4 Q Jerry had the gun?

5 A Yes, sir, he did.

6 Q Where was it?

7 A I believe it was still in his waistband.

8 Q You didn't know, though?

9 A No, sir; it was in his waistband before, so I
10 assumed it was still in his waistband.

11 Q And you stopped -- that is Odom stopped and you
12 were there?

13 A Yes, sir.

14 Q Did you turn around and go back?

15 A Yes, sir, Jerry got in the front seat and we
16 turned around and went back.

17 Q Now there is four adults and two children in the
18 front seat?

19 A Yes, sir.

20 Q And you turn around and you go back; what did
21 you do when you got back to the pickup?

22 A We gave Jerry a jump in the Herndon pickup and
23 then we all left.

24 Q Okay, are you in front again?

25 A Yes, sir, we were.

1 Q Are you talking as you go on out and go up to the
2 main road, are you and the others talking about what to do?

3 A I can't recall the conversations that we did have
4 when we left, I can't remember the conversations we had when
5 we left or what they were about.

6 Q Did you talk about this crime that just occurred?

7 A I mentioned it -- I mentioned it several times
8 before I got in the truck with Jerry.

9 Q Well, tell me what you did to mention it?

10 A You mean what I said or --

11 Q What you said?

12 A After we dropped Jerry off and started leaving,
13 I just asked the question, why, you know, and now what's going
14 to happen, what are we going to do? Just various questions
15 like that, I believe, but I can't recall everything I said
16 and I can't recall most anything that was said after that.
17 But after we got on the road, like I said, is when Bill's
18 children, his oldest boy, Billy, had puked on me and my
19 clothes were smelling really bad, so I went ahead and hopped
20 in the pickup with Jerry Pizzuto.

21 Q Did Odom tell you to get out of his pickup and
22 ride with Jerry?

23 A Yes, he did tell me to get out after his son
24 puked on me. He said, well, I stink, I better get out and
25 ride with Jerry, and that's when I agreed, and went and rode

1 with Jerry.

2 Q Well, we really want you to carefully think about
3 what conversations took place from the time you left Cabin
4 No. 1 and the time that you got out of the Odom pickup and
5 got in with Jerry in the Herndon's pickup. I want you to
6 recall as best you can whether or not you discussed this
7 crime with the Odoms and whether or not you discussed what to
8 do?

9 MR. BOOMER: Your Honor, I think that question has been
10 asked and answered just a few minutes ago.

11 THE COURT: Well, we'll let him answer it again.

12 A All I can answer you, sir, is what I just answered
13 you about what we should do, I asked him what we should do and
14 -- you want me to go on?

15 Q (Mr. Chenoweth:) Yeah.

16 A Just about asked him what we should do and I did
17 suggest we go talk to Bill's friend, Steve, he's a police
18 officer in McCall.

19 Q Did you see Steve when you pulled into that first
20 stop at McCall?

21 A No, sir, I did not.

22 Q Did you ever see Steve in McCall?

23 A I saw who I --

24 Q I mean during this period of time, not the day
25 before or the day before that?

1 A No, sir.

2 Q How many stops did you make in McCall?

3 A Just the one, if I'm correct. I think maybe we
4 might have got a hamburger or something, or Lene got some food
5 from a fast food place, but I don't know.

6 Q Did you park alongside Odom's rig and wait for
7 Lene to go in and get food for all of you?

8 A I think so, I think we did, I'm pretty sure we
9 did.

10 Q And did she come out and give you food?

11 A As a matter of fact, she did because Bill had
12 ordered hamburgers with no mayonnaise on them or something
13 like that and she came up and brought up some food, yes.

14 Q Did she give you food?

15 A Yes, sir, I didn't eat.

16 Q Did she give food to Jerry?

17 A Yes, sir, I think she gave him two hamburgers,
18 I can't be sure of the amount, but I'm pretty sure.

19 Q Did she take food into her truck with her husband?

20 A Yes, sir.

21 Q During that drive into McCall, was there any
22 time when you were riding with Jerry Pizzuto in the Herndon
23 pickup that Odom's got out of sight from you?

24 A No, sir.

25 Q They were within your sight all the time?

1 A We were no more than a car's length, two cars
2 apart at the very most all the way in.

3 Q All the way into Gold Fork, as well?

4 A Pardon me?

5 Q All the way from McCall to Gold Fork, as well?

6 A I don't know where Gold Fork is.

7 Q If I tell you that that's where the hot springs --

8 A Okay, yes, yes.

9 Q Okay, is it true that you and Jerry sat out in
10 the pickup, in the Herndon's pickup while Bill Odom sat in
11 his pickup with his children while Lene went into the
12 restaurant to get food for all of you and you drove out of
13 McCall?

14 A That's true.

15 Q Where was the rifle all this time?

16 A Bill had the rifle in his pickup, I believe it
17 was in between the door and his feet.

18 Q Do you know whether or not it was loaded?

19 A It was still loaded, as far as I know.

20 Q Now, ever since the murders occurred, were you
21 anxious to contact the police?

22 A Yes, sir, I was anxious to get the heck out of
23 there.

24 Q Well, the question was not whether or not you
25 wanted to get out, it was whether or not you wanted to contact

1 the police?

2 A Yes, sir.

3 Q Were you looking for the police when you were in
4 McCall?

5 A Was I looking for them -- yes, sir, I was, but
6 it wouldn't have done me no good if I did find one.

7 Q Why not?

8 A How would I have gotten to him?

9 Q Well, you could have walked to them?

10 A We were in the truck.

11 Q Okay, you went on from there to Gold Fork Hot
12 Springs?

13 A Yes, sir.

14 Q And you spent some time there in the hot springs
15 that night?

16 A Yes, sir -- inside the springs, themselves?

17 Q Well, you camped there?

18 A Yes, sir.

19 Q And you also got in the water, didn't you?

20 A Yes, sir, we did.

21 Q Did you talk about the murders?

22 A No, sir, we did not.

23 Q Why not?

24 A I don't know, I didn't feel I should say another
25 word, Jerry was going to shoot me once and I didn't want him

1 to try to shoot me again.

2 Q Were you still afraid of Bill, too?

3 A Just from the time Jerry gave Bill the money, I
4 was afraid of Bill, and from the time he pointed that gun at
5 me, I was even more afraid of him.

6 Q So, you spent the night sleeping in the truck?

7 A I sat in the truck all night, yes.

8 Q Did you sleep?

9 A I don't believe I did, no.

10 Q Next day; who decided to get rid of the Herndon
11 pickup?

12 A Bill Odom.

13 Q Was there talk of driving it somewhere else
14 other than leaving it near Gold Fork?

15 A Jerry wanted to keep the truck, he wanted to
16 drive the truck up to -- well, he said we could go to Reno,
17 or Washington or Montana.

18 Q Whose idea was it to hide the truck?

19 A Bill Odom's, he said he knew a perfect spot where
20 they could put the truck and nobody would find it for years,
21 if they found it if at all.

22 Q Did he direct the hiding of the pickup?

23 A Yes, sir, he did.

24 Q Did he say anything about coming back and getting
25 it later?

1 A I can't recall, I don't think so. I could be
2 wrong, but I don't know.

3 Q Then you went on to Cascade?

4 A Yes, sir.

5 Q You went to a motel and Lene rented a room?

6 A Yes, sir; I believe it's the Valley View.

7 Q You went into the motel with a couple of
8 bedrooms?

9 A One bedroom

10 Q There's only one bedroom in the motel?

11 A Yes, sir.

12 Q Was there a living room?

13 A Yes, living room was a combination bedroom and
14 there was a little small bedroom and there was a bathroom.

15 Q Okay. Did you and Bill Odom stay there alone
16 some of the time?

17 A One time.

18 Q And that's when Jerry went downtown?

19 A Jerry and Lene and their youngest, Jacob, went
20 downtown, yes.

21 Q Did you go over to the office and talk to any
22 of the people in the motel office?

23 A Yes, -- did I?

24 Q Yes.

25 A No, after I made a phone call that night, Jerry

1 called his girlfriend in California and we both went there to
2 pay the lady for our tab, the operator called her and I guess
3 that's how they determine how much the phone call was.

4 Q You and Jerry went to the office; was he armed?

5 A Yes, sir, he was.

6 Q He went into the office wearing a gun?

7 A Jerry never let that gun out of his back pocket,
8 he never went nowhere without that gun and he even, most of
9 the time, he even carried his knife with him.

10 Q Okay. When you and Bill Odom were in the motel
11 alone, did you ever think about going to the phone and calling
12 the police?

13 A I thought about it, then I went to the bathroom,
14 this is the first time I went into the bathroom to climb out
15 the bathroom window, but it was only four inches wide and
16 about eighteen inches high and that was out. So, I was never
17 -- I was never alone by myself, there was either Bill or Jerry
18 there. I didn't even want to give a hint of calling anybody.

19 Q Well, isn't it true the rifle was wrapped up in
20 a towel or a blanket and thrown behind the couch?

21 A Whether it was wrapped up in a blanket I can't
22 remember, but it wasn't thrown behind the couch, it was sitting
23 behind the couch with the butt sticking up, yes.

24 Q Why didn't you reach over and get it?

25 A I don't know, suppose I would have done it and

1 missed and he come up with the gun?

2 Q Who was he?

3 A Bill Odom.

4 Q You were there alone with him for a while?

5 A Thirty minutes, yes.

6 Q Did he move around the apartment or motel room?

7 A No, sir.

8 Q Where --

9 A I was sitting cloest to the bathroom and he was
10 sitting on the bed closest to the door, and we were watching
11 t.v., I believe the program we were watching was Andy Griffith
12 on t. v.

13 Q So, you got a bus ticket and you told everybody
14 you were leaving?

15 A Yes, sir.

16 Q And you got on a bus?

17 A Yes, sir.

18 Q And Jerry took a picture of you as you were
19 getting on the bus?

20 A Yes, sir.

21 Q And you wanted to go to the police?

22 A Yes, sir.

23 Q And the bus leaves Cascade and it goes south to
24 Boise, doesn't it?

25 A Yes, sir, we stopped -- there's a little

1 restaurant on the other side of the Payette River, that was
2 our first stop for twenty minutes.

3 Q Why didn't you call the police?

4 A Three reasons; I wanted to get home and I wanted
5 to get my family out of the house. Jerry had a friend of his
6 who supposedly had --

7 MR. CHENOWETH: Just a minute. I would ask the Court
8 to direct this witness to answer the questions.

9 MR. BOOMER: He's simply explaining his answer, Your
10 Honor.

11 THE COURT: He was answering your question. Do you
12 want to withdraw your question?

13 MR. CHENOWETH: I'll withdraw it.

14 THE COURT: Okay, you may proceed.

15 Q (Mr. Chenoweth:) You went on to Reno?

16 A Yes, sir.

17 Q You washed your clothes in Reno?

18 A Yes, sir.

19 Q You washed the clothes you were wearing on the
20 day of the murder?

21 A Yes, I believe I washed just about everything
22 except for maybe a couple of pair of socks, I guess.

23 Q When you say everything, you didn't stand there
24 without any clothes on while you washed, did you?

25 A No, sir, I had a pair of white Adidas shorts,

1 tennis shorts, more or less, and I was wearing those, but I
2 wasn't naked.

3 Q But you washed nearly all the clothes you had?

4 A Yes, sir.

5 Q And you were headed on; why did you wash your
6 clothes?

7 A Because I had puke on them, I had puke on my
8 shirt and pants and it soaked even through my boxers. And
9 there's no need carrying my bag on the bus and having everybody
10 looking at me.

11 Q You didn't attempt to locate the police at any
12 time until you got to Orland, California?

13 A I had very good reasons why I better not.

14 Q And so you got there and you called your mother?

15 A I got to Roosevelt, California, yes.

16 Q And you told your mother what had happened?

17 A Yes, sir.

18 Q Or a little bit about what had happened?

19 A Yes, sir, and I also asked her a couple of other
20 questions.

21 Q Did you tell her the truth about what had happened?

22 A Yes, what I told her was the truth.

23 Q And the next day you called the police?

24 A The next morning, yes.

25 Q And you talked to Officer Boyles eventually,

1 didn't you?

2 A Yes, sir.

3 Q And that's when you started giving Mr. Bovles some
4 stories?

5 A Yes.

6 Q You also talked to an Officer Johnson, didn't you?

7 A Yes, sir, I did.

8 Q Officer Johnson is the one that you told that
9 Bill Odom had held a .22 to your head and forced you to hit
10 the Herndons?

11 A Yes, sir.

12 MR. CHENOWETH: Your Honor, if we do intend to take
13 an afternoon break, I'm getting close to being finished, but
14 I would like an opportunity to check my notes before I finish.
15 Therefore, would a recess be appropriate?

16 THE COURT: We'll take a ten minute recess. Please
17 don't form or express any opinions about the case, ladies and
18 gentlemen. Don't talk about it.

19 We'll be in recess.

20 (Thereupon Court took a short recess, after
21 which the following proceedings were had,
22 to-wit:)

23 THE COURT: Mr. Chenoweth, you may proceed.

24 CROSS-EXAMINATION (cont.)

25 BY MR. CHENOWETH:

1 Q Mr. Rice, you told us that you made a number of
2 statements that are untrue throughout this case.

3 MR. BOOMER: Objection, Your Honor, that incorrectly
4 states his testimony.

5 MR. CHENOWETH: I think it does state it correctly.

6 THE COURT: Go ahead and get your question out, Mr.
7 Chenoweth, please. Is that part of the question or --

8 MR. CHENOWETH: No, I was getting ready to state the
9 question, I was stating facts I thought were in evidence.

10 THE COURT: Go ahead.

11 MR. CHENOWETH: May I restate what I just stated?

12 THE COURT: Sure.

13 Q (Mr. Chenoweth:) You've told us here today, and
14 told this jury that you've made a number of statements that
15 were untrue?

16 A Yes, sir, I did.

17 Q And you told us that those statements started by
18 you lying to various police officers in California. Did you
19 lie to Mr. Johnson?

20 A At the beginning, yes, sir, I did. As a matter
21 of fact, I don't believe -- Mr. Johnson's the one in Orland,
22 if I'm correct.

23 Q Well, there's Boyles and Johnson.

24 A There was another officer there, too, present
25 and I don't believe that he even has the truth, I didn't tell

1 the truth at all, I didn't tell the truth until I came up
2 here to Idaho.

3 Q Well, you told the truth when you got here to
4 Idaho?

5 A Pardon me?

6 Q You told the truth as soon as you got to Idaho?

7 A Not as soon as I got to Idaho, no.

8 Q In fact, you had an interview with Randy Baldwin
9 here in this building, didn't you?

10 A Yes, sir, I did.

11 Q And you told Randy a whole lot of things?

12 A I told him a whole lot of things, yes.

13 Q That would be the Sheriff of this county, wouldn't
14 it?

15 A Yes, sir, it would.

16 Q Did you tell him that -- you just testified that
17 you walked -- excuse me -- that you drove when you were
18 looking for Jerry, he had gone out hunting, he had gone toward
19 Cabin No. 2, you got in the pickup with Odom, you had driven
20 up, you turned around and you hollered "Jerry" as you drove
21 up?

22 A Drove up and as we turned around, yes.

23 Q Do you recall telling a different story about
24 that trip to Randy Baldwin?

25 A If you can refresh my memory.

1 Q Did you tell Randy that you walked up there, you
2 and Bill?

3 MR. BOOMER: Your Honor -- strike that, I'll withdraw
4 it.

5 A Yes, sir, I believe I did.

6 Q And you heard a gunshot?

7 A Yes, sir, I believe I did tell him that.

8 Q And I think you told him you heard a gunshot and
9 you started walking up there?

10 A Yes, sir, I believe that both the statements I
11 made to Randy Baldwin is almost correctly as the one I made in
12 California.

13 Q Did you ever hear any of the victims make any
14 noises except the noise you've described to us, you said that
15 you heard a snoring-like noise and went over there and shot
16 Mr. Herndon between the eyes. Did you ever hear them make
17 any other type of noise?

18 A No, sir, just the scuffling of his feet on the
19 wooden floor, and that's it.

20 Q You testified that you and Bill had walked back
21 up there the second time and that you heard from -- you were
22 ten or fifteen feet from the cabin, I think that's what you
23 said, and you heard the noises like somebody tapping a
24 watermelon?

25 A I believe I said we ran up there and we did hear

1 those noises.

2 Q Did you hear anybody let out a scream or any
3 kind of noises?

4 A No, sir.

5 Q Did the Herndon's have gags in their mouths, as
6 far as you could tell?

7 A When I went in the cabin?

8 Q Yeah.

9 A No, sir.

10 Q You told Randy Baldwin a number of times that
11 you didn't shoot Mr. Herndon, didn't you?

12 A Yes, sir, I did.

13 Q And although you told the California police you
14 hit the Herndon's, you told Randy Baldwin that you never hit
15 the Herndon's nor shot them?

16 A Yes, sir, I did tell them that.

17 Q And you told Randy Baldwin that you saw them,
18 you called them, put the hammer, the claw hammer that you
19 claimed to have killed the Herndon's, in the pickup truck;
20 do you remember telling them that?

21 A I can't remember saying that. Like I said, that
22 statement is basically the same as I told in California. I
23 can't remember everything I said. Bits and pieces and I can,
24 but whether or not I told him that, I can't be positive if I
25 did or not.

1 Q Well, did you see them put the hammer in the
2 truck?

3 A No, sir, I did not.

4 Q Where is the hammer, to your knowledge?

5 A I don't have a knowledge of where that hammer is.

6 Q Throughout your interview with Randy Baldwin
7 you kept referring to the perpetrators of this crime as
8 "they." Do you remember doing that, you kept saying "they
9 did this" or "they did that"?

10 A It's -- I believe I can remember saying that a
11 few times, yes.

12 Q In fact, you said it a lot of times, don't you
13 recall, I can remind you if you want me to?

14 A I may have said it all the way through the
15 statement I made, I can't be sure.

16 Q Who did you mean by "they"?

17 MR. BOOMER: Your Honor, that question is virtually
18 impossible to answer, it's improper impeachment.

19 THE COURT: I'll let him answer; you can answer.

20 A I was probably referring to Jerry, Bill, Lene.

21 Q (Mr. Chenoweth:) Okay, and you blame those
22 people for this killing?

23 A I blamed Jerry for this killing.

24 Q Why did you refer to it as "they," all the way
25 through?

1 A I don't know, I can't -- I can't answer that
2 question, I don't know.

3 Q Did you admit that you did refer to -- whenever
4 you referred to something happening, it was "they" who did it
5 and if you wish, I'll refresh your recollection.

6 A I can remember that.

7 Q Do you remember saying that they did the killings?

8 A I could have said that, I'm not sure; if you
9 can refresh my memory, maybe I can remember, but as I said,
10 I can't remember what I said all the way through, none of the
11 statements I made.

12 Q Have you read your statements recently?

13 A Yes, sir, as a matter of fact, I believe I read
14 every one of them. I read them I believe maybe Friday or
15 Thursday -- no, it was Friday, I believe. As a matter of
16 fact, I'm sorry, it was Thursday.

17 Q Okay, do you remember Bill telling you sometime
18 along this day the Herndon's died, "that that's the way they
19 do things here in Idaho."

20 A Yes, sir.

21 Q And that was Bill Odom who said that?

22 A Yes, sir.

23 Q What was he referring to?

24 A He said -- he repeated what he had heard from
25 two friends of his that we had met at the creek when they were

1 staying at Bill's uncle's house, he brought two of his
2 friends down and we met them, I can't remember their names, but
3 they were talking about -- they were talking about another guy
4 that had committed murder a few years back, ten years or
5 something, I can't really recall, though, and that's how
6 that statement was brought up first. But Bill Odom had
7 repeated it at that time.

8 Q Did you also say to Randy Baldwin that you never
9 pointed the gun at Mr. Herndon, that you closed your eyes and
10 pulled the trigger?

11 A Yes, sir, I did.

12 Q Is that what you really did?

13 A No, sir; it is not.

14 Q What is it that you really did?

15 A I closed my eyes for a second, I wiped my eyes
16 and I shot him.

17 Q You looked down the site when you shot him?

18 A Yes, sir, I did.

19 Q Have you been before this Court before?

20 A Yes, sir.

21 Q Have you entered a plea in this Court?

22 A Yes, sir, I did.

23 Q Do you understand the charges that you have pled
24 to?

25 A Yes, sir, I do.

1 Q Do you recall whether or not on the 23rd day of
2 January, of this year, you were asked by this Court as to
3 how you plead to the crime of second degree murder in the
4 death of Del Dean Herndon; how do you plead, guilty or not
5 guilty?

6 A I pled guilty.

7 Q And the same as to the woman?

8 A Yes, sir.

9 Q You understand what second degree murder is?

10 A Yes, sir, I do.

11 Q Did you murder anybody?

12 A No, sir, I did not.

13 Q If you didn't murder anybody, why did you plead
14 guilty to two counts of second degree murder?

15 A Because I was at the scene at the time, I did
16 shoot Mr. Herndon in the head and I owed it not only to myself
17 but to the Herndons, to my family and to everybody else to
18 tell the truth. And as it says in the law books, that was
19 read to me I was at the scene of the crime, I was there, there
20 is no getting around that.

21 Q So, you pled guilty to second degree murder
22 because you were there?

23 A No, sir.

24 Q Okay.

25 A That's not the only reason I pled guilty to that,

1 I just explained to you how --

2 Q Did you tell the judge, Judge Reinhardt, sitting
3 to your left, why you pled guilty to two counts of second
4 degree murder, and did you tell him why on January 27th, --
5 23rd of this year?

6 A Yes, sir, I believe I did.

7 Q Tell me the exact words that you told Judge
8 Reinhardt the reason that you are pleading guilty to this
9 charge.

10 A I believe I told him that I was pleading guilty
11 to the fact because I was there and wanted the truth to come
12 out and I can't remember exactly what I said, but I also said
13 that if I had been in a different state of mind, and acted
14 different, it was possible that I could have possibly prevented
15 the killings. It might have cost me a gun shot or something
16 like that, but like I said, if I acted more calm, I could
17 have a way to stop Jerry instead of just doing nothing.

18 Q Did you tell this Court on the 23rd of January
19 that: "I plead the following sentence, I plead guilty to two
20 counts of second degree murder so that I don't die."

21 A Yes, I did say that.

22 Q So, is that really the reason you are pleading to
23 two counts of second degree murder?

24 A No, sir, I didn't commit murder, and I did say
25 that. I have had it in my mind since I was charged with these

1 crimes that I was going to die.

2 Q Well, that's the reason you gave the Judge on
3 that day, isn't it?

4 A No, sir, it is not, I just explained to you what
5 the reasons were.

6 Q Well, I'm asking you, did you tell the Judge that
7 was your reason on that day?

8 A That was one of them, yes.

9 Q Was another one of the reasons that you pled
10 guilty to second degree murder because you were charged with
11 first degree murder plus some other counts, and that you,
12 in consideration of being allowed to plead to second degree
13 murder, you have decided to come here and testify today; is
14 that your reason?

15 MR. BOOMER: Your Honor, that's kind of a multiple
16 question, could I ask the Court to direct Counsel to break
17 that up into segments?

18 THE COURT: Yes, that would be appropriate.

19 MR. BOOMER: Thank you.

20 Q (Mr. Chenoweth:) Ypu have been talking through
21 your attorney to the Prosecuting Attorney in this case, Henry
22 Boomer?

23 A I believe we've only conversed twice.

24 Q I didn't say you, I said your attorney has been
25 talking with Henry Boomer?

1 A Yes, well, that's what I mean, through my
2 attornys, they speak for me. And I didn't mean to sound
3 different, but, yes.

4 Q And certain arrangements have been made between
5 your attorneys and the prosecution in exchange for your
6 testimony here?

7 A I don't follow what you mean by arrangements?

8 Q Well, you --

9 A As far as having different charges dropped?

10 Q Yes, you're having charges dropped, are you not,
11 so that you'll testify here?

12 A Yes, sir.

13 Q Or amended, I should say?

14 A Yes, sir.

15 Q And you were first charged with what, Mr. Rice?

16 A I was charged with four counts of first degree
17 murder, grand theft, conspiracy to commit murder.

18 Q Charged with robbery, too?

19 A And robbery, there was seven charges all together,
20 that I was charged with originally.

21 Q And now you're charged with two?

22 A Yes, sir.

23 Q And it's your understanding, is it not that
24 you're now charged with two crimes, second degree murder, and
25 that you've pled guilty to, that you would come here and

1 testify in this Court against Jerry Pizzuto?

2 A Yes, sir.

3 Q Does that fact that you have now had your
4 charges reduced cause you to lie to this jury?

5 A No, sir. I haven't told one lie since I've been
6 sitting in this chair.

7 Q You've told a lot of lies in this case, and now
8 you're telling the truth now, is that what you're telling us?

9 A That's exactly what I'm telling you. I told a
10 lot of lies in the statements I've made, but since I've sworn
11 not only to the Court, but in the name of God himself, I
12 haven't told one lie since I sat in this chair.

13 MR. CHENOWETH: Thank you, Mr. Rice.

14 THE COURT: Re-direct.

15 MR. BOOMER: Thank you, Your Honor.

16 RE-DIRECT EXAMINATION

17 BY MR. BOOMER:

18 Q Mr. Rice, just a few quick questions. First of
19 all you indicated in response to one of Counsel's questions,
20 that you didn't have -- that you don't have very good eyesight?

21 A No, sir.

22 Q I notice you are wearing glasses, were you
23 wearing glasses when you were up at Ruby Meadows?

24 A No, sir, I was not.

25 Q Remember that picture Mr. Chenoweth showed you of

1 the test hole where Mr. Herndon's body was buried?

2 A Yes, sir.

3 Q And do you remember that he pointed out to you

4 that there wasn't this drum or barrel in the photograph?

5 A Yes, sir.

6 Q You don't know when that photograph was taken,

7 do you?

8 A No, sir, I do not.

9 Q So, you don't know whether or not that barrel

10 had been moved away, either, do you?

11 A No, sir, I do not.

12 Q Okay. This motel you were staying in in Cascade,

13 how far was it from the town itself?

14 A About a mile, I would think.

15 Q Was it across some railroad tracks?

16 A Yes, sir, it was.

17 Q Down the south end of town?

18 A Yes, sir.

19 Q. How far was it from this cafe that you all kept

20 going to to get meals?

21 A It was right there in town.

22 Q The cafe was?

23 A Yes, sir. I would say it was about a mile and a

24 quarter at the very most from the motel.

25 Q Okay. Now, when you saw Mr. Herndon's legs moving,

1 how were they moving?

2 A They were shaking.

3 Q They weren't moving in any controlled direction,
4 they were just shaking?

5 A They were shaking sideways and up and down, back
6 and forth.

7 Q Okay, and did that remind you of anything that
8 you had ever seen before, you know, not human necessarily, but
9 did it remind you of anything you had seen before in your
10 experiences you've had?

11 A Yes, sir; we used to go hunting for jack rabbits
12 all the time. One time, well, this jack rabbit was running
13 and me and my dad and uncle and my brother all four of us
14 shot at it with shotguns and I think only two of us hit it,
15 but the rabbit was lying down shaking on the ground and my
16 dad went over and hit it in the back of the head and it
17 died. That's how we used to slaughter rabbits that we raised.

18 Q In your own mind, did you think that Mr. Herndon
19 was still alive when you fired that shot, or otherwise?

20 MR. CHENOWETH: Your Honor, object to that question,
21 he's already answered that once and he didn't know whether he
22 was alive or dead.

23 A I said that he was not breathing and that there
24 was no more sound and no more movement in his upper body, just
25 feet.

1 Q (Mr. Boomer:) Mr. Rice, Mr. Chenoweth asked you
2 a great number of questions about your interview with Randy
3 Baldwin when you got up here to the Idaho County Jail?

