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NOT FOR PUBLICATION

FILED

JUN 18 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARD CONTRERAS SANDOVAL, Petitioner-Appellant, v. BRAD CAIN, Superintendent, Snake River Correctional Institution, Respondent-Appellee.	No. 23-35213 D.C. No. 2:19-cv-01278-SI MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

Submitted June 6, 2024**
Portland, Oregon

Before: RAWLINSON, FORREST, and SUNG, Circuit Judges.

Leonard Contreras Sandoval (Contreras Sandoval) appeals the district court's denial of his habeas petition under 28 U.S.C. § 2254, after Contreras Sandoval was convicted of murder in Oregon state court. Contreras Sandoval

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

argues that his trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984) for failing to obtain his military records and offer a use-of-force and military combat training expert at trial to support his self-defense theory. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

"We review de novo a district court's denial of a habeas corpus petition and review for clear error any factual findings made by the district court. . . ." *Hart v. Bloomfield*, 97 F.4th 644, 652 (9th Cir. 2024) (citation omitted). "But we are constrained by the Antiterrorism and Effective Death Penalty Act (AEDPA), which governs habeas review of state convictions." *Iversen v. Pedro*, 96 F.4th 1284, 1286 (9th Cir. 2024). "Under AEDPA, we must defer to the last state court's reasoned decision[1] on any claim that was adjudicated on the merits unless that decision is (1) contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court or (2) based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. . . ." *Id.* (citation and internal quotation marks omitted).

1. As an initial matter and based on the post-conviction court's statement that it "read 90 percent" of the trial transcript, Contreras Sandoval argues that the court's decision is not subject to the customary AEDPA deference. Under *Strickland*, "a court hearing an ineffectiveness claim must consider the totality of

[1] In this case, the last reasoned decision was that of the state post-conviction court.

the evidence," 466 U.S. at 695, but a state court "need not address 'every jot and tittle of proof suggested to them.'" *Kipp v. Davis*, 971 F.3d 939, 954 (9th Cir. 2020) (citation omitted). The state post-conviction court acknowledged the totality of the evidence standard, and adhered to that standard in finding no prejudice. Accordingly, the post-conviction court's ruling is entitled to AEDPA deference. *See Iversen*, 96 F.4th at 1286.

2. The post-conviction court's determination that Contreras Sandoval was not prejudiced by his counsel's ineffective performance was not contrary to or an unreasonable application of *Strickland*. "*Strickland*'s 'prejudice' prong requires a defendant to show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . ." *Lewis v. Andes*, 95 F.4th 1166, 1177 (9th Cir. 2024) (citation and internal quotation marks omitted).

We agree with the district court that the experts' testimony was "of somewhat limited value" under Oregon law, being "necessarily . . . based on [their] assessment of [Contreras Sandoval's] believability." *State v. Sperou*, 442 P.3d 581, 588 (Or. 2019) (en banc) (citation omitted). In any event, the jury was aware that Contreras Sandoval was a skilled shooter due to his military background. And the State introduced ample evidence to dispel Contreras Sandoval's self-defense theory, including that Contreras Sandoval often communicated a desire to kill the

victim, and even divulged a plan to prompt the victim to brandish a firearm so that Contreras Sandoval could shoot the victim and assert self-defense. The State also presented evidence that the trajectory of the bullet established that Contreras Sandoval exited his vehicle to shoot the victim, refuting the premise that Contreras Sandoval was reacting to a threat created by the victim.

3. Finally, we are not persuaded by Contreras Sandoval's contention that the post-conviction court's ruling was based on an unreasonable determination of the facts. Based on the record evidence, the post-conviction court "could reasonably determine that" Contreras Sandoval planned to provoke the victim. *Sifuentes v. Brazelton*, 825 F.3d 506, 531 (9th Cir. 2016), *as amended*.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

LEONARD CONTRERAS SANDOVAL,

Petitioner,

v.

BRAD CAIN,

Respondent.

Case No. 2:19-cv-01278-SI

OPINION AND ORDER

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SIMON, District Judge.

Petitioner brings this habeas corpus case pursuant to 28 U.S.C. § 2254 challenging the legality of his Josephine County murder conviction dated March 6, 2009. For the reasons that follow, the Amended Petition for Writ of Habeas Corpus (#23) is denied.

BACKGROUND

Petitioner and Jack Whitcraft, two residents of a small town in Josephine County, had an acrimonious relationship. While Petitioner and his wife, Mary Carlson, were separated but still married, she became engaged in a romantic relationship with Whitcraft and married him after she and Petitioner divorced. Thereafter, Petitioner was "forever" harassing and threatening Carlson and Whitcraft, and had specifically told Carlson, "If I can't have you, no one can." Trial Transcript, pp. 1033, 1035.[1] He threatened to kill her, Whitcraft and anyone who was helping her. *Id* at 1035. At times, Carlson would be walking down the street while Petitioner was driving down the same street. He would swerve his vehicle close to her, reach out, and hit whatever she was carrying in her hand. *Id* at 1037.

After his divorce from Carlson, Petitioner entered into a relationship with Robin Garten for approximately three years in the late 1990's. He then began a relationship with another woman, Janice Rose. Rose's mother lived two houses away from the home Carlson and Whitcraft occupied, placing these four other individuals within frequent proximity to each other. Petitioner and Rose were "both tearing in and out of the road all the time and making gestures at [Carlson]." *Id.* Petitioner would gesticulate, "[u]sually the middle finger," and this would occur "[t]here, four, five times a week, every time [Petitioner] came in." *Id*.

[1] Citations to the trial transcript are to the numbers located at the bottom right of the pages.

Despite the fact that Carlson had obtained a restraining order against Petitioner after he attempted to hit her with his truck while she was standing in her yard, the confrontations escalated in late 2000 and 2001. Petitioner would stalk Carlson and "pretty much didn't let [her] go anyplace freely." *Id* at 1039. Petitioner also demonstrated consistent animosity toward Whitcraft and, on one occasion, attempted to run him off the road after Whitcraft exited a gas station. *Id* at 1039. Whitcraft told Carlson that "one of these times [Petitioner is] actually going to get [Whitcraft] run off the road and [Whitcraft's] afraid that one of these times that the [Petitioner] is going to pull a gun and shoot him when he's . . . driving." *Id* at 1041.

Tensions between Petitioner and Whitcraft continued to run high, and at least one person heard Whitcraft say he would like to kill Petitioner. *Id* at 1473. On July 18, 2001, Whitcraft and Petitioner were both at the Lil Pantry convenience store when they became involved in a physical altercation. It is not known who instigated the fight and, while Whitcraft was bloody, his glasses were broken, and his shirt had been ripped off, it is uncontroverted that he prevailed in the fight. *Id* at 1041. In the aftermath of that altercation, "it seemed like [Petitioner's] attitude had changed . . . he was more anxious and more angry." *Id* at 1089. According to Rose, "he wasn't the person that I had known. He was very angry, he was very nervous, he couldn't stay in one sport very long, very agitated." *Id.*

For his part, in the wake of the fight at the Lil Pantry, Whitcraft feared that "because he had finally got the better of [Petitioner] that [Petitioner] would retaliate and probably shoot him." *Id* at 1041. Approximately eight weeks after the altercation, on September 13, 2001, Whitcraft called Carlson at home:

> He was very agitated, very scared, his voice was very shaky, said he had just talked to the Police Department – or, the Sheriff's Department and told me why.

* * *

> . . . the [Petitioner] had caught him at the red light at the Robertson Bridge Road and pulled a gun on him and then followed him up to Harvey's when he went in there, but didn't follow him in and he was just afraid that he'd come back and shoot him.
>
> * * *
>
> . . . he told me to watch out because now he's done this and [Petitioner will] probably come for me next.

Id.[2]

Whitcraft and Carlson discussed the incident at length and agreed that Whitcraft should start carrying a revolver with him when he left the house.[3] Carslon gave him a .44-caliber revolver Petitioner had given her as a present on Valentine's Day 1984, and Whitcraft kept it on the seat next to him when he drove, except when Carlson was with him in which case he kept it on the dashboard of his vehicle.

Two weeks later, on September 27, 2001, Whitcraft was driving on Pickett Creek Road outside of Merlin, Oregon when Petitioner shot and killed him. There were no witnesses to the shooting. The evidence showed that Whitcraft had slammed the brakes on his pickup truck in an uncontrolled stop. When law enforcement showed up at the scene, the back of Whitcraft's truck was in contact with the front of Petitioner's Ford Bronco, and there was damage to the left front quarter panel of the Bronco. Whitcraft's truck was still running and the gear selector was in neutral while the Bronco was not running and the gear selector was in third gear.[4] The driver's

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[2] It is unclear when, but there was also an incident where Petitioner pointed a pistol at Carlson from the driver's side of his car as Carlson was driving in her own vehicle. Trial Transcript, p. 1043.

[3] Prior to the incident where Petitioner pointed the firearm at Whitcraft, Whitcraft did not regularly carry a firearm. Trial Transcript, p. 1043.

[4] Petitioner told police that when he left the scene to call 9-1-1, Whitcraft's truck was still running with the gear selector in reverse. Respondent's Exhibit 134, p. 39.

side door of Whitcraft's truck was open, and his body lay partially in the roadway with his feet still tangled up in the interior speaker wiring of his truck's cabin. His .44-caliber revolver was cocked, loaded, and underneath his body. Petitioner had fired a single shot from his bolt-action rifle which pierced the rear window of Whitcraft's pickup, entered the rear of his skull on the lower left side, and exited above his right eye. Responding officers found an ejected single rifle shell casing outside and underneath the Bronco. Trial Transcript, pp. 1315-17.

Approximately 90 minutes after the shooting, Detective Rylander interviewed Petitioner. He claimed he had killed Whitcraft in self-defense. According to Petitioner's version of events, he was on his way to visit with Tyrone Montgomery, a service officer for Veterans Affairs, about increasing his benefits. He then planned to deliver grass seed to a friend who wanted to seed a muddy portion of his yard.[5] He was at a stop sign on a road running perpendicular to Pickett Creek Road when he saw Whitcraft drive by in front of him. Petitioner claimed that when he turned right onto Pickett Creek Road (placing him behind Whitcraft), Whitcraft slammed on his brakes, reversed the vehicle, and intentionally crashed into the front of Petitioner's Ford Bronco.

Petitioner related that after the collision, he peered through the rear window of Whitcraft's pickup truck and saw him reach over and grab a revolver. Whitcraft then allegedly opened the door of his truck, stepped out with one leg, and began turning toward Petitioner such that he was facing Petitioner and pointing the revolver at him. Respondent's Exhibit 134, pp. 29-33. Petitioner stated that he retrieved his rifle from behind his seat, chambered a round from the loaded magazine, opened the door of his Bronco, and fired without aiming while still seated in the vehicle. *Id* at 33-36. Despite killing Whitcraft with a single, well-placed shot, Petitioner

[5] Petitioner did not have any grass seed in his car that day. Trial Transcript, p. 785.

stated that he not only lacked the time to look through his rifle's scope, but also did not have time to look down the barrel before firing what he claimed was simply a lucky shot. *Id* at 37.

Approximately 80 minutes after Petitioner participated in this interview, he changed his recollection of events. At the time, he was riding in a vehicle with Rylander who was not questioning him. Petitioner initiated a new conversation where he advised Rylander that, contrary to his earlier statement during his interview, Whitcraft had never actually exited his vehicle but was instead preparing to do so.

The Josephine County Grand jury indicted Petitioner on one count of murder with a firearm. He proceeded to a jury trial where the State highlighted how certain discrepancies in Petitioner's recollection of events was inconsistent with the physical evidence at the scene. For instance, Because Whitcraft had both of his feet tangled in his car's interior wiring, he could not have stepped out of the vehicle as Petitioner initially told police. *Id* at 1212, 1214.

In addition, based upon the position of the vehicles and trajectory of the bullet, the physical evidence suggested that Whitcraft had either been in the normal driving position with his head facing forward, or possibly turning his head slightly and starting to make a movement to grab the door. He had not, however, made any significant movement to exit the vehicle when Petitioner shot him. *Id* at 1234-38, 1238, 1257, 1315-17, 1321-22. Contrary to Petitioner's initial statements to Rylander, Whitcraft had not been exiting his car, facing Petitioner with his gun drawn at the time Petitioner killed him. This was important not only because Petitioner stated that he had been in his Bronco, under attack, when he fired his weapon, but also because his neighbors testified that they frequently witnessed him practice a shooting maneuver where he would drive his car at a high rate of speed, abruptly stop the vehicle, jump out, and shoot his firearm. *Id* at 1416, 1424, 1428.

Testimony at trial also revealed Petitioner's fixation with Whitcraft and Carlson. Rose testified at trial that Petitioner "had a real hatred for Mary" and she "could see the anger in him building." *Id* at 1085. She recalled riding with Petitioner on one occasion when he glimpsed Whitcraft driving. "[H]e was getting real close to the bumper, getting very aggressive." *Id* at 1087. According to Rose, Whitcraft "got so scared that he pulled over into the oncoming lane and [Petitioner] just hit the gas and got side-by-side' with him and they were flipping each other off." *Id.* On another occasion, they were out driving when Petitioner saw Whitcraft and Carlson driving, and "he'd just get real close to the bumper and start cussing. . . and acting very angry and volatile." *Id.* Rose screamed at Petitioner to stop and leave the couple alone. Petitioner did not explain to her why he was engaging in such aggressive behavior, "he was just angry, just a rage." *Id*. These actions were consistent with a scheme he related to Rose shortly before he killed Whitcraft. He told her, "'Mary has a gun in her car at all times so if they come out of the car with a gun from the car I'll shoot them, it'll be self-defense.'" *Id.*

Garten testified that during her time dating Petitioner, he talked about Whitcraft and Carlson "constantly," that he "always had something bad to say about them," and told her he was going to kill Whitcraft and Carlson and "make a blood bath out of it." *Id* at 1123. She recalled that Petitioner tried to intimidate Carlson both in town and where she lived, and that he frequently talked about killing Carlson and Whitcraft. *Id* at 1125.

Gary Sell, another local resident, testified about the first occasion he met Petitioner. A third party introduced him to Petitioner, stating that Sell was a friend of Whitcraft's. According to Sell, "the first thing that comes out of [Petitioner's] mouth is he's going to shoot [Whitcraft] and fill him full of lead." *Id* at 781. Sell stated "it wasn't joking. Yeah, it was serious." *Id*.

The jury convicted Petitioner of intentional murder with a firearm and the trial court sentenced him to life in prison with a 300-month minimum sentence. The Oregon Court of Appeals affirmed the trial court's decision without issuing a written opinion, *State v. Sandoval*, 204 Or. App. 457, 130 P.3d 808 (2006), but the Oregon Supreme Court granted review, reversed the conviction, and remanded the case for a new trial based upon an erroneous jury instruction. 342 Or. 506, 156 P.3d 60 (2007).

In 2009, the State retried Petitioner. Once again, a jury convicted him of intentional murder with a firearm and the trial judge sentenced him to life in prison with a 300-month minimum. The Oregon Court of Appeals affirmed the conviction without opinion, and the Oregon Supreme Court denied review. *State v. Sandoval*, 246 Or. App. 577, 266 P.3d 669 (2011), *rev. denied,* 351 Or. 649, 275 P.3d 968 (2012).

Petitioner next filed for post-conviction relief ("PCR") in Malheur County. Among the many claims he raised, he asserted that his attorney from his 2009 trial had been ineffective for failing to: (1) investigate Petitioner's military and Veterans' Administration records; (2) retain an expert in self-defense and use of force; and (3) retain an expert in military training and combat who could have provided evidence about how Petitioner's killing of Whitcraft might have been a conditioned response. Respondent's Exhibit 123. The PCR court concluded that trial counsel performed deficiently when he did not obtain Petitioner's military records and consult self-defense and use-of-force experts. Respondent's Exhibit 170, p. 211. Noting that this was a very difficult case, the PCR court did not, however, find that Petitioner had established prejudice. The Oregon Court of Appeals affirmed the PCR court's decision without opinion, and the Oregon Supreme Court denied review. *Sandoval v. Nooth,* 294 Or. App. 511, 429 P.3d 448 (2018), *rev. denied,* 364Or. 535, 437 P.3d 1139 (2019).

Petitioner filed this federal habeas corpus action on August 14, 2019, and the Court appointed counsel to represent him. On April 6, 2020, Petitioner filed his Amended Petition for Writ of Habeas Corpus (#23) wherein he raises four grounds for relief containing numerous sub-parts. Respondent asks the Court to deny relief on the Amended Petition because: (1) with the exception of Grounds I, III(A), III(B)(b), and III (B)(d), Petitioner failed to fairly present his claims to Oregon's state courts and they are now procedurally defaulted; and (2) Oregon's state courts denied relief on Petitioner's fairly presented claims in decisions that are reasonable and entitled to deference.

DISCUSSION

I. Unargued Claims

In his briefing, Petitioner argues that: (1) the trial court violated his right to due process when it admitted evidence that was irrelevant and prejudicial (Ground I); and (2) trial counsel was ineffective for failing to obtain his military records and consult experts on use of force, self-defense, combat, and military training (Grounds III(A), III(B)(b), and III(B)(d)). He does not, however, address Respondent's contention that the remainder of his claims are procedurally defaulted and ineligible for federal habeas corpus review. Where Petitioner has not addressed this procedural issue, he has not carried his burden of proof with respect to these unargued claims. *See Silva v. Woodford*, 279 F.3d 825, 835 (9th Cir. 2002) (Petitioner bears the burden of proving his claims). Even if Petitioner had briefed the procedural issue, the Court has examined the unargued claims based upon the existing record and determined that they do not entitle him to relief.

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II. Standard of Review

Review in this case is governed by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") of 1996. An application for a writ of habeas corpus shall not be granted unless adjudication of the claim in state court resulted in a decision that was: (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). A state court decision is "contrary to . . . clearly established precedent if the state court applies a rule that contradicts the governing law set forth in [the Supreme Court's] cases" or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [that] precedent." *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000).

Under the "unreasonable application" clause of § 2254(d)(1), a federal habeas court may grant relief "if the state court identifies the correct governing legal principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id* at 413. The "unreasonable application" clause requires the state court decision to be more than incorrect or erroneous. *Id* at 410. Twenty-eight U.S.C. § 2254(d) "preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents. It goes no farther." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

Twenty-eight U.S.C. § 2254(d)(2) allows a petitioner to "challenge the substance of the state court's findings and attempt to show that those findings were not supported by substantial evidence in the state court record." *Hibbler v. Benedetti*, 693 F.3d 1140, 1146 (9th Cir. 2012). A

state court renders an unreasonable determination of the facts if it "plainly misapprehends or misstates the record in making its findings or where the state court has before it, yet apparently ignores, evidence that supports petitioner's claim." *Andrew v. Davis,* 944 F.3d 1092, 1107 (9th Cir. 2019) (internal quotations omitted). A federal habeas court cannot overturn a state court decision on factual grounds "unless objectively unreasonable in light of the evidence presented in the state-court proceeding." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). This is a "'daunting standard—one that will be satisfied in relatively few cases,' especially because we must be 'particularly deferential to our state-court colleagues.'" *Hernandez v. Holland*, 750 F.3d 843, 857 (9th Cir. 2014) (quoting *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004)).

When a state court reaches a decision on the merits but provides no reasoning to support its conclusion, the federal habeas court must conduct an independent review of the record to determine whether the state court clearly erred in its application of Supreme Court law. *Delgado v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000). In such an instance, although the federal court independently reviews the record, it still lends deference to the state court's ultimate decision and will only grant habeas relief if the state court's decision was objectively unreasonable. *Richter,* 562 U.S. at 98; *Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002).

III. Ground One: Due Process

As Ground One, Petitioner alleges that the trial court improperly admitted testimony from Michelle Clayburn, a neighbor who lived between Carlson and Rose. He claims that that the trial court erroneously overruled objections to her testimony that he: (1) sat in Rose's yard sharpening knives; (2) carried firearms from his house to his vehicle; (3) intimidated Clayburn; (4) allowed his pit bulls charged the fence at Clayburn's children; and (5) threatened both Rose and Clayburn. Because the Oregon Court of Appeals did not provide any rationale for its affirmance

of the trial court's decision, this Court conducts an independent review of the record with respect to this claim.

Petitioner asserts that the trial court's evidentiary rulings as to Clayburn's testimony are contrary to clearly established federal law. However, in 2009, the Ninth Circuit addressed whether due process claims of this nature can qualify for habeas corpus relief and concluded that they cannot:

> Under AEDPA, even clearly erroneous admissions of evidence that render a trial fundamentally unfair may not permit the grant of federal habeas corpus relief if not forbidden by "clearly established Federal law," as laid out by the Supreme Court. In cases where the Supreme Court has not adequately addressed a claim, this court cannot use its own precedent to find a state court ruling unreasonable.
>
> The Supreme Court has made very few rulings regarding the admission of evidence as a violation of due process. Although the Court has been clear that a writ should be issued when constitutional errors have rendered the trial fundamentally unfair, it has not yet made a clear ruling that admission of irrelevant or overtly prejudicial evidence constitutes a due process violation sufficient to warrant issuance of the writ. Absent such "clearly established Federal law," we cannot conclude that the state court's ruling was an unreasonable application." Under the strict standards of AEDPA, we are therefore without power to issue the writ on the basis of [the petitioner's] additional claims.

Holley v. Yarborough, 568 F.3d 1091, 1101 (9th Cir. 2009) (internal citations omitted).[6]

Petitioner argues that clearly established federal law exists that would permit this Court to grant habeas corpus relief. He directs the Court to *Dowling v. United States*, 493 U.S. 342, 353 (1990), where the Supreme Court concluded that improper admission of unduly prejudicial evidence of other bad acts may violate due process. He also points out that in *McKinney v. Rees*,

[6] The Ninth Circuit concluded that, but for the "clearly established federal law" restriction applicable to habeas corpus cases, it would have granted relief because the admission of irrelevant and prejudicial evidence in *Holley* "resulted in a trial that was fundamentally unfair and would warrant issuance of the writ under [the Ninth Circuit's] precedent." *Holley*, 568 F.3d at 1101 n.2.

993 F.2d 1378 (9th Cir. 1993), the Ninth Circuit stated that the use of "other acts" evidence as character evidence is "contrary to firmly established principles of Anglo-American jurisprudence." *Id* at 1380.

Both of these cases predate the AEDPA as well as the Ninth Circuit's decision in *Holley* wherein the appellate court had occasion to conclude that there is no clearly established federal law governing due process claims arising out of state evidentiary rulings. No subsequent en banc opinion by the Ninth Circuit has overruled *Holley*, and Petitioner points to no clearly established federal law the Supreme Court issued in the years following *Holley* that would provide a basis for habeas corpus relief. Where precedent establishes that there is no clearly established federal law on point as to Petitioner's due process claim, he is not entitled to relief.

IV. Ground III: Ineffective Assistance of Counsel

As Ground Three, Petitioner argues three fairly presented claims of ineffective assistance of counsel. He asserts that his trial attorney neglected to obtain his military records (Ground III(A)), consult with and retain an expert in self-defense and use of force (Ground III(B)(b)), and consult with and retain an expert in military training and combat (Ground III(B)(d)). The Court uses the general two-part test established by the Supreme Court to determine whether Petitioner received ineffective assistance of counsel. *Knowles v. Mirzayance*, 556 U.S. 111, 122-23 (2009).

First, Petitioner must show that his counsel's performance fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 686-87 (1984). Due to the difficulties in evaluating counsel's performance, courts must indulge a strong presumption that the conduct falls within the "wide range of reasonable professional assistance." *Id* at 689. Second, Petitioner must show that his counsel's performance prejudiced the defense. The appropriate test for prejudice is whether Petitioner can show "that there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id* at 694. A reasonable probability is one which is sufficient to undermine confidence in the outcome of the trial. *Id* at 696. "The likelihood of a different result must be substantial, not just conceivable." *Richter*, 562 U.S. 86, 112 (2011) (citing *Strickland,* 466 U.S. at 693). When *Strickland's* general standard is combined with the standard of review governing 28 U.S.C. § 2254 habeas corpus cases, the result is a "doubly deferential judicial review." *Mirzayance*, 556 U.S. at 122.

After personally reviewing "90 percent" of the trial transcript, the PCR judge determined that although counsel's performance fell below an objective standard of reasonableness for failing to obtain Petitioner's military records and consult with defense and use-of-force experts, Petitioner had not established prejudice.

> But my goodness, you know he's a military veteran, I think you need to get the records. I think you need to at least consider and at least speak to a self-defense expert and a use-of-force expert.
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> * * *
>
> . . . when you look at is his performance deficient, in those two areas, not hiring – and you don't want to (indiscernible) jury with eight experts, but in hiring one or two or at least consulting with them (indiscernible) use-of-force and self-defense and in conjunction with getting the military records and providing those to the experts, I find (trial counsel) was deficient.
>
> * * *
>
> The problem . . . in [Petitioner's] case is finding adequate prejudice to [Petitioner]. In that I have to look at all of the evidence that was presented.
>
> * * *
>
> The evidence is extremely strong, circumstantial or not, that this was a setup – albeit, a really creative and unusual setup. And

> maybe if Mr. Whitcraft, the victim, hadn't acted in the way he did everybody would have driven off and something would have happened, possibly happened a week later, who knows.
>
> But the fact of the matter is there is enough evidence for the jury in this case, even hearing the experts that I've said I believe should have been called or at least consulted, that I don't – I cannot find as a matter of law that the deficiencies by trial counsel had a tendency to affect [any] result under the standards set forth not only by Strickland, but by Green v. Franke.
>
> So with some reluctance, because this case bothers me – I didn't – and I'm very serious this is one of the toughest cases I've had, and I've had hundreds. I really think trial counsel should have done a better job for this gentleman.
>
> But can I find that he prejudiced him to the point where he's entitled to post-conviction relief? I just cannot do that and so my verdict is for the defendant. I will make the appropriate findings and the judgment.

Respondent's Exhibit 170, pp. 211-13.

A. Applicability of AEDPA's Standard of Review

Petitioner first asserts that the AEDPA's standard of review does not apply to this Court's review of his ineffective assistance of counsel claims because the PCR judge, by his own estimation, read only 90 percent of the trial transcript. The applicability of the AEDPA's strict standard of review is governed by whether a state court adjudicated Petitioner's claims on the merits, not on the depth of its review of the case file. When a state court has not passed upon the merits of a claim that a habeas petitioner properly raises in federal court, the claim is reviewed *de novo*. *Cone v. Bell*, 556 U.S. 449 (2009). However, when, as here, a state court has addressed the merits of a claim, the AEDPA deferential standard of review applies. *Kernan v. Hinojosa,* 578 U.S. 412, 413 (2016) (per curiam); *Lambert v. Blodgett*, 393 F.3d 943, 969 (9th Cir. 2004).

Petitioner also argues that the PCR judge's failure to read every page of the trial transcript compels the conclusion that he unreasonably applied *Strickland* because that case

obligated him to consider the issue of prejudice in light of the totality of the evidence adduced at trial as well as the evidence counsel should have presented. *See Strickland,* 466 U.S. at 695. The fact that the PCR judge did not personally read every page of the trial transcript does not compel the conclusion that he did not consider the totality of the evidence. The Supreme Court has never impose such a requirement when evaluating *Strickland* claims. Moreover, contrary to constituting a statement that he had not considered the totality of the evidence, this Court views the PCR judge's statement that he had personally read the vast majority of the trial transcript as a reflection of the time and attention he personally devoted to Petitioner's case. Under Petitioner's construction, the Court would have to interpret the PCR judge as stating on the record that although this case was particularly difficult and troubling, he was also refusing to consider the totality of the evidence. This is a nonsensical interpretation.