4 A Yes, sir.

5 Q And he asked you about various things that you
6 had told Sheriff Baldwin that were not true?

7 A Yes, sir.

8 C I want to ask you this: By the end of that
9 statement that you gave to Randy Baldwin, by the time you two
10 were done talking, from the evening of August 6th, 1985, other
11 than the fact that you told Sheriff Baldwin that you closed
12 your eyes when you pulled the trigger --

13 A Yes, sir.

14 Q -- did you tell him essentially the same thing
15 that you have told this jury here today?

16 A Yes, sir.

17 MR. BOOMER: Thank you, Mr. Rice.

18 THE COURT: Re-cross.

19 MR. CHENOWETH: Thank you, no re-cross.

20 THE COURT: Thank you, Mr. Rice, you may be excused.

21 You have, as I understand it, one more possible witness?

22 MR. BOOMER: That's correct, Your Honor.

23 THE COURT: All right, at this time, ladies and
24 gentlemen, there is a matter we need to take up outside your
25 presence. Please don't form or express any opinions about the

1 Does it boil down to "let's blame Jerry,"? It's
2 your job to figure that out. Were the opportunities there
3 to plan this story? Do you have any reasonable about Jerry
4 Pizzuto's guilt? We may never know the truth. Maybe one
5 of the reasons we wont know is because Jim Rice and Bill Odom
6 will not be tried. They've already made their deal and
7 they are already going to the penitentiary at some time in
8 the future, I presume, although that's the decision of Judge
9 Reinhardt. I think that if you belive Odom and Rice you
10 are going to convict this man so quick you can't believe it.
11 But if you find those two buffoons believable, I'll be
12 surprised. Two convicted felons, one who forged on his own
13 fathers account and one who robs and burglarizes and then says
14 he earned everything he had. Says he's lied many times. "Oh,
15 I lied last time, but I'll tell you the truth this time," and
16 then he lies again and then he says it again. Odom, the man
17 that says: " you say whatever you have to say to cover it up."

18 Logic calls you to the conclusion, that in fairness,
19 malice toward none, would lead you to look at the lesser
20 included offenses in this case when you try to balance all of
21 these lies one against the other. Think about that and give
22 Jerry a fair trial.

23 THE COURT: You may proceed Mr. Boomer.

24 MR. BOOMER: Thank-you, Your Honor. Ladies and
25 gentlemen of the jury, you just heard a very fine closing

1 arguement by a very skilled defense attorney. Now, he did a
2 good job in highlighting every single inconsistency you have
3 seen come up in the trial, that's his job. He did a pretty
4 good job of it and I would submit to you, however, that your
5 memories concerning some of those inconsistencies are not
6 going to be the exact same as Mr. Chenoweth. I urge you to
7 find your own memories on that.

8 Mr. Chenoweth mentioned something concerning the
9 lesser included offenses that I wanted to mention real quickly.
10 He suggested without saying so, and I don't know whether he
11 intended to say so or not, but in any event I got the impression
12 that he was trying to encourage you to look at the lesser
13 included offenses before you consider Jerry Pizzuto, that
14 man right over there, is guilty of as charged. Now, Judge
15 Reinhardt's instruction in forty-A, last paragraph, second
16 sentence: you should consider lesser included offenses in
17 regards to count 1 and 2 only in the event State has failed to
18 prove--excuse me--failed to convince you beyond a reasonable
19 doubt that the defendant is guilty of murder in the first
20 degree in violation of in the code sections. Please remember
21 that, please follow that instruction, it's very important.

22 It is also very important to this case that you con-
23 sider every count. Not only the two forms premeditated first
24 degree murder, but also the two counts of robbery murder,
25 felony murder as it has been referred to in this trial, as

1 well as the robbery and the grand theft.

2 A word about the deals. Now Jim Rice pled guilty
3 to two counts of second degree murder, aiding and abetting
4 in these murders. I didn't believe every single word he said,
5 I think he shaded his testimony to some degree. I don't know
6 whether Mr. Herndon was lying on the floor of the cabin, if
7 due to the nature of that cabin his head was tipped forward
8 at at forty-five degree angle. Jim Rice went up and shot him
9 right between the eyes, or if Jim Rice went up rolled him
10 over and shot him right between the eyes; I don't know. And
11 I submit to you that it doesn't make a lot of difference.
12 When Jim Rice went to the police and told them -- when
13 the police came to his mother's place that was the first time
14 that he told anyone what had happened in detail. And he told
15 Sergeant Boyles lie number one, no doubt about it. He didn't
16 tell the entire truth. What he did say contrary to what Mr.
17 Chenoweth would have you believe is that: "I came up to this
18 cabin and Jerry--" whose name he wasn't sure of. " -- was
19 beating on this man on the back of the head with a hammer."
20 He's certainly been consistent about that throughout all of
21 this case. When he gets up, though,--well, they drill him
22 down at Orland and he says well, no, that's not exactly true.
23 Odom stuck, you know, after Jerry was hitting the man in the
24 head with the hammer, Odom stuck the rifle under--not in--
25 my right eye and told me: "if you don't, you won't." Then,

1 I went ahead and hit him on the jaw with the hammer and he
2 was already dead and I left." I'm summarizing. He gets
3 up here to Idaho County and Sheriff Baldwin says: "hey, you
4 are not telling us the truth, this lying has got to stop."
5 Puts him on the spot and the story comes out and he told you
6 from that witness stand that other than for the fact that he
7 didn't close his eyes when he fired that shot, that what he
8 was telling was the truth, and what he was telling you was the
9 same thing that he had told Sheriff Baldwin after Sheriff
10 Baldwin convinced him that he darned well tell the truth, at
11 least as best he could.

12 What does Angie Pizzuto add to this case? She adds
13 alot, she corroborates the other witnesses whose credibility
14 has been called into question. I don't blame Mr. Chenoweth
15 for doing that, it is perfectly right to question their
16 credibility. Angie said that her own brother, who she loves,
17 but will not cover for, told her that he killed a man and
18 a woman in Idaho. Went on into some detail, told her he was a
19 highwayman. That's a common thread that runs through this case.
20 Told Odom and Rice that he was a highwayman, and that's how
21 he described himself when he got the drop on the Herndon's.
22 Told his own sister, bragged about it, he's a highwayman. And
23 then he tells Roger Bacon that he was a highwayman. Bacon
24 adds alot to this case, certainly does. Mr. Chenoweth didn't
25 talk too much about Mr. Bacon and that's because Mr. Bacon

1 just like Del and Berta Herndon, was tied up with shoelaces.
2 His own shoes were removed and he was tied up with shoelaces
3 just like Del, just like Berta. Not in the exact same fashion
4 but very similar. It's inescapable, folks.

5 I'm not going to attempt to go through each and every
6 inconsistency that Mr. Chenoweth has cited to you. Some of
7 them you may not believe are true inconsistencies, others
8 you may think are. But let me talk for a minute about the
9 deals, I was going to do that a little ago and I kind of lost
10 my train of thought. Jim Rice pled guilty to two counts of
11 second degree murder. Judge Reinhardt has instructed you
12 that you are not to consider the guilt or innocence of anybody
13 else, but that's already been called in to questions so
14 we are going to have to talk about it some. Jim Rice expects,
15 and he told you from the witness stand, that he may spend the
16 rest of his natural life in prison. Got a great deal, didn't
17 he? That's after he went to the police. If Jim Rice hadn't
18 gone to the police we probably wouldn't be here today. I
19 don't know, maybe you think the prosecutor is an idiot for
20 making that sort of an arrangement, maybe. I goofed up, I don't
21 know, but that's not for you to decide in this particular
22 case.

23 Bill Odom: Mr. Chenoweth says he pled guilty to two
24 counts of manslaughter, ten years on each count of manslaughter.
25 And then he hurriedly told you that he also pled guilty to

1 conspiracy and grand theft. What he didn't tell you is what
2 Mr. Odom said about the possible sentences that he could get.
3 Number one, the court is not bound by that ten years on each
4 count recommendation or recommendation not to exceed ten years
5 on each count of voluntary manslaughter. Mr. Chenoweth didn't
6 tell you that conspiracy to commit robbery, which is another
7 crime that Bill Odom pled guilty, carries five to life, fixed.
8 He didn't tell you that the crime of grand theft that he pled
9 guilty and it's contained in one of the exhibits, the Agree-
10 ment as to the plea I believe is what is titled, but he could
11 stand up to fourteen years in the state penitentiary and that
12 all of these sentences could be fixed and that all of these
13 could run concurrently and that he faces a potential sentence
14 of life plus forty-four years. It gets redundant after life
15 but in any event I think you will see that Bill Odom, although
16 his charges were reduced, and while you may or may not feel that
17 that was good, that that was a smart move by the prosecutor,
18 it is over and done with. There is not anything that you can
19 do about that, not anything that I can do about that at this
20 point. But it's not as good deal as Mr. Chenoweth would have
21 you to believe.

22 Lene Odom, let's talk her deal for a moment. Lene
23 spent five and a half months in the Idaho County jail. Granted,
24 she's no angel and I didn't try to tell you she was. Look at
25 her here, she didn't think she did anything wrong, she's

1 partying up and having a good time. But I'll tell you one thing
2 about her, she wont lie for her husband. She was interviewed by
3 Sheriff Baldwin the morning after her arrest and she told him
4 what had happened out there and she told him again, and she
5 told him again under oath before she testified. Sheriff
6 Baldwin told you that she told essentially the same story each
7 and every time. Some details, you know, adding a few details
8 or responding slightly differently to a slightly different
9 question; that's understandable, that happens to all of us.
10 But she been consistent and as far as letting her walk, in the
11 words of Mr. Chenoweth, I don't know, maybe sometimes you've
12 got to let the little fish go to catch a shark.

13 Rice pled guilty to two counts of second degree murder
14 and part of what he said was: "because I don't want to die."
15 The other part of what he said was: "because I'm guilty,
16 because I feel responsibility to those people, because I
17 could have stopped it, because I didn't." That's true.
18 I think that Rice, Odom knew where Jerry was going when he
19 took off up the road to go hunting, to go get some meat. That
20 was the first time 'ol Pizzuto had gone hunting, only he
21 wasn't hunting game, folks. And I think they knew that or
22 suspected that, in fact Odom eluded to that but he said he
23 wasn't worried because Pizzuto had been talking big, he
24 wanted to rob a truck that had a bunch of beer in it while
25 they were up there and so forth, but when the big show down

1 came with the fisherman he didn't follow through so Odom
2 didn't take him serious. I don't know if that's true, but I
3 think the essence of what they told you was true, and I think
4 you know it.

5 Who was the leader? Well Odom really wasn't the
6 leader. That's pretty obvious from the testimony of Steven
7 Crawford. Pizzuto comes walking up there, he's not afraid,
8 he's a brave highwayman. Odom's walking along behind him
9 with the gun. Who captures the attention of Steven Crawford?
10 Not really Odom even though Odom had the gun; Pizzuto. Who
11 does most of the talking? Pizzuto. And I don't think Craw-
12 ford said that Pizzuto did all the talking, I think he said he
13 did most of the talking and that is consistent with what Odom
14 told you. In any event, it's not that critical of a decision
15 in this case.

16 Who got the loot? Well, I don't know who's going to
17 end up with that pickup, maybe they all thought they could
18 wind up with that pickup, or parts of it. But the point I was
19 making was; who took the trophies? Many of you hunt, I'm sure
20 all of you have had experiences, you know, you are either men
21 or have known men and you've known people who have hunted. I
22 think that you know the psychology of the man that we are
23 dealing with, the psychology of a man that would take the
24 trophies. That's the hunter, that's the killer; again, the
25 boots, the ring, the camera.

1 Why would Pizzuto hand the money to Odom? I don't
2 think it's that big of a deal, but I submit to you, ladies
3 and gentlemen, it ties in with the trophies, it ties in with
4 him thinking: "hey, I'm a big man, here you hold on to this."
5 That doesn't sound unreasonable to me.

6 Why didn't Rice call till he got to California? He told
7 you why, he was frightened so bad of Jerry Pizzuto. He moved
8 his wife and he moved his wife to a girlfriends place, he
9 moved himself into his mother's house, he called the police
10 the very next morning and he eventually asked and they agreed
11 to a protective custody arrangement for Jim Rice, because
12 he was scared. You would be too if somebody was pointing a
13 .380 caliber pistol at you. Granted, that's not a high caliber
14 weapon, but it will do damage.

15 Hamburger and fries: I don't know, these folks went
16 into town and on several occasions, I don't know if they
17 bought things to eat when they were in there or not, I think
18 that you could presume that they probably did. They ate alot
19 of meals in Cascade. I bet you folks couldn't tell what you
20 had three days ago, and I bet you couldn't look over to the
21 person sitting next to you and say: "boy, I remember, John
22 Overton had a hamburger and fries." Can't do that, I don't
23 think it's that big of a deal, I don't think it's that big
24 of deal if we forget or if they misremember on such a simple
25 little point.

1 I challenged you in my opening remarks to consider
2 all the evidence and take Odom and Rice out of the picture,
3 you still come up with the same picture. The evidence is
4 simply overwhelming, you've got the forensic from Ned Stuart
5 and from Ann Bradley, for that matter. You've got the medical
6 evidence, you've got the photographic evidence. Mr. Pizzuto's
7 family album here. I don't think that there can be any doubt
8 your mind. But one more word about the credibility of Jim
9 Rice and William Odom. Mr. Chenoweth would have believe they
10 concocted this story on the way out of Ruby Meadows and later
11 at the motel. There is no evidence of that, you really can't
12 consider but he's asking you to speculate and he's asking you
13 to consider that they concocted this story. Well, if they
14 concocted the story they gave in court, then why, when Rice
15 went to the authorities in California, why didn't he tell that
16 story? It doesn't make sense. Now, I think, we have Mr.
17 Chenoweth overlooking a detail. If they concocted a story
18 why didn't he stick with it? Why did he implicate Odom in this
19 situation? Why didn't they exonerate each other? Why did they
20 say some incriminating things about each other? Why didn't
21 they say: "look, here's what we'll tell them, we both walked
22 up to the cabin together and saw Jerry beating these people
23 to death with a hammer." That's not the way it came out, though
24 because Jim Rice at first, didn't want to admit that he had hardly
25 been around, he was just kind of a casual bystander and he

1 just happened by. He was putting alot of distance between
2 himself and Odom and he was afraid of Odom, at that point,
3 and I submit to you ladies and gentlemen, if you look at these
4 photographs, granted, they are not conclusive, but the photo-
5 graphs and the actions and the attitude of Mr. Odom would
6 lead you to believe that he's starting to believe, "hey, I
7 can be a highwayman, too." No evidence that they concocted
8 this story. Even if they did, what do you do about all of
9 this other evidence? The conclusion is just inescapable,
10 ladies and gentlemen.

11 There has been alot of talk about the heavy burden
12 that the State of Idaho has in proving this case. That's
13 true, it's a heavy burden and I've felt it since the 30th
14 day of July of this year--or this last year. What I ask you
15 to do and what I submit that you will do is that you will go
16 back into that jury room, you will deliberate and you will help
17 to lift that heavy burden, and you're going to put this
18 vicious cold blooded highwayman out of business. Thank-you.

19 THE COURT: Well, Ladies and Gentlemen, you may now
20 retire to the jury room and deliberate upon your verdict. We
21 need to swear the bailiff in. I'll have both bailiffs stand,
22 raise your right hands, face the clerk.

23 (There upon the court bailiff's were duly sworn in,
24 after which the following proceedings were had)

25 THE COURT: Now, ladies and gentlemen, of the jury

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THE COURT: For the record, this is 22075, State of Idaho vs. Gerald Ross Pizzuto. Mr. Pizzuto is present in court with counsel, Mr. Chenoweth and Mr. Wayman; the State is present through Mr. Boomer, Deputy Prosecuting Attorney of Idaho County. Now is the time and place set for pronouncement of sentence.

First of all, let me mention, Mr. Pizzuto, that perhaps you've had some time to consider what occurred yesterday, I will give you one last opportunity to address me before I impose a judgement. If you'd like to, you may, if you don't want to, you don't have to and your comments are fresh in my mind now. Do you have anything else to say before I impose this judgement?

MR. PIZZUTO: No, sir.

THE COURT: Do you know of any legal cause why judgement should not now be pronounced against you?

MR. PIZZUTO: No.

THE COURT: All right, gentlemen, as a preliminary matter the record would reflect that yesterday after the sentencing hearing, in some of the companion cases it was ascertained that a questionnaire from which a pre-sentence investigation report is prepared was given to the Court with the pre-sentence investigation. A copy of that, however, has not been delivered to the defense. I have then caused a copy of that questionnaire

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1 to be given to Defendant's counsel this morning and I
2 want to say for the record that the Court has not con-
3 sidered the information in that questionnaire and will
4 not. I simply want to make a record of a fact though
5 that I had received it and not considered it and I will
6 work it as a Court exhibit and keep it as a part of this
7 record.

8 Does that accurately set forth your understanding Mr.
9 Chenoweth?

10 MR. CHENOWETH: Yes, it does.

11 THE COURT: And do you have any objection to
12 that process?

13 MR. BOOMER: No, Your Honor.

14 MR. CHENOWETH: The writing has little or no
15 significance to the case.

16 THE COURT: Thank you. The first crime that
17 I need to sentence you on, is that of Grand Theft.
18 The reasons for the punishment that I'll impose on this
19 Grand Theft case are the same reasons that I imposed
20 the punishment that I will impose the for murder charges,
21 and hence, I will simply announce your sentence on the
22 Grand Theft charge and the reasons for that sentence
23 will be contained in the reasons for my imposing the
24 sentence on the murder cases, do you understand that?

25 MR. Pizzuto: Yes, sir, I think.

1 dealing with the convictions or findings of guilt by
2 the jury of murder in the first degree. Now, with reference
3 to the first count, you are found guilty of murdering
4 Del Dean Herndon in violation of Idaho Code 18-4001 and
5 18-4003 (a).

6 In Count three, you are found guilty also of murder-
7 ing Mr. Del Dean Herndon in violation of Idaho Code
8 18-4001 and 18-4003 (b).

9 In other words, to use some shorthand phrases, you
10 were found guilty of pre-meditated murder and felony
11 murder. When I use those terms, Mr. Chenoweth, do you
12 understand what I am talking about?

13 MR. CHENOWETH: Of course.

14 THE COURT: Now, I cannot give you two sentences
15 for killing Mr. Del Herndon. In other words, I can't
16 impose one sentence for pre-meditated murder and then
17 another sentence for felony murder, because it's the
18 murder of the same person. Do you understand that?

19 MR. PIZZUTO: (thereupon no audible or discernable
20 answer.)

21 THE COURT: Perhaps your attorneys can explain
22 it to you sometime, but that's the best I can do to explain
23 that to you now. I'm going to sentence you to the exact
24 same sentence on both of those counts of Mr. -- for the
25 murder of Mr. Del Dean Herndon. I will do the same

1 with reference to Count two, which you were found guilty
2 of murder in the first degree of Berta Louise Herndon,
3 in violation of Idaho Code 18-4001 and 18-4003 (a).
4 And again, in Count four you were found guilty of murdering
5 Berta Louise Herndon in violation of Idaho Code 18-4001
6 and 18-4003 (b), and I will refer to those again as the
7 pre-meditated murder of Mrs. Herndon and the felony murder
8 of Mrs. Herndon. I can't impose two sentences for the
9 murder of Mrs. Herndon, either. The sentence I impose
10 in Count two, that is the pre-meditated murder of Mrs.
11 Herndon will be the same as the sentence I will impose
12 on Count four, that is the felony murder for Mr. and
13 Mrs. Herndon.

14 The punishment that I impose for the murdering of Mr.
15 Herndon, I'm going to impose a like sentence for the
16 murdering of Mrs. Herndon. When I give you the reasons
17 for why I imposed the judgement that I did impose for
18 killing Mr. Herndon, those are the same reasons for my
19 imposing the judgement for your murdering Mrs. Herndon.

20 Now, Mr. Chenoweth, do you understand those preliminary
21 comments?

22 MR. CHENOWETH: Yes.

23 THE COURT: As we're well aware, the court
24 is required to issue written findings when the court
25 considers imposing the death penalty. And because the

1 facts and circumstances surrounding the killing of Mr.
2 Herndon are identical to the facts and circumstances
3 surrounding the killing of Mrs. Herndon. I will not make
4 two sets of findings for the reasons that those findings
5 are identical. Is that appropriate and acceptable to
6 you, Mr. Chenoweth?

7 MR. CHENOWETH: Yes, Your Honor.

8 THE COURT: I am going to read those findings
9 now and I have prepared written findings and then I will
10 deliver copies of the same to you, Mr. Boomer and to
11 you, Mr. Chenoweth, for delivery to Mr. Pizzuto.

12 Whereas the above-named defendant, that is Gerald Ross
13 Pizzuto, Jr., was found guilty on March 27, 1986 by a
14 jury of two counts of murder in the first degree,
15 which under the law authorizes the imposition of the
16 death penalty, and whereas the Court ordered a pre-sentence
17 investigation to be conducted, and whereas a sentencing
18 hearing was convened on May 21, 1986 for the purpose
19 of hearing all relevant evidence and arguments of counsel
20 in aggravation and mitigation of the offenses. And,
21 whereas the court has considered such evidence and argument
22 as well as all of the evidence admitted during the trial
23 had herein. Now, therefore, the Court makes the following
24 findings. 1: Conviction. The defendant being represented
25 by counsel is found guilty by a jury of two counts of

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the offense of murder of the first degree, Idaho Code 18-4003 (a), 18-4003 (b).

2: Pre-sentence report. A Pre-sentence Investigation Report was prepared by the Idaho Department of Probation and Parole pursuant to Court and order and a copy thereof was delivered to the defendant or his counsel at least seven days prior to the sentencing hearing pursuant to law.

3: Sentencing Hearing. A sentencing hearing was held on May 21, 1986, pursuant to notice to the defendant and his counsel. At said hearing in the presence of the defendant, the Court heard relevant evidence and argument in aggravation and in mitigation of the offenses.

4: Facts and Arguments found in mitigation. a: The defendant is a relatively young man being thirty years of age at the time of sentencing b: The defendant comes from a broken family and was mis-treated as a child. c: The defendant has a history of abusing drugs. d: Some members of the defendant's family have expressed concern for his well being. e: Facts and arguments found in aggravation. The defendant has a criminal record, he was convicted of theft in 1973 and was convicted of criminal sexual assault in the first degree. The defendant was sentenced to serve from twenty to forty years for the above mentioned rape charge. The defendant was

1 sentenced for the rape on October 17, 1975 when he was
2 nineteen years old, and was paroled on September 14,
3 1984, at the age of 28 years. The defendant has shown
4 no remorse whatsoever for killing the Herndons.

5 C: That the defendant has not cooperated with the
6 authorities following his arrest and has intimidated
7 and threatened his jailers.

8 D: The possibility, if any, that the defendant is
9 capable of rehabilitation can be characterized at best
10 as being remote. There is little chance that the defendant
11 will ever change for the better.

12 E: The defendant is unintelligent, uneducated, unskilled
13 and totally lacking in discipline and motivation, such
14 that he will never be capable of securing and maintaining
15 employment or being anything other than a counter-productive
16 element of society.

17 F: The Defendant has an antisocial-sociopathic personality
18 disorder with explosive features.

19 G: The Defendant is a manipulative and deceitful individual!

20 H: The Defendant is a violent, intimidating and dangerous
21 individual.

22 I: The Defendant is impulsive and has extreme difficulty
23 in controlling his emotions.

24 J: The Defendant has little or no motivation to change
25 his behavior.

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K: The Defendant is an aggressive and wreckless individual.

L: The Defendant has little ability to tolerate ambiguity.

M: The Defendant is an antisocial and predatory individual who has in the past and will in the future seek out others and attempt to dominate them through means of violence.

N: The Defendant has little empathy for others.

O: The Defendant has little ability to feel guilt.

P: The Defendant has a need to demonstrate power and control over other individuals.

Q: The Defendant cannot anticipate the consequences of his behavior, especially in terms of other individuals' feelings.

R: The Defendant has no close or meaningful relationships, plural, and has a low self esteem. The Defendant's past pattern of living clearly indicates that he will continue a life of violent criminal activity.

Statutory Aggravating circumstances found under Idaho Code 19-2515 (f), Idaho Code. This Court finds beyond any reasonable doubt that the following Statutory aggravating circumstances exist.

A: At the time the defendant murdered Del Dean Herndon, he also murdered Berta Louise Herndon.

B: The murders of the Herndons were especially heinous atrocious, cruel, and manifested exceptional depravity.

1 The defendant approached his victims at a remote cabin
2 in Idaho County near McCall, Idaho. He pulled a gun
3 on them, he forced Mr. Herndon to drop his pants and
4 crawl into the cabin. He bound their arms and legs
5 and proceeded to smash in the back of their skulls with
6 a hammer. The manner in which this unprovoked and calcu-
7 lated killing was accomplished exhibits a depravity which
8 exceeds all comprehension, explanation and human decency.

9 C: By the murder and the circumstances surrounding
10 it's commission, defendant exhibited utter disregard
11 for human life. The defendant approached the Herndons
12 at gun point and tied them up for the purpose of stealing
13 from them. The circumstances demonstrate that the Herndons
14 posed no threat to the Defendant's safety or to his escape
15 from the scene of the robbery. The killing was not accomp-
16 lished out of rage, revenge or for personal gain. The
17 murders were cold-blooded and pitiless. The killing
18 was committed for the sake of killing.

19 D: The murders are defined as murder of the first
20 degree by Idaho Code Section 18-4003 (sub a) and 18-4003
21 (b). The murders were accomplished with the specific
22 intent to cause the death of Mr. and Mrs. Herndon.

23 E: The Defendant by prior conduct and by conduct in
24 the commission of the murders in this case, has exhibited
25 a propensity to commit murder which will constitute a

1 continuing threat to society.

2 The reason why the penalty was imposed.

3 A: This Court finds beyond a reasonable doubt that
4 the above listed mitigating circumstances do not out-
5 weigh the gravity of the statutory aggravating circumstances
6 listed above as would make the imposition of the death
7 penalty unjust.

8 B: This Court finds beyond a reasonable doubt that
9 the mitigating circumstances which were presented do
10 not out-weight any one the statutory aggravating circum-
11 stances listed above as would make the imposition of
12 the death penalty unjust.

13 C: The jury in this case found the Defendant guilty
14 of two counts of murder of the first degree.

15 The evidence clearly demonstrates and this Court finds
16 beyond a reasonable doubt that the Defendant willfully,
17 deliberately, intentionally and with pre-meditation murdered
18 Mr. and Mrs. Herndon, and furthermore, that such murders
19 were committed during the perpetration of a robbery .
20 Prior to and subsequent to the killing of the Herndons,
21 the Defendant bragged to his associates about killing
22 other people. He joked and bragged about the killings
23 with his associates. The Defendant paraded and posed
24 for his friends who took Polaroids of the Defendant with
25 a gun stolen from the victim. The Defendant hid out

1 at his sister's home in Montana where he bragged to her
2 about killing a number of individuals. Some of the objectives
3 of sentencing are, A: The protection of society. B:
4 Deterrence, general and special for individual. C: Re-
5 habilitation. And D: Punishment or retribution for
6 wrong doing.

7 The members of our society need to be protected from
8 the Defendant. He is an uncontrollable and vile individual.
9 He receives pleasure from killing people. He enjoys
10 inflicting pain upon the helpless. He achieves a sick
11 satisfaction from tying people up and torturing them.
12 He has no conscience whatsoever. The circumstances sur-
13 rounding the offenses in question as well as the Defendant's
14 past conduct demonstrates proclivity of the Defendant
15 to commit murder. Subsequent to his arrest for the murders
16 of the Herndons, the Defendant admitted shooting another
17 individual on March 30, 1985, over a cocaine transaction.
18 The Defendant states the shooting was an accident. The
19 Defendant will continue to engage in criminal activity,
20 be inside or outside of the walls of a prison.

21 Concerning the issue of deterrence, it is important
22 to note that the murders of the Herndons were not as
23 a result of sudden impulse, passion or psychotic behavior.
24 The murders were planned and calculated. The offense
25 is thus the type of offense that may be deterred

39 21012

1 if proper punishment is imposed. The punishment imposed
2 hereunder will serve as a general deterrent to murder.
3 Furthermore, the sentence imposed herein is the only
4 sentence available that will deter the Defendant from
5 killing other individuals.

6 The Defendant is not capable of being rehabilitated.
7 In Michigan the Defendant was convicted of rape and placed
8 upon parole in September of 1984. Attempts have been
9 made to rehabilitate the Defendant and such efforts have
10 failed. The nature of the Defendant's personality is
11 such that no amount of therapy will ever lessen the menace
12 which the Defendant poses to Society.