It was within the PCR judge's discretion to closely examine the portions of the transcript he felt were most relevant to the issues Petitioner presented. In this respect, the PCR judge did not unreasonably apply *Strickland* when he performed a targeted review of the record. Accordingly, this Court will apply the AEDPA's standard of review. Where the PCR court denied Petitioner's ineffective assistance of counsel claims based upon an insufficient showing of prejudice, this Court begins its analysis with that same inquiry.

B. Analysis

During his PCR action, Petitioner provided evidence from multiple expert witnesses, two of whom are at issue in this habeas corpus case.[7] Timothy Charpenter, a military training expert,

[7] Despite presenting evidence from numerous experts during his PCR hearing, during his PCR appeal he winnowed his claims down to those involving only Charpenter and Bedard. Respondent's Exhibits 173 & 175. As a result, how other expert testimony might have impacted his trial is not preserved for habeas corpus review. *See Rose v. Lundy*, 455 U.S. 509, 519 (1982) (only claims fairly presented to a state's highest court are eligible for habeas corpus consideration).

reviewed Petitioner's records and stated that the military had instructed him in rifle marksmanship and that his training was intended to not only teach a particular skill, but also to desensitize him to the use of force. He stated that Whitcraft's actions constituted an ambush of opportunity by: (1) suddenly stopping his vehicle; (2) reversing the vehicle so as to seal off Petitioner's immediate routes of escape and gain an advantage; and (3) immediately opening his door, prepared to exploit the kill zone he had created with a drawn and cocked pistol. Respondent's Exhibit 142, p. 5. He further provided that the military conditions its soldiers to react to such ambush situations "quickly and aggressively with lethal force," and that Petitioner's combat experiences as an aerial door gunner in Vietnam reinforced that training. *Id* at 5-6. It was his opinion that Petitioner reacted to Whitcraft's purported threat in accordance with his training. *Id* at 6-7.

Petitioner also introduced evidence from Roy R. Bedard, an expert in defensive tactics and use of force. He stated that, assuming Petitioner's version of events was true, it was reasonable to assume that his life was in danger and he had to be entirely self-reliant in his own defense. Respondent's Exhibit 137, pp. 14-15. He found that all of the physical evidence supported Petitioner's statements, found no reason to dispute the credibility or reliability of his version of events, and concluded that Petitioner's actions were consistent with accepted standards of appropriate self-defense.[8] *Id* at 28, 39.

Petitioner argues that the testimony of these two individuals (or similar experts) would have been particularly important to provide context to his reaction to the threat Whitcraft posed. He claims that the expert testimony would have made it clear that the position of his Ford

[8] Although Bedard also rendered an opinion on "critical incident amnesia," the PCR court did consider that portion of Bedard's Declaration because he was not qualified to render an opinion on that subject. Respondent's Exhibit 170, p. 22.

Bronco rendered implausible the State's theory that Petitioner controlled the encounter and shot from outside his vehicle. He contends that although there were multiple eyewitness accounts to Petitioner's frequent practice of jumping from his vehicle and firing his weapon, Charpenter might have explained at trial that Petitioner had a desire to keep up with his training and not lose a perishable skill.[9]

As Petitioner states, this Court must imagine the trial as if the jury had heard the testimony from both Charpenter and Bedard. However, it must also view the PCR court's decision through the deferential lens of the AEDPA which reserves habeas corpus relief only for unreasonable decisions by the state courts. Here, any testimony by Charpenter or Bedard would have been of somewhat limited value because their opinions assume the veracity of Petitioner's version of events to establish Whitcraft as the aggressor. *See, e.g.*, Respondent's Exhibit 137, p. 14 ("Assuming Sandoval's version of events . . .").

Even if this were not the case, the PCR court correctly stated that there was strong evidence of Petitioner's guilt adduced at trial.[10] Despite the fact that Whitcraft prevailed against Petitioner in the physical altercation at the Lil Pantry and had stated to at least one person that he would like to kill Petitioner, the testimony at trial generally portrayed Petitioner as the historic aggressor against Whitcraft. The witnesses testified that Petitioner was angry about losing Carlson, stalked and terrorized Whitcraft and Carlson for years, and threatened them through words and actions (including with a firearm). Two of Petitioner's former girlfriends (Rose and Garten) and another individual whom he had just met (Sell) all testified that Petitioner personally

[9] Charpenter testified at the PCR hearing only that a person who wishes to keep military training can do so through practice to ensure muscle memory, not that Petitioner had done so. Respondent's Exhibit 170, p. 176.

[10] Petitioner also contends that the PCR court's implicit finding that Petitioner was not credible is so clearly incorrect as to constitute an unreasonable determination of the facts. As is evident in this Opinion, there was ample evidence of Petitioner's guilt such that the PCR judge's implicit determination on his credibility was not unreasonable.

told them he would like to kill Whitcraft. According to Rose, Petitioner told her he had a plan to prompt Carlson or Whitcraft to brandish a firearm so he could shoot them and claim self-defense. Petitioner's many acts of provocation are consistent with Rose's testimony.

Witnesses also testified that they saw Petitioner practice a shooting maneuver whereby he would approach his target area in his car at a high rate of speed, abruptly stop, exit his vehicle, and fire his weapon. Given the trial testimony about the position of the two vehicles and the trajectory of the bullet that killed Whitcraft, these practice ambush-style maneuvers were not dissimilar to the evidence that tended to show Petitioner exited his Bronco with a firearm and shot Whitcraft in the back of the head with a single shot before Whitcraft had a chance to exit his pickup truck. The accuracy of Petitioner's round and it's angle of impact with both the rear window of Whitcraft's truck as well as his head belie Petitioner's statements to Rylander that he simply fired a lucky, right-handed shot from his driver's seat without ever having exited his vehicle, and also without the benefit of aim or even the chance to look down the barrel of his rifle. The fact that, decades earlier, the military had trained him for combat in Vietnam and that he had served in combat during that conflict would not have been particularly significant to explain such incredible accuracy.

In addition to the physical evidence derived from the scene of the killing, Petitioner's inconsistent statements were also damaging to the defense. He first told Detective Rylander that he shot Whitcraft only after Whitcraft had exited his pickup truck, turned toward Petitioner, and pointed his revolver at him. However, unprompted, Petitioner changed his recollection of events 80 minutes later to more closely align his version of the shooting to fit the physical evidence at the scene. He likely realized that if he did not alter his first statement, it would be impossible for him to explain: (1) how Whitcraft stepped outside his truck with one leg yet had both of his feet

tangled in speaker wire in his truck's interior when he was killed; and (2) how he shot Whitcraft in the back of the head through the truck's rear window if Whitcraft had exited his truck with one leg, was facing him, and pointing a gun at him.[11]

The jury in this case made a credibility determination adverse to Petitioner based upon strong circumstantial evidence that he shot Whitcraft in the back of his head as he sat in his truck. The production of Petitioner's military records and resulting expert testimony from Charpenter and Bedard during Petitioner's PCR proceedings are not so strong as to establish a reasonable probability that, but for counsel's errors, the result of the trial would have been different. At a minimum, this Court cannot conclude that the PCR judge's prejudice determination was not only wrong, but so unreasonable that no fairminded jurist could agree with his conclusion. Habeas corpus relief is therefore denied.

CONCLUSION

For the reasons identified above, the Amended Petition for Writ of Habeas Corpus (#23) is denied. The Court does, however, issue a Certificate of Appealability limited to Grounds I, III(A), III(B)(b), and III(B)(d) of the Amended Petition.

IT IS SO ORDERED.

March 20, 2023
DATE

Michael H. Simon
United States District Judge

[11] Petitioner argues that Bedard could have explained inconsistencies in Petitioner's statements to Detective Rylander in the aftermath of the shooting by opining that individuals can make unintentional misstatements in the immediate aftermath of a violent confrontation. However, this is the "critical incident amnesia" opinion that the PCR court excluded. Respondent's Exhibit 170, p. 22. Accordingly, it is not properly before this Court for its consideration. Even if the Court could consider Bedard's opinion on this matter, his testimony that witnesses can make misstatements in the aftermath of violent encounters would not have meaningfully negated the damaging effects of Petitioner's shifting account.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

LEONARD CONTRERAS SANDOVAL,

Case No. 2:19-cv-01278-SI

Petitioner,

JUDGMENT

v.

BRAD CAIN,

Respondent.

SIMON, District Judge.

Based on the Record,

IT IS ORDERED AND ADJUDGED that this Action is DISMISSED, with prejudice. The Court does, however, issue a Certificate of Appealability limited to Grounds I, III(A), III(B)(b), and III(B)(d) of the Amended Petition.

March 20, 2023
DATE

Michael H. Simon
United States District Judge

1 - JUDGMENT

FILED: October 10, 2018

IN THE COURT OF APPEALS OF THE STATE OF OREGON

LEONARD CONTRERAS SANDOVAL,
Petitioner-Appellant,

v.

MARK NOOTH, Superintendent, Snake River Correctional Institution,
Defendant-Respondent.

Malheur County Circuit Court
12109709P

A163008

Joseph C. Guimond, Senior Judge.

Submitted on September 17, 2018.

Before Lagesen, Presiding Judge, and James, Judge, and Sercombe, Senior Judge.

Attorney for Appellant: Jed Peterson.

Attorney for Respondent: Jordan R. Silk.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

[ ] No costs allowed.
[X] Costs allowed, payable by Appellant.

IN THE SUPREME COURT OF THE STATE OF OREGON

LEONARD CONTRERAS SANDOVAL,
Petitioner-Appellant,
Petitioner on Review,

v.

MARK NOOTH, Superintendent, Snake River Correctional Institution,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A163008

S066397

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
3/7/2019 10:37 AM

c: Jordan R Silk
Jedediah Peterson

lk

Verified Correct Copy of Original 9/1/2016

Entered/Docketed
Date 9/1/16

FILED
Malheur County Circuit Court
SEP - 1 2016
Time: 11:36am By VA

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF **MALHEUR**
251 B Street W, Vale OR 97918

Leonard Contreras Sandoval
Plaintiff

Sid # 14205210

v.

Mark Nooth, Snake River Correctional Inst
Defendant

Case No: 12109709P

AMENDED

GENERAL JUDGMENT FOR

POST-CONVICTION RELIEF

This matter came before the court on **August 2, 2016** on an action for post-conviction relief.

☐ The Petitioner **withdrew** the following claims:

Findings of fact ☒ were made on the record ☒ included in the legal findings below
☐ as follows:

➢ ☒ Federal and/or ☒ State Constitution questions were presented and decided

The following claims are **ALLOWED** *(list claims)*:
For all allowed claims, the following relief is granted: ∑

The following claims are **DENIED**: *(copy and paste for additional claims)*

Claim: is denied because Petitioner failed to:
☐ utilize or follow available state procedure
☐ establish the merits of the claim
The legal basis for denial of relief is: ∑

Claim: is denied because Petitioner failed to:
☐ utilize or follow available state procedure
☒ establish the merits of the claim

The legal basis for denial of relief is: Petitioner proved trial counsel was legally deficient in failing to hire an expert on self-defense and use of force. I do not find that Petitioner established that he suffered prejudice as a result of trial counsel's errors. No evidence was presented that the result would have been different.

RECEIVED SEP 01 2016

Verified Correct Copy of Original 9/1/2016.

The following are additional findings to be added to the Sandoval Judgment – As follows: As to the remainder of Petitioner's claims that were not dismissed prior to trial, I find that Petitioner has failed to prove by a preponderance of the evidence that trial counsel's conduct was deficient in any of the particulars alleged by Petitioner. I also find that Petitioner suffered no prejudice as a result of trial counsel's conduct in each of these claims. I make this finding with respect to the following claims alleged by Petitioner: Claim (18) that trial counsel failed to move to exclude Petitioner's statements as unreliable; Claim (19) that trial counsel failed to offer an expert witness regarding "critical incident amnesia"; Claim (25) Trial counsel failed to call an expert on accident reconstruction ; Claim (27) Trial counsel failed to object and except to the UCJ instruction on provocation; Claim (28) That trial counsel failed to object and except to the UCJ instruction on initial aggressors; Claim (34) that trial counsel failed to object to testimony from Gary Scott Sells; Claim (35) that trial counsel failed to call an expert in "psychology and memory" regarding petitioner's statements; Claim (38) that trial counsel failed to call an expert in crime scene reconstruction.Σ

Additional findings and orders:

The court adopts all findings made on the record and incorporates them into this judgment.

All questions presented were decided. This judgment constitutes a final General Judgment for the purposes of appellate review and res judicata.

MONEY AWARD

1. Judgment Creditors *(name, address)*:
   a. Judgment Creditors' lawyers *(name, address, phone)*:

2. Judgment Debtors:

Name	**Address**	**Year of Birth**	**SSN** (last 4) **/TIN**	**Dr.License # & State**	**Lawyer Name**

3. No person or public body other than Judgment Creditor and Judgment Creditor's lawyer is entitled to any part of this money award EXCEPT:

4. The total amount awarded by this judgment is $ 0.00 , which includes:

1. Money Award $	2. Prejudgment Interest $
3. Costs & Service Expenses $	4. Attorney Fees $
5. Prevailing Party Fee (listed at ORS 20.190) $	

Plus postjudgment interest at the rate set by ORS 82.010(2) *(or)* on the amounts in sections 1, 2, & 3 at _____% by agreement of the parties and the balance as set by ORS 82.010(2)

Judge Signature:

Joseph C. Guimond 8-19-16

Senior Judge Joseph Guimond

Entered/Docketed
Date 8/8/16

FILED
Malheur County Circuit Court
AUG - 8 2016
Time: 3:14 P .m By:

Verified Correct Copy of Original 8/8/2016.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF **MALHEUR**
251 B Street W, Vale OR 97918

Leonard Contreras Sandoval
Plaintiff

Sid # 14205210

v.

Mark Nooth, Snake River Correctional Inst
Defendant

Case No: 12109709P

GENERAL JUDGMENT FOR POST-CONVICTION RELIEF

This matter came before the court on **August 2, 2016** on an action for post-conviction relief.