13 Concerning the issue of retribution, the sentence imposed
14 herein is the least sentence that would not unduly deprecate
15 the seriousness of the crimes in question. Society's
16 respect and concern for life as well as this Court's
17 obligation to express Society's condemnation of the murders
18 in question dictates, and this Court does order that
19 the Defendant be sentenced to suffer the punishment of
20 death for the murders of Mr. and Mrs. Herndon. The death
21 penalty should be imposed for the offenses of which the
22 Defendant was convicted. Dated this 23rd day of May,
23 1986.

24 Do you understand the sentence I imposed, Mr.
25 Boomer?

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MR. BOOMER: Yes, Your Honor.

THE COURT: Mr. Chenoweth?

MR. CHENOWETH: Yes.

THE COURT: Would you please cause a judgement to be prepared in this matter, proposed judgement?

MR. CHENOWETH: Yes.

THE COURT: Do you understand and is it clear the sentences that I have imposed herein?

MR. CHENOWETH: Crystal clear.

THE COURT: We have thus two death sentences, we have a fixed life term of incarceration for the robbery charge and we have a fourteen fixed year term for theft.

MR. CHENOWETH: Your Honor, was the death penalty on the two cases under the pre-meditation section or the felony section?

THE COURT: Okay, with reference to Mr. Herndon, the death sentence was imposed for the pre-meditated killing of Mr. Herndon. He was also sentenced for felony murder, the death sentence is exactly the same. The punishments are the same and not overlapping and they don't aggregate each other. And the same would apply to Mrs. Herndon. So, he has two death sentences and a fixed fourteen years, a life fixed sentence.

Is there anything further from the State?

MR. BOOMER: No, Your Honor.

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THE COURT: From the Defense?

MR. CHENOWETH: No, Your Honor.

THE COURT: We'll be in recess.

(Thereupon the day's proceedings concluded and the Court stood in recess.)

AFFIDAVIT OF JAMES M. RICE

STATE OF CALIFORNIA)

:ss

County of Solano)

James M. Rice, a person over eighteen years of age and competent to testify, being duly sworn, depose and say as follows:

JP 1.) My name is James M. Rice. I am currently an inmate at the California State Prison, Solano.

JP 2.) I was charged with the first degree murders of Del and Berta Herndon in Idaho County, State of Idaho in 1985 along with co-defendants, William Odom and Gerald Pizzuto.

JP 3.) I pled guilty to two counts of second degree murder in Idaho County Case No. 22089 on the 23d day of January, 1989. Judge George Reinhardt accepted my plea and sentenced me to twenty years concurrent. I also testified against Gerald R. Pizzuto in his first degree murder case, Idaho County Case No. 22075. Judge Reinhardt sentenced Mr. Pizzuto to death.

JP 4.) My attorneys, William Dee and Wayne MacGregor, told me that they worked it out with the prosecutor that if I pled guilty, I would get a sentence of twenty years concurrent on each count. They told me I would serve fourteen years, eight months and sixteen days on the twenty year sentence. I remember this clearly. As part of the deal, I had to testify against Gerald Pizzuto.

DR 5.) I was also told by my attorneys that if I did not agree to the deal I could receive a death sentence.

DR 6.) I vaguely remember signing something regarding my plea and agreement to testify against Pizzuto, but I don't think it was a formal agreement where the prosecutor agreed to the sentence. Rather, my attorneys assured me that an agreement had been worked out and I relied on their representations. They often talked about their close relationships with the prosecuting attorney and judge and they assured me that I could rely on their representations.

DR 7.) I underwent a lot of questioning at my plea about whether I had been promised anything in return for a guilty plea, or had been told I would receive a certain sentence. I answered "No," because that's what my attorneys told me to say. I was asked whether I understood I could get a life sentence. I said "Yes," but I knew I was not going to get a life sentence and that I would get the twenty year sentence. I answered all of these questions the way my attorneys told me to answer them.

DR 8.) I was asked at Mr. Pizzuto's trial whether I understood that I could get a fixed life sentence to which I said yes even though I knew I was going to get the promised twenty years. At Mr. Pizzuto's trial, I answered all of these questions by both the prosecuting attorney and defense attorney in the way my attorneys told me to.

DR 9.) When I went to my sentencing hearing, I was a little bit nervous that the prosecutor and judge might not follow through with the deal. I made some small talk with the prosecutor before the hearing where I told him I was nervous. He told me to relax and not to worry about anything. Then I knew everything would go as planned and I stopped worrying.

OP 10.) I was sentenced to twenty years on each count, to be served concurrently and actually served a little less than fourteen years, eight months and sixteen days. I would not have pled guilty or testified against Mr. Pizzuto if I did not believe a sentencing agreement had been reached with the State and judge.

OP 11.) I had only known Gerald Pizzuto for a very brief time when the crimes occurred. I met him the day we left Orland. He didn't seem to have any money or possessions, and just needed a ride back up north where he was from. I don't know why the other codefendant, Bill Odom, agreed to bring him along.

OP 12.) During the entire time I was with Jerry Pizzuto, he was extremely quiet, withdrawn and reclusive. He seemed to have trouble socializing. When he did speak, it was usually a mumble under his breath. I did not think he was normal. There seemed to be something wrong with him.

OP 13.) Bill Odom was the one of us who started all the talk about claim-jumping, robbing and murdering people. He tried to get me to go along with this idea, and when I wouldn't, he talked to Gerald about it.

OP 14.) The sheriff's department, court, and jail were all in the same building in Idaho County. I saw and heard a lot from the jail. Based upon my observations it appeared to me that Sheriff Randy Baldwin was involved in a close personal relationship with Annette Jones, the pre-sentence investigator who interviewed me and submitted her report to the court for my

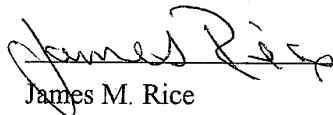
sentencing.

OP 15.) I was contacted once in the past by an investigator for the Capital Habeas Unit

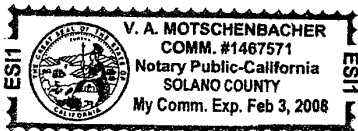
of the Federal Defenders of the Eastern District of Washington and Idaho while I was serving my prison sentence on the Second Degree murder conviction out of Idaho. I did not tell the investigator about my deal because I did not want to jeopardize my parole. After I was released from prison, I did not seek to tell anyone about the deal because I might need the Idaho authorities to vouch for me one day. In fact, I was charged in a criminal case in California and my attorney did ask the prosecutor, Henry Boomer, to help with my case. Now, I am in prison for life because I was a three strikes defendant, and I have nothing to lose by coming forward with the truth. I also don't think Gerald Pizzuto should die because he was put up to the crime by Bill Odom.

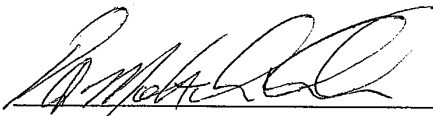
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 28 September, 2005.


James M. Rice

SUBSCRIBED AND SWORN before me this 28th day of September, 2005.




Notary Public in and for the State of California residing at
VACAVILLE, CA therein.

My commission expires: FEBRUARY 3, 2008

AFFIDAVIT OF JULIE KASCHMITTER

STATE OF IDAHO)
)
)
County of Idaho)

I, Julie Kaschmitter, a person over eighteen years of age and competent to testify, being duly sworn upon oath, deposes and states as follows:

1. I am employed by the law office of MacGregor and MacGregor, formerly Dee and MacGregor. I have been employed with them since the late 1970s.
2. I can confirm that the documents attached are records from our former files. The first document is a handwritten note by William Dee dated January 16, 1986 at 6:00 a.m., and I recognize the writing as William Dee's. The second document is a four page billing statement to the County of Idaho for services performed in January 1986 in the case of James Michael Rice in the amount of \$1,360.32. I recognize that to be one of our billing statements.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Grangeville, Idaho on October 21, 2005

FURTHER YOUR AFFIANT SAYETH NOT.

Julie Kaschmitter

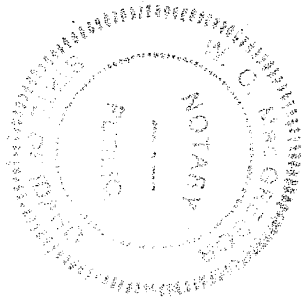
JULIE KASCHMITTER

SUBSCRIBED AND SWORN before me this 21st day of October, 2005.

H. C. MacGregor

Notary Public for the State of Idaho
residing at Grangeville therein

My commission expires: October 1, 2010



Wayne + myself - Jan 16, 1982

Meeting - Prosecutor - Judge

Proximate
Met ~~Chas Sabatelli~~
discussed negotiation
for Rice to enter plea
to reduced charges -

NO problem on 2nd
degree on the man as
a number of admissions
that he shot him -

Explored his connection
death of woman -

had told us that he
was aware that she
was going to be murdered
when Pizzuto stepped
out of cabin #2 with the
man's gun + holter in
his possession -

Certain questions raised
by the judge

1) Did Rick know
he was digging a grave
before or after the murder
2) when did he meet
of the robbery
etc.

Remaining questions
noted by Wayne -
would interview Rice
before next Thursday -
Jan 23.

ALL CLAIMS MUST BE FILED FIVE DAYS BEFORE
THE SECOND MONDAY IN EACH MONTH.

COUNTY OF IDAHO - STATE OF IDAHO

Claim No. _____

WILLIAM J. DEE

DEE & MacGREGOR (Plaintiff)

Address P.O. BOX 463
GRANDEVILLE, IDAHO 83430

Amount \$ 1,360.32

For Services rendered for James Michael Rice

O.K. _____

Disallowed \$ _____ Additional \$ _____

Reason _____

Allowed on _____ Fund _____

In the sum of \$ _____ this _____

day of _____, 19 _____

Chairman of the Board.

VERIFICATION

STATE OF IDAHO, }
County of Idaho } ss. The undersigned, being duly sworn, says
that this account is correct, justly due
and that no part thereof has been paid.

(Sign Here)

Filed _____

_____, Clerk

By _____, Deputy

SERVICES PERFORMED FOR JAMES MICHAEL RICE

IDAHO COUNTY CASE No. 22089

DATE:	WORK PERFORMED:	TIME:	CHARGE:
1/2/86	Began preliminary negotiations with the prosecuting attorney on possible plea bargaining agreement	3/4 hour	\$ 30.00
1/2/86	Telephone call to Hank Boomer, dictated Affidavit and Motion	1/2 hour	\$ 20.00
1/3/86	Received and reviewed letter from Idaho Supreme Court with attached copies	1/4 hour	\$ 10.00
1/6/86	Telephone call with Doctor White, psychiatrist, on his coming report on the defendant; discuss said report with Doctor White over the telephone	1/2 hour	\$ 20.00
1/8/86	Telephone call from Court Clerk, took pleadings and order up to court and had conference with Hank Boomer	1 hour	\$ 40.00
1/8/86	Received letter from Judge Reinhardt with Dr. White's report; examined and reviewed Dr. White's report	1/4 hour	\$ 10.00
1/8/86	Received telephone call from Hank Boomer and discussed certain aspects of the Rice case.	1/4 hour	\$ 10.00
1/9/86	Made telephone call to Hank Boomer, returning to Hank certain information requested the day before.	1/4 hour	\$ 10.00
1/9/86	Telephone call from Judge Reinhardt in reference to the Rice Case.	1/4 hour	\$ 10.00
1/13/86	Serious consultations and negotiations for plea-bargaining conference with the prosecutor, with both attorneys being present for one hour, total time 2 hours	2 hours	\$ 80.00
1/13/86	Telephone call from Court clerk		

	requesting certain materials	1/4 hour	\$ 10.00
1/14/86	Consultation with the defendant at NezPerce on proposed plea bargains; two attorneys necessary, time elapsed 1 and 1/2 hours, mileage covered 64 miles, total time 3 hours	3 hours	\$ 120.00
1/14/86	Mileage to NezPerce, 64 miles at 21 per mile		\$ 13.44
1/15/86	Trip to NezPerce, for conference with Jim Rice on plea bargain arrangements, total time 3 1/4 hours	3 1/3 hrs	\$ 130.00
1/15/86	Mileage to NezPerce, 64 miles at 21 per mile		\$ 13.44
1/16/86	Conference at Crossroads with Judge Reinhardt, prosecutor on plea agreement, two attorneys necessary, negotiations continued for 1 1/2 hours, total hours	3 hours	\$ 120.00
1/17/86	Telephone call from Attorney General's Office, call returned to the Attorney General's Office	1/2 hour	\$ 20.00
1/17/86	Telephone call from Jim Rice, the defendant, dictated letter and sent the same	1/2 hour	\$ 20.00
1/21/86	Trip to NezPerce for conference with James Rice on plea bargaining, two attorneys 1 1/2 hours total	3 hours	\$ 120.00
1/21/86	Mileage to NezPerce, 64 miles at 21 per mile		\$ 13.44
1/21/86	Telephone call from Hank Boomer, also one to Lewis County Sheriff's Office	1/4 hour	\$ 10.00
1/22/86	Received Notice, Affidavit and Order from Attorney General's office in reference to appeal	1/4 hour	\$ 10.00
1/23/86	Met at 9:00 a.m., with preliminary negotiations with associate attorney, two attorneys then going to court; met with the prosecuting attorney, district judge on plea bargaining; then met with the defendant-client,		

on said plea bargaining; then pleas entered at beginning about 12:15 and concluding at 3:30 p.m; that a total of 6 and 1/2 hours was used for each attorney for a total of 13 hours

13 hours \$ 520.00

TOTAL BILLING TO 1/23/86.....\$1,360.32

HENRY R. BOOMER
Idaho County Prosecuting Attorney
Idaho County Courthouse
Grangeville, Idaho 83530
(208) 983-0166

FILED
AT 4:00 O'CLOCK P.M.

FEB 1 1986

JOYCE C. HART

Clerk of District Court

RECORDED

By [Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 GERALD ROSS PIZZUTO,)
)
 Defendant.)

Case No. 22075

THIRD SUPPLEMENTARY
DISCOVERY COMPLIANCE

TO: Nick Chenoweth, Attorney for Defendant Gerald Ross
Pizzuto;

In compliance with the discovery request filed in the above
entitled case the State hereby submits the following copy of James
Michael Rice's transcript of entry of pleas of guilty and sworn
statement, given on January 23, 1986, with a copy to counsel.

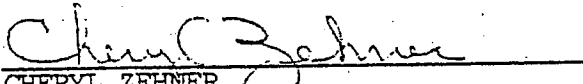
DATED this 18 day of February, 1986

[Signature]
HENRY R. BOOMER
Prosecuting Attorney

MAILING CERTIFICATE

I the undersigned, do hereby certify that a copy of the foregoing Third Supplementary Discovery Compliance was mailed by me by regular first class mail deposited in the U. S. Post Office at Grangeville, Idaho, this 13th day of February, 1986, to:

Nick Chenoweth
Attorney at Law
P. O. Box 1422
Orofino, Idaho 83544


CHERYL ZEHNER

Secretary for Idaho County Prosecuting Attorney's Office

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

3
4 STATE OF IDAHO,)

5 Plaintiff,)

6)
7 VS)

DISTRICT COURT
CASE NO. 22089

8)
9 JAMES MICHAEL RICE,)

10 Defendant.)

11
12 BEFORE
13 HONORABLE GEORGE R. REINHARDT, III
14 DISTRICT JUDGE

15
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18
19
20 TRANSCRIPT OF DEFENDANT'S ENTRY OF PLEAS OF GUILTY AND
21 SWORN STATEMENT

22
23 23RD DAY OF JANUARY, 1986
24
25

1 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

3
4 STATE OF IDAHO,)

5 Plaintiff,)

6)
7 VS)

DISTRICT COURT
CASE NO. 22089

8)
9 JAMES MICHEAL RICE,)

10 Defendant.)

11
12 BE IT REMEMBERED That the above-entitled cause of
13 action came on for hearing commencing at 1:00 p.m., on
14 Thursday, the 23rd of January, 1986, before the Honorable
15 George R. Reinhardt, III, District Judge, in the District
16 Courtroom of the Idaho County Courthouse, City of
17 Grangeville, County of Idaho, State of Idaho.

18 The State appeared through its representative,
19 Mr. Henry Boomer, Prosecuting Attorney in and for the County
20 of Idaho, Idaho County Courthouse, Grangeville, Idaho 83530.

21 The defendant, James Michael Rice, appeared in
22 person and through his representatives, Mr. William J. Dee
23 and Mr. Wayne C. MacGregor, Dee and MacGregor, Post Office
24 Drawer 463, Grangeville, Idaho 83530.
25

1 THE COURT: For the record, this is 22089, State of
2 Idaho versus Jim Rice. The record would reflect that Mr. Rice
3 is present in Court with counsel, Mr. Dee and Mr. MacGregor
4 of the firm of Dee and MacGregor of Grangeville.

5 The record would also reflect that Mr. Boomer, the
6 Prosecuting Attorney of Idaho County is present in Court at
7 this time. The record would reflect that now is the time and
8 place set for various pre-trial hearings.

9 It's my understanding that certain negotiations
10 have been entered into between the State and the defense in
11 this action and as a result of said negotiations, the State
12 is willing, at this time, to Amend the Information that has
13 been filed in this case and based upon those amendments,
14 it's the intention of the defendant to enter pleas of guilty
15 to a number of offenses.

16 Is that your understanding, Mr. Boomer?

17 MR. BOOMER: It is, Your Honor.

18 THE COURT: And Mr. Dee?

19 MR. DEE: Yes, Your Honor.

20 THE COURT: Perhaps for the record, Mr. Boomer,
21 you could advise the Court as to what negotiations have
22 transpired and what you understand the arrangements to be.

23 MR. BOOMER: Your Honor, we've had numerous
24 discussions and of course this matter has been fully
25 investigated at this point. As the Court may be aware from

1 a review of the preliminary hearing transcript, Mr. Rice did
2 phone the police shortly after this incident took place. In
3 light of that consideration and in light of our investigation
4 and discussion with Mr. Rice and his attorney's and his
5 cooperation in this matter, I am moving to amend the
6 information as follows.

7 On page one of the information near the middle of
8 the page where it charges the crimes of, and lists all the
9 crimes, I would like to strike the word "first," and insert
10 the word "second," so that it reads "second degree murder,
11 two counts."

12 I would then like to delete the first degree felony
13 murder, robbery, grand theft and conspiracy all felony's
14 language.

15 MR. MACGREGOR: Pre-meditation?

16 MR. BOOMER: Then, Your Honor, on Count One, the
17 third line of Count One near the bottom of page one where
18 it has the words "and with pre-meditation," I would move to
19 strike those three words.

20 And then add the words after the words "Del Dean
21 Herndon by," I would like to add the words "aiding and
22 abetting," in the beating upon the head of Del Herndon, and
23 so forth.

24 And after the word "actions," strike the word "he,"
25 and insert the word "Del Dean Herndon."

1 With reference to the Idaho Code Section, it should
2 be "Idaho Code Sections," with a plural 18-4001, 18-4003 G,
3 and 18-204, and for the benefit of the Court and so we don't
4 have a misunderstanding, I would propose to read Count One
5 in its entirety as amended just to make sure if that pleases
6 the Court.

7 THE COURT: Yes.

8 MR. BOOMER: Count One: that the defendant, Jim
9 Rice, on or about the twenty-fifth day of July, 1985, in the
10 County of Idaho, State of Idaho, did willfully, deliberately
11 and with malice aforethought, killed and murdered Del Dean
12 Herndon by aiding and abetting in the beating on the head of
13 Del Dean Herndon with a hammer and shooting him in the head
14 with a twenty-two caliber rifle, from which actions Del Dean
15 Herndon died in violation of Idaho Code Sections 18-4001,
16 18-4003 G and 18-204.

17 Count Two would be a very similar amendment and
18 should read as follows: That the defendant, Jim Rice, on or
19 about the twenty-fifth day of July, 1985, in the County of
20 Idaho, State of Idaho, did willfully, deliberately and then
21 strike the words "and with pre-meditation" -- did willfully,
22 deliberately and with malice aforethought kill and murder
23 Alberta Louise Herndon by aiding and abetting in the beating
24 upon the head of Alberta Louise Herndon with a hammer, from
25 which actions Alberta Louise Herndon died, in violation of

1 Idaho Code Sections 18-4001, 18-4003 G and 18-204.

2 THE COURT: You would then further amend the
3 Complaint?

4 MR. BOOMER: Yes, I would have further amended
5 Complaint by dismissing Counts Three, Four, Five, Six and
6 Seven.

7 THE COURT: And what do you understand the defense
8 will do in the event that you so move to amend the Complaints?

9 MR. BOOMER: It's my understanding that the
10 defendant will change his plea to guilty, and would further
11 more testify truthfully in the trials of any co-defendants
12 that may be tried here after.

13 THE COURT: When you say plead guilty, you mean
14 plead guilty to what?

15 MR. BOOMER: Plead guilty to the charges as amended,
16 I'm sorry.

17 THE COURT: That would be Counts One and Two of the
18 amended Information?

19 MR. BOOMER: Yes, of second degree murder, yes.

20 THE COURT: What's your understanding of the
21 arrangement, Mr. Dee?

22 MR. DEE: May it please the Court, that's the
23 understanding of the defense counsel and we believe of the
24 defendant, Your Honor.

25 THE COURT: Do you understand, Mr. Rice, what has

1 transpired here this morning?

2 MR. RICE: Yes, sir.

3 THE COURT: And what do you understand the
4 arrangement to be in this case?

5 MR. RICE: That I plead guilty to two counts of
6 second degree murder so that I don't die.

7 THE COURT: And do you understand then that --

8 MR. RICE: And that I'll testify under truthful
9 oath and tell the whole story what happened.

10 THE COURT: And do you understand that in
11 consideration for that, the State will dismiss the count --
12 two counts of first degree murder, as well as all the other
13 counts that are in the Information?

14 MR. RICE: Yes, sir.

15 THE COURT: All right, thank you, be seated.

16 Well, Mr. Boomer, would you then formally move to
17 amend the Information as indicated by you?

18 MR. BOOMER: Yes, Your Honor, I do so move.

19 THE COURT: Any objections to the Motion To Amend?

20 MR. DEE: No objection from the defense.

21 THE COURT: Well, that Motion To Amend will be
22 granted.

23 Now, what I'm going to do, Mr. Rice, is in essence
24 arraign you on this new amended Information because we're
25 dealing with different statutes and different punishments,

1 and I want you to be aware of the meaning of the amendment.

2 First of all, you have the right to remain silent,
3 everything you say can and will be used against you. You have
4 the right to have a lawyer with you now and at each and every
5 stage of the case against you. If you want a lawyer but
6 cannot afford to hire one, one will be appointed to represent
7 you, as has already been done in this case. In the event
8 that you enter a plea of not guilty to the matters set forth
9 in the Information, you would then be entitled to a trial by
10 jury on the Information, on the charges set forth in the
11 Information. At your trial, you are as now, presumed to be
12 innocent until proven guilty beyond any reasonable doubt. At
13 your trial, you have the right to confront and cross-
14 examination witnesses against you. You have the right to
15 present evidence on your own behalf. You have the right to
16 present testimony in your own favor. In the event that you
17 do have witnesses who you wish to appear and testify for you,
18 I would order that they come to your trial by issuing
19 subpoenas to compel their attendance and that would be done
20 at no cost to you. At your trial, if you want to you can
21 testify on your own behalf, which means you can tell your
22 side of the story. If you don't want to testify, however,
23 you don't have to and you may if you choose, sit and remain
24 silent for the whole trial. In the event that you choose to
25 not testify at your trial and remain silent, no one will

1 infer or presume that you are guilty because of the fact that
2 you sat silent. If you are convicted you have the right to
3 appeal your conviction.

4 Now, if you plead guilty to the charges set forth
5 in the Information, then you're going to give up a number of
6 very valuable and important rights. You give up your right
7 to remain silent, you give up your right to a trial by jury.
8 The right to a trial by jury is a very valuable and important
9 right. In essence, it's the right to have twelve individuals
10 selected at random from the community who will sit as fact-
11 finders in the case. All twelve of them must be convinced
12 of your guilt beyond any reasonable doubt before you can be
13 convicted or found guilty. If you do decide to plead guilty,
14 you give up your right to confront and cross-examine witnesses
15 against you. You give up your right to present evidence on
16 your own behalf. Do you understand that you're giving up a
17 number of very valuable and important rights if you do
18 decide to plead guilty?

19 MR. RICE: Yes, I do.

20 THE COURT: Idaho Code 18-4001 provides as follows:
21 Murder defined: Murder is the unlawful killing of a human
22 being with malice aforethought, or the intentional application
23 of torture to a human being which results in the death of a
24 human being. Torture is the intentional infliction of
25 extreme and prolonged pain with the intent to cause suffering.

1 It shall also be torture to inflict on a human being extreme
2 and prolonged acts of brutality, irrespective of proof of
3 intent to cause suffering. The death of a human being caused
4 by such torture is murder irrespective of proof of specific
5 intent to kill. Torture causing death shall be deemed the
6 equivalent of intent to kill.

7 Idaho Code 18-1402 provides as follows: Expressed
8 and implied malice; such malice may be expressed or implied.
9 It is expressed when there is manifested a deliberate
10 intention unlawfully to take away the life of a fellow
11 creature. It is implied when no considerable provocation
12 appears or when the circumstances attending the killing show
13 an abandon and a malignant heart.

14 Idaho Code 18-4003 provides as follows: All murder
15 which is perpetrated by means of poison or lying in wait or
16 torture when torture is inflicted with the intent to cause
17 suffering to execute vengeance, to extort something from the
18 victim to satisfy some sadistic inclination or which is
19 perpetrated by any kind of willful, deliberate and pre-
20 meditated killing is murder of the first degree. Any murder
21 of any peace officer, executive officer, officer of the Court,
22 fireman, judicial officer or prosecuting attorney who was
23 acting in the lawful discharge of an official duty and was
24 known or should have been known by the perpetrator of the
25 murder to be an officer so acting shall be murder of the first

1 degree. C: Any murder committed by a person under a sentence
2 for murder of the first or second degree, including such
3 persons on parole or probation from such offenses shall be
4 murder of the first degree. D: Any murder committed in the
5 perpetration of or attempt to perpetrate arson, rape, robbery,
6 burglary, kidnapping or mayhem is murder of the first degree.
7 E: Any murder committed by a person incarcerated in a penal
8 institution upon a person employed by the penal institution,
9 another inmate of the penal institution or a visitor to the
10 penal institution shall be murder of the first degree.
11 F: Any murder committed by a person while escaping or
12 attempting to escape from a penal institution is murder of
13 the first degree. And G, which is the section the prosecutor
14 has charged you with, it says: All other kinds of murder are
15 of the second degree.

16 Idaho Code 18-4004 defines the punishment for
17 murder. Subject to provisions of 19-2515 of the Idaho Code,
18 every person guilty of murder in the first degree shall be
19 punished by death or by imprisonment for life. Every person
20 guilty of murder of the second degree is punishable by
21 imprisonment for not less than ten years and the imprisonment
22 may extend to life.

23 Now, Mr. Rice, the last section I want to read to
24 to you is Idaho Code Section 18-204, which section defines
25 principles, and you're being charged as a principle in the

1 amended Information. The principle section is defined as
2 follows: All persons concerned in the commission of a crime,
3 whether it be felony or misdemeanor and whether they directly
4 commit the act constituting the offense or aid and abet in
5 its commission, or not being present have advised and
6 encouraged its commission, all persons counseling or advising
7 or encouraging children under the age of fourteen years,
8 lunatics or idiots to commit any crime, or who by fraud,
9 contrivance or force occasions the drunkenness of another
10 for the purpose of causing him to commit any crime, or who
11 by threats, menaces command or coercion, compel another to
12 commit any crime or principles in any crime so committed.

13 Now, Mr. Rice, do you understand what murder is?

14 MR. RICE: Yes, sir; I do.

15 THE COURT: And do you understand what second degree
16 murder is?

17 MR. RICE: Yes, sir.

18 THE COURT: And do you understand what a principle
19 is?

20 MR. RICE: Yes, sir.

21 THE COURT: And do you understand the maximum
22 punishment that may be imposed in the event that you are
23 convicted of murder in the second degree or if you pleaded
24 guilty to murder in the second degree?

25 MR. RICE: Yes, sir.

1 THE COURT: Okay, why don't you tell me what you
2 understand the punishment for second degree murder is?

3 MR. RICE: Exceeding no less than ten years to life
4 imprisonment.

5 THE COURT: Right, and that punishment could be
6 imposed, theoretically, for both of the two offenses that I
7 have been told you're going to plead guilty to; do you
8 understand that?