☐ The Petitioner **withdrew** the following claims:

Findings of fact ☒ were made on the record ☒ included in the legal findings below
☐ as follows:

➢ ☒ Federal and/or ☒ State Constitution questions were presented and decided

The following claims are **ALLOWED** *(list claims)*:
For all allowed claims, the following relief is granted:

The following claims are **DENIED**: *(copy and paste for additional claims)*

Claim: is denied because Petitioner failed to:
☐ utilize or follow available state procedure
☐ establish the merits of the claim
The legal basis for denial of relief is:

Claim: is denied because Petitioner failed to:
☐ utilize or follow available state procedure
☒ establish the merits of the claim
The legal basis for denial of relief is: Petitioner proved trial counsel was legally deficient in failing to hire an expert on self-defense and use of force. I do not find that Petitioner established that he suffered prejudice as a result of trial counsel's errors. No evidence was presented that the result would have been different.

Additional findings and orders:

The court adopts all findings made on the record and incorporates them into this judgment.

All questions presented were decided. This judgment constitutes a final General Judgment for the purposes of appellate review and res judicata.

RECEIVED AUG 0 8 2016

Verified Correct Copy of Original 8/8/2016.

MONEY AWARD

1. Judgment Creditors *(name, address)*:
   a. Judgment Creditors' lawyers *(name, address, phone)*:

2. Judgment Debtors:

Name	**Address**	**Year of Birth**	**SSN** (last 4) **/TIN**	**Dr.License # & State**	**Lawyer Name**

3. No person or public body other than Judgment Creditor and Judgment Creditor's lawyer is entitled to any part of this money award EXCEPT:

4. The total amount awarded by this judgment is $ 0.00, which includes:

1. Money Award $	2. Prejudgment Interest $
3. Costs & Service Expenses $	4. Attorney Fees $
5. Prevailing Party Fee (listed at ORS 20.190) $	

Plus postjudgment interest at the rate set by ORS 82.010(2) *(or)* on the amounts in sections 1, 2, & 3 at _____% by agreement of the parties and the balance as set by ORS 82.010(2)

Judge Signature:

Senior Judge Joseph C. Guimond

8-2-16
Date:

CASE NO. A141783

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF JOSEPHINE

--oOo--

2009 SEP -3 PM 2:24
BY

STATE OF OREGON, Plaintiff-Respondent, vs. LEONARD CONTRERAS SANDOVAL, Defendant-Appellant.	JOSEPHINE COUNTY CASE NO. 01CR0641 APP. NO. A141783 VOLUME 1 OF 6

FILED
COURT OF APPEALS
JAN - 4 2010
STATE COURT ADMINISTRATOR
BY TC
Deputy

TRANSCRIPT OF AUDIO RECORD ON APPEAL

MOTION HEARING
OMNIBUS HEARING
12 PERSON JURY TRIAL - DAY 1
12 PERSON JURY TRIAL - DAY 2
12 PERSON JURY TRIAL - DAY 3
12 PERSON JURY TRIAL - DAY 4
12 PERSON JURY TRIAL - DAY 5
12 PERSON JURY TRIAL - DAY 6
12 PERSON JURY TRIAL - DAY 7
SENTENCING

Grants Pass, Oregon
August 15, 2002; 3:00 p.m.
February 9, 2009; 1:43 p.m.
February 18, 2009; 9:46 a.m.
February 19, 2009; 9:34 a.m.
February 20, 2009; 9:34 a.m.
February 23, 2009; 9:36 a.m.
February 24, 2009; 9:33 a.m.
February 25, 2009; 9:47 a.m.
February 26, 2009; 9:31 a.m.
March 6, 2009; 10:09 a.m.

Susan E. Lefebvre
Official Court Transcriber
PO Box 5057
Central Point, OR 97502
(541) 944-4100

--oOo--

BEFORE:
THE HONORABLE GERALD C. NEUFELD, CIRCUIT JUDGE
(8/15/02 only)

THE HONORABLE LINDI L. BAKER, CIRCUIT JUDGE

--oOo--

APPEARANCES:

FOR THE PLAINTIFF: SCOTT TITZLER (8/15/02 only)
STEPHEN D. CAMPBELL
DEPUTY DISTRICT ATTORNEYS
500 NW 6TH AND C STREETS
GRANTS PASS, OR 97526

FOR THE DEFENDANT: STEVEN JOHNSON(8/15/02 only)

DON SCALES
ATTORNEY AT LAW
916 WEST 10TH STREET
MEDFORD, OR 97501

TRANSCRIBED BY: SUSAN E. LEFEBVRE
OFFICIAL COURT TRANSCRIBER

--oOo--

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MASTER INDEX

CHRONOLOGICAL INDEX OF WITNESSES

PLAINTIFF'S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
FEBRUARY 19, 2009					
MARY SIZEMORE	231	270	286	288	2
MICHELLE CLAYBURN	291	302	--	--	2
JANICE ROSE	312	--	--	--	2
FEBRUARY 20, 2009					
JANICE ROSE	338	374	402 410	405 410	2 2
ROBIN SUE GARTEN	413	422	424	--	2
DEBBIE LYNN CARTER	430	440	442	443	2
BRIAN FLOYD MARKL	466	475(477)	--	--	3
DANIEL JAMES GALLAGHER	480	489	491	--	3
TYRONE MONTGOMERY	493	497	--	--	3
VERNON ERVIN TIMMONS	504	510	--	--	3
JAMES WRIGHT	519	527	529	--	3
GERALD CARL RYLANDER	530	--	--	--	3

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MASTER INDEX

CHRONOLOGICAL INDEX OF WITNESSES (CONT.)

PLAINTIFF'S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
FEBRUARY 23, 2009					
GERALD CARL RYLANDER	--	574	--	--	3,4
JOHN ANTHONY AMISH	579	667(707)	711	714	3,4
GERALD CARL RYLANDER	717	745	773	775	4
GARY SCOTT SELL	777	782	--	--	4
FEBRUARY 24, 2009					
DR. JAMES N. OLSON	787	809	--	--	4
RICHARD KUEHMICHEL	820	(891) 906	938	939	4,5
STEPHEN LEE CURTIS	941	--	--	--	5
TRESSIE DARLENE MOLER	948	--	--	--	5
LISA LOCKE	954	959	--	--	5
FEBRUARY 25, 2009					
CHARLOTTE SPERISEN	994	1003	--	--	5
PEER LIEBES	1009	1015	--	--	5
JUDITH WEINER	1019	1026	1032	1034	5
JASON HINES	1036	1044	1045	--	5

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MASTER INDEX

CHRONOLOGICAL INDEX OF WITNESSES

DEFENDANT'S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
FEBRUARY 25, 2009					
MARIO TORRES	1052	1056	1059 1061	1060 --	5
GEORGE INGLE	1063	1065	--	--	5
FLOYD MARTENS	1068	1075	1079	--	5
JOHN CRISSUP	1103	1112	1120	1123	6
TERESA HILL	1125 1138	-- 1139	-- --	-- --	6 6
GERALD CARL RYLANDER	1149	1154	1155	1156	6

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INDEX OF PLAINTIFF'S EXHIBITS

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No. 3 - Photo - Hussey	537	538	3
No. 4 - Photo - Bronco	537	538	3
No. 5 - Photo - Scene	537	538	3
No. 6 - Photo - Pickup	537	538	3
No. 7 - Photo - Rear Close up of Bronco	537	538	3
No. 8 - Photo - Right Side of Bronco	537	538	3
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No. 19 - Photo - Inside Left Door Panel	537	538	3

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No. 33 - Photo - Blood on Bronco Hood	537	538	3
No. 34 - Photo - Blood on Bronco Hood	537	538	3
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No. 61b - Bullet Fragments	539	540	3
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No. 65 - Diagram	636	636	3
No. 66 - Diagram	636	636	3
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Susan E. Lefebvre
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MASTER INDEX

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GRANTS PASS, OREGON

THURSDAY, AUGUST 15, 2002; 3:00 P.M.

MOTION HEARING

*** THE HONORABLE GERALD C. NEUFELD PRESIDING ***

--oOo--

THE COURT: This is the time that has been set the Court for hearing on various motions filed by the defendant in the case of State of Oregon vs. Sandoval, 01CR0641.

Prior to convening in the courtroom the Court met with counsel in chambers and discussed a couple of the defendant's motions. First was a request for a jury view. The Court's going to allow that and Mr. Johnson is going to submit an order. Defense Counsel will arrange for the transportation of jury. Planning tentatively at this point to have the jury do the jury view the second day of trial in the morning.

And there was also a request for an expanded jury questionnaire. And the way the Court's going to handle that is Counsel has certain areas that they would like the Court to consider whether the Court ought to cover them or not in just a regular voir dire, they can -- we

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can discuss that pretrial and the Court can indicate whether or not it wishes to cover those things itself in voir dire or Counsel can cover them. I think it had to do with juror's feelings toward guns, self defense, those kinds of issues that I think can be handled by just talking to the jurors without the necessity of a questionnaire.

So, I think as far as those two matters are concerned the Court has dealt with those and so now we're down to the evidentiary issues. Let's begin first with the motion to exclude and sequester witnesses. Let's begin first with the motion to exclude and sequester witnesses.

Go ahead, Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor. We rely on the points and authority I put in the memorandum supporting that motion. This is basically just the expanded version of the regular motion to exclude witnesses. I believe everything I asked for in that is proper. Not have witnesses relating to child which -- what other witnesses are saying I think is a good thing. And I think all of the requests are essential to getting a fair trial. I'd ask the Court to allow that motion.

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THE COURT: Mr. Titzler?

MR. TITZLER: I'm sure Counsel didn't really intend to sequester, simply to exclude. Because otherwise we've got a huge bill to put a jury for two and a half weeks in a hotel and feed them and everything else. So, I don't oppose the exclusion in the regular manner that we typically do. But, I will, of course, as that the victim be allowed to remain in the courtroom, and that's the significant other of the decedent, Mary Krauson. And also Detective Rylander be designated as State's representative.

I have at this point, unless the Court orders me, absolutely no intention of not talking to victims -- I mean, to witnesses between direct and cross at which we have a hearing. I have every intention of talking to them on the break. I certainly will not relate, as would be the order of the Court typically, I will not relay information that has been put into the record in court to witnesses that have not yet been in court or not yet testified and have not been excused.

One of Counsel's requests is that the prosecutor be admonished in advanced not to do this sort of stuff. Of course, the Defense

counsel is just as much responsible for the same burdens under the order as I would be and that should be made very clear as well.

So, what I would propose, Judge, is I -- neither of us would communicate to witnesses what's gone on in the courtroom. Witnesses will be told not to do that as well. Only witnesses that have been excused can talk amongst themselves about what's been in -- gone on in the courtroom and not to talk to someone that has not been excused. And there's -- I mean, that's what we always do. That accomplishes the goal of getting pure testimony and it should -- there's no point in going any farther than that.

THE COURT: Anything further?

MR. JOHNSON: No, Your Honor. And I admit that the motion I -- I do say on Number 4, "Prosecution and Defense counsel should not speak to witnesses during recesses." Well --

MR. TITZLER: I think I'm referring to Number 6 where it's pointed directly at the --

MR. JOHNSON: Okay.

MR. TITZLER: -- prosecution.

MR. JOHNSON: Well, we -- I would want it to go both ways and be fair. But, I do think that

these are valid requests.

THE COURT: Okay. There's six requests here on defendant's motion. One is to exclude witnesses from the courtroom. The Court will grant Specification 1, with the exception of the significant other of the decedent and Deputy Rylander. All other witnesses are to be excluded.

Certainly Number 2, to order the witnesses to have no contact with other witnesses or they relate to other witnesses what their testimony has been. The exception to that would be witnesses who have testified can talk to other witnesses that are testified -- that have testified. Witnesses that have not testified may not talk to witnesses who have testified.

As far as ordering Counsel, either the prosecutor or the Defense attorney, about some of these things both of you are officers of the court, you know what's ethical. If I don't see anything wrong, if you have a witness that you're getting ready to call, talk to that witness, it's a fine line between witness -- legitimate witness preparation and what amounts to unethical activity, I mean, according to this order. So, certainly I would expect during witnesses that

you're going to probably talk to witnesses that have not testified about what their testimony may be.

Counsel apparently are in agreement that they would not discuss with any potential witnesses testimony of witnesses who have testified under oath in court.

So, to that extent the Court will grant the order. So, Mr. Johnson, I'll ask that you submit an order consistent with that ruling.

MR. JOHNSON: Okay.

MR. TITZLER: I would point out that Number 3, first sentence it says "To order the prosecutor not to discuss the testimony or facts of this case". Testimony, yes. But, you know, if you're -- for instance, if one of us is preparing a rebuttal witness on a specific issue of course we're going to talk to that witness about that issue without, per se, saying that that's what's been testified to in court. But, you know, to say "the facts of this case" is way too broad. Testimony, yes, but not the facts of the case.

THE COURT: And I think -- here again, I think we get down to Counsel being officers of the court and knowing what's ethical and what isn't.

And I think if we just abide by those simple rules I think everything will be fine.

Okay. Let's move now to the urine test motion in limine. Go ahead, Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor. As part of the investigation in this case Mr. Sandoval did consent to a urine test, which did come back positive for marijuana metabolites. There is no suggestion that I've seen in the reports prepared at the time of the incident that in any way indicate that Mr. Sandoval was under the influence of marijuana. Marijuana, I'm sure the Court is aware, tends to linger in a person's urine to up to 90 days from a DRE. If that fact comes into the court we're going to have to go off and say -- and thought about whether or not Mr. Sandoval was under the influence and explain the nature and how long marijuana lingers in the system. I think it's something that doesn't have any effect on the outcome of this case. I don't even want to go there. I don't think it's germane to the issues here.

THE COURT: Mr. Titzler?

MR. TITZLER: I guess I have to question if Counsel feels it has no effect on the outcome

of the case then why are we having the motion in limine? But, one could certainly argue that committing a homicide is having a behavior consistent with being under the influence of some controlled substance.