9 MR. RICE: Yes, sir; I do.

10 THE COURT: In Idaho, let me advise you that we have
11 a sentencing statute which would permit me to impose a fixed
12 life sentence; do you know what a fixed life sentence is?

13 MR. RICE: No, sir, I don't.

14 THE COURT: All right, have you ever heard the
15 term "indeterminate?"

16 MR. RICE: Yes, sir; I have.

17 THE COURT: And what do you understand that to be?

18 MR. RICE: There's such as in your mind hasn't
19 been made up as how long you will serve, I reckon.

20 THE COURT: If you are given an indeterminate life
21 sentence, according to the statutes, you would have to serve
22 a certain percentage of that term. In other words, if you
23 were given an indeterminate thirty year sentence, you would
24 have to serve a certain fraction of that sentence in jail and
25 you might serve the entire sentence in jail depending on

1 whether or not the Parole Board lets you out early. Do you
2 understand that?

3 MR. RICE: Yes, sir.

4 THE COURT: So, it's indeterminate in that the
5 exact amount of time would not be determined. Only the
6 minimum amount of time would be determined based upon the
7 percentage that would apply. Do you understand that?

8 MR. RICE: Yes, sir.

9 THE COURT: For instance, if you were sentenced to
10 an indeterminate period of incarceration in the Idaho State
11 Penitentiary for thirty years, you may have to serve a
12 third of that, at least, and whether or not you spend the
13 balance of the term would perhaps depend upon the Parole
14 Board's analysis of your case with reference to whether or
15 not they felt you would be a good candidate for parole. Do
16 you understand that?

17 MR. RICE: Yes, sir.

18 THE COURT: But, certainly, an indeterminate
19 sentence does not mean automatically that you would be
20 released after serving a certain percentage. It simply means
21 that it's a possibility, however you may serve the entire
22 term in the penitentiary. Do you understand that?

23 MR. RICE: Yes, sir.

24 THE COURT: That's an indeterminate sentence. A
25 fixed sentence, on the other hand, is a sentence that

1 requires that you spend that entire amount of time in jail.
2 For instance, if I sentence you to a fixed term of twenty years
3 you would have to spend twenty years in jail without any
4 possibility of parole. Do you understand that?

5 MR. RICE: Yes, sir, I do.

6 THE COURT: So, we have to understand those two
7 terms when we analyze or look at the possible punishments you
8 may receive if you plead guilty to murder in the second degree.
9 Because the provision in the sentencing statute provides that
10 you can be sentenced to life imprisonment, and because I have
11 the power to impose the fixed life sentence. That means,
12 when you read those two sections together, that I have the
13 authority to sentence you to serve a period of incarceration
14 in the Idaho State Penitentiary until the day you die, with
15 no possibility of parole. Do you understand that?

16 MR. RICE: Yes, sir.

17 THE COURT: And do you understand that if you plead
18 guilty to two counts of second degree murder that I can
19 impose a fixed life sentence on the first charge, and a
20 fixed life sentence on the second term?

21 MR. RICE: Yes, sir.

22 THE COURT: And that simply means that when you
23 combine those together, that's the maximum punishment you can
24 receive if you plead guilty would be to spend the rest of
25 your natural life in the Idaho State Penitentiary. Or, to say

1 it a different way, I can sentence you to prison until such
2 time as you die. Do you understand that?

3 MR. RICE: Yes, sir.

4 THE COURT: Now, do you feel you've had an adequate
5 opportunity to talk to your lawyers with reference to how you
6 wish to proceed today?

7 MR. RICE: Yes, sir; I have.

8 THE COURT: And do you have any complaint whatsoever
9 about the manner in which the lawyers have represented you?

10 MR. RICE: No, sir.

11 THE COURT: Do you feel that they've paid attention
12 to you?

13 MR. RICE: Yes, sir.

14 THE COURT: Do you feel they've looked out for your
15 best interest?

16 MR. RICE: Yes, sir.

17 THE COURT: Do you have any complaints about them?

18 MR. RICE: No, sir.

19 THE COURT: Has anyone made you any promises? In
20 other words, has anyone told you that if you plead guilty
21 today, that you will or will not receive a certain sentence?

22 MR. RICE: No, sir.

23 THE COURT: Has anyone told you that you will be
24 given any type of reward for pleading guilty today?

25 MR. RICE: No, sir.

1 THE COURT: Has anyone told you that I would be
2 easier on you if you pled guilty today?

3 MR. RICE: No, sir.

4 THE COURT: Has anyone told you anything about what
5 I might do in this case?

6 MR. RICE: No, sir.

7 THE COURT: You understand that if I feel it would
8 be appropriate, that I can, in fact, sentence you to serve a
9 period of incarceration in the Idaho State Penitentiary until
10 the day you die?

11 MR. RICE: No, sir.

12 THE COURT: Okay, let me ask you that question
13 again. Do you understand --

14 MR. RICE: Oh, yes, sir, I do. I'm sorry, I heard
15 you cough and then you broke off --

16 THE COURT: All right, let me ask you again. Do
17 you understand that if I feel it would be appropriate in
18 your case, that I may sentence you to serve a period of
19 incarceration in the Idaho State Penitentiary until the day
20 you die?

21 MR. RICE: Yes, sir.

22 THE COURT: Has anyone told you that I would be
23 easier on you if you would pled guilty, as opposed to if you
24 were found guilty after going to trial?

25 MR. RICE: No, sir.

1 THE COURT: So, let me ask you finally: Has anyone
2 made you any promises, whatsoever, with reference to your
3 treatment as a result of your pleading guilty to these two
4 counts of second degree murder?

5 MR. RICE: No, sir.

6 THE COURT: Have you had any drugs today?

7 MR. RICE: No, sir.

8 THE COURT: Any alcohol?

9 MR. RICE: No, sir.

10 THE COURT: Mr. Dee and Mr. MacGregor, do you feel
11 -- and it makes it difficult, so I'll ask you Mr. Dee and if
12 you want to speak, Mr. MacGregor, you feel free to. Do you
13 feel that your client has a clear understand of what he is
14 doing today based upon your numerous discussions with him
15 concerning this matter?

16 MR. DEE: I believe so, Your Honor. We have
17 outlined it in writing, even, just what His Honor has gone
18 over as recently as an hour and a half ago.

19 MR. MACGREGOR: In that regard, Your Honor, there
20 is one question I have, because you asked Mr. Rice whether
21 he understood what the term "fixed term," meant. Now, we've
22 very carefully went over that with Mr. Rice not more than
23 fifteen or twenty minutes ago and we thought he understood,
24 but we would like to have the Court again go into that
25 question because we explained to him the sentencing procedure

1 we explained the possible punishments that may be involved.
2 We further explained what the term "indeterminate," would
3 mean, as well as fixed term. Since there possibly was some
4 confusion, I would like to have that straightened out.

5 THE COURT: All right, well, I though he understood,
6 but I will go over it again.

7 With reference to -- let me give you an example:
8 an indeterminate life sentence means you would have to serve
9 a certain percentage of your life term and then you would be
10 eligible for parole. But because no one knows how long you're
11 going to live, it's difficult to apply that percentage to
12 an unknown. So, what the Court has done, is they have said
13 that we will consider life term to be thirty years. Then,
14 they impose a percentage on that thirty year term. So, if
15 you are given an indeterminate life sentence, for example,
16 you would be required to spend one-third of thirty years in
17 jail, after which time you would become eligible for parole;
18 do you understand that?

19 MR. RICE: Yes, sir.

20 THE COURT: Is that your understanding, Mr. Dee?

21 MR. DEE: Yes, Your Honor.

22 THE COURT: And Mr. Boomer?

23 MR. BOOMER: Yes, sir.

24 THE COURT: I also have the authority to impose
25 instead of an indeterminate life term, a fixed life term,

1 which would mean that you would stay in the penitentiary for
2 how long, Mr. Rice?

3 MR. RICE: Until the day I die.

4 THE COURT: Until the day you die, for the rest of
5 your natural life. So by pleading guilty today, you're
6 subjecting yourself to the possibility that you will go to
7 the penitentiary and stay there until the day you die; do
8 you understand that?

9 MR. RICE: Yes, sir.

10 THE COURT: With no possibility for parole?

11 MR. RICE: Yes, sir.

12 THE COURT: Does that clarify that in your mind,
13 Mr. MacGregor?

14 MR. MACGREGOR: I believe that clarifies it. I
15 wanted to be sure he understood it.

16 THE COURT: All right. Mr. Dee and Mr. MacGregor,
17 I assume you have discussed with Mr. Rice all of his options
18 with reference to his pleading not guilty and going to trial
19 and facing the possibility of conviction on the charges that
20 he is confronting right now, is that correct?

21 MR. DEE: That is correct, Your Honor.

22 THE COURT: And I further understand that you have
23 talked to him about his rights on appeal, and what effect
24 pleading guilty would do to his present appeal that is pending
25 before the Court?

1 MR. DEE: That is correct, Your Honor.

2 THE COURT: And to that particular appeal concerns,
3 as I recall, whether or not certain matters should be
4 excluded from the consideration of the jury, is that correct?

5 MR. DEE: That is correct.

6 THE COURT: And by pleading guilty, he will, in
7 essence, giving up his right to challenge the sufficiency of
8 the evidence, he will be giving up his right to challenge
9 various seizures and various confessions that may have been
10 taken by him, arguably, in violation of his constitutional
11 rights; is that correct?

12 MR. DEE: That is correct, Your Honor.

13 THE COURT: Does he so understand that?

14 MR. DEE: He does understand.

15 THE COURT: Do you understand that, Mr. Rice?

16 MR. RICE: Yes, sir, I do.

17 THE COURT: In other words, to make it a little
18 more simpler, your attorney's have alleged that statements
19 that you made to the police were taken from you in violation
20 of your constitutional rights; do you understand that?

21 MR. RICE: Yes, sir.

22 THE COURT: Ultimately, if a Court were to decide
23 that that fact was true, that is, that with your confession
24 or incriminating statements were taken in violation of your
25 constitutional rights, then the State would be forced to

1 exclude those statements from the evidence they present to
2 the jury. Do you understand that?

3 MR. RICE: Yes, sir.

4 THE COURT: And do you understand that by pleading
5 guilty today, you are going to give up your right to challenge
6 the alleged violation of your constitutional rights with
7 reference to the taking of confessions, for example, and
8 statements and any other type of evidence that may have been
9 seized in violation of your constitutional rights?

10 MR. RICE: Yes, sir.

11 THE COURT: I will ask you formally, then, at this
12 time with reference to Count One of the Information that
13 charges you with, as a principle, in the crime of second
14 degree murder and the death of Del Dean Herndon in violation
15 of Idaho Code 18-1401, 18 -- excuse me -- 18-4001, 18-4003
16 Sub G, and 18-204; how do you plead, guilty or not guilty?

17 MR. RICE: Plead guilty, Your Honor.

18 THE COURT: With reference to County Two, which
19 charges you with, as a principle, in the killing of Alberta
20 Louise Herndon, murder in the second degree in violation of
21 Idaho Code 18-4001, 18-4003 Sub G, and 18-204; how do you
22 plead, guilty or not guilty?

23 MR. RICE: I plead guilty, Your Honor.

24 THE COURT: Now, you may be seated. Let me ask
25 you; have you ever been charged with a crime before?

1 MR. RICE: Yes, sir; I have.
2 THE COURT: And what has that been?
3 MR. RICE: Pardon me?
4 THE COURT: What has that been?
5 MR. RICE: It was armed robbery and second degree
6 burglary.
7 THE COURT: And you were convicted of those
8 offenses?
9 MR. RICE: Yes, sir.
10 THE COURT: And were you ever represented by
11 counsel when you were convicted of those offenses?
12 MR. RICE: Yes, sir.
13 THE COURT: And did you go through a court hearing?
14 MR. RICE: I didn't go through a jury trial, no.
15 THE COURT: Did you go through a hearing perhaps
16 similar to this?
17 MR. RICE: Yes, sir; I did.
18 THE COURT: And were you sent to the penitentiary?
19 MR. RICE: Yes, sir; I was.
20 THE COURT: And where was that?
21 MR. RICE: In California.
22 THE COURT: And how much education do you have?
23 MR. RICE: I graduated from the eleventh grade.
24 THE COURT: And have you ever held steady
25 employment?

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MR. RICE: Yes, sir.

THE COURT: Can you read?

MR. RICE: Yes, sir.

THE COURT: Can you write?

MR. RICE: Yes, sir.

THE COURT: How long have you worked at one period of time?

MR. RICE: Four years.

THE COURT: And what did you do?

MR. RICE: Roofer, commercial and private industry roofing.

THE COURT: Well, I do find that the defendant in this case has knowingly, intelligently and voluntarily, with full knowledge of the consequences that may follow, entered a plea of guilty to murder in the second degree, two counts.

Now, before I can accept your plea, I have to ascertain whether or not there a factual basis for your pleading guilty, and how do you gentlemen wish to proceed with reference to that?

MR. DEE: Mr. Boomer, do you want to have him sworn in and testify?

MR. BOOMER: I would prefer that, Your Honor, I would prefer to have the defendant under oath.

THE COURT: You wish to inquire of Mr. Rice at this time?

1 MR. DEE: Yes, Your Honor.

2 THE COURT: Perhaps, if you can raise your right
3 hand, you'll be sworn to testify.

4 JAMES MICHAEL RICE,

5 Called as a witness on behalf of the State, after first being
6 duly sworn upon his oath to tell the truth, the whole truth,
7 and nothing but the truth, testified as follows, to-wit:

8 DIRECT EXAMINATION

9 BY MR. DEE:

10 Q Would you state your name, please, Mr. Rice?

11 A James Michael Rice.

12 Q And where do you live?

13 A In Orland, California.

14 Q And what is your age?

15 A Twenty-seven.

16 Q What is your marital status? I mean, are you
17 married?

18 A Yes, sir, I am.

19 Q And how many children do you have?

20 A We have three and one on the way.

21 Q Where is your wife, at the present time?

22 A She is in California, at home in Orland.

23 Q Now, to get into this situation as quickly as
24 we can, Mr. Rice, do you know of William Odom?

25 A Yes, sir, I do.

1 Q And where did you meet Mr. Odom?

2 A I have a tree service that I do on weekends
3 when I'm not roofing and I needed somebody to help me take
4 down two trees and I asked Bill Odom if he would want to
5 work for a day, and he said yes, and this was last January
6 of '85. And I hired him for a day to work with me and that's
7 how I met him. I never let him work again, though.

8 Q Well, now, where did Mr. Odom live at that
9 time?

10 A Just around the block from where I lived.

11 Q And after that, what contact did you have with
12 Mr. Odom?

13 A Not very much. He started doing some drugs and
14 taking his wife's checks and my wife found out about it so
15 she told me to stay away from him. Occasionally, I would see
16 him walking around where I would just say hi to him or
17 something and we would talk for a little bit, but that was
18 about it.

19 Q Did you ultimately take a trip with Mr. Odom
20 up to the State of Idaho?

21 A Yes, sir; I did.

22 Q And when was this?

23 A It was July sixteenth.

24 Q Of what year?

25 A 1985.

1 Q And what was the occasion of taking this trip?

2 A Bill Odom was up here prior to going back to
3 California, he said he was up here working in the apples and
4 he was making ninety-nine dollars a day. When I saw him after
5 he came back to California, he had, I believe, a three
6 thousand nine hundred dollar check that he wanted to know if
7 I could cash for him. I told him no, and he asked me if I
8 wanted to make some money, help him and his wife move up there
9 and he would pay me for driving the car up here. Plus, I
10 could work in the apples for a couple of weeks and make
11 ninety-nine dollars a day and then I could go back home.

12 So, I called my boss and I took two weeks off from
13 work and I volunteered to come up here and help him move.

14 Q How many vehicles did Mr. Odom have?

15 A After he got his check cashed, he bought a
16 1970 Ford pickup and I believe he bought a Oldsmobile -- or
17 Buick Skylark, rather.

18 Q So, that --

19 A He had two automobiles.

20 Q Now, approximately when did you leave on this
21 trip?

22 A We left July sixteenth.

23 Q And who all was in the party?

24 A It was William Odom, his wife, Lene, their two
25 children and Jerry Pizzuto.

1 Q Now, when did you meet Mr. Pizzuto?

2 A Just two days before we left.

3 Q And what was the occasion of meeting him?

4 A I went over to Bill Odom's house asking what
5 all I should take, see if there was room, see if I should
6 take more clothes than I was going to, and he introduced me
7 to Jerry Pizzuto and I later learned that Jerry Pizzuto had
8 been staying at Bill Odom's house while he was up here in
9 Idaho.

10 Q Did he introduce him as Jerry Pizzuto?

11 A No, sir, he didn't.

12 Q What name did he use, if you recall?

13 A He introduced him to me as Jerry, but later on
14 Jerry told me his last name was Gilbertson.

15 Q When you started out from California, where
16 did you go?

17 A We went through Nevada and then through
18 Oregon and then into here.

19 Q Now, when you say "here," you mean?

20 A Into Idaho.

21 Q Where did you stop in Idaho?

22 A First stop we stopped in Donnelly and we
23 rented a motel room for, I believe we stayed two nights there.

24 Q And then what did you do?

25 A Then we went over to Bill Odom's aunt and

1 uncle's house. They live in between Donnelly and McCall, and
2 visited them. We never met his aunt and uncle, Jerry or I
3 didn't, but Bill and Lene were over there staying at their
4 uncle's house and me and Jerry would sleep in the car a
5 couple of nights.

6 Q What did you do after that?

7 A After that, Bill had tried to find a house to
8 rent for his wife and him and he couldn't find one, so he
9 suggested we go up to either War Eagle or Ruby Meadows and
10 go camping for a couple of weeks, pan for some gold and
11 rubies and blue sapphires, I believe it was.

12 Q And did you do this?

13 A Yes.

14 Q Approximately when, if you can recall? What
15 was the date?

16 A About the twenty-first, I would say. Before
17 we went up to Ruby Meadows, we went to a sporting goods shop
18 and --

19 Q What town was this in?

20 A This was in McCall. Bill Odom was going to
21 buy a rifle for hunting and he was purchasing a twenty-two
22 automatic rifle and a gentleman behind the counter asked him
23 if he had any I.D. William Odom didn't have any I.D., so
24 they looked at me and he said I've got I.D., so we put the
25 gun in my name and then we went on up to Ruby Meadows.

1 Q Who paid for the gun?

2 A Bill Odom.

3 Q And who kept the gun?

4 A Bill Odom did.

5 Q And now, when approximately did you get up to
6 Ruby Meadows?

7 A I believe it was about the twenty-first, but
8 it was evening time, just before dark around eight-thirty or
9 nine, I believe.

10 Q Who was in the party?

11 A Myself, William Odom, Lene, their two children
12 and Jerry Pizzuto.

13 Q All right. What did you do that first
14 evening?

15 A William and I went fishing for some brook
16 trout and we built a fire and we ate dinner and we went to
17 bed.

18 Q What did you do the next morning?

19 A Next morning, Bill and I went up on the ridges
20 and went hunting for some grouse and elk, and we hunted for
21 about five or six hours and we came into the back side of
22 Ruby Meadows, we had walked all the back ridges just about
23 and we came upon a cabin as you come into Ruby Meadows, you
24 take a hard left and the cabin lays about two hundred and
25 fifty yards. We seen the cabin, it was abandoned and we went

1 back to the camp site and he told his wife about the cabin
2 and we told them we could sleep in the cabin, so we moved all
3 our things from the camp site into the cabin.

4 Q That was the second day you were there?

5 A Yes, sir.

6 Q How long did it take you to move everything
7 into the cabin?

8 A About an hour.

9 Q What else did you do, if anything, that day?

10 A Later on that evening, Bill and I went hunting
11 again. It was probably about three-thirty in the afternoon
12 when we left to go hunting and we came back about six o'clock,
13 I believe, in between there. I didn't have a watch.

14 THE COURT: What was the date?

15 A That was the twenty-second, I believe.

16 THE COURT: Of?

17 A July.

18 THE COURT: You may proceed.

19 Q (By Mr. Dee) Then did anything ever more happen
20 that night?

21 A No.

22 Q Then what happened the next day?

23 A The next day, Bill and I went to -- I believe
24 it's the back side of McCall.

25 Q When?

1 A This was the twenty-third of July.

2 Q In the morning?

3 A In the morning.

4 Q What time did you go?

5 A About eleven o'clock, I would think.

6 Q Did you drive?

7 A We drove the pickup.

8 Q All right, go ahead -- you and who now?

9 A Bill Odom. We went to lake side of McCall, I

10 don't know what part it's called. We went to get gas and some

11 supplies and we bought some beer and potato chips and things

12 and the truck had stalled in between time going to the store

13 and getting gas, so we crossed the street and Bill seen a

14 police officer he knew and was talking to the man,

15 introduced me to him and there was some people in the car

16 that was on their way to Alaska, I believe it was, and they

17 gave us a jump in their car. And after that there, we went

18 ahead and came back to the camp.

19 Q What time did you go back to the camp?

20 A It was probably about six o'clock, it took a

21 while to get the truck jumped and get back, but on our way

22 back to camp there was a truck parked in the -- just off the

23 road inside the drive, back end of it was full of beer and

24 Bill said we don't need to go to the store, here's a whole

25 keg here, and when we got back to the cabin, he told Jerry

1 Pizzuto, if we run out of beer, we can go up to the yellow
2 truck up there with beer in the back of it.

3 After that, we sat around the campfire and drank
4 some beer and about -- I don't know what time it was, but
5 went to bed, but the next day, I believe it was the twenty-
6 fourth, Bill and I again got up early in the morning and we
7 made our own breakfast and we went up on the ridges again.
8 This time we took our pans and shovels and rifle to go
9 hunting and panning. We were gone three or four hours and
10 came back. After we got back, we still --

11 Q What time was it, approximately, when you got
12 back?

13 A We left about five o'clock in the morning, got
14 back about ten-thirty, I believe, I guess, somewhere in there.

15 Q Go ahead.

16 A After we got back, Bill told Jerry to go down
17 and do some fishing and bring up some lunch. So, Jerry took
18 my pole and Bill went fishing with him, too, took his pole
19 and they came back and brought back a few brook trout, I
20 believe it was brook trout, anyway, and they skinned them,
21 fried them up and ate them and later on that evening, Bill
22 told me that we could go up on War Eagle and take a claim
23 and claim it ours. I asked him if he meant jumping somebody's
24 claim and he told me, yes, and I told him, "we can't do that,"
25 and he said, "if they don't find the bodies, they can't prove

1 anything." And I told him, "no, we can't do that," so we let
2 it go at that.

3 I believe that was the twenty-fourth, but anyhow we
4 went hunting again that evening. When we got back, we sat
5 around the fire again talking, and again went to bed.

6 Then, the morning of the twenty-fifth came around
7 and I believe it was -- me and Bill got up again real early
8 and there was frost out. We made a fire and we made
9 breakfast and went hunting again. We came back about near
10 the noon hour, close to it, anyway, and I went ahead and we
11 had a stream right by the cabin. In between these days, I
12 had two holes that I was getting sand and gravel out of and
13 I was panning for gold or whatever I could find out of them.
14 One was up the road from the cabin and one was directly
15 behind, so I got a five gallon bucket, got the sand in it on
16 the north side of the stream, I believe, and I started
17 panning. Then, Bill asked me to go hunting again. I told
18 him after I finished this bucket, we'll go hunting and he
19 was wanting to go right then and there, and I said "Okay,
20 I'll finish later." So, we started walking down the trail
21 towards the opening of Ruby Meadows where there is a pond,
22 we came to the clearing just before the clearing and there
23 was a yellow, what I thought was a Toyota pickup parked
24 outside -- right up on the outside of the bank and there
25 was one man standing near the edge of the water and another

1 standing near the front of the truck fishing. Bill told me
2 right then and there, "go back to the cabin and send Jerry
3 back, he's going to go hunting with me."

4 When I started to do that, Bill started following
5 me back to the cabin. I told Jerry, "Bill wants you to go
6 hunting with him, I'll stay with the kids." I went back to
7 my bucket work, panning and Jerry and Bill had left the cabin
8 and were heading down towards the opening of Ruby Meadows.
9 About twenty minutes later, Bill came back and he wasn't
10 carrying the gun this time. He went into the cabin and got
11 his fish eggs, he had got some when he bought the rifle and
12 I asked him "Where's Jerry at?" "Talking to the two fishermen."

13 Right then, for some reason, something in my
14 mind, Bill had never any other time let anybody else touch
15 the rifle, I wasn't going to ask him why, but I was just
16 curious, why, and I started getting suspicious that something
17 was going to get wrong. Bill left, went back down to where
18 Jerry was and about fifteen minutes later I heard a truck
19 coming up. So, I stopped my panning, got up and kept my pan
20 in my hand. I found fourteen rubies, what I thought were
21 rubies. They turned out to be garnets instead and I had them
22 in my shirt pocket in a cellophane wrapper and the pan in
23 my hand when the truck came up. It had a man and woman
24 inside. They slowed down where it goes across the creek
25 crossing and I -- they stopped and I asked them how they were

1 doing. I started talking with the man, I could barely see
2 the lady because the rear of the truck, the windows, it was
3 a wrap around, I guess, and I started talking to him and
4 told him I had been panning for gold for a couple of days
5 and I didn't know what I was looking for, and I showed him
6 my rubies we found. We started talking and we laughed a
7 little bit and this all took less than four maybe three
8 minutes and then they drove on.

9 About, maybe no more than three minutes after they
10 had left, well, Jerry and Bill came up, they weren't at a
11 run or anything, but not at a walk either. I was back at my
12 water hole panning and Bill and Jerry came up. Jerry asked
13 who is that I was talking to and I said it was just a man
14 and a lady. They said "Where did they go?" I told him they
15 went up the road. About five minutes later, I guess, Jerry
16 had taken the rifle again from Bill and said "I'm going to
17 go hunting and get me some meat." At that time, nothing
18 kicked in my mind, I didn't think anything was going to go
19 wrong and after about -- I quit panning at that time and I
20 went over and sat with Bill on the porch and we started
21 drinking a beer and smoking a cigarette. After our first
22 beer, I guess, about ten or fifteen minutes after that we
23 started talking about Jerry -- or Bill brought the subject up.
24 He said he was afraid of Jerry, he didn't trust him. I said:
25 "Yeah, if I had a face like Jerry, I wouldn't trust him

1 either." No, he said, Jerry scares him, is what he said, and
2 I said "If I had a face like Jerry, I would be scared too."
3 About another ten minutes went by and we drank another beer
4 and Bill said: "Let's go up and we'll get my gun and we'll go
5 hunting on the ridge."

6 I said something and we got in Bill's truck and we
7 drove past the place where the Herndon's had driven and there
8 were more cabins up there and a couple of them that were
9 torn down, but in between our cabin and where the Herndon's
10 were, I was leaning out of the truck yelling Jerry's name
11 hoping he would come out of the bushes or something, get his
12 attention. As we came up, I kept yelling and yelling and
13 finally we came out of the clearing, I called Jerry's name
14 and we saw the Herndon's truck parked and there was no one
15 around. We turned around and came back and I was yelling
16 Jerry's name again. Jerry stepped out of the cabin, there
17 was a cabin, the first cabin that you come in to after the
18 clearing is a small one. It's about ten feet across and
19 twelve feet wide and when we were driving down, Jerry came
20 out of the cabin, I told Bill, I said "There he is," and he
21 stood at the door and held up a gun in a holster and held it
22 up like that and I took a look at Bill and said "He's got
23 those people in the cabin." Jerry said "Give me a half hour
24 and come back."

25 We drove off, we parked the car and I told Bill

1 "There's no way we can give that guy any time." We jumped
2 out of the truck, I didn't know what I was going for, we were
3 looking for something and Mrs. Odom, Lene, asked what was
4 going on and Bill said "I think Jerry is going to kill those
5 people." So we ran up there and right when we were getting
6 there, you can hear the people getting hit in the head with
7 the hammer, which at that time, I didn't know it was a hammer,
8 but after that there, Jerry came out of the cabin and had
9 the hammer in his hand, he was carrying the rifle . . .

10 THE COURT: Why don't we let him take a moment.

11 MR. DEE: What happened after that?

12 A After that, Jerry came walking out of the cabin
13 and had the rifle in his hand and he had a bloody hammer in
14 his hand. I didn't know what to do at that time, but I looked
15 at Jerry's feet and he also had the guy's boots on. He
16 came out of his pocket -- he handed Bill Odom the rifle and
17 he came out of his pocket and he pulled out a wad of hundred
18 dollar bills. He told Bill, he said: "There's nine hundred
19 dollars there." And Bill asked -- I think Bill asked him:
20 "Where is his wallet?" And Jerry said it was in his back
21 pocket.

22 I didn't see the hand gun that Jerry had, I believe
23 it was in his back pocket or in his waistband. I took Bill
24 from the gun -- I mean, the gun from Bill and I started
25 walking towards our original cabin. Jerry said: "Where are

1 you going?" I told him: "I'm going back to the cabin."
2 He said you're going to dig a hole and you're going to help
3 bury those people. I told him I wasn't going to help nobody
4 and I was walking past the cabin and I heard some scuffling
5 inside the cabin. The man was in there, his feet were
6 shaking. I looked at the lady, she had a big 'ol blood spot
7 on the back of her head. I looked at him and he was laying
8 on his back and had blood on his face and on the side of his
9 head and his legs were shaking like -- oh, well, reminded
10 me of when my dad used to hit a rat with a hammer, the rat
11 would shake. I took the .22 rifle and shot him
12 between the eyes, tried to put him out of his misery. I got
13 sick, I cried. As I was walking back down to the cabin,
14 Jerry said: "Hey." I turned around and this time he had the
15 .380 automatic in his hand. He gave me a shovel and told me
16 to dig a hole.

17 Q (By Mr. Dee.) What happened to the rifle?

18 A I went ahead and took -- after he gave me the
19 shovel, I went ahead and took the rifle down to the cabin
20 and I came back up there and started to dig the hole. I
21 didn't know what else to do.

22 Q Now, where did you dig the hole?

23 A I dug the hole approximately about, maybe
24 sixty yards, seventy yards from the cabin where the people
25 were hit in the head. Down towards our cabin near -- heading

1 towards the opening of the Ruby Meadows.

2 Q Go ahead, and then what happened?

3 A I asked Jerry if he was going to kill me. He
4 just told me to go ahead and dig. After I dug the hole, I
5 -- I dug it about two feet, I threw the shovel down and I
6 ran back down to the cabin. Before I came back up there,
7 after I took the gun back, while I took the gun back, Lene
8 asked me what happened and I told her what had happened. I
9 told her: "We got to get the heck out of here," and that's
10 when I went back up and dug the hole, but I dug it about
11 two feet. I guess I came to my senses and I threw that shovel
12 down and went back to the cabin.

13 About ten minutes later, in the meantime, I was
14 loading the truck, getting all of my stuff and all of their
15 stuff and putting it all in the truck. Jerry and Bill came
16 down. Jerry yelled at me a little bit and told me the hole
17 wasn't deep enough, go back up there and dig it deeper. Well,
18 I had done that. After I dug the hole deeper, I went back
19 down to the cabin. After I dug the hole, there was a rock
20 that was marking a trail that me and Bill used to take and
21 I moved the rock in line with the grave of where the woman
22 was going to be buried. At the time, I didn't know who was
23 going to be buried there or if both were going to be buried
24 there, but I moved the rock to where it would line up with
25 the grave. I went back down to the cabin, again, about

1 twenty minutes after that, Bill and Jerry came down driving
2 the Herndon truck. And Bill had said: "We buried the lady,
3 everything's okay, we got the man in the back of the truck
4 and now we've got to go bury him." Jerry looked at me and
5 said: "You're going to help us bury the man." I said: "I'm
6 not going to help you bury nobody, I'm not touching the dead
7 body, I'm not going to do nothing." Jerry had taken the gun
8 out of his back pocket and I went ahead and I knelt my head
9 down to my knees and all at one time, Bill yelled out: "No,"
10 he used a couple of bad words and told him that he would help
11 him bury the man. And so after Jerry had agreed, he said:
12 "Well, you're going to come with us anyway and help us lift
13 the guy out of the back of the truck," because he was heavy.
14 I didn't have any other words to say about it and I went with
15 them and just passed the cabin probably a hundred and fifty
16 yards, there's a little dirt road that goes off to the left
17 and I believe there's some old diggings that are there, a
18 pile of dirt and we lifted the man out of the back of the
19 truck and sat him on the ground. After that there, I
20 remembered the rock that I had set there by the would be grave
21 of whichever person was going to be buried, so I took -- I
22 thought at first it was fifty gallon drum, but later on I
23 realized it was a twenty-five gallon oil drum, I took it out
24 of the Herndon truck and I sat it right next -- just fifteen
25 feet from where the man was being buried.

SECOND DISTRICT COURT
IDAHO COUNTY

1 Q What was the purpose of marking the graves?

2 A I had it in my mind already that was going to
3 the police and tell them what I know, and I never had a
4 chance.

5 Q Okay, what occurred then?

6 A After the man was buried, Bill and I had
7 walked back down to the cabin and Jerry drove the Herndon
8 truck. I went ahead and started -- kept loading our things
9 into the truck because Lene told Bill that everything was
10 wrong here and we should leave, and I agreed with her
11 probably too fast, but Jerry had told me, he told Bill and I
12 that we were taking the tools, the chain saw and there was
13 some kind of pump in the back of the Herndon truck, and we
14 were taking those with us. He told me to get the chain saw
15 out of the back of the truck, so I did. And just before that
16 there, we were all in the cabin and Bill had knelt down and
17 he put out three piles of hundred dollar bills and I told
18 Bill: "I don't need no money." I mean, because he was
19 supposed to pay me for driving their car up here in the first
20 place, I told him I didn't need any money and I looked at
21 Lene's face and I looked at Bill and Jerry was behind me, and
22 I knew that Jerry had to have something in his hand by the
23 look on Lene's face, and Bill said: "Yeah, you need the
24 money." And it was three hundred and forty dollars, so I
25 went ahead and took it. I didn't know until later that Jerry

1 had the gun at the back of my head.

2 So, after that, after we started loading the truck
3 and Jerry told me to go ahead and put the chain saw in and I
4 went ahead and did it. And then he asked -- he told us to
5 put the pump in the back of the truck and Bill yelled out:
6 "No, we're not taking it. It's too big, we don't need it, we
7 don't want it."

8 So, about another twenty minutes of loading went
9 by. Lene had gone through the lady's purse, Bill had told
10 her to go through it, see if there was any money in it. She
11 done so. We burned the credit cards. I saw Jerry, I seen his
12 hand and I said: "Man, Jerry's kind of sick; he's got the
13 guy's boots on and he's got his ring on." I don't know if
14 Jerry heard me, but he made a scowling remark at my face with
15 his eyes and Bill told me to hush, so I did.

16 As we were getting ready to leave, I asked what
17 they were going to do with the Herndon truck and Jerry said:
18 "I'm taking the truck, I'm keeping it." I told Bill: "I'm
19 riding with you." Bill told me to ride with Jerry and I
20 said: "No, I ain't riding with Jerry; I'll wind up falling
21 out of the truck somehow." So, we got in the truck of Bill
22 Odom's, except Jerry, he was in the Herndon truck. As we
23 were leaving, I was holding William's oldest son, Billy --
24 his youngest son, Jacob, and as we were leaving his son had
25 puked on me, so I just shrugged that off. At that time, I

1 wasn't going to get in the truck with Jerry, there were five
2 of us all together in Bill's truck, counting these two
3 children. When we hit the road heading back towards McCall
4 and his son puked on me again and the smell was getting kind
5 of bad and I went ahead and told Bill: "I'll go ahead and
6 ride with Jerry, but we'll either stay in front of you or
7 real close behind you." So, I went ahead and started to -- I
8 got out of the truck and I rode with Jerry towards McCall.
9 He was trying to talk me into going with him to Washington,
10 Montana and Florida with him. He said all I would have to do
11 is drive the vehicle and he would rob and take whatever he
12 could from people, and I said: "No, I couldn't do that."

13 So, we went to a hamburger joint just inside McCall,
14 I don't remember the name of it. I believe we bought almost
15 a dozen hamburgers, anyhow, and we got the hamburgers, divided
16 them up. I went ahead and gave mine to Jerry and we drove to
17 the Hot Springs just inside of Donnelly, I don't remember the
18 name of them, but we got there and it was about eight-thirty
19 at night. At this time, we got there and we covered the
20 Herndon truck and the Odom's truck with a blue tarp that I
21 had brought with me to cover their furniture and stuff; it
22 was a roofing tarp I used on people's homes. We covered the
23 trucks and Jerry told me I was going to sleep -- telling me
24 that I was to sleep inside the truck and he would sleep in
25 front of it and Bill would sleep on the side of it. So, I

1 went ahead and laid in the truck, I didn't sleep much, but
2 the next day, this would be the twenty-sixth, the next day we
3 went to -- we took the back road to Cascade and after about
4 thirty minutes of driving the back road, Jerry Pizzuto and
5 Bill had gotten into the Herndon truck and drove it into the
6 woods somewhere in there and they left it there.

7 And then, we went ahead and went on into Cascade
8 where Bill had rented a motel room -- I don't remember the
9 name of it -- rented a motel room and we were going to spend
10 the night there. Well, after we got the room and stuff, we
11 all went into town and Bill bought everybody breakfast. I'd
12 asked the lady at the motel just before that if there was any
13 bus transportation that goes, like Greyhound or anything like
14 that, and she told me that there was one that goes through
15 Cascade. She told me the northbound goes at six-thirty and
16 the southbound goes at six, or something like that. But --
17 excuse me -- when we got to the restaurant, we went ahead and
18 got our meal and took it back to the motel room. And so after
19 we had eaten, I just stayed as far away from Jerry as I could,
20 but there was no where I could get from him anyway, but I was
21 laying on the bed, this was in the evening time, for some
22 reason I woke up, but when I woke up Jerry was just putting
23 the nine millimeter from the Herndon's, he was just putting
24 it away. I kind of looked at him and Bill was looking at me
25 and said if he would have done that, it would have brought

1 the police there, it would have been too much noise. Right
2 then and there I knew the gun was pointed at my face when I
3 was asleep.

4 So, the next morning I went into town and we got
5 breakfast, and that's -- Jerry and I had went into town on
6 this day, this was about the twenty-seventh. We were in the
7 restaurant and we had ordered breakfast and the lady had told
8 me that, at the motel, that I could get my ticket at a drug
9 store that was right across from the restaurant. So, I told
10 Jerry: "I'm going to go across to the drug store and buy
11 some postcards for my wife." He told me: "Okay, just hurry
12 up." So I started going across the street and I got inside
13 there and I asked the girl that was working if I could buy a
14 bus ticket to California and when the next bus came. She
15 sold me a bus ticket and as I was putting it away, Jerry
16 walked into the store. He asked me: "What -- what's that
17 in your hand?" I told him that's a money order, and I looked
18 at the girl and I give her kind of a shy eye, I guess, and
19 she understood I didn't want him to know. So, I told him it
20 was a money order because I remember in California, anyway,
21 money orders are green a lot. So, I put it in my wallet and
22 went ahead and paid for the postcard. Jerry bought -- in
23 between the time that I was in the restaurant, he had bought
24 a box of nine millimeter shells for the handgun he had. And
25 he had about a roll of film in the drug store, so we went

1 back to the restaurant and got the food. The lady inside
2 the drug store told me what time the bus was coming, so we
3 went to the restaurant and got the food and took it back to
4 the motel room.

5 When we got back, I told Bill, I said: "You guys
6 might not like this, Bill, but I've got me a bus ticket and
7 I'm going back home tonight." Bill said: "Good thing you
8 are, because I couldn't have stopped Jerry again." And I
9 knew what he meant by that, and I had talked Bill into
10 letting me drive the truck into town with Lene and Jerry,
11 because if I went with just Jerry, I knew I probably wouldn't
12 have made it to the bus station. So, the three of us went to
13 the restaurant and we ordered dinner for themselves and the
14 bus was a little bit late, but I got on it about a quarter to
15 seven, and I started my homeward destination, I guess. And
16 there was a couple of times when I thought I should get off
17 the bus and call the police, but Jerry had mentioned to me
18 that he's got a friend of his down in California that I had
19 heard -- before we left there was a Corvette that was blown
20 up in Chico, California and Jerry told me that his friend
21 had done that for him. He told me that he had called his
22 friend and he was going to meet me at the bus station in
23 Orland. Well, right then, I thought maybe Jerry's friend
24 was going to take me for a longer ride than the bus was so I got
25 off from the bus a hundred miles from my house and I hitch-

1 hiked the rest of the way home in order not to see the guy
2 at the bus station.

3 Before I got home, I called my Mom. I told her,
4 I said: "Mom, I've got some news that I've seen and I don't
5 know how to tell it to anybody." And I told her, I said:
6 "Mom, I've witnessed -- I didn't actually see it, but I heard
7 two people get killed." She told me to come home right away,
8 I hitchhiked home -- I hitchhiked to my house, mine and my
9 wife. I told my wife that Bill and Lene and Jerry and I had
10 all been camping together and I told her -- I didn't tell
11 her what happened, I just told her two people were killed.
12 The next morning, I believe this was probably the twenty-
13 eighth, maybe the twenty-ninth, I'm not sure, but I had
14 called the Chief of Police in Orland, California who was on
15 vacation. And so, I was referred to another guy, Sergeant
16 Bob Boyles who was a pretty good friend of the family. I
17 told him, I said: "Bob, I witnessed a double murder in
18 Idaho." And we went to the police station and I don't know
19 what came over my mind, but I gave them a statement that was
20 virtually all false. And so I took a polygraph test and it
21 came up to where -- when the guy had asked me if the last --
22 was the cabin the last place that I had seen the man and
23 lady? Without thinking, I said: "Yes," which it wasn't.
24 The last place I seen them together was in the cabin. The
25 last place I seen them together was in the cabin, but when I

1 saw the man, the man, the lady was already buried, so I
2 didn't pass that question.

3 He also asked me if I inflicted any pain on either
4 of the victims, and I told him: "No." Well, both questions
5 came up wrong and we were sitting there and he showed me
6 where they had come up wrong and I knew I'd lied, I knew
7 darn well I'd lied. He told me: "Well, let me tell you what
8 I think happened." He said: "What I think happened, is that
9 after this guy Jerry hit the people in the head with the
10 hammer, he gave you the hammer and told you that if you don't
11 do it, he'll kill you." So, I agreed with him, which wasn't
12 what happened. I was more or less afraid of telling him I
13 shot the man in the head and I agreed with him on that. And
14 that's -- that would really set things off on the wrong
15 side of the track, and so I asked to be put into protective
16 custody, and they did. And then, later on, I guess, a couple
17 of days later, I signed extradition papers to come up here.

18 Q I think that pretty well covers the -- do you
19 want to go any further of the events up here or is that far
20 enough for you, Your Honor.

21 THE COURT: No, I don't necessarily need to inquire
22 of anything further. Based upon that story, as I understand
23 it, Mr. Dee, you had conversations with Mr. Boomer to attempt
24 to see what portions, if not all, of his particular story
25 coincided with the evidence that Mr. Boomer intended to

1 present at the trial?

2 MR. DEE: Yes, that's correct, Your Honor.

3 THE COURT: And based upon your analysis of Mr.
4 Boomer's information and the information given to you by Mr.
5 Rice, did you believe that there would be a possibility, then,
6 that Mr. Rice could be found guilty of first degree murder?

7 MR. DEE: Yes, Your Honor.

8 THE COURT: And based upon the evidence that Mr.
9 Boomer advised you that what he was aware of and based upon
10 the various statements given by the defendant to various law
11 enforcement agencies, I must conclude that therefore you felt
12 that it would be wise for the defendant to enter into the
13 plea bargain as has been set out for the Court?

14 MR. DEE: That's right, Your Honor.

15 MR. RICE: Your Honor, if I may, another reason why
16 I have pled guilty is I feel if I acted different, I could
17 have probably stopped them.

18 THE COURT: Mr. Dee, do you have anything further
19 to say?

20 MR. DEE: I don't believe we have, Your Honor.

21 THE COURT: Mr. Boomer?

22 MR. BOOMER: If I could have just a moment, Your
23 Honor, I need to clear my head for a moment. I may have a
24 question or two, but I doubt it.

25 THE COURT: Based upon the information you gave to

1 Mr. Dee, do you believe that you have a case that could
2 convict the defendant on first degree murder?

3 MR. BOOMER: Yes, Your Honor.

4 THE COURT: And what's that based upon?

5 MR. BOOMER: That's based upon statements of other
6 co-defendants and facts and circumstances surrounding the
7 incident. The geographical location of the Ruby Meadows area,
8 being at the end of a dead-end road, prior knowledge of this
9 man that Jerry Pizzuto was a bad guy and was up to no good,
10 some of which has been outlined in his own testimony here
11 today. The fact that Jerry Pizzuto going hunting in the
12 middle of a hot July day did not strike me as being reasonable
13 with he and Mr. Odom deciding some few minutes later to go
14 off and find Mr. Pizzuto, get the gun from him and go hunting
15 themselves; did not ring true to me.

16 Also, the circumstances of death of the people, and
17 furthermore, the fact that Mr. Rice and Mr. Odom saw Mr.
18 Pizzuto in the cabin, at the door of the cabin holding the
19 victim's gun, with the victims no where in sight, knowing at
20 that time that something bad, robbery and or killing was about
21 to take place. Also, the evidence, Your Honor, that Mr. Odom
22 and Mr. Pizzuto were upset that a truck had interrupted them
23 and I believe that's from prior conversation.

24 THE COURT: That -- I'm sorry.

25 MR. BOOMER: Perhaps, I should ask Mr. Rice

1 concerning that.

2 CROSS-EXAMINATION

3 BY MR. BOOMER:

4 Q Mr. Rice, was there any conversation -- we've
5 talked about this before --

6 A When they came back, as I gathered at the
7 preliminary, the man's name was Crawford, as they came back
8 from the truck --

9 Q This is the yellow truck?

10 A This was the yellow truck. And Jerry was
11 talking about he wanted that gun, and Bill said: "That's a
12 .44 Magnum, you'd never get it off the guy's shoulder
13 holster." Bill had also said that if that truck hadn't
14 come by when it did, he said: "It's a good thing that that
15 truck came by when it did, because I had a bead on that man."

16 THE COURT: What truck came by?

17 A The Herndon's.

18 THE COURT: Bead on what man?

19 A Mr. Crawford.

20 THE COURT: The man in the yellow pickup, or by the
21 yellow pickup?

22 A Yeah, right, that's why they came up to the
23 cabin so fast is because the Herndon's had scared them off
24 from doing what they were going to do. The Herndon's don't
25 know it, but they saved those people's lives.

1 THE COURT: Is there anything further from the
2 State?

3 MR. BOOMER: No, Your Honor.

4 THE COURT: Well, after having considered all the
5 matters set forth today, I do believe there is a factual
6 basis for the entry of the plea of guilty to the Counts of
7 first degree murder --

8 MR. DEE: First degree?

9 THE COURT: I'm sorry, two counts of second degree
10 murder. I will accept those pleas and direct the clerk to
11 record the guilty pleas.

12 I will order that a pre-sentence investigation be
13 conducted by the Idaho Department of Probation and Parole
14 before sentencing. When that report is complete, we'll set
15 a date for sentencing.

16 Mr. Dee?

17 MR. DEE: Yes, Your Honor, at this time, the
18 defense would like to make a motion pursuant to Section
19 19-2515 of the Idaho Code, that we be permitted to present
20 evidence at a hearing on the sentencing in the way of
21 mitigating circumstances and the like. It's our understanding
22 that such a hearing is mandatory for a capital offense, but
23 it's only discretionary with the Court in reference to other
24 than a capital offense, and we feel that there are certain
25 circumstances and backgrounds of this man. The fact that he

1 wasted no time whatsoever upon his return to report this
2 crime to the proper authorities, his assistance, particularly
3 the marking of the graves, which we can show was at least
4 partially acted upon by the authorities. We wish to make
5 that -- would like to make that type of presentation either
6 at the time of sentencing or just prior thereto, Your Honor.

7 MR. BOOMER: I would have no objection to such a
8 motion, Your Honor.

9 THE COURT: Well, we will have such a formal
10 hearing conducted prior to sentencing.

11 MR. DEE: Thank you, Your Honor.

12 THE COURT: Let me advise you, Mr. Rice, that
13 before I do sentence you, I'll afford you an opportunity to
14 present evidence and information in support of your position,
15 that is in mitigation of punishment. You may have witnesses
16 called or subpoenaed to the hearing to testify on your own
17 behalf and you can present any and all relevant evidence
18 in mitigation of punishment. Do you understand that?

19 MR. RICE: Yes, sir; I do.

20 THE COURT: You can present evidence, testimony of
21 others, you can testify yourself, counsel can speak for you
22 or any combination of the same; do you understand that?

23 MR. RICE: Yes, sir.

24 THE COURT: Is there anything further from the
25 State?

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MR. BOOMER: No, Your Honor.

THE COURT: From the defense?

MR. DEE: No, Your Honor.

THE COURT: With that, gentlemen, we'll be in recess.

(Thereupon the day's proceedings concluded.)

1
2
3 REPORTER'S CERTIFICATE

4 STATE OF IDAHO)
5) ss.
6 County of Idaho)

7 I, Jeffrey J. Elliott Certified Shorthand Reporter
8 and Notary, do hereby certify:

9 That the hearings of the above-entitled action were
10 taken down by me in machine shorthand and thereafter reduced
11 to typewritten form under my direction, and that the same
12 was held before the Honorable George R. Reinhardt, III,
13 District Judge, in the Idaho County Courthouse, Grangeville,
14 Idaho.

15 I further certify that this is a true and correct
16 record of all on-the-record proceedings had thereat, to the
17 best of my ability.

18 I further certify that I am not an attorney for nor
19 a relative of any said parties or otherwise interested in
20 the action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this _____ day of _____, 1986.

23 _____
24 JEFFREY J. ELLIOTT
25 Official Court Reporter

RECEIVED

JAN 22 1993

IDAHO COUNTY DISTRICT COURT FILED

NANCE, IARIA & GOMBINER

JUN 4 3 59 PM '86

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF IDAHO

CLERK OF DISTRICT COURT BY *Charla [Signature]*

STATE OF IDAHO	)	Case No. 22089
	)	JUDGMENT OF CONVICTION
-vs-)	
JAMES MICHAEL RICE,)	
Defendant.)	

39 07974

The above entitled matter came on to be heard before the Honorable George Reinhardt, Judge of the above entitled court on Friday, the 23rd day of May, 1986, pursuant to earlier orders of the Court. The State was represented by Henry R. Boomer, Deputy Prosecuting Attorney in and for Idaho County, Idaho, and the defendant was personally present in court, and was represented by his attorneys of record, William J. Dee and Wayne C. MacGregor, Jr., of Grangeville, Idaho. Whereupon the pre-sentence report, previously ordered having been filed herein, and the defendant through his attorneys having filed written objections thereto, and the Court having inquired of the defendant concerning the same, and the defendant having been given full opportunity to explain portions thereof, as well as having heard testimony and argument by both the defendant and his attorneys in mitiga-

PAGE -1- JUDGMENT OF CONVICTION

tion and aggravation, pursuant to the Idaho Code, and the Court having been advised by the defendant that there is no legal cause why judgment should not now be pronounced against him, the Court proceeded to announce sentence.

With respect to the charges stated in the Amended Information, and pursuant to the pleas of guilty of the defendant entered thereto, on the 23rd day of January, 1986.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that you, JAMES MICHAEL RICE, are guilty of two crimes of murder in the second degree as charged in the Amended Information, as you have plead guilty thereto; and

IT IS FURTHER ORDERED BY THE COURT, that based upon the circumstances and testimony produced in this matter, that the defendant is sentenced to an indeterminate period of incarceration within the Idaho State Department of Corrections not to exceed twenty (20) years on each count, the said sentences to run con-currently.

39
07975

The defendant should be given credit for the time served for the period of July 31, 1985 through August 5, 1985 and August 6, 1985 through May 30, 1986, during which he was incarcerated in Orland California, Idaho County and NezPerce County jails, that being 305 days.

IT IS FURTHER ORDERED, that the said defendant is hereby remanded to the custody of the Sheriff of Idaho County, Idaho, until such time as demand is made for delivery to the duly

PAGE -2-
JUDGMENT OF CONVICTION

authorized traveling guard of the Idaho State Department of Corrections for transportation to the Idaho State Penitentiary.

ENTERED this 1st day of June, 1986



GEORGE REINHARDT
DISTRICT JUDGE

39 07976

PAGE -3-
JUDGMENT OF CONVICTION

R/c



STATE OF IDAHO

Department of Correction
Administrative Offices

JAMES C. SPALDING
DIRECTOR

PHILIP E. BATT
GOVERNOR

FINAL DISCHARGE IDAHO DEPARTMENT OF CORRECTION

In accordance with the laws of the State of Idaho, JAMES MICHAEL RICE, 23720, has completed all the time required to be served in the following cases and is hereby discharged from the custody of the Idaho Department of Correction effective 12-25-98.

CASE NUMBER	COUNTY	DATE SENTENCED	DATE DISCHARGED	CRIME
22089	Idaho	5-23-86	12-25-98	Murder, 2nd

WITNESS WHEREOF, I affix the Seal of the Board of Correction.