I can see at this point that there appears not to be any specific indicia of marijuana intoxication when the defendant was interviewed shortly after the shooting occurred. And Counsel and I have already talked about this. I would agree that we've come to an agreement with the substances -- there's a prescription substance that was maybe positive in the decedent too, but it's not a conclusive confirmed positive. We've agreed that neither of these results would come in, the marijuana of the defendant, nor the prescription may be positive in the victim unless there's a showing outside of the presence of the jury that it's otherwise relevant or probative. So, we're not going to be making it available in front of the jury about the metabolites in the urine.

THE COURT: Yeah, I think that basically would probably state the Court's feeling on that motion, that unless there's other evidence that

would substantiate that the presence of marijuana was having an impact on the -- or the use of drugs on one side or the other the Court would agree that introducing evidence that the mere presence of marijuana without more -- the prejudicial effect of that would probably outweigh it's probative value.

So, I think if you can draw up an order that's consistent with what you're agreement is then I think that's essentially a statement of what the Court's ruling would be.

MR. JOHNSON: I will endeavor to draft --

THE COURT: All right.

MR. JOHNSON: -- an order and I'll send it to Mr. Titzler for review and, of course, to the Court.

THE COURT: Okay. The target shooting motion in limine. So, go ahead, Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor. Your Honor, one of the -- some of the witnesses that the State has used -- the State has provided to me are going to testify about nothing really involved in this case. They're going to basically say that Mr. Sandoval was a bad neighbor, he target shot from his house frequently, disturbing

the neighbors and the neighbors didn't like it. But, I think that is -- whether or not Mr. Sandoval is a decent neighbor, a neighbor that somebody would want has no bearing on the -- whether or not he killed the victim and whether or not he did -- was justified in that shooting. I think that's just not -- talking about the -- the target shooting and things like that is just not -- it doesn't advance the case at all and I think would prolong the case.

THE COURT: Mr. Titzler?

MR. TITZLER: I would anticipate -- and maybe this is a good time to clarify some of the issues. I don't anticipate an issue at all as to the fact that Mr. Sandoval shot and killed Jack Whitcraft, is that at issue?

MR. JOHNSON: No.

MR. TITZLER: Okay. Because if there's an issue of who's shooting, I mean, a gun was used to kill Jack Whitcraft and Mr. Sandoval pulled the trigger. So, we start from that platform. This case is about who shot who first, it's a self defense case, it's a first aggressor case. Is that fair?

MR. JOHNSON: I think that's fair.

MR. TITZLER: Okay. On that point the facilcate (sic) of using a gun is highly relevant. And this isn't about what Mr. Sandoval's neighbors think of him as a neighbor, unless there's a probative character trait that becomes available to attack by way of aggressiveness or violence or something like that. But, facilcate (sic) with a weapon is highly relevant in this case.

And they will testified -- the other thing you have to keep in mind is this is a case where the decedent, Jack Whitcraft, has lived with the defendant's former spouse since 1996 when she moved out of Mr. Sandoval's house up into Merlin. And there is -- since that split of Mary Krauson and Mr. Sandoval the State fully intends to show an ongoing persistent chronic badgering of Mary Krauson and Jack Whitcraft, now virtually one in the same because they spent all their time together, by Mr. Sandoval.

And that badgering and harassment begins to escalate in about March of 2001 and they're about the same time, unusual chronic and very persistent shooting behavior of the defendant continues to take place at his residence just below where the killing took place. And he shoots

frequently and often at his property a bucket that's on a fencepost. And there are even some apparent drills, for a lack of a better word, that he does that neighbors that live right across the street, right next door are very clear on that he would race down, get out of his car, shoot, get back in his car, race away, race back down, get out of his car, shoot, and race away. Which, as a matter of far more than coincidence is the State's theory in this case as far as how it actually occurred, the circumstances leading up to the shooting.

So, his practicing of the firearm and the chronic use of the firearm, given the fact that he killed the defendant -- the defendant killed Mr. Whitcraft with just one shot without even aiming through the scope suggesting that facilcate (sic) really with the firearm, it is highly probative and relevant for -- or, really a core issue in the case to talk about this defendant's use of firearms.

THE COURT: To the extent that Mr. Sandoval's proficiency with a firearm is relevant and to the extent that he did some target shooting in a certain manner that show -- that may show

some relevance as to how it occurred here I think that's relevant evidence. I think -- I think whether he -- his neighbors liked him or not or they were disturbed by the shooting, unless as Counsel pointed out another pertinent character trait is made known through that testimony and so it becomes relevant for another reason, I don't think the fact that he was a bad -- or, they thought he was a bad neighbor or he bothered them or something like that is probably relevant at this point.

You know, we don't know exactly what people are going to say at trial. But, certainly to the extent that his proficiency and the fact that he was target shooting as that aided the proficiency I think that is relevant. So, I will grant and deny the motion as I've stated. You can get into --

MR. TITZLER: Well, Judge, I'd ask you to just deny it with the agreement on my part that if -- we'll abide by the Rules of Evidence, but I think I'm getting into an area that may be somewhat gray. I'll raise it to the Court before I raise it to the jury.

THE COURT: Okay. So --

MR. JOHNSON: Your Honor, this was the first time I've heard of this idea that Mr. Sandoval was going down the corner and getting out and shooting --

MR. TITZLER: It's in the discovery, Counsel.

MR. JOHNSON: Anyway --

THE COURT: Well, the Court's being asked to rule on things and I'm indicating that I think somebody's proficiency with a gun with a charge Murder with a Firearm is certainly relevant. And if he was target shooting or practicing shooting in a certain way that's relevant to this case I think the jury should hear that evidence. But, if it was disturbing neighbors or they thought he was a bad guy because he was doing this with what I know now I would not allow that evidence in for that purpose.

And, finally, the alleged gun pointing incident.

MR. JOHNSON: Your Honor, Mr. Whitcraft, the decedent in this case, made statements to a number of people that Mr. Sandoval had pointed a gun at him, there was a police report file and there are no witnesses to that. And so the only

evidence that would be brought forth to support that would be the hearsay statements of the decedent. And I don't believe that there are -- there is an exception to allow that and I don't think -- it's certainly not relevant as far as state of mind because the state of mind of the decedent is not at issue in a murder case.

So, I don't believe that Whitcraft statements to those people that Mr. Sandoval had pointed a gun at him should be allowed in.

MR. TITZLER: I think it was actually -- the report that Mr. Whitcraft made with regards to this incident, the incident allegedly occurred in July -- no, September 13th of 2001, two weeks before Jack Whitcraft was killed. Jack Whitcraft was killed with a model gun, rifle with a long stock by the defendant in a Bronco too not far from Robertson Bridge Road not far from where the defendant lived and not far from where Jack Whitcraft went frequently to visit a friend in the morning hours. This incident took place in the morning hours. This incident took place with a long stocked gun with the defendant in a Bronco holding it out of the Bronco described by Jack Whitcraft in the same fashion as the defendant

described how he held it out of the Bronco when he killed Jack Whitcraft.

And the same -- just yards away from the same location and it occurred in the same time frame in the morning when Jack Whitcraft frequently over to his friends, where in fact he was going at the time of the brandishing incident. So, there's far more corroborating type information than just the blind statement.

In the last page of Counsel's motion or memorandum, and I can't put my finger on the document right now, but the very last page up near the top it says, "This incident could only be relevant to motive or state of mind of the victim." and then he makes the following conclusion that "The motive or state of mind of the victim in a murder case is not relevant."

And that's just flat wrong and it's wrong for this reason: one, this isn't just a murder case, this is a murder case where, as Counsel's indicated, self defense and first aggressor is the focal and only issue of the case, or actually issues because it's clear from the case law that those are two separate and distinct issues. We know from cases like ***State vs. Whitney***

Biggs, Judge Coones case in this county prior instances of conduct of a decedent, bad conduct of the decedent that are not known to the defendant aren't admissible as to the reasonable belief necessity component of self defense.

But, that's not the issue in this case. The issue in this case and the reason that there's -- that motive of the victim is crucial and important is first aggressor is the predicate upon which the self defense in this case lies. And the Oregon Supreme Court has made it very clear in -- and I've got copies for Counsel and the Court, ***State vs. Thompson*** and ***State vs. Tarter*** and I've got another cite for the cites, Tarter and Thompson also. But, ***State vs. Raider***, which is 94 Oregon 432, you can see these are all cases, 1894 for Tarter and Thompson is 1907, Raider is 1919, which cites Tarter.

But, what these cases specifically say, these are homicide cases. These are cases where first aggressor and self defense are issues, okay? You're not always going to have a first aggressor issue in a self defense case, there are factual scenarios where you would not. But, this case, State vs. Sandoval, is a first aggressor self

defense case. And it's very clear in these cases, "The motive of the deceased is an issue on self defense first aggressor and it's the nature and character of the assault that one must analyze." And on the specific issue of first aggressor the state of mind of the decedent is relevant on the decedent's state of mind in the context of first aggressor.

So, it is at issue. It is an issue in the case that can clearly be addressed by the parties because it goes to the nature and the character of the assault. It is -- and there's another case, ***State vs. Holbrook*** that is -- the peaceful trait of the victim is admissible on the State's case and chief in anticipation of the violent character in the self defense case.

But, it also talks about, in a sense it was an issue whether or not the victim was about to violate the law. So, that's why the motive of the victim is at issue in a first aggressor case, and those cases stand for that. They are cited for a while, they're not overruled that I can see.

And -- but you need to separate out the Whitney-Biggs analysis for self defense reasonable necessity from the first aggressor issue. Under

the reasonable necessity issue only what's known to the defendant comes in. But, on the first aggressor issue the mental state of the victim is extremely crucial. And it makes sense because if you look at the way these cases typically stack up on a self defense case the State is put into the position of defending the victim. The victim is on trial and the victim isn't there to testify or defend his or her self. So, it crucifies the victim in a self defense homicide. But, when you've got first aggressor issues you get to put in what's in the victim's head.

And you've got ***State vs. Brown***, which is the -- ***State vs. Brown*** is 310 Oregon 347, I think I've got a copy of it here.

THE COURT: Yeah, you gave that one to me.

MR. TITZLER: That is not a self defense case, that is a fearful victim case who says "Here's a bag of drug records and everything else, please use it." This woman is giving this bag of stuff to the law enforcement officer saying, "Use this to put this guy in jail because he's going to kill me. I'm afraid for my life." And her fear of him stated to somebody else was allowed to show

her state of mind. Because it was probative on the issue of whether subsequently she allegedly got into a car to go someplace with him when she was last seen before she disappeared. And it was allowed in to refute that she got into the car with the defendant to leave.

So, the point is her state of mind was relevant in that case and the issue of her statement of the present tense situation the 8033 type evidence, allowed her statements in about her state of mind.

So, the victim's state of mind is at issue. Yes, there can be motive of victim that's relevant in the case on a first aggressor case and Tarter and Thompson and this prior situation is admissible not for the truth of the matter asserted, but for Jack Whitcraft's state of mind.

And I need to talk about another aspect of that because Counsel has moved against a specific instance of conduct, this brandishing of a gun at the bridge. And I would not intend to offer it for the truth of the matter asserted, unless another door is opened and Your Honor saw that one of those doors open at the release hearing where Counsel asked something about when

he started to carry a gun and it was -- and there's a lot of different ways that this could end up coming into evidence for the truth of the matter asserted. Right now it would only e offered for the mental state, the motive as to the issue of first aggressor of the victim.

But, there's another body of evidence that I fully intend to get in, and that is part and parcel to Jack Whitcraft telling various different people, including a police officer, about this incident two weeks before he was killed down on Robertson Bridge the brandishing incident. He also said to many people, many, many people that he was fearful of Mr. Sandoval and that the day after this happened was when he started carrying a gun because he didn't want to get caught someplace alone with Mr. Sandoval without having a weapon. And that statement of fear of Jack Whitcraft is a different piece of evidence than the specific instance of conduct at the bridge. And I fully intend to get that statement of his fears, self proclaimed statement of his fear into evidence, offer that into evidence. And under Brown and under Thompson and Tarter that very clearly is additionally admissible on that

issue.

So, I will concede that the specific instance that gave rise to that fear, the incident at the bridge, the situation at the bridge that gave in part rise to that fear of Mr. Whitcraft gets closer to being problematic because it's a specific instance of conduct. But, it's not offered for the -- necessarily for the fact that it did occur, it's offered for as it would bear on the mental state and fear of Jack Whitcraft.

So, Counsel would be at this stage of the game anyway, unless the door is opened otherwise, Counsel would be -- or, Defense would be entitled to a limiting instruction on the admission of that specific instance of conduct, not as to -- would not be allowed a limiting instruction on Mr. Whitcraft's statement of fear or statements that evidenced fear of Mr. Sandoval.

THE COURT: Anything further?

MR. JOHNSON: Your Honor, this is an interesting issue and because we have time I would ask the Court to hold judgment. I'd like to read Tarter, Thompson and the other cases cited by the State in possible response. I did not go back to 1993 and 1894 in my research, my computer program

doesn't support it. I'm going to have to go back and use a different program. But -- so, I'd ask the Court to hold judgment at this time on this motion.

THE COURT: And I'm not so sure anyway that this is something that -- I think this is something that if we had to we could deal with it at trial anyway before we got into those witnesses that might be testifying along the lines of what you suggested.

MR. TITZLER: You know, from the standpoint of planning and choreographing the trial some of the early witnesses of the State would be testifying on statements made by Jack Whitcraft about his fear of Mr. Sandoval.

THE COURT: Well, --

MR. TITZLER: But, there's two issues, the statement of --

THE COURT: Subject to the defendant's ability to reopen the issue after you've reviewed these cases the Court's ruling on this issue is going to be that the State would be allowed to introduce evidence not for the truth of the matter asserted, but as it relates to the fear -- as it relates to the victim's alleged fear of Mr.