December 25, 1998

Carolee Kelly

Carolee Kelly
Sentencing Specialist
Idaho Department of Correction

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**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GERALD ROSS PIZZUTO, JR.,)
)
 Applicant,)
)
 vs.)
)
 RANDY BLADES, Warden, Idaho)
 Maximum State Institute,)
 Respondent.)
)
 _____)

CAPITAL CASE

NO. _____

**MOTION TO FILE SUCCESSIVE
PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. §2244(B)(3)(A)**

[Circuit Rule 22-3]

TABLE OF CONTENTS

TABLE OF AUTHORITIES	<u>iii</u>
I. INTRODUCTION	<u>2</u>
A. Summary of the Claims to Be Presented	<u>4</u>
B. The Factual Bases for the Claims to Be Presented	<u>5</u>
II. STATEMENT OF THE CASE	<u>11</u>
A. RELEVANT FACTUAL BACKGROUND	<u>11</u>
1. Events Leading to James Rice’s Guilty Plea	<u>12</u>
2. New Facts Supporting Existence of Undisclosed Plea Bargain	<u>14</u>
3. Rice’s Guilty Plea	<u>16</u>
a. The Plea Hearing	<u>16</u>
b. The Concealment of the Agreement	<u>17</u>
4. Rice’s Testimony at Mr. Pizzuto’s Trial	<u>18</u>
5. Rice’s Sentence	<u>18</u>
B. PROCEDURAL HISTORY	<u>19</u>
1. Direct Appeal and Section 19-2719 Post-Conviction	<u>19</u>
2. Federal <i>Habeas Corpus</i> Proceeding	<u>21</u>

3.	Other Post-Conviction Proceedings	<u>22</u>
4.	The Instant Proceedings.	<u>25</u>
III.	REASONS AUTHORIZATION TO FILE A SUCCESSIVE PETITION FOR WRIT OF <i>HABEAS CORPUS</i> SHOULD BE GRANTED	<u>28</u>
A.	The Law Governing Successive <i>Habeas Corpus</i> Applications. ...	<u>28</u>
1.	Petitioner has Made a Prima Facie Case of Judicial Misconduct and Bias.	<u>28</u>
2.	Petitioner Has Been Consistently Diligent in Pursuing His Judicial Misconduct Claim	<u>30</u>
B.	HAD THE NEWLY DISCOVERED EVIDENCE BEEN PRESENTED AT TRIAL, NO REASONABLE FACTFINDER WOULD HAVE FOUND PETITIONER GUILTY OF THE UNDERLYING OFFENSES OR SENTENCED HIM TO DEATH.	<u>32</u>
1.	Judicial Bias and Misconduct	<u>32</u>
2.	Prosecutorial Misconduct	<u>34</u>
C.	THE APPLICATION FOR <i>HABEAS CORPUS</i> RELIEF IS TIMELY PETITIONER’S RIGHT TO PROCEED IN THIS SUCCESSIVE PETITION FOR WRIT OF <i>HABEAS CORPUS</i>	<u>44</u>
IV.	CONCLUSION	<u>54</u>
	INDEX OF APPENDICES	<u>55</u>
	CERTIFICATE OF SERVICE	<u>56</u>

TABLE OF AUTHORITIES

FEDERAL CASES

Atkins v. Virginia, 536 U.S. 304 (2002) 26, 27

Banks v. Dretke, 540 U.S. 668 (2004) 41, 43

Belmontes v. Brown, 414 F.3d 1094 (2005) 41

Berger v. United States, 295 U.S. 78 (1935) 41

Brady v. Maryland, 373 U.S. 83 (1963) passim

Bullington v. Missouri, 451 U.S. 430 (1981) 47

Carriger v. Stewart, 132 F.3d 463 (9th Cir 1998) 52

Cooper v. Woodford, 358 F.3d 1117 (9th Cir. 2004) 48

Danforth v. Minnesota, 552 U.S. 264 (2008) 25, 26

Evitts v. Lucey, 496 U.S. 387 (1985) 49

Gardner v. Florida, 430 U.S. 349 (1977) 37

Giglio v. United States, 405 U.S. 150 (1972) 40

Hayes v. Brown, 399 F.3d 972 (9th Cir. 2005) 40, 41, 42, 44

Hoffman v. Arave, 236 F.3d 523 (9th Cir. 2001) 49

Kyles v. Whitley, 514 U.S. 419 (1995) 41, 51

Lott v. Mueller, 304 F.3d 918 (9th Cir.2002) 47

Miles v. Prunty, 187 F.3d 1104 (9th Cir. 1999) 47

Napue v. Illinois, 360 U.S. 264 (1959) passim

Pace v. DiGuglielmo, 544 U.S. 408 (2005) 55

Paradis v. Arave, 130 F.3d 385 (9th Cir. 1997) 52

Pizzuto v. Arave , 280 F.3d 1217 (2002) 23

Pizzuto v. Arave, 280 F.3d 949 (9th Cir 2002) passim

Pizzuto v. Arave, 345 F.3d 1119 (2003) 23

Pizzuto v. State, 552 U.S. 1227 (2008) 25, 26

Pliler v. Ford, 542 U.S. 225 (2004) 55

Porter v. Singletary, 49 F.3d 1483 (11th Cir. 1995) 31, 38

Ring v. Arizona, 536 U.S. 584 (2002) 23, 25, 26

Sanders v. United States, 373 U.S. 1 (1963) 47, 54

Sargent v. Henderson, 926 F.2d 706 (8th Cir. 1991) 47

Sawyer v. Whitley, 505 U.S. 333 (1992) 47

Schlup v. Delo, 513 U.S. 298 (1995) 53

Schriro v. Summerlin, 542 U.S. 348 (2003) 23, 26

Strickler v. Greene, 119 S. Ct. 1936 (1999) 51

Strickler v. Greene, 527 U.S. 263 (1999) 41

United States v. Agurs, 427 U.S. 97 (1976) 41

United States v. Bagley, 473 U.S. 667 (1985) 40

STATE CASES

In re Rhoades, McKinney, Pizzuto, Card, Hairston, and Stuart v. State,
149 Idaho 130, (March 17, 2010) 26

Lankford v. Idaho, 500 Idaho 110 (1991) 31, 32, 38, 39

Odom v. State, 121 Idaho 625, 826 P.2d 1337 (Idaho App. 1992) 37

Pizzuto v. Hardison, 2009 WL 2905537 (Sept. 4, 2009) 27

Pizzuto v. State, 127 Idaho 469, 903 P.2d 58 (1995) 23, 24, 25

Pizzuto v. State, 134 Idaho 793, 10 P.3d 742 (2000) 24, 25

Pizzuto v. State, 233 P.3d 86 (Idaho, 2010) Passim

Pizzuto v. State, 146 Idaho 720, 202 P.3d 642 (2008) 26, 27, 33

Sivak v. State, 8 P.3d 636 (Idaho 2000) 47, 52, 53

Sivak v. State, 112 Idaho 197, 731 P.2d 192 (Idaho 1986) 37

State v. Pizzuto, 119 Idaho 742, 810 P.2d 680 (1991) passim

State v. Rhoades, 822 P.2d 960 (Idaho 1991) 50

DOCKETED CASES

Pizzuto v. Arave, USDC Case No. CV-92-0241-S-AAM 10, 33

Pizzuto v. Idaho, USSC No. 10-6377 (January 18, 2011) 30

Pizzuto v. State, Idaho Supreme Court Case No. 32677/32678 25, 26

FEDERAL STATUTES

28 U.S.C. §2244(b)(2)(B)(i) 30

28 U.S.C. §2244(b)(2)(B)(ii) 30, 47

28 U.S.C. §2244(b)(3)(A) 3

28 U.S.C. §2244(d)(1) 46

28 U.S.C. §2244(d)(1)(1) 46

28 U.S.C. §2244(d)(1)(2) 46

28 U.S.C. §2244(d)(1)(D) 46, 49, 50

28 U.S.C. §2254(B) 46

28 U.S.C. §2254(B)(1) 49

28 U.S.C. §2254(c) 50

U.S. Const., Amendment 5 32, 39

U.S. Const., Amendment 8 32, 39

U.S. Const., Amendment 14 32, 39

STATE STATUTES

Idaho Code § 19-2515 21

Idaho Code §19-2719 passim

Idaho Code §19-2719(5) 53, 54

Idaho Code §19-4901 53

Idaho Code §19-4901(b) 47, 52, 53

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**UNITED STATES DISTRICT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GERALD ROSS PIZZUTO, JR.,)	
	)	<u>CAPITAL CASE</u>
Applicant,)	
	)	NO. _____
vs.)	
	)	MOTION TO FILE SUCCESSIVE
GREG FISHER, Acting Warden,	)	PETITION FOR WRIT OF
	)	<i>HABEAS CORPUS</i> UNDER 28
Respondents.	)	U.S.C. §2244(b)(3)(A)
)	
_____	)	[Circuit Rule 22-3]

TO THE HONORABLE COURT AND TO COUNSEL OF RECORD:

Petitioner-Applicant Gerald Ross Pizzuto, Jr., pursuant to 28 U.S.C §2244(b)(3)(A) submits the following application for an Order authorizing the United States District Court for the District of Idaho to consider petitioner’s petition for federal *habeas corpus* relief.

I. INTRODUCTION

Petitioner, Gerald Pizzuto, was convicted and sentenced to death in 1986 based upon the testimony of his sister and two co-defendants. His sister testified to purported admissions by Mr. Pizzuto. One of the co-defendants, James Rice, testified that Petitioner tied up and beat with a ping hammer two victims, one of whom died, in a remote cabin in Idaho County, Idaho. Mr. Rice also testified that he, Mr. Rice, shot the other victim because he begged Mr. Rice to put him out of the misery he was suffering from wounds inflicted by Mr. Pizzuto. The other co-defendant, William Odom, said he came upon the victims after they were dead and helped to bury them. His wife, Lene Odom, and a potential co-defendant corroborated Mr. Odom's version of events. Neither Mr. Rice nor Mr. Odom testified consistent to their pre-trial statements. Despite immediate scrutiny and crime scene processing when the bodies were found, no physical evidence connecting the cabin in which Mr. Rice said the murders took place was found until months after the discovery of the bodies and shortly following a plea agreement between the state and Mr. Rice. Mr. Pizzuto did not make any pre-trial statements to law enforcement or testify at trial.

//

//

Newly discovered evidence shows:

- The testimony of James Rice was negotiated very shortly before the trial was to begin in an *ex parte* undisclosed meeting with the prosecutor, Henry R. Boomer, the trial and sentencing judge, Judge George R. Reinhardt and the appointed counsel of Mr. Rice, William Dee and Wayne MacGregor.
- The testimony of James Rice regarding the promises made in exchange for his testimony was perjured;
- The prosecutor and the trial and sentencing judge knew Rice's testimony was perjured testimony and did nothing to correct or prevent it;
- Physical evidence to corroborate the version of events to which Mr. Rice testified was coordinated by the trial and sentencing judge and the county sheriff, Randy Baldwin;
- The judge and sheriff maintained an unethical and corrupt relationship which likely resulted in the coordination of fabricated physical evidence to support the version of events to which Mr. Rice testified, specifically, the presence of blood and a shell casing in the cabin in which Mr. Rice claimed the murder took place, notwithstanding numerous prior searches of the cabin which failed to reveal any such physical evidence.

A. Summary of the Claims to Be Presented

Petitioner now brings a *habeas corpus* petition consisting of 7 claims. A copy of the Petition with Supporting Documents is filed herewith and are incorporated hereto as if fully set forth herein. *See* Appendix A, Petition for Writ of *Habeas Corpus* Asserting Newly Discovered Evidence of Judicial Bias and Misconduct and Prosecutorial Misconduct; Appendix B, Exhibits 1- 41 Filed in Support hereof and in Support of the Petition for Writ of *Habeas Corpus*.

Claims 1 and 2 allege prosecutorial misconduct in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Napue v. Illinois*, 360 U.S. 264 (1959) in which the State with the trial judge entered into negotiations with co-defendant's counsel and promised a sentence of twenty years which was significantly more lenient than the potential of life without possibility of parole ultimately disclosed to defense counsel and to which the co-defendant testified. Claims 3 and 4 addresses the outrageous and unethical conduct of the trial and sentencing judge, Hon. George R. Reinhardt III, against whom Mr. Pizzuto consistently alleged bias. That conduct included: a) active participation in negotiations with the co-defendant's counsel outside Petitioner's and or his counsel's presence, b) the coordination with the county sheriff, Randy Baldwin, of physical evidence consistent with the version of events agreed upon by the judge, prosecutor and co-defendant's

counsel; c) the silence of the judge when the co-defendant falsely testified to promises made; and *ex parte* communications by the judge with State's witnesses and jurors reflecting a pre-disposition to sentence Mr. Pizzuto to death. Claim 5 alleges the actual innocence of Petitioner which, but for the false testimony and the judicial and prosecutorial misconduct, no reasonable juror would have convicted and/or sentenced to death. Claim 6 addresses the cumulative error in the errors above and Claim 7 addresses Idaho's constitutional failure in adequately providing a post-conviction procedure which provides a means of adequately reviewing constitutional claims in capital cases, specifically as applied to Mr. Pizzuto.

B. The Factual Bases for the Claims to Be Presented

The principal damning evidence against Petitioner was the testimony of James Rice, who testified he had been offered nothing other than the promise not to seek death. Rice maintained that in a subsequent post-conviction interview with an investigator for Mr. Pizzuto's federal appellate counsel, the Federal Defenders of the Eastern District of Washington and Idaho Capital Habeas Unit, Richard Hays. Appendix B, Exhibit 40. It was not until any hope of further

prosecutorial assistance was lost, in September, 2005¹ that Rice told Petitioner's investigator that his testimony about the promise made to secure the plea was false. Appendix B, Exhibit 1. All five claims came to light as a result of the co-defendant's admissions made in September, 2005 and were immediately and diligently pursued resulting in corroboration by Rice's ex-wife, Joy Tara October 14, 2005. Mr. Rice swore that his attorneys told him the judge was aware of the promises and that the prosecutor had assured him the promised sentence of twenty years (served in fourteen years eight months plus) would be imposed. Appendix B, Exhibit 1.²

The assertions made by Rice and his ex-wife led to a complete review of any and all documentation available to support the claims then made by Mr. Rice, including records and files of the co-defendant's counsels files, trial counsel files and offense reports secured throughout the nineteen prior years of litigation. After meeting with the custodian of the files of Mr. Rice's counsel's defense files and

¹ Mr. Rice's secondary motivation for coming forward when he did was because he did not think "Jerry Pizzuto should die for because he was put up to the crime by Bill Odom." Appendix B, Exhibit 1 at 4.

²William Odom, the other primary co-defendant who testified against Mr. Pizzuto and also received a twenty-year sentence, later confirmed that his attorney had advised him prior to Mr. Rice's plea that Mr. Rice was going to receive twenty (20) years. Appendix B, Exhibit 41.

reviewing the same, billing documents within the files revealed negotiations between Mr. Rice's counsel and the judge and prosecutor at a local restaurant at 6:00 a.m. Appendix B, Exhibit 3. An undated report by then Idaho County Sheriff, Randy Baldwin revealed direct communication between the judge and the sheriff shortly thereafter concerning Mr. Baldwin's preparation of the cabin in which Mr. Rice claimed the murder occurred. Appendix B, Exhibit. Despite searches at or near the time of the discovery of the bodies by a state criminalist, a deputy sheriff and the coroner which revealed no blood present in the cabin, following the overnight expedition arranged between Judge Reinhardt and Sheriff Baldwin, visual observation showed significant blood present, confirmed by luminol testing. *See and compare*, Appendix B, Exhibit 21 with Appendix B, Exhibits 5, 19, 20, 34. The sheriff also claimed to have found a shell casing at the scene. Appendix B, Exhibit 16 (Undated Report by Sheriff Baldwin), 16A (undated and unsigned supplementary offense report by Deputy Travis Breckon); . *But see*, Exhibit 17 (Declaration of Deputy Sheriff Travis Breckon)

Shortly after upon securing Mr. Rice's (September 28, 2005) and his ex-wife's (October 14, 2005) affidavit, and confirming the notes and billings reflecting the judge's knowledge of the negotiations as true and correct copies (October 21, 2005), Mr. Pizzuto filed a state petition for post-conviction petition

in the state courts of Idaho consistent with the procedural requirements of the state courts on November 25, 2005. Despite the above-described additional investigation and evidence of misconduct, corruption and ultimately the pre-judgment of the ultimate sentence of death by the trial judge, the petition was rejected by the Idaho Supreme Court on March 19, 2010, rehearing denied, June 10, 2010. *Pizzuto v. State*, 233 P. 3d 86 (Idaho, 2010), *cert denied*, ___S. Ct.___, (Jan 18, 2011).

Mr. Pizzuto alleged ineffective assistance of trial counsel, prosecutorial misconduct and judicial bias in his first petition for a writ of *habeas corpus* in the district court. *Pizzuto v. Arave*, 280 F. 3d 949, 954 (9th Cir 2002).³ A chief component of this claim was that trial counsel had failed to adequately investigate and impeach James Rice and William Odom. The district court recognized that the State's case in both the guilt and penalty phases depended in large measure on the testimony of Rice and Odom. However, the court also found that Petitioner's failure to adequately explain what additional investigation would have uncovered undermined the claim. "Further and most importantly, petitioner fails to point out anything which would have been revealed by a more thorough investigation."

³ *See also, Pizzuto v. Arave*, USDC Idaho, Case No. 92-0241-S-AAM.

Order Denying Petition For Writ of *Habeas Corpus* at p. 74. Evident from this Court's recitation of the facts of the case is the heavy reliance by the state courts and consequently this Court on the testimony of James Rice. *Pizzuto v. Arave*, 280 F. 3d 949, 954 (9th Cir 2002)

What Pizzuto and his counsel did not know when he made his prior claims of bias and misconduct and what neither the United States District Court nor this Court knew when their respective decisions were rendered is that both the trial and sentencing judge and the prosecutor concealed from Pizzuto's trial attorneys critical evidence of the judge's pre-disposition to Mr. Pizzuto's fate, a pre-disposition to sentence Mr. Pizzuto to death, which the judge, Hon. George R. Reinhardt, III, actively promoted by directly participating in plea negotiations with the co-defendant's attorneys and the prosecutor. Those negotiations included discussions of the facts as Mr. Rice would present them and investigatory development corroborating those facts and included an hour and half 6:00 a.m. meeting away from the courthouse with Mr. Rice's counsel and the prosecuting attorney, now magistrate, Hon. Henry R. Boomer, none of which was disclosed to Mr. Pizzuto's defense counsel. See Appendix B, Exhibit 4.

Nor did defense counsel know that the judge had attended a dinner with the prosecutor and a number of state's witnesses including the sheriff Randy Baldwin,

a Washington state law enforcement official, Earl Davis, and the sister of Mr. Pizzuto, Angellina Pizzuto Rawson, who after years of hiding, swore in a declaration that at the dinner, Judge Reinhardt told her he was going to “hang” her brother.⁴ Appendix B, Exhibit 30.

Because of the seriousness of the allegations, Petitioner did all that he could to corroborate and confirm the veracity of the co-defendant which ultimately led to the discovery of numerous *ex parte* pre-trial and pre-sentencing contacts by the judge, inconsistencies in the “discovery” of blood in the small cabin where Mr. Rice claimed the murder. *See* Exhibits cited above. Petitioner also secured significant corroborative evidence of a pattern and practice of unethical and illegal behavior by the judge and sheriff which make the veracity of the acts alleged herein more likely. *See generally*, Appendix B, Exhibits 17 (former Idaho County Deputy Travis Breckon), 32 (former Idaho County Deputy Buck Kelty), 35 (former Idaho County Deputy David Riley), 36 (former United States Attorney Ron Howen), 39 (former Idaho County Court Reporter, Gloria McDougall).

⁴ The intent to “hang” language reportedly used by the judge is reiterated in the Affidavit of court reporter, Gloria McDougall. *See* Appendix B, Exhibit 39 at 3.

II. STATEMENT OF THE CASE

A. RELEVANT FACTUAL BACKGROUND

On July 25, 1985 Del and Berta Herndon were murdered at Ruby Meadows, a remote location outside of McCall, Idaho and their bodies buried in shallow graves. The crimes did not come to light until July 29, 1985, when James Rice contacted the police in Orland, California and made statements implicating himself, William Odom, Odom's wife, Lene, and Gerald Pizzuto. *See State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991).

Autopsies of the Herndons revealed that both had been struck in the head with a blunt object. *See State v. Pizzuto*, 810 P.2d 680 at 687. Del Herndon had also been shot in the head with a rifle. No murder weapon was discovered nor was there any forensic evidence linking any of the three men arrested to the crimes. Mr. Rice told the police that the Herndons were shot in the small cabin but examinations of the cabin by law enforcement and two different state criminalists conducted in August and October of 1985, respectively, revealed no blood in the cabin. Exhibits 5, 19, 20, 34.

Eventually Rice, the Odoms, and Pizzuto were arrested and charged in Idaho County with first degree murder. *See State v. Pizzuto*, 810 P.2d 680 at 687. All initially entered pleas of not guilty. Shortly before the trial, deals were made

with the three California co-defendants, all of whom testified against Mr. Pizzuto, the most critical of whom was James Rice. Petitioner was convicted of two counts of first degree murder by a jury and sentenced to death by the trial judge, Judge Reinhardt.

1. Events Leading to James Rice's Guilty Plea.

From the time of their arrests until late January, 1986, none of the persons charged entered guilty pleas or agreed to cooperate with the State. Mr. Rice's status as a co-defendant to be tried with Mr. Pizzuto's trial was especially problematic because of the statements Rice had already made. In Rice's initial statement to the police, he denied any involvement in the killings. After taking a polygraph, Rice gave another statement to the police in California in which he admitted to hitting both of the Herndons in the head with a hammer, at the direction, not of Mr. Pizzuto, *but of Mr. Odom*.⁵ Mr. Rice gave yet another version of the offense when he was interviewed by Idaho County Sheriff Randy Baldwin and attributed primary responsibility for the murders to Pizzuto, although admitting it was he who shot Mr. Herndon in the head. He claimed he had done so

⁵ In his 2005 affidavit, Rice again intimates Odom, not Petitioner, was the main culprit. Appendix B, Exhibit 1 at 3 ¶13, 4 ¶15.

only in an attempt to end Mr. Herndon's sufferings. No physical evidence corroborated any of Rice's versions of events. Appendix B, Exhibits 19, 20, 34.

Unbeknownst to Pizzuto's counsel, while awaiting trial in Idaho, Rice continued to give conflicting accounts of the crimes to his lawyer. Rice's inability to tell a consistent story and his generally bizarre behavior aroused such concern with his own attorneys that they moved for a mental examination. The attorneys' request was supported by sworn testimony of counsel in which they averred Rice answered questions "without any connection to reality or the facts" and was a "compulsive answerer" who could neither tell a consistent story nor assist in his defense. Appendix B, Exhibit 10. Rice was both an admitted poly-substance abuser and a felon, those convictions included an armed robbery conviction. Appendix B, Exhibit 11 [SEALED].

By January of 1986, neither of the Odoms nor Rice had agreed to plead guilty. Without cooperation, the prosecutor faced going to trial without any witness who would accuse Pizzuto, or any one of the other participants, of being the actual killer. Without Mr. Pizzuto's knowledge, the plea which was eventually struck on Rice's behalf was the result of the active and considerable participation of the trial judge in plea negotiations. In exchange for pleas of guilty to two counts of second degree murder, Rice would testify that he "expect[ed] life in

prison” but this was coupled with an off-the-record and undisclosed promise that Rice would, subject to his cooperation, be guaranteed a 20-year sentence, which with good time credits, would insure that he would actually serve only 14 years, 8 months, and 16 days. Mr. Pizzuto’s jury was led to believe that Rice expected to receive the most severe punishment short of death,⁶ while at the same time Rice was in fact testifying against Pizzuto in exchange for the certain knowledge that awaiting him was a sentence far less than life.⁷

2. New Facts Supporting Existence of Undisclosed Plea Bargain

In 2005, long after Mr. Pizzuto’s conviction was final and despite a prior interview of Mr. Rice during a continuous and on-going investigation by Petitioner, Mr. Rice stated for the first time known to Petitioner that his attorneys told him that he would receive a sentence of 20 years in exchange for his testimony against Pizzuto and that he would actually serve only 14 years, 8

⁶ Appendix B, Exhibits 14, 15.

⁷ Shortly after Mr. Rice pleaded guilty, Mr. Odom did so as well. He entered pleas of guilty to conspiracy to commit robbery, theft, and two counts of voluntary manslaughter with an on the record agreement that the prosecutor would not ask for more than 10 years apiece on the manslaughter counts but that the prosecution was otherwise not bound to recommend any sentence and the judge not bound to impose any particular sentence. Mr. Odom received a 20 year sentence—the same as he had been advised by his attorney Mr. Rice would receive. Appendix B, Exhibit 41.

months and 16 days. Appendix B, Exhibit 1. This is, in fact, the sentence that Mr. Rice received. Following Rice's disclosure, his ex-wife corroborated his affidavit, swearing under oath that Mr. Rice told her prior to his sentencing that he would get 20 years. Appendix B, Exhibit 3.

Searching for further corroboration of Rice's and his ex-wife's affidavits, Pizzuto's counsel searched files of Mr. Rice's counsel in which notes and billing records of defense counsel shed further light on how the deal was reached and then concealed. According to the co-defendant's trial counsel's notes, the prosecutor, Hank Boomer, called Rice's attorney and "discussed certain aspects of the Rice case[]" on January 8, 1986. The following day, Rice's counsel called Boomer and gave him "certain information requested the day before." That same day, Rice's counsel received a telephone call from "Judge Reinhardt in reference to the Rice case." On January 13, 1986 Rice's counsel's billing records reflect two hours of "serious consultations and negotiations for plea- bargaining" with "the prosecutor." Appendix B, Exhibit 4.

The culmination of the negotiations was a meeting which took place at the Crossroads [a local restaurant] on January 16, 1986. Handwritten notes from one of Mr. Rice's counsel show that the meeting took place at 6:00 a.m. and that the

attorneys for Rice, the prosecutor, and Judge Reinhardt “discussed negotiations for Rice to enter a plea to reduced charges” which included “certain questions raised by the judge.” The notes also state that counsel “would interview Rice before next Thursday–Jan. 23.” Exhibit 4.

Based on the affidavits and counsel notes, Petitioner sought post-conviction relief including discovery, depositions and an evidentiary hearing to show that it was at this meeting that the prosecutor promised and the judge agreed that if Rice pleaded guilty and testified against Pizzuto, he would receive a 20 year sentence but only serve 14 years, 8 months, and 16 days.

3. Rice’s Guilty Plea

a. The Plea Hearing

Prior to Pizzuto’s trial, Rice entered a plea of guilty. At the hearing, the judge, the prosecutor, and Rice’s defense counsel failed to disclose how the agreement had been reached and exactly what the agreement was. *See* Appendix B, Exhibit 12. The questions posed by Judge Reinhardt and the answers given by the prosecutor created the impression that the agreement had been reached between Rice’s defense and the prosecution, omitting any reference to the judge’s presence at and participation in the plea bargaining process. *Id.* The judge stressed to Rice that the court could impose a fixed life sentence for each of the

second degree murder counts and that Rice was not being promised any sentence,⁸ when the judge knew full well that he was a party to an agreement that assured Rice a 20-year sentence and an even shorter amount of time that would actually be served. The judge specifically asked Rice if any promises had been made in exchange for his guilty plea. Rice answered “no.” However, a promise of a 20-year sentence had been made -- a promise to which the judge was a party.

b. The Concealment of the Agreement

The prosecution deliberately concealed the plea negotiations and the promised sentence from the defense. On February 18, 1986 the prosecution filed its “Third Compliance with Discovery” and provided Pizzuto’s counsel with the transcript of Rice’s plea and sworn statement. However, the discovery did not mention the negotiations between Rice, his counsel, and the judge, nor did it mention that Rice had been promised a sentence of 20 years and was not facing a possible fixed life sentence. Following the plea agreement, evidence not previously available became available. Most remarkably, the site where Rice then claimed Petitioner killed the Herndons, which had previously showed no signs of

⁸ Appendix B, Exhibit 12 at 15, 17, 19-20.

blood, upon “re-examination” -- a re-examination directed by the trial judge and the local sheriff – now revealed significant evidence of blood in the cabin.

4. Rice’s Testimony at Mr. Pizzuto’s Trial

At Pizzuto’s trial, the prosecution elicited testimony from Mr. Rice that he was facing up to life imprisonment, and emphasized this fact in closing argument. While conceding that Mr. Rice had many flaws, the prosecutor was still able to assure the jury that Rice had not gotten away with anything and was looking at life in prison. “Jim Rice expects, and he told you from the witness stand, that he may spend the rest of his natural life in prison. Got a great deal, didn’t he?”

5. Rice’s Sentence

The day after Mr. Pizzuto was sentenced to death by Judge Reinhardt, Judge Reinhardt sentenced Mr. Rice to 20 years, on each of the second degree murder counts to be served consecutively. This was the same sentence received by William Odom, who had entered pleas of guilty to the lesser charges of conspiracy to commit robbery and voluntary manslaughter after being advised by his attorney that Rice was going to plead guilty and get twenty years and that the plea would result in dismissal of charges against his wife, also charged.⁹ Exhibit 41.

⁹ Mr. Odom later filed a post-conviction petition claiming the plea was
(continued...)

Without knowing of the matters surrounding the plea agreement now known, the jury in petitioner's case returned verdicts of guilty on two counts of murder in the first degree and two counts of first degree felony murder under instructions which permitted Mr. Pizzuto to be found guilty as a party to the offense. Following a sentencing hearing before the judge alone, as then provided by Idaho Code § 19-2515, the judge made findings of fact in aggravation and mitigation and sentenced Mr. Pizzuto to death on two counts of first degree premeditated murder and felony murder on May 23, 1986. The Judgment and Sentences of death were filed on May 27, 1986, and it is from these convictions and sentences that relief is sought.

B. PROCEDURAL HISTORY

1. Direct Appeal and Section 19-2719 Post-Conviction

Petitioner, represented by the same counsel as at trial, appealed to the Idaho Supreme Court from the Judgment and Conviction, the imposition of sentence, and the denial of postconviction relief. The conviction and sentence of death were affirmed. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), *cert. denied*,

⁹(...continued)
coerced, which resulted in a modification of the sentences to be served concurrently rather than consecutively. Appendix B, Exhibit 41.

March 2, 1992. In that appeal he specifically raised the issue of Judge Reinhardt's bias and prejudice, based upon the judges knowledge of the co-defendant proceedings. *Id.* at 776, and at 714.

As required by statute, trial counsel filed a petition for postconviction relief within forty-two days of imposition of judgment. Idaho Code §19-2719. In the post-conviction proceedings trial counsel moved for the disqualification of Judge Reinhardt because he “may have become a witness in this matter concerning what information he received prior to sentencing which was not disclosed to the defense.” The Motion was summarily denied.

On consolidated appeal, the Idaho Supreme Court affirmed the conviction and sentence and denial of postconviction relief. *State v. Pizzuto*, 810 P. 2d 680 (Idaho 1991) *cert. denied*, 503 U.S. 908, (1992) (hereinafter *Pizzuto I*). On the issue of disqualification of the judge, the Idaho Supreme Court said:

Pizzuto does not provide this Court with any insight as to what information Judge Reinhardt may have received while presiding over the prosecutions of Rice and Odom. If in fact Judge Reinhardt had been exposed to prejudicial information, “[t]hat judges are capable of disregarding that which should be disregarded is a well accepted precept in our judicial system.” [Citations omitted].

State v. Pizzuto, 810 P.2d 680, 715 (1991) (hereinafter, *Pizzuto I*).

2. Federal Habeas Corpus Proceeding

On June 22, 1992, Petitioner sought relief in federal court and new counsel was appointed. A petition for writ of *habeas corpus* was filed on September 18, 1992 and amended on September 18, 1992. *Pizzuto v. Arave*, 280 F.3d at 954. The petition was stayed pending Mr. Pizzuto's exhaustion of a claim of ineffective assistance of counsel. No evidentiary hearing was held on the issue of ineffective assistance of counsel and the issue was defaulted under Idaho Code §19-2719 and the petition dismissed, a ruling affirmed by the Idaho Supreme Court in *Pizzuto v. State*, 127 Idaho 469, 903 P.2d 58 (1995).

The Ninth Circuit Court of Appeals denied Petitioner relief but stayed the mandate in that case pending this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), *Pizzuto v. Arave*, 280 F. 3d 1217 (2002), and later stayed the time for filing a petition for rehearing and/or rehearing en banc pending the final disposition of *Schriro v. Summerlin*, 542 U.S. 348 (2003). *Pizzuto v. Arave*, 345 F. 3d 1119 (2003).

On the issue of the judicial bias, the Court summarized the issue as follows:

Pizzuto relies on un rebutted affidavits from his mother, father and sister averring that, at the start of the trial, Judge Reinhardt told Mrs. Pizzuto “[y]our son is a murderer-get it through your head-we're going to burn his ass” to argue that he should have an evidentiary hearing on his claims of judicial bias. Pizzuto asserts that one of his trial lawyers, Nick Chenoweth, who also

represented him at sentencing, on appeal, and in consolidated post-conviction relief proceedings, was present when the comments were made. Pizzuto first raised the claim of judicial bias in his second and third petitions for post-conviction relief; in them, he explained that he had not done so earlier because he was unaware of the claims, and his lawyer's relationship with the trial judge created an actual conflict of interest sufficient to excuse the default. In both instances, the trial court and Idaho Supreme Court held that the claims were procedurally defaulted because they were known or reasonably should have been known at the time Pizzuto brought his first petition. *Pizzuto II*, 903 P.2d at 60; *Pizzuto III*, 10 P.3d at 744-45.

280 F. 3d at 974-75. In the original federal *habeas corpus* proceedings, there were no claims of prosecutorial misconduct.¹⁰

3. Other Post-Conviction Proceedings

During the pendency of the federal proceedings and thereafter, successive petitions for state post-conviction relief, all of which save one sought to disqualify

¹⁰ Attempts to expand the habeas petition and record to include the Brady claims raised in the third state post-conviction and an application to file a successor petition were denied by this Court. *Pizzuto v. Arave*, 280 F. 3d at 954 n.1.

the trial judge,¹¹ were routinely and summarily dismissed.¹² *See Pizzuto v. State*, 127 Idaho 469, 903 P. 2d 58, 60-61 (1995) (*Pizzuto II*) (finding that I.C. §19-2719 precluded further proceedings in state courts, rejecting Petitioner’s claim of the denial of ineffective assistance of trial counsel who had represented Petitioner in his first expedited, consolidated post-conviction proceeding under I.C. §19-2719, because “[trial] counsel was aware of the possible existence of claims of [their own] ineffective assistance” of counsel.); *Pizzuto v. State*, 134 Idaho 793, 10 P. 3d 742, 747-48 (2000) (*Pizzuto III*) (rejecting Petitioner’s claims of violations of *Brady v. Maryland* by the State’s failure to disclose information regarding co-defendants, including Rice’s mental condition rendering him “unable to tell the truth” and Odom’s work history, his experience as a police informant, his past fabrication of events, and his violation of probation for an earlier offense, because

¹¹ The only post-conviction proceeding in which disqualification of Judge Reinhardt was not sought was the post-conviction seeking relief under *Ring v. Arizona*, 536 U.S. 584 (2002) which raised a purely legal question of retroactivity of the right to jury fact-finding in a capital case. *See Pizzuto v. State*, Idaho Supreme Court Case No. 32677/32678, Order, December 28, 2006, *cert granted*, 552 U.S. 1227, 128 S.Ct. 1441, 170 L.Ed.2d 271 (2008) (Judgment vacated and remanded for further proceedings in light of *Danforth v. Minnesota*, 552 U.S. 264, 128 S. Ct. 1029, 169 L.Ed. 2d 859 (2008) (*Pizzuto IV*).

¹² Despite efforts by Petitioner to secure sufficient notice from the Idaho Supreme Court that further state efforts were futile, the uncertainty of the application of the capital post-conviction statute made continued efforts to exhaust necessary to federal review.

they were known, or *should have been known*, at time of first petition for post-conviction relief by defendant who was sentenced to death, where the information was in the co-defendant's case file and the file was a public record, and thus, defendant waived his claims regarding state's alleged due process violation in failing to disclose the information).

Following the United States Supreme Court's opinion in *Ring v. Arizona*, *supra*, Petitioner filed a post-conviction proceeding in state court seeking retroactive application, which was rejected under *Summerlin v. Schriro*, 542 U.S. at 358. *See Pizzuto v. State*, Idaho Supreme Court Case No. 32677/32678, Order, December 28, 2006, *cert granted*, 552 U.S. 1227, 128 S. Ct. 1441, 170 L. Ed.2d 271 (2008) (Judgment vacated and remanded for further proceedings in light of *Danforth v. Minnesota*, 552 U.S. 264, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008)). On remand from the U.S. Supreme Court, the State of Idaho again rejected Petitioner's argument that *Ring* should be retroactively applied under state law. *In re Rhoades, McKinney, Pizzuto, Card, Hairston, and Stuart v. State*, 149 Idaho 130, 233 P. 3d 61 (March 17, 2010).

On June 19, 2003, Petitioner filed a petition for post-conviction relief under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Pizzuto v. State*, 146 Idaho 720, 202 P. 3d 642, 646 (2008) (*Pizzuto I*). The Idaho Supreme Court affirmed the sentencing

judge's denial of relief under *Atkins v. Virginia* without an evidentiary hearing, in part because Mr. Pizzuto failed to produce evidence showing that his IQ was 70 or below prior to his eighteenth birthday. *Pizzuto v. State*, 146 Idaho at 734, 202 P. 3d at 656 . The *Atkins* claims are now pending an evidentiary hearing in the United States District Court, District of Idaho, in a successive petition for writ of *habeas corpus*. *Pizzuto v. Hardison*, CV-05-00516-S-BLW, 2009 WL 2905537 (Sept. 4, 2009), Winmill, J., presiding.

4. The Instant Proceedings.

The state post-conviction petition giving rise to these proceedings was filed November 25, 2005, less than sixty days after securing Mr. Rice's admission that he had been promised far more than he admitted at Petitioner's trial. Petitioner alleged that the prosecutor wilfully withheld information as to the true content of the plea agreement, and similarly alleged that the trial judge had numerous *ex parte* contacts with the prosecutor, co-defense counsel and witnesses, including participating in plea negotiations and coordinating evidence to be marshaled against Mr. Pizzuto, all in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendment and the Eighth Amendment right to be free from cruel and unusual punishment.

The petition was supported by numerous sworn affidavits by witnesses to the judge's *ex parte* activities, including a dinner with witnesses during the trial at which the judge declared he was going to "hang" Petitioner. Appendix B, Exhibit 30.

The judges in the Second Judicial District, where Judge Reinhardt is a retired senior judge, recused themselves. The Idaho Supreme Court assigned the case to the Fourth Judicial District in Ada County, Boise, Idaho.

The first out-of district judge assigned granted the State's motion to dismiss pursuant to Idaho Code 19-2719, in part. Specifically, the district court judge issued an opinion which included dismissal of the claim relating to the blood evidence as "categorically cumulative and/or irrelevant"; claims relating to the recently disclosed plea bargain because "the plea bargain evidence is not material under the standards set forth in *Napue*, *Hayes*, and *Sivak*"; and of the judicial misconduct claims regarding Judge Reinhardt's participation in and his silence when perjury was committed and his interaction with the jurors during the trial and after the verdict was rendered.

The court did, however, order an evidentiary hearing on the allegations of judicial bias and misconduct regarding a dinner conversation with the prosecutor and State's witnesses. While moving toward the evidentiary hearing for which the

Judge Reinhardt and former prosecutor, Henry Boomer, had been subpoenaed,¹³ the district court judge recused herself.

After supplemental briefing and argument, a newly assigned judge, without addressing the original judge's order, granted the State's Motion for Summary Dismissal on the single remaining issue of judicial misconduct and vacated the evidentiary hearing order.

On appeal, the Idaho Supreme Court held the claims were barred under Idaho Code §19-2719(5) because the claims were known or should have been known within forty-two (42) days of the Judgment and Sentence entered on May 27, 1986 (plea bargain), Petitioner failed to make a prima facie case. *Pizzuto v. State*, 233 P. 3d 86, 92-94 (Idaho 2010). The Idaho Supreme Court's opinion also addressed constitutional issues now raised below. The state supreme court specifically found that "I.C. §19-2719 does not violate the Equal Protection Clause, *State v. Beam*, 115 Idaho 208, 213, 766 P.2d 678, 683 (1989), and it does not violate the Due Process Clause. *Rhoades*, 120 Idaho at 806, 820 P. 2d 676"). 233 P. 3d at 95-96. The decision was factually and legally unprecedented and

¹³ Attempts to subpoena the former sheriff were unsuccessful.

unconstitutional. The United States Supreme Court denied Mr. Pizzuto's petition for writ of *certiorari* thereon. *Pizzuto v. Idaho*, USSC No. 10-6377 (January 18, 2011).

III. REASONS AUTHORIZATION TO FILE A SUCCESSIVE PETITION FOR WRIT OF *HABEAS CORPUS* SHOULD BE GRANTED

A. The Law Governing Successive *Habeas Corpus* Applications.

As amended by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. §2244 (b)(2)(B)(i)-(ii) provides:

A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless . . . the factual predicate for the claim could not have been discovered earlier through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. §2244 (b)(2)(B)(i)-(ii).

1. Petitioner has Made a Prima Facie Case of Judicial

Misconduct and Bias.

The unrefuted allegations that Judge Reinhardt expressed hostility toward Mr. Pizzuto, directed and orchestrated the plea negotiation and blood evidence investigation, and decided to impose the death penalty in advance of the

sentencing hearing, compel the conclusion that Mr. Pizzuto was not tried by an impartial judge, in violation of due process. The allegations, if proved at an evidentiary hearing, entitle Mr. Pizzuto to a new trial. *Porter v. Singletary*, 49 F.3d 1483, 1489-90 (11th Cir. 1995). The state courts erred in finding the claim procedurally barred, Where as here, the allegations of judicial misconduct are supported by declarations of reputable credible persons and documentation, Mr. Pizzuto is, at the very least, entitled to an evidentiary hearing on the critical issue of judicial misconduct, *i.e.*, did Judge Reinhardt in fact pre-judge both the guilt of Petitioner and the appropriate penalty to impose.

The evidence before this Court certainly presents an unquestionable prima facie case on that issue. Judge Reinhardt participated and orchestrated an arrangement to assure the State had a witness to testify that Mr. Pizzuto was the killer; Judge Reinhardt repeatedly advised the family of Petitioner, both those who were in contact with Petitioner and those who were testifying for the State and estranged from Petitioner (Angelina Rawson) of his intent to impose the death penalty in words not unlike those he used in the *Lankford* case as testified to by the Court reporter, Gloria McDougall. Appendix B, Exhibit 39. Judge Reinhardt's pre-judgment on the penalty is confirmed by his conversations with the jury following the verdict. Appendix b, Exhibits 26, 27, 28, 29, 31. Judge

Reinhardt served as judge in Pizzuto's trial, sentence and postconviction proceedings without giving notice to Petitioner's counsel of his activities in relation to the plea negotiations. In what would have been perjurious for a witness, the judge's silence during Mr. Pizzuto's trial regarding his pre-trial actions is unquestionably unconstitutional.¹⁴ Neither the Constitution of the United States of America, nor the decisions of the United States Supreme Court can possibly permit an execution ordered solely on the fact-finding of a judge so decidedly partial. U.S. Const. 5, 8, 14.

2. Petitioner Has Been Consistently Diligent in Pursuing His Judicial Misconduct Claim

In prior post-convictions, Mr. Pizzuto has raised claims of judicial misconduct, offering affidavits to support the same. Petitioner has alleged and the State has not refuted that Judge Reinhardt had made comments suggesting he was going to "burn" Petitioner's "ass", and that his attorney Nick Chenoweth was a close personal friend of Judge Reinhardt. Appendix C, D. Mr. Pizzuto also moved to disqualify Judge Reinhardt and requested discovery and an evidentiary hearing. Appendix C at 27. Judge Reinhardt dismissed the petition without ruling

¹⁴ Judge Reinhardt's silence has previously resulted in constitutional error. *See Lankford v. Idaho*, 500 Idaho 110, 120 (1991).

on the disqualification motion. This Court affirmed, holding that all of the issues, including those relating to the egregious judicial misconduct, should have been raised in Mr. Pizzuto's first post-conviction proceeding, within forty-two days of the Judgment and Sentence. *Pizzuto II*, 903 P.2d at 60.

In the federal courts, Petitioner again raised the issue of judicial misconduct. *See Pizzuto v. Arave*, USDC Case No. CV-92-0241-S-AAM, specification of non-frivolous issues to be raised in Petition for *Habeas Corpus*, (Dkt. 4), and First Amended Petition for Writ of *Habeas Corpus*, Dkt. 29. The federal district court refused to reach the merits of the claim. Acknowledging that Mr. Pizzuto had provided affidavits substantiating Judge Reinhardt's off-the-record remarks, the district court nevertheless found that because Mr. Pizzuto had not explained how the hostile remarks to his family members had affected the trial, he could not show "actual prejudice." *See Pizzuto v. Arave*, USDC Case No. CV-92-0241-S-AAM, Order Resolving Procedural Issues, Dkt. 78 at 77-80. (emphasis in original). On appeal, this Court of Appeals found that Petitioner failed to establish "cause" to avoid the finding of procedural default in the state courts. *Pizzuto v. Arave*, 280 F.3d 949, 975 (9th Cir. 2002). The additional evidence now adduced showing extraordinary bias and misconduct on the part of the trial and sentencing judge

compels consideration of the issue and reversal of the conviction and sentence imposed by that judge.

B. HAD THE NEWLY DISCOVERED EVIDENCE BEEN PRESENTED AT TRIAL, NO REASONABLE FACTFINDER WOULD HAVE FOUND PETITIONER GUILTY OF THE UNDERLYING OFFENSES OR SENTENCED HIM TO DEATH.

1. Judicial Bias and Misconduct

The state postconviction court did not conduct an evidentiary hearing. Though Judge Williamson initially was sufficiently concerned by the allegations to permit a limited hearing on the assertion that Judge Reinhardt made comments to a state's witness during the trial which illustrated a pre-determination of the trial and sentencing results, that Order was ultimately vacated by Judge Owen. 34845 CR at 637-647. There was never been a meaningful opportunity for the state district court to assess the credibility of the affiants who submitted affidavits or to determine whether the court's actions at trial sentencing were so adversarial and pre-judgmental as to render the sentencing trial fundamentally unfair.

This is not a case involving merely an uncorroborated news report or rumor. Nor does this case involve a conclusory proffer of judicial misconduct. The proffer is that there is now evidence that the judge actively participated and directed the plea negotiations with the co-defendant's counsel and the prosecutor

to secure testimony against Mr. Pizzuto, *outside* the presence or knowledge of Petitioner or his counsel; that the judge participated in arranging and directing the acquisition of evidence at or near the same time as the plea negotiations; that the trial and sentencing judge made an affirmative statement of pre-judgment pre-trial to a state's witness (Angelina Rawson) and made affirmative statements relevant to sentencing to members of the jury *prior to the sentencing hearing* that demonstrated animosity towards Petitioner.

Add to that the proffer of the three persons who had previously come forward with specific and reliable evidence that the judge had a fixed predisposition to sentence this particular defendant to death before he was convicted by the jury. *See* Appendix B, Exhibit 43 (Affidavit of James R. Siebe with attached Affidavits of Gerald R. Pizzuto, Sr., Pamela Pizzuto; Toni King.) Those declarations now take on additional credibility as a result of the declarations of both Angelina Rawson, the state's witness and the court reporter, Gloria McDougall, who revealed similar statements made by this judge about another defendant who he sentenced to death. Appendix B, Exhibit 39.

The extra-judicial expressions of actual bias, and prosecutorial actions of the judge create a presumption that the activity was prejudicial. The burden was on the prosecution to prove that there was no prejudice. At the very least, due

process demands that the Petitioner is entitled to an evidentiary hearing to permit complete inquiry. More importantly, however, denial of the evidentiary hearing regarding the *ex parte* meeting on Rice's plea, the judge's silence during Rice's false testimony and the false "resurrection" of corroborating physical evidence to support Rice's testimonial version of events demands a court hearing, somewhere in these United States of America. Without a hearing, the execution of Jerry Pizzuto on the word of James Rice and the factfinding of a biased and overly intrusive sentencing judge is an outright injustice and constitutionally intolerable.

2. Prosecutorial Misconduct

In the state courts, Mr. Pizzuto submitted affidavits that have been neither challenged nor refuted; the record plainly shows the prosecutor withheld critical information regarding the gathering of physical evidence, withheld evidence of the plea agreement with the co-defendant, James Rice, and stood by silently or may have actively promoted the co-defendant's false testimony. As argued above, Mr. Pizzuto is entitled to relief on the *Brady* and *Napue* errors alleged. Alternatively, he is at a minimum entitled to a full evidentiary hearing on the acts of the prosecutor, state agents and trial and sentencing court in failing to disclose the *ex parte* proceedings and standing by while false testimony was given to the jury.

Rice and Odom potentially faced the death penalty themselves. By adroit finger-pointing toward Mr. Pizzuto, they were able to avoid a death sentence. *See Odom v. State*, 121 Idaho 625, 627, 826 P.2d 1337, 1339 (Idaho App. 1992). Their life-saving deals, however, came at a price to Mr. Pizzuto when the deals were closed by bargains made with direct input from the same judge who would sentence Mr. Pizzuto. Petitioner's defense counsel at trial was deprived of essential information that should have been disclosed because the only interested party not present or represented at those proceedings was Mr. Pizzuto. He is entitled to know what assertions and representations were made to the judge to persuade him to accept the plea recommendations and from which the judge concluded Mr. Pizzuto deserved a death sentence while the co-defendants did not. *See Gardner v. Florida*, 430 U.S. 349 (1977); *see also, Sivak v. State*, 112 Idaho 197, 205, 731 P.2d 192, 200 (Idaho 1986).

The newly discovered evidence is so damaging that confidence can no longer be maintained in the trial's reliability. The evidence against Pizzuto in this case came directly from James Rice, whose credibility is utterly devastated by the new evidence. Though the evidence is impeaching, it is so clear and convincing that a jury's reliance upon the trial testimony of Rice. The unrefuted allegations that Judge Reinhardt expressed hostility toward Mr. Pizzuto, directed

and orchestrated the plea negotiation and blood evidence investigation, and decided to impose the death penalty in advance of the sentencing hearing *outside the presence of the defense*, compel the conclusion that Mr. Pizzuto was not tried by an impartial judge, in violation of due process. The allegations, if proved at an evidentiary hearing, entitle Mr. Pizzuto to a new trial. *Porter v. Singletary*, 49 F.3d 1483, 1489-90 (11th Cir. 1995).

It is respectfully submitted that the evidence in support of the Petition sought to be filed and now before this Court is overwhelmingly. Judge Reinhardt participated and orchestrated an arrangement to assure the State had a witness to testify that Mr. Pizzuto was the killer; Judge Reinhardt repeatedly advised the family of Petitioner, both those who were in contact with Petitioner and those who were testifying for the State and estranged from Petitioner (Angelina Rawson) of his intent to impose the death penalty in words not unlike those he used in the *Lankford* case as testified to by the court reporter, Gloria McDougall. Appendix B, Exhibit His pre-judgment as to penalty is confirmed by his conversations with the jury following the verdict. Appendix B, Exhibits 26 at 3¶16. Judge Reinhardt participated in Pizzuto's trial, sentence and postconviction proceedings without giving notice to Petitioner's counsel of his activities in relation to the plea negotiations and the acquisition of blood evidence prior to Mr. Pizzuto's trial. In

what would have been perjurious for a witness, the judge's silence during Mr. Pizzuto's trial regarding his pre-trial actions is unquestionably unconstitutional.¹⁵ The Constitution of the United States of America cannot possibly permit an execution ordered by a judge so decidedly partial. U.S. Const. 5, 8, 14. The prosecution and trial judge knew of significant exculpatory and impeachment material ("Brady material") regarding both Rice and the coordination of additional evidence to corroborate the Rice version adopted pursuant to the plea agreement was not disclosed. Petitioner suffered substantial prejudice which infected his trial and totally undermines confidence in the verdict and sentence because he was not aware of the undisclosed benefits promised to Rice and the judge's active participation in those promises. The *Brady/Napue* material includes: the admission by Rice that he was promised twenty years, not the possible life without parole to which he testified, the corroboration by Rice's ex-wife of the promise made in exchange for the plea, the active participation and agreement by the trial and sentencing judge with the plea bargain, the billings of Rice's lawyers corroborating the judge's participation, the *ex parte* communications by the judge

¹⁵ Judge Reinhardt's silence has previously resulted in constitutional error. *See Lankford v. Idaho*, 500 Idaho 110, 120 (1991).

with state's witnesses and jurors *prior* to the sentencing, in which the judge was the sole fact finder.

Mr. Pizzuto's trial was infected by the egregious misconduct of the prosecutor and the trial judge. Without notice to the defense, the judge and prosecutor reached an undisclosed deal with James Rice that he would receive a 20 year sentence and serve even less actual time. The judge and prosecutor then conducted a public plea hearing at which this deal was not disclosed, but instead a false impression was created that Mr. Rice could expect a sentence of up to fixed life in prison. At Mr. Pizzuto's trial this deception continued. The prosecution elicited knowingly false testimony from Mr. Rice about his plea deal and the judge, knowing this testimony was false, allowed it to stand uncorrected.

The undisclosed plea deal constitutes material impeachment entitling Mr. Pizzuto to relief under *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Bagley*, 473 U.S. 667 (1985). The eliciting of knowingly false testimony entitles Mr. Pizzuto to relief as well. *Giglio v. United States*, 405 U.S. 150 (1972); *Napue v. Illinois*, 360 U.S. 264 (1959); *Hayes v. Brown*, 399 F.3d 972 (9th Cir. 2005) (granting habeas relief because of undisclosed plea deal for State's star witness).

The legitimacy of our criminal justice system depends on the "special role played by the American prosecutor in the search for truth in criminal trials."

Banks v. Dretke, 540 U.S. 668, 696 (2004) (quoting *Strickler v. Greene*, 527 U.S. 263, 281 (1999)). The same principle extends to the police and their investigatory work in supporting the prosecution. Full disclosure, competency in the investigation, and confidence in the evidence is expected. The obligation of the prosecutor to disclose evidence favorable to the defense serves to “justify trust in the prosecutor as ‘the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.’” *Kyles*, 514 U.S. at 439, (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

Napue holds that the knowing use of false evidence by the state, or the failure to correct false evidence, violates due process. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). To prevail on a *Napue* claim, the petitioner must show that “(1) the testimony (or evidence) was actually false, (2) the prosecution knew or should have known that the testimony was actually false, and (3) ... the false testimony was material.” *Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005) (en banc) (omission in original) (internal quotation marks omitted). For the purpose of *Napue* claims, materiality is determined by whether “there is ‘any reasonable likelihood that the false testimony could have affected the judgment of the jury,’” in which case the conviction must be set aside. *Belmontes v. Brown*, 414 F.3d 1094, 1115 (2005) (quoting *United States v. Agurs*, 427 U.S. 97, 103 (1976)).

“Under this materiality standard, [t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Hayes*, 399 F.3d at 984 (alteration in original) (internal quotation marks omitted).

The prosecution failed to disclose certain evidence regarding favorable treatment of Rice that was potentially impeaching or exculpatory. The district court found that the prosecution's failure to disclose that Rice received lenient treatment, in the form of an agreed upon twenty year sentence, despite his admission that he killed at least one of the victims in exchange for his testimony against Pizzuto, did not “represent[] anything beyond impeachment and cumulative evidence.” 34845 CR at 507. Even if that characterization were true, the evidence nonetheless is material and requires reversal. There is no question this evidence could have been useful to Pizzuto, as the defense attempted to portray Rice as an unmitigated liar motivated by self-interest to fabricate evidence. Although the jury was aware of Rice's receiving less than death in exchange for testifying against Pizzuto, the fact that he *did* receive lenient treatment and testified falsely to the degree of leniency agreed upon for his testimony at Pizzuto's trial could have given the jury an additional reason to distrust Rice's

testimony -- and indeed the entire circumstantial case presented by the State. As a result of the State's non-disclosure of this evidence, the development of a more comprehensive theory of the co-defendants' incentives in testifying was hindered. *See Banks*, 540 U.S. at 691 (“Corresponding to the second *Brady* component (evidence suppressed by the State), a petitioner shows ‘cause’ when the reason for his failure to develop facts in state-court proceedings was the State's suppression of the relevant evidence.”).

The prosecution violated *Napue* by failing to correct and indeed relying upon Rice's testimony that he expected to get life in exchange for his cooperation in the State's case against Pizzuto. The trial judge's and State's failure to correct false testimony on this issue violated due process. The undisclosed evidence regarding the lenient treatment Rice received, Rice's misleading testimony that he faced “and expected” a life sentence in exchange for his cooperation in the State's case against Pizzuto, and Rice's false testimony as to the place of the murder and actual plea agreement is material for both *Brady* and *Napue* purposes.

Notwithstanding the prosecutor's protestations otherwise, Rice and Odom provided the only “direct” evidence that connected Pizzuto to the actual commission of the murders. 16489 TR at 2113-2120. Odom's testimony was effectively dismissed because under it, he was not guilty of any offense, something

the State admitted was totally incredible. The state thus relied solely on Rice's testimony, and for corroboration of that testimony presented the purported "blood evidence." Without the co-defendants' testimonies, which were not consistent with each other, the prosecution's case against Pizzuto was entirely circumstantial. No fingerprints, DNA evidence, or eyewitness testimony placed Pizzuto at the scene. *See Hayes v. Brown*, 399 F.3d 972, 985-988 (9th Cir. 2005) (en banc) (holding that evidence of an undisclosed deal with a witness was material where the witness's testimony regarding the defendant's confession was undoubtedly the centerpiece of the prosecution's case and almost all of the other evidence against the defendant was circumstantial).

Contrary to the state district court's conclusion, which was not addressed by the Idaho Supreme Court, the non-disclosure of Rice's lenient treatment was material. The failure to disclose this evidence may well have altered the outcome of the trial. The prosecution's suppression of evidence and failure to correct the false testimony was material, resulting in a due process violation under *Brady* and *Napue*. Thus, not merely was questioning of the prosecution's case impeded, but the manifest falsity of that case was never revealed to the jury.

No reasonable juror, however, would have found Rice credible, had the newly discovered evidence been available and presented at trial. Indeed, had the

defense known of the *ex parte* communications including participation by the judge with the co-defendant's counsel and prosecutor outside the presence of the defense, they would have removed the judge from the case which, at the very least, undermines any confidence in the sentence. Beyond that, had Rice not received the twenty year promise, it is unlikely he would have testified at all, making conviction and certainly, death, extraordinarily unlikely. He had struck a deal with the State which gave him a motivation to shift the blame to someone else and he had told the district court at the time of his guilty plea that "I plead guilty to two counts of second degree murder so that I don't die." Trial Transcript ("Tr") 1882. Moreover, while Rice denied either planning or participating in the murders, his own testimony included not only the admission that he had shot Mr. Herndon, Tr 1827, but also his admission that prior to the Herndons being murdered, he had dug a hole which turned out to be Berta Herndon's grave. Tr 1810.