Sandoval and also as it relates to the issue of first aggressor. And, again, subject to allowing the defendant to reopen that issue if necessary.

So, maybe, Mr. Titzler, I'll ask you to submit that order since I think you kind of prevailed on that question.

MR. TITZLER: Okay.

THE COURT: All right.

MR. TITZLER: Also, one other thing I'd like to clarify, Pat Wolke was the original attorney on this and he filed notice of -- filed notice of EED defense and I just want to clarify. Counsel and I have had discussions off the record where we've agreed, and we've agreed on the record also, the only issues are first aggressor self defense. So, we in agreement with that notice of EED is withdrawn; is that right?

MR. JOHNSON: No, I'm not going to withdraw it yet. But, I'm not going to use it either.

MR. TITZLER: But, I'm going to act on it and ask that the defendant be candled then for evaluator if we're going to -- if you're not going to withdraw it. I think I'm allowed to do that under the statutes.

MR. JOHNSON: I'll move to withdraw the motion to -- the notice of the intent to use the EED defense.

THE COURT: Okay. Okay. Mr. Titzler, here are your cases back and we're in recess.

(On August 15, 2002, the above entitled matter was concluded.)

GRANTS PASS, OREGON

MONDAY, FEBRUARY 9, 2009; 1:43 P.M.

OMNIBUS HEARING

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

--oOo--

THE COURT: Good afternoon. This is the time set for hearing on motions filed by Defense. And this is in the matter of State of Oregon vs. Sandoval, that would be Case 01CR0641. Mr. Scales, you are here with your client; Mr. Campbell for the State. And unless there's some preliminary issue that we need to go over then we can start with Mr. Scales.

MR. SCALES: Thank you, Your Honor. Actually, there is one brief issue. Let me get the actual issue that I had raised in my motion. The memorandum there's a couple of things, the second issue testimony regarding prior bad acts of Mr. Whitcraft should be allowed to show the defendant's state of mind. When I received the State's response I did some further investigation. I have had some sketchy reports about Mr. Crowe, the witness who had heard these things about Mr. Whitcraft and had been involved in the incident

with Mr. Whitcraft. I confirmed with Mr. Sandoval that Mr. Sandoval did not know about that incident until after the shooting incident took place.

THE COURT: Okay.

MR. SCALES: So, essentially I'm withdrawing that particular motion, that issue as far as having it being admitted to show the defendant's state of mind. We are not necessarily saying that we wouldn't be offering it under a different theory. But, at least under the theory that we've stated in there we are withdrawing that.

THE COURT: All right. So, that is your second motion?

MR. SCALES: That's correct.

THE COURT: All right.

MR. SCALES: That being said, Your Honor, there was a witness that we had talked to for some time and I was unaware -- well, let me just back up. It is a John Crissup, we spoke with him back in November. And he had some information, but I asked my investigator to follow up on that to determine if that information about Mr. Whitcraft's prior bad behavior had been made known to Mr. Sandoval prior to the shooting. I hope

you're keeping up with me.

THE COURT: I am.

MR. SCALES: I'm sorry.

THE COURT: I am.

MR. SCALES: I'm probably confusing myself as well. I did notify Mr. Campbell that it's essentially the same issue was we had for this issue B, it's the same argument.

THE COURT: Mm hm.

MR. SCALES: Mr. Crissup, we reinterviewed him I believe on January 23rd, somewhere around there, and we are prepared to address that today. Originally I had intended on filing a supplemental brief to the memorandum, a supplemental memorandum. I did not, but I did advise Mr. Campbell by giving him a written report and that we're withdrawing the issue of Robert Crowe, but we are raising the issue with the new witness, John Crissup. Mr. Crissup is here to testify should the Court require it.

But, because I agree with the State's response that that type of evidence is relevant, but there's a foundational requirement to show that the defendant knew of the threats prior to the shooting. And I agree with him that we need

to lay that foundation. That being said, I don't know if the Court wants to hear testimony from Mr. Crissup or if we can rely on the hearsay testimony through his police report -- or, excuse me, his investigative report which I've provided Mr. Campbell.

I think in the past decisions in this case a lot of these witnesses have been allowed to testify. Their testimony has been admitted without them having to come in to testify to lay the foundation. So, if that's the situation I would ask that we not call Mr. Crissup, but just go ahead and we can discuss his testimony and the Court can make a decision based on that without hearing live testimony.

THE COURT: All right.

Mr. Campbell, the State's position that procedural question?

MR. CAMPBELL: Yeah. Judge, it's -- if the -- I know the Court looked at the last transcript and you know the law on this. Normally we -- under 104 we would -- the parties would simply represent what the witness would say and then the Court would make he preliminary ruling. Obviously, at trial the foundation has to be laid

under oath. And I can't think of really a reason, so long as Mr. Scales represents to the Court he believes this witness will testify as he represents I don't know why we would have -- we would handle him differently. I have some doubts about his credibility, but my attack will probably have to be during trial. So, depending on the Court's ruling --

THE COURT: And I would agree with that that if there is any question that that would be the proper procedure.

So, Mr. Scales, are you suggesting that we start with really your second motion and go ahead and deal with this now since --

MR. SCALES: We can go ahead and --

THE COURT: -- we've spent some time --

MR. SCALES: -- do that. I would suggest though that if Mr. Campbell does not -- is not requiring that he testify that he be excused, the witness is waiting outside.

THE COURT: All right. I agree with that, I think --

MR. SCALES: Okay.

THE COURT: -- that we can excuse the proposed witness, John Crissup. And you can make

your representations --

MR. CAMPBELL: Well --

THE COURT: -- on the record.

MR. CAMPBELL: -- my only question, I guess is, Mr. Scales, I didn't talk to him out there so are you going to be able to represent that you believe he really will testify as the report you gave me indicates?

THE COURT: Let's hold on to the witness until we deal with this in total, what's a few minutes for him to wait?

MR. SCALES: Sure. Well, I guess, let me think about that question. I'm not usually called on to vouge for a witness. I can tell you that --

THE COURT: Well, I don't think that you were asked to do that, I --

MR. SCALES: I --

THE COURT: -- just think that it is proper though --

MR. SCALES: Sure.

THE COURT: -- that you feel comfortable giving a representation as far as your knowledge is concerned for this witness.

MR. SCALES: Well, my knowledge -- I have not spoke with Mr. Crissup directly, it's --

typically I send and investigator should he --

THE COURT: Mm hm.

MR. SCALES: -- if he decides to change his testimony on the stand. I can make the representation to the Court that I believe that what is written here from my investigator is true and accurate.

THE COURT: Why don't you go ahead and tell me what your initial report states.

MR. SCALES: Would the District Attorney have -- it's a very short report, would you have an objection to me letting the Court read that?

MR. CAMPBELL: No, I --

THE COURT: You've received it, I assume?

MR. CAMPBELL: Yes, I have.

THE COURT: Okay. Why don't you bring it up.

MR. SCALES: Thank you.

THE COURT: Okay. Just one moment, let me take a look.

(Brief Pause)

THE COURT: All right. I have reviewed the investigator's report that is dated January 23rd, 2009, and I'll return that to you. The State has indicated they received a copy. All right.

So, if you would like to just go ahead and proceed with your representation, the Court understands it's based on your receipt and review of the report from your investigator.

MR. SCALES: That's correct, Your Honor. I have not personally spoken with Mr. Crissup about this allegation. And is the Court allowing me to make argument pursuant --

THE COURT: Yes.

MR. SCALES: -- to our motion? Thank you. Your Honor, I -- it doesn't always happen that I agree with the State, but looking at the State's response to the motion they are not disputing the argument that these types of threats are -- have an effect on Mr. Sandoval's state of mind. And in a case like this where the issue is who's the first aggressor, who had the right to use deadly physical force in defense of themselves? I think this is extremely relevant. And there is -- there will be an opportunity for the State to attack the credibility of Mr. Crissup.

But, he has told my investigator and I'm confident he will do so under oath and I have also determined that by speaking with my client that he

was aware of the threats that were made that Mr. Whitcraft wanted to kill Mr. Sandoval prior to the incident. That being the case I think the foundation has been laid. It's sufficient to get it before the jury and we can go from there as far as cross examining him regarding his credibility, there will be ample opportunity for that.

What I'm saying though is that this -- this evidence is relevant, it is not going to show character, but is going to show Mr. Sandoval's state of mind which is particularly relevant in this type of prosecution. So, I believe that the evidence should be admitted and that's what we're requesting the Court to do.

THE COURT: All right.

Mr. Campbell?

MR. CAMPBELL: Just on this issue?

THE COURT: Just on this issue.

MR. CAMPBELL: Well, I basically said in my memo that what's good for the goose is good for the gander. In other words, the law allows us to put in, we argue, the state of mind of the victim and why he in fact picked up a gun in this case and I think it equally applies to the defendant. So, I'm not arguing with that if it is -- if

there's a foundation that the defendant had, in fact, knowledge of that and that was a reasonable fear as a result of it.

That -- I guess the difference between the two parties is this: we have a victim that's dead and is unable to testify and this defendant is able to testify and could get up and say what was in his mind and yet by hearsay he will probably not get up and say what was in his mind and try and put it in through hearsay statements. And I think it's a little unfair, but it's -- it does appear to be the state of the law so we'll deal with it that way.

THE COURT: All right. Well, the Court does find that at this stage there has been a proper foundation laid. Of course -- and that does mean that this this testimony of John Crissup would be allowed at trial. However, Mr. Scales, you will be required at that time to lay your foundation and, of course, follow all of the steps at that point.

MR. SCALES: Absolutely, Your Honor.

THE COURT: So, with respect to your Motion Number 2, understanding that it does not relate to your original argument on -- was it Mr.

Crowe, Robert Crowe?

MR. SCALES: That's correct, Your Honor.

THE COURT: All right. Does not relate to that, but does relate to Mr. John Crissup the Court would allow that testimony.

MR. SCALES: Thank you, Your Honor. And just for the record, I had filed a motion to have Mr. Crowe transported from I believe it was Two Rivers Correctional Facility. Given the fact that we are not calling him I don't want the Court to think that we are not wanting him transported. There may be another purpose for which we would want him, so we are still requesting that that --

THE COURT: Still want him transported?

MR. SCALES: We still want him transported.

THE COURT: All right. Okay. So, nothing will be done to change that order.

MR. SCALES: Thank you.

THE COURT: All right. Your next item?

MR. SCALES: Okay. I guess the -- you want us to go back to the first one then?

THE COURT: That would be fine.

MR. SCALES: Okay. I didn't know if you wanted the first or the third.

THE COURT: It doesn't make any difference, we're going to cover them all.

MR. SCALES: All right. Your Honor, I think I'm probably going to start -- I'm going to rely mostly on what is in my memorandum and I don't want to just simply get up here and regurgitate that. So, I'm going to start by responding to the State's response. I was looking at the State's response and it appears -- well, let me back up a step. Our issue that we have raised is regarding alleged prior bad acts of the defendant. There's a -- a good portion of the State's response looking at Oregon Rules of Evidence 404(2)(b) which is regarding evidence of a pertinent trait or character of the victim. I think that the State -- I think the State is correct that they don't have to wait until we've raised the issue before they bring evidence of the victim. We can certainly rebut it through the use of specific incidents to rebut that.

But, what I'm saying is that our issue that we had raised was limited to prior bad acts, crimes, wrongs, harmful behavior on the part of the defendant.

I think looking at 404(1) evidence of a

person's character or trait of character is admissible when it is an essential element of a charge, claim or defense or one of the elements of the crime. I can think of no scenario where -- and I'm not going to spend a lot of time getting into the specific things that I anticipate the State will be bringing up in prior bad acts, I'll just refer to it as that. I can't think of that as going towards one of the elements of the crime or using to rebut any type of a defense. I think really the only reasonable purpose that the State has in bringing up these prior bad acts are to show that Mr. Sandoval is a bad guy. It is right on point that they are trying to show character.

In our memo, Your Honor, we mentioned a list of names. We did not get into all of the details of things that they may be testifying to. But, there's, I believe, 19 witnesses who may be testifying to, among other things, that they had heard rumors of Mr. Sandoval pointing a gun at Mr. Whitcroft -- or, Whitcraft, excuse me, approximately two weeks prior to this homicide. That they had heard that Mr. Sandoval had attempted to run Mr. Whitcraft off the road. That they had heard that Mr. Sandoval was involved in a

hit and run with a bus. These were listed in the memo. That Mr. Sandoval is paranoid, suffers from PTSD. That he was abusive to women, that he threatened to kill Michelle Clayburn. That he fired a weapon at another person in Tucson, Arizona over 20 years ago. And that they heard rumors that Mr. Sandoval threatened to kill Mr. Whitcraft or Ms. Carlson. Has a cocaine habit. Tailgated Ms. Carlson, showed her a weapon. And that he started to -- started -- tried to start fights. And that he threatened to kill Ms. Charlotte Sperisen.

There is no other logical purpose for bringing that in other than to show his character or that he acted in conformity with. And that's definitely laid out in Rule 404(3).

Even if it is admissible, even if the Court determines that it is relevant we have to go back to Rule 403. And I have a disagreement with the State's characterization -- well, we do make reference to the balancing test in 403. And I'm going to go ahead and just read this, "Although relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or

misleading the jury or by considerations of undue delay or needless presentation of cumulative evidence."

I would agree -- I don't know if the State raised this, but in the balancing test it's not simply that this is prejudicial, therefore it's thrown out because prejudicial stuff comes in a criminal defendant's case all the time, all the testimony of the State's witnesses are going to be prejudicial. And I would concede that the prejudicial effect has to substantially outweigh the probative effect before the Court can shut that off.

However, the risk that we run here, Your Honor, is by bringing in all of this stuff, first off it is highly prejudicial. It is not used to show an element of the crime, it is not used to rebut any type of a defense, but essentially it's going to show that Mr. Sandoval is a dangerous, violent, angry, could kill anyone type of person.

Once again I have to back up a step by saying as of just recently I know that Mr. Campbell and I had discussed this a little bit last week, I don't think the State has completely determined what evidence they intend to offer.

And so I'm acting in kind of an anticipatory role here today. I don't know everything that they're going to offer. But, evidence of Mr. Sandoval tailgating somebody, evidence of him flipping the bird at somebody I don't believe that that is relevant and it's just prejudicial. All it does is it paints a picture of him being an angry, bad person.

Getting back to my response to the response, I'm looking at the second page. I guess I have a concern, "evidence of an actor's knowledge of the person's prior threats", I'm looking at Page 2, Line 14. That's just what we -- what we just dealt with. The actor's knowledge of the other person's threats is relevant. I don't know the authority for reputation for violence and prior acts of violence being normally admissible. So, I dispute that. But, a threat that Mr. Whitcraft knew about or that Mr. Sandoval knew about I would agree that those are relevant.

The other concern that I have, Your Honor, is the State's contention, looking at Page 3, the first section balancing test, "That the defendant argued several times that the character evidence in issue is subject to the 403 balancing

test is incorrect, the appropriate analysis is for the Court to determine if the evidence is relevant to a salient issue of the case. If it is the Wang test of 403 does not apply in criminal cases." and there's a reference to 404(4), I'll get to that in a second.

The appropriate balance -- or, the appropriate analysis is still to weigh the prejudicial value as to the probative value and if it substantially outweighs the probative value it has to be -- it has to be excluded. This balancing test essentially guarantees the most fundamental aspect of fairness that a defendant can have. By bringing a defendant in and painting him -- painting a picture of him based on -- well, I'll get to that in a second. A picture of him being an angry person who carries guns, that drives up and down his gravel road at high speeds, that he flips people off, these are all things that, first, I don't believe they're relevant.

Second, I believe there's also -- the Court should require a foundation on the part of these people who are going to testify to this as the proponent of the evidence I believe the State has an obligation to show that not only did these

people simply hear this from the decedent's girlfriend, but that they have some personal knowledge of it otherwise it is hearsay.

And looking at one of the cases that was listed, and bare with me for a moment, Your Honor. One of the cases that was listed I think was ***State vs. Philips*** I did not print a copy of that out for the State. But, ***State vs. Philips*** does, in fact, implicate the balancing test. On Page 98 there are three conditions on whether evidence of uncharged misconduct is relevant. The evidence must be independently relevant for a non-character purpose. The proponent of the evidence must offer sufficient proof that the uncharged misconduct was committed and that the defendant committed it. And the -- Number three, the probative value of the uncharged misconduct evidence must not be substantially outweighed by the dangers or considerations set forth in OEC 403. So, it directly relies on OEC 403.

To say that the balancing test is not relevant or is not applicable is wrong, and I say that respectfully. But, it does apply in criminal cases.

As to the State's response regarding

hearsay. I agree with the State's definition of hearsay. But, I think it's important that we establish who the declarant is. Is the -- if the -- these -- the people who are going to testify I don't know if the declarant was Jack who told them these things or if the declarant was, in fact, Mary who told them these things.

THE COURT: And Mary is?

MR. SCALES: Mary is the girlfriend of Mr. Whitcraft, the decedent --

THE COURT: Okay.

MR. SCALES: -- at the time of the --

THE COURT: Okay. I appreciate you clarifying thing like that.

MR. SCALES: Thank you, Your Honor.

THE COURT: Particularly for the record.

MR. SCALES: One other thing and I -- this is a little bit outside of the scope of the State's response, but I think I'm -- and I don't mean to blind side Mr. Campbell here, but this is a request that I would like the Court to consider. Under Rule 404(3) if the State is intending to offer evidence of other crimes there is no advance notice required, unlike I believe it's Rule 412 if you are intending to offer evidence of a sexual

misconduct and things like that there is an advance notice requirement, I believe it's 15 days. It's not required, but for lack of a better term I think it would be nice. It would give us an idea of what issues we would be looking at.

And I rely on Kirkpatrick, unfortunately I only have the Fourth Edition, I don't have the Fifth Edition. But, looking at Kirkpatrick -- if I could find it here.

THE COURT: If you could just cite the section it may be --

MR. SCALES: Yes, it's --

THE COURT: -- the same, actually.

MR. SCALES: It's Article IV -- well, let's see, how did I --

THE COURT: Just the section number.

MR. SCALES: It is 404.06(9).

THE COURT: Did you say "9"?

MR. SCALES: 9, that's correct, Your Honor.

THE COURT: Okay.

MR. SCALES: Now, there --

THE COURT: I have that section.

MR. SCALES: Okay. There's not a state rule, there is a federal rule that requires that,

but, I think the reason I'm ask -- requesting that is so that we have a full opportunity to understand what those potential issues are. It saves time in the trial and I think it also helps alleviate potential issues of a person not having full and effective assistance of counsel. So, that would be the reason that I would ask the Court to at least encourage the State to try to provide what types of prior bad acts they're going to try to get in.

Once again, on ***State vs. Wyant***, which is the other case that is cited under that section on Page 3, Line 6. If I remember correctly I had a couple of notes here. This was a case where a defendant's prior DUII convictions were being allowed in and I assume, if I remember correctly, it's a DUII prosecution. And the case deals specifically with prior convictions. I think it's -- I think it's kind of a stretch to be bringing that type of prior bad act evidence in unless it goes to an element of the crime or one of the things that -- a non-character purpose. This is exactly -- well, I'm getting redundant. But, that's exactly what I believe the State is intending to do is to show Mr. Sandoval's

character by bringing in that prior bad act evidence.

The last part, this is not directly addressed in the State's response. But, looking at OEC 404(4) Kirkpatrick talks at length about this particular section and I was not aware of this, but this particular evidentiary rule goes beyond the rule of nearly every jurisdiction as to the ability of the State to put on evidence of guilt, evidence of prior bad acts.

There is no federal counterpart and not trying to throw a bunch of statistics at the Court, but I think at least 37 other states and in the common law of the remaining 12 states and the District of Columbia this type of evidence is -- is -- it's propensity evidence, which is not allowed in.

If the Court does allow this type of character evidence, and I think that also that begins to get into implicating constitutional issues whether or not a defendant has had his right to a fair trial or a right to an impartial jury affected by bringing in evidence. Which really for no other reason does anything but paints him as a bad person.

We rely on a case -- and once again I'm looking at Kirkpatrick and I don't mean to keep referring to Dean Kirkpatrick's book. And I'm looking at 404.07(1). By far the most import potential ground for exclusion listed in OEC 404(4)(a) is OEC 403 evidence of a defendant's prior crimes, wrongs or acts as normally thought to be highly prejudicial evidence that requires a careful balancing. The Oregon Supreme Court has held that OEC 403 balancing is required under 404(3) such as to show motive, intent or identity.

However, looking at the next paragraph Kirkpatrick it seems unlikely that the legislature intended to reference 403 in OEC 404. I hate to be superfluous, what Kirkpatrick is saying is that an analysis under 403 should also be required before evidence is admitted under 404(4). While it's not -- while it may not be expressly required, I believe that the Court still needs to do that balancing under that. And to not do a balancing test, quite frankly, would be denying him due process.

One other thing, Your Honor, in this particular case -- well, actually that's for the next issue. So, I'll go ahead and let the State

respond to my arguments on this issue and save that for the next.

THE COURT: All right. Thank you.

Mr. Campbell, when you're ready.

MR. CAMPBELL: I'll just respond to that last argument first while I'm thinking about it. Professor Kirkpatrick's written a nice treatise for us and he has his own views also about the laws of Oregon. But, in fact, our appellate courts have spoken on 404(4) after he wrote his treatise saying that he didn't really like 404(4) and they have held that it is not only constitutional, but it says exactly what it means. And that is that you don't do a weighing test on 404 evidence. And so that -- those cases I cite stand for that proposition and that is the current state of Oregon law.

THE COURT: Mr. Campbell, could I interrupt you for just a moment here?

MR. CAMPBELL: Yeah.

THE COURT: In your brief when you cite the Philips case can you just double check that cite and make sure? I was running short on time and grabbed that and it looked to me like it wasn't the correct cite.

MR. SCALES: I think it's 217, not 207.

THE COURT: 217? Okay. Then that answers that.

MR. CAMPBELL: It is 217, Judge.

THE COURT: All right. Okay. Thank you.

MR. CAMPBELL: Sorry.

THE COURT: That clarifies that, that'll make it easier to find the case.

MR. CAMPBELL: I think defendant mischaracterizes my -- the reason the evidence that he's talking about comes in. I would say this, the rules actually are fairly clear and what becomes difficult is when you have a mish-mash of facts and the witnesses in explaining their testimony will explain about contacts with the defendant.

Pointing a gun at -- I mean, he went through a list so I'll kind of go through it. He says pointing a gun is just a -- at Whitcraft is just a bad act that shouldn't be admissible. Wrong. We just argued about guns being pointed at somebody caused them to have reasonable apprehension or reasonable fear that allows them to take acts when someone moves against them. And so that's why it's admissible for an independent

relevant matter.

Running Whitcraft off the road gives him reasonable fear. A hit and run incident with a bus which was closely related to Mr. Whitcraft and Mary Carlson. Mary Carlson just to make sure the Court understands the relationship, the defendant was married to Mary Carlson for approximately 10 years. In 1996 she left him and after that time she began a relationship with Jack Whitcraft, the victim in this case. And they had a common law marital relationship from '96 until his death in 2001.

There will be evidence that the defendant threatened Mary Carlson that if he couldn't have her nobody would. She took it as a threat of violence against her. And Jack Whitcraft and Mary Carlson were a close couple, spent most of their time together and frankly the problem between the defendant and Mr. Whitcraft was that Mr. Whitcraft was aware of all the threats and the harassment of Mary Carlson. He wasn't going to put up with it so it began to be directed at him, as well as Mary Carlson.

So, they really are basically a unit that I think you have to analyze the threats that

we represent the defendant uttered and carried out as against one as the same as against the other because they were communicated and it was part of the mind set of the victim in this matter.

He talked about Michelle Clayburn who is a close neighbor who observed the defendant's conduct toward the two and can testify to it.

And he -- there's a -- he talked about a tailgating incident where there was at least one where both Mary Carlson and Jack Whitcraft were in the vehicle and it was a threatening situation. And it is admissible under the arguments we've made about -- which the defendant is availing himself too, but reasonable fear is events that caused reasonable fear in the mind of an actor in a violent confrontation using self defense are admissible. So, those are why a number of those things come in.

I didn't know if you were going to stop me right there or --

THE COURT: No, I'm just wondering if you're going to go through -- if we are going to cover each and every possible bit of testimony.

MR. CAMPBELL: And I don't think -- I guess that's my next point, Judge, I don't think

that the Court can make the ruling that the defendant really asked them to make today until you see this evidence in context.

MR. SCALES: I agree with that.

MR. CAMPBELL: And --

THE COURT: And that's where I was headed as well, I'm not so sure that he can --

MR. CAMPBELL: And he's going to have to raise his objection and you'll have to rule.

MR. SCALES: Sure.

MR. CAMPBELL: But, that's the -- the evidence from the neighbors -- and a number of these people that he lists in the motion are neighbors. The defendant was very practiced with the firearm and, in fact, increased his practicing before this murder and the neighbors will testify to that. His competence with the firearm is relevant and t's relevant for that purpose. And though they may characterize it as character evidence about a propensity, that's not why we're offering it. So, it is relevant, it does come in. And I think the defendant may at some point request the Court to give a -- some kind of a limiting instruction. But, if it's relevant it comes in.

So, what -- I guess my last point and then I think we leave it at I think really the Court is going to have to hear the evidence as it comes in is that what they characterize as prior bad acts I don't think the case law really -- really characterizes as prior bad acts necessarily. And I'm thinking about a lot of the shooting evidence that was introduced before and we're going to put some of that on again. Shooting, multiple shootings on your property are not necessarily bad acts, but they don't really want the jury to know about them, I guess because they think it makes him seem violent. But, they are relevant for his competence with the firearm and the use that leads up to this event is relevant to the event.

So, I think that's all I have to say on this particular issue.

THE COURT: On this whole part of the motion? Because I did want to hear your response to his -- to the Defense's request that they be given notice.

MR. CAMPBELL: Oh, well, they're not entitled to notice and they really have notice. They have more notice than any other defendant

I've ever tried because they have a full transcript of what we put on before. And I don't think -- I don't think I have anybody in this area that didn't testify before to it. So --

THE COURT: So, no -- so, no new evidence that you're anticipating?

MR. CAMPBELL: No, although I --

THE COURT: I'm not trying to pin you down on that, I'm just --

MR. CAMPBELL: Not right now, but, you know, I may be doing some more investigation in light of this Crissup thing.

THE COURT: Okay.

MR. CAMPBELL: May come up with something else there. So, I think they have notice, to be honest.

MR. SCALES: By the way, has Mr. Crissup been excused?

THE COURT: I'm satisfied that he can be excused now.

MR. SCALES: Thank you. Well, first I -- I probably should have interrupted Mr. Campbell, but I didn't want to be rude. I agree with him on a number of things. First -- now I can't remember what I agreed on, there were a number of things,

so I'll try to be specific here. As to the proficiency with a weapon. There was a prior motion in limine raised on that and I don't -- I think it was in my motion, but I'm conceding that. I think his proficiency with weapons and things of that nature is relevant and I'm not going to raise any issue with respect to that.

As to one of the other things, yes, the incident -- and we did just get through -- are doing this, the incident, the gun pointing incident regarding Mr. Whitcraft certainly goes to Mr. Whitcraft's state of mind and his fear. So, I will not be arguing that.

The two cases that are cited in that particular session, I don't think that the Court of Appeals has clearly said, "Well, you don't have to do a balancing test if it's relevant to a salient issue we bring it all in." I think what they are saying that if the exclusion was required by the due process clause then it can be excluded. And what we are talking about here, Your Honor, is -- well, I don't want to be too redundant. But, we're bringing in evidence that's going to deny him his due process rights by bringing in evidence that's just totally highly prejudicial.