Under these circumstances, there can be no doubt of the significance of the newly discovered evidence. No reasonable juror would have convicted Pizzuto of the underlying offenses, if this evidence had been discovered and presented at trial.

**C. THE APPLICATION FOR *HABEAS CORPUS* RELIEF IS
TIMELY PETITIONER’S RIGHT TO PROCEED IN THIS
SUCCESSIVE PETITION FOR WRIT OF *HABEAS CORPUS***

As required by 28 U.S.C. §2254(B), “the factual predicate for the claims could not have been discovered previously through the exercise of due diligence and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that but for the constitutional errors, no reasonable factfinder would have found applicant guilty of the underlying offense” of capital murder.

The statute of limitations for filing a petition for writ of *habeas corpus* is set out in 28 U.S.C. §2244(d) (1). The relevant provisions of that statute are:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(B) The date on which the impediment to filing an application created by State action in violation of the Constitution or law of the United States is removed, if the applicant was prevented from filing by such State action.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be count toward any period of limitation under this subsection.

28 U.S.C. §2244(d)(1), (2) “[W]hen external forces, rather than a petitioner's lack of diligence, account for the failure to file a timely claim, equitable tolling may be

appropriate.” *Lott v. Mueller*, 304 F.3d 918, 922 (9th Cir.2002) (quoting *Miles v. Prunty*, 187 F.3d 1104,1107 (9th Cir. 1999)). Because Mr. Pizzuto has diligently pursued his rights throughout and the state courts’ failure to diligently apply and enforce its own capital postconviction statute in a constitutional manner was a factor outside of Mr. Pizzuto’s control, he is entitled to equitable tolling during the time in which the petition was pending in the state courts.

The claims now raised by Petitioner allege his actual innocence of his commission of the murder. The allegations raise a substantial doubt about the findings of both guilt of first degree murder and of the death penalty.¹⁶ The “actual innocence” of Petitioner permits the filing of a successive federal *habeas corpus* petition and precludes summary dismissal. 28 U.S.C. §2244(b)(2)(B)(ii).¹⁷ See *Sanders v. United States*, 373 U.S. 1, 198 (1963); see also, *Sawyer v. Whitley*, 505 U.S. 333, 340 (1992).

¹⁶ Because a capital sentencing hearing is akin to a trial on guilt or innocence, the imposition of the death penalty is also akin to a verdict on the “guilt or innocence” of death penalty eligibility. See *Bullington v. Missouri*, 451 U.S. 430 (1981).

¹⁷ Idaho law is similar though broader in its scope, notwithstanding the Idaho Supreme Court’s failure to apply the well-settled law in Idaho in this case. See, e.g., Idaho Code §19-4901(b); *Sivak v. State*, 134 Idaho at 649, 8 P.3d at 644 (2000); see also, *Sargent v. Henderson*, 926 F.2d 706 (8th Cir. 1991), *cert. denied*, 112 S.Ct. 915 (1992), *vacated and remanded on other grounds*.

Notwithstanding its holding in the underlying case on appeal, under the Idaho Supreme Court's consistent interpretation of Idaho Code §19-2719, the petition was properly filed in the state courts and thus the time pending therein (November 25, 2005 through January 18, 2011) was tolled, making the filing herein within one (1) year of the date in which Petitioner was reasonably aware of the factual bases of the claims raised here. 28 U.S.C. §2244(d)(1)(D).

The mere finding by the Idaho Supreme Court that the petition is barred by its application of Idaho's Special Capital Appellate and Post-Conviction Statute does not bar this federal court review. *See e.g., Cooper v. Woodford*, 358 F.3d 1117 (9th Cir. 2004). Any time spent in the state court was tolled because the state petition was properly filed. Even if because of the Idaho Supreme Court's finding of untimeliness prevails and the state petition is not found to be "properly filed", the actions of the state compels an equitable tolling of the statute of limitations in this case. In any case, the "ends of justice" require that claims of judicial and prosecutorial misconduct, individually and cumulatively, be determined notwithstanding raised here

If the State of Idaho had a statutory mechanism that provided Petitioner with the ability to develop the claim that he repeatedly raised, but never had heard, this case would not be before the Court and Petitioner would not be on death row.

While there is no constitutional requirement that the states provide a post-conviction remedy, like an appeal, where one is provided, it must comport with due process. See *Evitts v. Lucey*, 496 U.S. 387, 400-401 (1985). As exemplified in Petitioner's case, Idaho's death penalty post-conviction statute, Idaho Code § 19-2719, has been no more than empty promises, failing to satisfy even minimum notions of fairness and due process. It is, however, the state's illusory right to file which necessarily compelled the state proceedings under 28 U.S.C. § 2254(B)(1).

In Mr. Pizzuto's case, the statutory right to a post-conviction challenge provided no avenue to relief because it was, unlike any prosecutorial misconduct claim before it, subjected to a 42-day *pre-appeal* statute of limitations at a time when appointed trial counsel served as post-conviction counsel and was necessarily presented to the very judge whose conduct was at issue.¹⁸ Mr. Pizzuto's ability to secure relief was dependent on his ability to fully investigate and develop his fact-based concerns and present them to a neutral judicial fact-finder, neither of which was possible within the draconian 42-day statute of limitations, particularly under the circumstances of same counsel, same prosecutor and same judge. The state supreme court's opinion makes clear that because

¹⁸ In 2001, this Court noted that the forty-two day statute of limitations is the shortest in the nation. *Hoffman v. Arave*, 236 F.3d 523, 532-533 (9th Cir. 2001)

Petitioner had “some reason” to believe the judge was biased, namely, statements by the judge to Petitioner’s family members of the judge’s pre-disposition to conviction and sentence which triggered the 42-day statute of limitations, nothing Mr. Pizzuto has later found can lift the procedural bar. See *Pizzuto v. State*, 233 P. 3d 86, 92-95 (Idaho 2010). The long and torturous procedural history of this case makes two things clear: Mr. Pizzuto rightly and consistently believed and asserted that the sentencing judge was biased, and Mr. Pizzuto was, and has consistently been, denied the opportunity to fairly litigate the extent of that bias by Idaho’s unconstitutional Special Appellate and Expedited Post-Conviction Death Penalty statute, Idaho Code Section 19-2719, though presumably required to do so under both state and federal standards. See 28 U.S.C. §2254(c) and *State v. Rhoades*, 822 P.2d 960, 969 (Idaho 1991) (“There is no absolute bar on successive petitions for relief.”)

The question presented here is whether Idaho’s post-conviction procedures as applied to Mr. Pizzuto created a “meaningless ritual”, ultimately inflicting unnecessary delay and depriving him of any realistic opportunity to litigate the serious constitutional issues of undisclosed judicial and prosecutorial misconduct which rendered his trial and sentencing a farce, and review of the same a nullity.

In September, 2005 Mr. Pizzuto, through the cooperation of Mr. Rice for the first time Petitioner was advised of crucial evidence that totally discredited the prosecution and the judge ultimately undermining any resemblance of the state proceedings to a fair trial. This information was known to the prosecutor and the judge since before the trial, was known to be relevant and material to Petitioner's claims of innocence and yet remained undisclosed -- despite the prosecution's pious claims otherwise.

The State denied Pizzuto throughout the state proceedings the opportunity to be tried on all of the available evidence, including exculpatory and impeachment information. The delay is directly attributable to the State's shocking and illegal actions followed by the state supreme court's inexplicable indifference. The Supreme Court of the United States has held that the prosecution bears the risk of nondisclosure of material exculpatory and impeaching information. *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995). Moreover, when a prosecution informs the defense that it has an open file policy and that all exculpatory and impeaching information has been disclosed, the defense has a right to rely upon that representation. *Strickler v. Greene*, 119 S. Ct. 1936, 1947 n.18, 1949-51 (1999). Pizzuto's right to rely on the State's assertions of full disclosure was confirmed in open court by the prosecution. Pizzuto cannot

be faulted for failing to uncover the evidence until 2005, given his efforts to secure the information earlier and justifiable reliance upon the prosecution's claim of full and complete disclosure, any more than he can be faulted for relying on the Idaho Supreme Court's assurances of the right to be heard on newly discovered information. Pizzuto's reliance upon the State's material nondisclosures provides an excuse for that delay and precludes a finding of any lack of diligence on Pizzuto's behalf. *See Carriger v. Stewart*, 132 F. 3d 463, 479 (9th Cir 1998) (“[C]riminals who are rewarded by the government for their testimony are inherently untrustworthy and their use triggers an obligation to protect the defendant from being a victim of a perfidious bargain between the state and its witnesses.”) *Paradis v. Arave*, 130 F.3d 385, 393-94 (9th Cir. 1997) (“Even when cause and prejudice cannot be established, procedurally defaulted, successive or otherwise abusive claims brought in a repeat habeas petition will be addressed on their merits when necessary to serve the ends of justice.”).

Because the evidence here raises a substantial doubt as to Petitioner's guilt and wholly undermines the verdict of death returned by the sole factfinder, the trial judge, the claims should have been heard in the state courts. *See Idaho Code* §19-4901(b); *see also, Sivak v. State*, 8 P.3d 636, 642 (Idaho 2000). Because they were not, this Court should permit the filing of a successive petition for writ of

habeas corpus to ensure the constitutional integrity of the state of Idaho's decision to kill Mr. Pizzuto.

The record, with newly discovered evidence, now reveals the likelihood that no reasonable juror would have convicted Petitioner of first degree murder or sentenced him to death. The execution of an innocent individual is constitutionally prohibited under both the state and federal constitutions and in any event, compels consideration of the constitutional claims now raised notwithstanding any procedural bar to the same. Idaho Code § 19-4901 *et seq.*, *See Schlup v. Delo*, 513 U.S. 298 (1995); *Sivak v. State*, 8 P.3d at 642.¹⁹ It was to that end that the state postconviction which was only recently denied by the Idaho Supreme Court was properly filed and the Idaho Courts' rejection of the same constitutionally erroneous. Idaho Code §§19-2719(5), 19-4901 *et seq.*

¹⁹ In *Sivak*, the Idaho Supreme Court said, We reject the State's theory that Sivak has waived this claim for relief merely because he raised the issue in his first post-conviction petition. As Sivak concedes, this petition presents not a new claim but new evidence supporting an old claim. Applying this rule as the State requests would result in Idaho courts being unable to entertain evidence of actual innocence in successive post-conviction petitions, even where the evidence was clearly material or had been suppressed by prosecutorial misconduct. We must be vigilant against imposing a rule of law that will work injustice in the name of judicial efficiency.

134 Idaho at 647, 8 P.3d at 642.

Under any circumstances, the conviction and sentence of death imposed here is the result of a manifest injustice and the ends of justice require this Court to permit the claims to be reviewed by the district court. *See Sanders v. United States*, 373 U.S. 1, 18 (1963). Petitioner's claims raise significant allegations of a total collapse of the adversary system, denial of a fair trial and the probability that Petitioner is actually innocent of the offenses charged including the death-eligibility determination made by Judge Reinhardt, matters which because of the failure of the trial judge and prosecutor to disclose the conduct and facts giving rise to these claims cannot be procedurally defaulted under Idaho's 42-day rule, Idaho Code 19-2719, notwithstanding the Idaho Supreme Court's recent decision holding otherwise. *See Pizzuto v. State*, 233 P. 3d at 92-94.

Because the timing of the current petition results from the misconduct of the state and judge in their failure to reveal the fact of the judge's participation in plea negotiations and *ex parte* witness and juror communications as well as the state supreme court's erroneous and unconstitutional application of Idaho Code §19-2719(5) 42-day rule which would have effectively terminated any right by Mr. Pizzuto to challenge his convictions and sentences on undiscovered and undisclosed constitutionally defective misconduct which undermined the integrity of the proceedings leading to his sentence of death at any time subsequent to July

8, 1987 and pursuit of a federal habeas containing the same claim to one April 24, 1997, years before Mr. Rice willingly admitted the benefits of his testimony and counsel's notes were available to corroborate and expose the manner in plea was negotiated and entered.

Mr. Pizzuto has filed his successive petition for writ of *habeas corpus* well within one-year of the discovery of the claims based on the statutory tolling of the properly-filed petition for post-conviction relief or any time beyond the statute of limitations is necessarily equitably tolled by the unforeseen and unconstitutional actions of the state courts in precluding consideration of the claims in state court. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (A habeas petitioner must show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance has stood in his way.”); *Pliler v. Ford*, 542 U.S. 225, 234 (2004) (remanding for consideration of equitable tolling where respondent may have been “affirmatively misled by the district court”); see also *id.* at 235 ((O'Connor, J., concurring) (“Nevertheless, if the petitioner is affirmatively misled, either by the court or by the State, equitable tooling might well be appropriate). In *Harris v. Carter*, 515 F. 3d 1051, 1057 (9th Cir 2008) this Court held that “[e]quitable principles dictate that we toll AEDPA's statute of limitations in the rare case where a petitioner relies on our legally erroneous holding in

determining when to file a federal habeas petition.” The same principle applies when the state courts reject a “properly filed” petition on “timeliness” grounds under an unconstitutional interpretation of the state postconviction statute.

IV. CONCLUSION

Petitioner’s Application for Authorization to file a Successive Petition for Writ of *Habeas Corpus* and proceed with additional proceedings in the district court on the issues alleged therein should be granted.

DATED: February 23, 2011.

Respectfully submitted,

/s/ Joan M. Fisher

JOAN M. FISHER
Assistant Federal Defender
Federal Defenders of Eastern
District of California
801 “I” St., 4th Floor
Sacramento, CA 95818

Attorney for Petitioner

INDEX OF APPENDICES

APPENDIX A	Petition for Writ of Habeas Corpus
APPENDIX B	Exhibits in Support of Petition for Writ of Habeas Corpus
APPENDIX C	Petition for Post Conviction Relief (April 18, 1994)
APPENDIX D	Affidavit of Prejudice in Support of Motion to Disqualify for Cause in Case No. SP1837

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2011, I caused to be served a true and correct copy of the foregoing by the methods indicated below, postage prepaid where applicable, and addressed to:

Lawrence G. Wasden
Idaho Attorney General

Stephen Bywater
Deputy Attorney General
Chief, Criminal Law Division

L. LaMont Anderson
Deputy Attorney General
Chief, Capital Litigation unit

Statehouse Mail, Room 10
700 W. Jefferson Street
P.O. Box 83720
Boise, ID 83720-0010

U.S. Mail
 Hand Delivery
 Facsimile (208-334-
2942)
 Overnight Mail

/s/ Dianna Oglethorpe

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 DISTRICT COURT
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 CLERK OF DISTRICT COURT
 BY _____ DEPUTY

HENRY R. BOOMER
 Idaho County Prosecuting Attorney
 Idaho County Courthouse
 Grangeville, Idaho 83530
 (208) 983-0166

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case Nos. 22039, 22076,
	)	22077, 22075
vs.)	
	)	DISCOVERY COMPLIANCE
JIM RICE,)	
WILLIAM ODOM,)	
LENE ODOM,)	
GERALD PIZZUTO,)	
)	
Defendants.)	

39 25962

Comes now the plaintiff and submits the following response to the Requests for Discovery by the attorney's for the above-named defendants: the Idaho County Sheriff's Office has in its possession a three ring binder containing copies of all officers reports; potentially exculpatory material or information; any relevant written or recorded statements made by the defendants; the substance of any oral relevant statements made by the defendants to any peace officers or prosecuting officials or agents thereof; any written or recorded statements of co-defendants and the substance of any other relevant oral, statements made by co-defendants; copies of all defendants' prior criminal records and prior criminal records of any of the witnesses that have criminal records who may be called by us in the prosecution in this matter; lists or copies of all books, papers, documents, photographs, tangible objects that are in the possession, custody or control of the plaintiff or its agents which may be used as evidence at trial; copies of all results or reports of physical

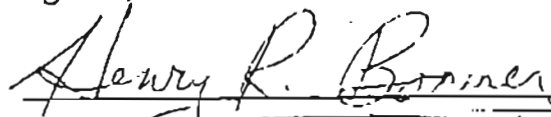
DISCOVERY COMPLIANCE - 1 -

or mental examinations that have scientific tests and experiments made in connection with these cases; a copy of the list of all persons having knowledge of relevant facts and that may be called as witnesses.

In addition, there are documents, reports, photographs and tangible objects in the possession of the court that were offered as evidence in the preliminary hearings of defendant's Lene Odom and William Odom on August 23, 1985, and that may presumably be viewed and copied upon request.

Furthermore, the afore-mentioned binder with materials and information is constantly being updated by the Idaho County Sheriff's Office as new material arrives, and counsel will of course be permitted to view any new material as it arrives. In addition, one copy of such material is being made and is being furnished to the Office of Prosecuting Attorney. Both binders may be viewed and copies made by defendant's counsel upon request.

DATED this 30 day of August, 1985.


HENRY R. BOOMER, Prosecuting Attorney

39 25963

Certificate of Mailing

I, the undersigned, do hereby certify that a copy of the foregoing Discovery Compliance was mailed by me by regular first class mail deposited in the U. S. Post Office at Grangeville, Idaho, this 30 day of August, 1985, to;

Wilfrid W. Longeteig, Attorney at Law, 201 W. Main, Craigmont, Idaho 83523 (attorney for Lene Odom);

Gregory FitzMaurice, Attorney at Law, 200 S. College, Grangeville, Idaho 83530 (attorney for William Odom);

William Dee, Attorney at Law, 416 W. Main, Grangeville, Idaho 83530 (attorney for Jim Rice);

Nick Chenoweth, Attorney at Law, P. O. Box 1422, Orofino, Idaho 83544 (attorney for Gerald Pizzuto);


HENRY R. BOOMER, Prosecuting Attorney

DISCOVERY COMPLIANCE - 2 -

IDaho DISTRICT COURT

RECORDED

HENRY R. BOOMER
Idaho County Prosecuting Attorney
Idaho County Courthouse
Grangeville, Idaho 83530
(208) 983-0166

FEB 13 9 1 AM '86
CLERK OF DISTRICT COURT
BY *Wanda Allen*
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,	)	Case No. 22075
)	
Plaintiff,	)	FOURTH SUPPLEMENTARY
	)	DISCOVERY COMPLIANCE
vs.)	
)	
GERALD ROSS PIZZUTO,)	
)	
Defendant.)	

TO: Nick Chenoweth, Attorney for Gerald Ross Pizzuto;

In compliance with the discovery request filed in the above entitled case the State hereby submits the following copy of the transcript of statement under oath of Iene Odom and a copy of the transcript of William Odom, Jr., entry of pleas of guilty and sworn statement, given on February 6, 1986, and a copy of notes of Daniel Willey concerning his testimony in State of Idaho vs. William Odom, with a copies to counsel.

DATED this 18 of February, 1986.


Henry R. Boomer
HENRY R. BOOMER
Prosecuting Attorney

22-0381

MAILING CERTIFICATE

I the undersigned, do hereby certify that a copy of the foregoing Fourth Supplementary Discovery Compliance was mailed by me by regular first class mail deposited in the U. S. Post Office at Grangeville, Idaho, this 19 day of February, 1986, to:

Nick Chenoweth
Attorney at Law
P. O. Box 1422
Crofino, Idaho 83544


~~HENRY R. BOOMER~~
Prosecuting Attorney

39 26382

Case #8507056
Report of Randy D. Baldwin
Attempted Evidence Recovery

In February 1986, a plea bargain agreement was made with Bill Odom, a suspect in the Herndon homicide which occurred in July 1985 in the Ruby Meadows area. Pursuant to this plea bargain agreement, Odom agreed to show law enforcement officers where he had disposed of a .22 caliber rifle that had been used during the Herndon homicide.

Odom described the area where he threw the rifle away as being on the Gold Forks Road, leading towards the hot springs, approximately two or three turns past the rock outcropping, which is on the right hand side of the road as you proceed toward the Gold Fork Hot Springs from the Donnelly area. Odom stated that he was enroute back to Donnelly when he decided to dispose of the rifle. He stated that he came to an inside turn with brush along the east side of the road towards the river. He advised that he pulled over towards the edge of the road, took the rifle by the forearm stock and reached out the window and threw it approximately ten to twelve feet against the brush. At that time, it fell down to the bottom of the brush. He also advised that he got out of his pick-up, remembering that the road was fairly level at that spot, because his pick-up was not equipped with an emergency brake and would not start again if you turned it off. Odom stated that he got out of the vehicle after he threw the gun over the bank and walked to the edge of the road, where he did observe the rifle laying on the ground at the base of the brush.

On February 15, 1986, Deputies Oliver, Crosland, McKenzie, and myself took Bill Odom to the Gold Fork area that he had described. At that location, we met two Valley County Deputies and began searching for the area where the gun was supposedly located. Bill Odom did locate the area where he believed he threw the rifle. At that location, we used a metal detector to try to locate any metal objects. We were unable to locate anything. We then dug down around the base of the brush, removing the snow, used the metal detector again, and were still unable to locate the rifle. Bill Odom stated that he was positive that the location where we removed the snow was the area where the rifle was. Photos were taken of the area where the rifle was believed to be. We checked other locations to see if possibly Bill Odom was mistaken and we were unable to locate any other area similar to the description he had given earlier of where he had thrown the rifle. It's a possibility that someone walking along the road could have easily seen the rifle along the roadway. According to Bill Odom, the rifle was located approximately ten feet from the edge of the road, which was consistent with the location we searched. This area was approximately 3.6 miles from the main highway leading to the Gold Forks Hot Springs. It is also approximately .09 of a mile from the bridge that crosses the Gold Forks River on the road leading to Gold Forks Hot Springs.

After completing the search of that area, I phoned Prosecutor Hank Boomer to see if he requested anything further, and I also contacted Assistant Defense Attorney Scott Wayman to ascertain if he requested any further search of the area. Both the prosecutor and defense advised that they could not think of anything else that needed to be done in the area at that time. We then returned to Grangeville with Bill Odom, and Odom was returned to the Idaho County Jail.

DISTRICT COURT
FILED

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FEB 7 10 50 AM '81

HENRY R. BOOMER
Idaho County Prosecuting Attorney
Idaho County Courthouse
Grangeville, Idaho 83530
(208) 983-0166

NED STUART
CLERK OF DISTRICT COURT
BY *Ned Stuart*
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

STATE OF IDAHO,)	
	)	Case No. 22075
Plaintiff,)	
	)	SECOND SUPPLEMENTARY
vs.	)	DISCOVERY COMPLIANCE
)	
GERALD ROSS PIZZUTO,)	
)	
Defendant.)	

TO: Nick Chenoweth, Attorney for Defendant Gerald Ross
Pizzuto;

In compliance with the discovery request filed in the above
entitled case the State hereby submits the following, with copies to
counsel:

1. One page report of Ned Stuart Re: Luminol testing on 1972 Ford pickup.
2. One page report of Ned Stuart Re: Luminol testing of cabin.
3. Two page report of Ned Stuart Re: James Rice polygraph.
4. Three page report of Ned Stuart Re: blood testing on clothing.
5. Two page report of Ned Stuart Re: re-examination of cabin site.
6. One page report of Ned Stuart Re: supplemental report on clothing.

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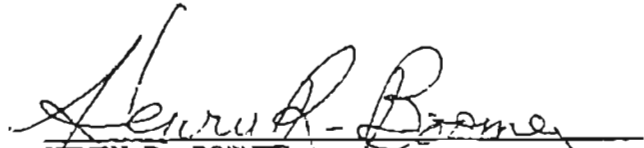
7. Letter from Cascade County, Montana, County Attorney's Office; copies of Return of Search Warrant, Search Warrant; Application for Search Warrant and related documents plus police reports as follows:

- a. Report of Sgt. John Vami, dated April 7, 1985;
- b. Teletype;
- c. Report of Keith Kercher, dated April 7, 1985;
- d. Teletypes;
- e. Report of Jim L. Carpenter, dated August 10, 1985;
- f. Report of Don McCaffrey, dated August 10, 1985;
- g. Report of John M. Erickson, dated August 10, 1985;
- h. Report of Ken C. Garrison, dated August 10, 1985;
- i. Report of Richard Johnson, dated August 10, 1985;
- j. Report of Cloyd Grove, dated August 9, 1985;
- k. Report of Sgt. D. Goyette, dated August 9, 1985;
- l. Report of Det. Sgt. Warrington, dated August 10, 1985;
- m. Statement of Rights, dated August 9, 1985;
- n. Report of Det. L. Renman, dated August 10, 1985;
- o. Sketch of trailer;
- p. Photo of Gerald Ross Pizzuto;
- q. Numerous teletypes;
- r. State of Montana Corrections Division Documents
- s. Sketch of Trailer;
- t. Report of Det. Edward J. Sinnott, dated August 12, 1985;
- u. Report of Det. McQuire, dated August 10, 1985;
- v. Report of Det. McQuire, dated August 18, 1985;
- w. Report of Det. McQuire, dated August 16, 1985;
- x. Report of Det. McQuire, dated August 14, 1985;

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- y. Photo of remington cartridge box;
- z. Receipt for property;
- aa. Report of Det. McQuire, dated September 5, 1985;
- bb. Teletypes;
- cc. Cleaning bill for Angie Pizzuto's trailer;
- dd. Dispatch report and short report Re: Betty Jay Noakes.

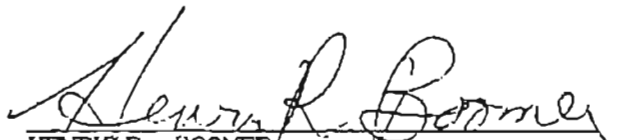
DATED this 7th day of February, 1986.


HENRY R. BOOMER
Prosecuting Attorney

MAILING CERTIFICATE

I the undersigned, do hereby certify that a copy of the foregoing Second Supplementary Discovery Compliance was mailed by me by regular first class mail deposited in the U. S. Post Office at Grangeville, Idaho, this 7th day of February, 1986, to:

Nick Chenoweth
Attorney at Law
P. O. Box 1422
Orofino, Idaho 83544


HENRY R. BOOMER
Prosecuting Attorney

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DISTRICT COURT
CLERK

DOCKETED

MAR 3 4 07 PM '86

HENRY R. BOOMER
Idaho County Prosecuting Attorney
Idaho County Courthouse
Grangeville, Idaho 83530
(208) 983-0166

JUDICIAL DEPARTMENT
CLERK
BY Henry R. Boomer
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO


STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. 22075
)	
vs.	)	SEVENTH SUPPLEMENTARY
	)	DISCOVERY COMPLIANCE
GERALD ROSS PIZZUTO,)	
)	
Defendant.)	

TO: Nick Chenoweth, Attorney for Gerald Ross Pizzuto the above-named defendant;

In compliance with the discovery request filed in the above entitled case the State hereby submits the following:

1. Statement of Sheriff, Randy Baldwin, concerning pre-polygraph interview of Jim Rice.
2. Statement of Sheriff, Randy Baldwin, concerning pre-polygraph interview of William Odom.
3. Statement of Sheriff, Randy Baldwin, concerning interview of Lene Odom.
4. Statement of Sheriff, Randy Baldwin, concerning evidence search at Ruby Meadows and search for rifle.

DATED this 3 day of March, 1986.


 HENRY R. BOOMER
 Idaho County Prosecuting Attorney

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Certificate of Service

I, the undersigned, do hereby certify that I delivered a true and correct copy of the foregoing Seventh Supplementary Discovery Compliance to Nick Chenoweth, Attorney at Law, P. O. Box 1422, Orofino, Idaho this 3 day of March, 1986.

Henry R. Boomer
HENRY R. BOOMER
Idaho County Prosecuting Attorney

Certificate of Mailing

I, the undersigned, Henry R. Boomer, do hereby certify that a copy of the foregoing Seventh Supplementary Discovery Compliance was mailed by me by regular first class mail deposited in the U.S. Post Office at Grangeville, Idaho, this 3 day of March, 1986, to:

Gregory FitzMaurice
Attorney at Law
200 South College
Grangeville, Idaho 83530

Wilfrid W. Longeteig
Attorney at Law
P. O. Box 155
Craigmont, Idaho 83523

William J. Dee
Attorney at Law
P. O. Drawer 463
Grangeville, Idaho 83530

Henry R. Boomer
HENRY R. BOOMER
Idaho County Prosecuting Attorney

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