The incidents that I'm referring to specifically -- and I agree that we have been given notice, of a sort, and I'm not asking the Court to require them to give notice. But, there are -- looking at the transcript there are a number of incidents where people have testified to "Leo tailgated me." "He flipped the bird at me." and things like that, they're just irrelevant. They -- they are only related to those witnesses. Quite frankly, I don't think they have any relevance in murder prosecution.

And so I also agree with Mr. Campbell that those are going to have to be decided on a case by case issue. I wanted to raise the issue generally today so the Court has a preview of what we intend to be doing. And we'll try to -- I'll try to do it as quickly as possible, but I do think the Court needs to make the determination individually witness by witness.

That's all I have on this issue, Your Honor.

THE COURT: All right. Let me just express a few of the Court's interpretations at this point. It is virtually impossible for me to make any kind of a ruling because I don't know

exactly what evidence the State really will be presenting. We've had other cases where the State wanted to put it all out on the table and then I was able to make decision, this is in, this is out, etcetera. That is not the case here. I think I have a pretty good idea now. You would have a much better idea, Mr. Scales, because I know you've spent many, many hours reviewing transcripts in this case.

So, in terms of notice the State is not required to provide any notice and I will not require that the State give you or the Court a list of the type of evidence they intend to present. So, we will not be going that methodology in this case.

However, given the information that I've picked up through the motions, through the response and through the partial transcript that the Court has reviewed and the only part of the transcript that the Court has or has reviewed is simply the portion that was referenced in the State's response and I did take a look at that, so that's all I've seen of the previous trial. But, I can tell you that hearing the type of evidence that is likely to be presented the Court would be

inclined to look at those things as relevant if they are directly related to the victim or the victim's girlfriend, common law wife. If it plays some importance in the decision making process the Court would find that that is relevant.

If there is something that is entirely off the chart as far as having no connection to the jury's task in fact finding then the Court would look at that in terms of relevancy.

But, I'm concerned about being in the middle of this trial and having a number of -- and I don't know if these are different witnesses to testify to each of these different points, and I suspect maybe they are all different witnesses. I am a little bit concerned about interrupting the trial every 20 minutes to have a motion be argued outside of the presence of the jury. And I would just ask both sides to the extent we can do this in block form maybe at the beginning of any particular day of trial, if we can address things like that rather then having an objection given right in the middle of the trial with the jury present and then having to ask the jury to go out. It -- this is a multiple day trial and juries do get a little restless, as everyone knows. And so

I want to keep that to a minimum to the extent possible.

But, at this point there's no way that the Court can rule on these other than the couple of items that Defense has conceded in terms of a couple of those points of evidence and we won't need to address those pointing of the gun, *etcetera*, would be an example of that. So, as to these other points of evidence, this other testimony, we'll just have to wait. And if the State is planning on introducing it or if you just offer it and if there's an objection we'll have to deal with it on the spot.

The Court certainly understands the law, understands both sides position so we probably won't have to argue it in the full detail that's been presented today. But, please understand I've taken careful notes, I do understand your positions, you've both filed documents so I'm aware of what you're arguments are. It will just be a matter of maybe a quick decision and a short little argument at the time.

Mr. Campbell?

MR. CAMPBELL: before we get off the *topic I just remembered something else.* And I --

to answer your -- the ruling right now, I really think most of the time you will be able to rule without us asking the jury to leave. It will be a matter of you just ruling and we going on. But --

THE COURT: And that I think would probably work pretty smoothly if you could just submit on the arguments you made in today's hearing.

MR. CAMPBELL: Yeah. You know, there may be an occasion where we're going to have to talk to you outside the presence of the jury, but most of the time probably not.

THE COURT: Okay.

MR. SCALES: And at least based on my prior experiences in this court it seems to work *well by doing it the morning of trial if we* anticipate what is X, Y and Z, we discuss that prior to the jury coming into the courtroom. So, I'm sure that Mr. Campbell and I can work out trying to streamline this.

THE COURT: Okay.

MR. SCALES: However, that being said, *I'm no necessarily stating that I agree that as* the -- well, as the proponent of the evidence I think they need to at least give the Court some

idea of what they're going to be offering and then I would be offered an opportunity to make my objections. I don't want it to just be, you know, summarily decided without a little bit of argument on the issue.

THE COURT: You both will be given any opportunity that you request.

MR. SCALES: Okay.

THE COURT: I'm not going to cut you off just because I want the trial to move more quickly, it's not going to be like that. I'm just trying to *talk about this ahead of time so that to* the extent we can handle thing in a block period of time first thing in the morning without the jury there we can do that or if you feel that you've already given your complete argument today during this hearing, again, I've made note of all of your arguments and I also have your written documents. And unless there is something new and different that you feel that you need to state on the record at the time of your objection then I would be prepared to rule.

MR. SCALES: The only thing I anticipate adding would be directed at the specific testimony that the State is proposing putting on. If there

are -- if I need any supplemental argument I would make it at that time.

THE COURT: That would be fine. For example, if you're argument was that an improper foundation has been laid I would think that that would be something that would be perfectly acceptable in front of the jury.

MR. SCALES: Okay.

THE COURT: All right.

Mr. Campbell, back to you. You were not finished.

MR. CAMPBELL: The one -- and I'll just have it out here for you to think about. The one of the reasons a bunch of garbage comes in is because of the defendant's statements they're filled with -- he's the kind of person that just attacks the other side. So, he fill -- when they try to talk to him he fills his statement with false allegations against Mary Carlson and false allegations against Jack Whitcraft and so interspersed in his explanation of what went on. That -- and I believe that relevance would allow us to answer that to some extent. So -- and maybe that's not the kind of evidence you're talking about. But, anyway, that does to some extent open

a door to at least rebut that. And, of course, that kind of evidence showing that he's being untruthful or painting somebody the way they aren't is some kind of evidence of his knowledge and guilt. So, that's another reason some of this comes in.

THE COURT: All right. And I appreciate you pointing that out because that's the type of information that the Court will not have unless the State has already presented that during the course of the trial.

MR. CAMPBELL: And I will present that before this evidence --

THE COURT: Okay.

MR. CAMPBELL: -- some of it. I will -- that should be in before we --

THE COURT: Okay.

MR. CAMPBELL: -- get into that issue.

THE COURT: All right.

MR. SCALES: Well, I think the remedy for that, Your Honor, if -- if there is -- if there are things to come in during the taped transcript of Mr. Sandoval's interview with the -- with law enforcement that are -- and I probably agree with his characterization, garbage, things that are

irrelevant, things that are not necessary for the jury to hear. I think the simple remedy is to redact those portions of the statement. We do it all the time in cases, we redact those things that are irrelevant, inadmissible, that confuse people.

On the flip side, I would agree that if there are things that he has -- that he's making false claims about Mary Carlson I think he's probably opened the door for the State to put on that evidence. So, I'm being agreeable, yet not being agreeable, if the Court understands my point?

THE COURT: I do understand that and I would just ask both Counsel that if there is something in a taped statement that is not relevant, is not necessary, is not helpful to the finder of fact and if both sides agree that it should be redacted then do that ahead of time and take care of that. That's something that should be done pretrial.

MR. SCALES: Okay.

THE COURT: Okay.

MR. SCALES: One other point of clarification and then I'll stand silent on this issue. The Court has just advised us that if the

Court believes that it's relevant to -- if Mr. Sandoval's conduct is relevant to something that's directly related to the victim or Mary Carlson the Court would tend to lean towards that being relevant and admissible. I just want to make sure the Court is not saying that the Court would not -- you're not saying that you would not use the balancing test or you'll make a decision at that time whether or not to -- that this triggers the use of the balancing test?

THE COURT: I will make a decision at that time, Mr. Scales. I have used the balancing test in the past --

MR. SCALES: Mm hm.

THE COURT: -- and I was not able to review the case that Mr. Campbell had cited or two cases and so I want to take a look at that in conjunction with your argument today.

MR. SCALES: Thank you.

THE COURT: But, I will definitely -- if I use the balancing test I will inform both sides and go through that analysis on the record.

MR. SCALES: Fair enough. Thank you, Your Honor.

THE COURT: All right. Are you ready to

go to your third issue?

MR. SCALES: Yes, Your Honor.

THE COURT: Okay.

MR. SCALES: And strangely enough I think I spent more time in my memorandum on that, but I probably have the least amount of argument on this. Your Honor, relying on our memorandum, I agree that victims have certain rights under the law, obviously, the right to be notified of trials, the right to be present at sentencings. They have a long list of rights that have been granted them.

But, there is no specific right to be called a "victim". And, quite frankly, under the statute that was cited, I believe it's ORS 130 -- it's 131.007, I think it's inappropriate until after a finding that harm -- that the victim was harmed as a result of a crime. It's inappropriate to call them a "victim". We're not -- this is not a whodunit, we are not saying that Jack Whitcraft did not die from homicidal violence. But, the issue is whether or not a crime was committed. To call him a "victim" and to refer to him as a "victim" just because the District Attorney's Office has characterized him as a victim that

doesn't necessarily mean he is a victim under the statute. We have to determine that this was a result of criminal activity on the part of Mr. Sandoval.

And I think the case, although it's pretty old, is persuasive authority. But, to call the decedent a "victim" it's almost as if there's a suggestion to the jury that that issue has already been decided. And we know that any of us who have tried cases in front of juries know that juries whether consciously or subconsciously they latch onto these things. If a person is a victim and the jury continually hears that I think you are almost impermissibly suggesting to them that this person -- you're half the way to a conviction. I mean, we might has well call Mr. Sandoval -- Mr. Whitcraft as the victim, Mr. Sandoval as the criminal.

I don't think there's any prejudice to the State to refer to him as "the decedent" just from a practical matter. It's not hurting anybody, but it is protecting the rights of Mr. Sandoval to have a fair and objective impartial jury. By calling him the -- or, by calling Mr. Whitcraft "the victim" we are, in my opinion,

impermissibly suggesting to them this is already a done deal. This guy's a victim, all you need to do is connect the dots and brand Mr. Sandoval as a criminal.

So, that being the case, Your Honor, and the relative lack of inconvenience to the State and the fact that, quite frankly, victims do not have a right to be called a "victim" under the law I am requesting that Mr. Whitcraft be referred to as "the decedent".

THE COURT: Mr. Campbell?

MR. CAMPBELL: I really don't have much to add to my argument. I think I -- the whole victim's rights legislation, which is constitutional and also in the statute is to give them close to an equal standing to the victim. They don't have an equal standing to the defendant in a case. Defendant's are called "defendant's" all the time and acquitted by juries sometimes. These are terms that are in the system and they are recognized by the constitution and by statute. The victim now has the right to sit in the courtroom just like the defendant does to hear every part of the proceeding, which wasn't the case in the past. And it's because they do have

standing under the law, just like the defendant has a standing under the law. And to say otherwise is an exercise I don't think this Court should go down that path.

THE COURT: All right.

Mr. Scales, did you have something further?

MR. SCALES: Real briefly, and I'm sorry to bounce up and down like this. But, Your Honor, I agree that victims have rights, they do have rights to be heard, they have rights to be present, they have rights to be notified of plea negotiations. But, to my knowledge there's nothing in the victim's rights legislation that grants them the right to be called a "victim".

Aside from that Mr. Sandoval has the right to not have something impermissibly suggested to the jury that Mr. Whitcraft is the victim, the victim, the victim. I think it's particularly applicable in this case because it's not an issue of whether Mr. Sandoval is responsible for the death of Mr. Whitcraft, we'll concede that. The issue is whether Mr. Sandoval is criminally liable for the death, was there in fact a crime? And that goes straight to the

definition of what a victim is under Oregon law. The issue of whether or not a crime has been committed in the first place is the only real issue that the jury -- well, it is the key issue that the jury has to determine. Obviously there's other issues that they have to determine to make that determination. But, a crime has not yet been established.

And I would be worried that by referring to him as "the victim" we are helping them in their own minds establish that Mr. Sandoval is guilty. Thanks.

THE COURT: All right. Thank you.

Did you have something else, Mr. Campbell?

MR. CAMPBELL: I do, Judge.

THE COURT: You looked like you had something to say.

MR. CAMPBELL: And it'll be brief.

THE COURT: Okay.

MR. CAMPBELL: The -- it is not the job of the judge to be a vocabulary referee. In fact, both of the parties have -- at least I have the burden of persuasion, I must use persuasive speech and it's -- to call this man a "victim" after I

recount the facts is persuasive speech, perhaps, but it's speech I'm entitled to use. And for the Court to go down -- I know the Defense has in general has been trying to get the Court to start telling us what language we can use in the court and I really think it's a slippery slope that is not appropriate to go down.

THE COURT: All right. Well, it's not a step that this Court is willing or ready to take. And I would be relying on just the general definition of victim. In this case Jack Whitcraft is the person who died and I am going to allow the State in this case to refer to him as "the victim" if the State chooses to. Mr. Scales, you can refer to him as "the decedent" or "Mr. Whitcraft", however you feel is appropriate.

But, I don't think that in the minds and the reasoning of the jury that they will make that leap from hearing the word victim to assuming that this was a crime at the hands of your client.

Historically those who were on the receiving end are considered victims. And we have had legislation in just recent years which have actually given additional rights to victims. And as you point out that has not specifically

addressed that they are entitled to be called "victims", but certainly that is the every day common usage of the term in the court system. And I think it is entirely appropriate and respectful for the Court or others to refer to the person who is deceased here as the victim in this matter.

The word "victim" is used not only in criminal justice settings, it's used outside of the courthouse as well. So, sometimes people who are hurt or killed as a result of national -- or, natural disasters are even called "victims". So, I think that it's -- that it is not inappropriate for the State or the Court to refer to Mr. Whitcraft as "victim". That's my main reasoning.

The other part of it is to have a rule that is so narrow and so far outside of the Court's every day practice that I would be concerned that either the Court or staff might refer inadvertently to the victim's family or something and then be in violation of any rule that the Court might make if I said that you can't refer to him or his family as "the victims". So, that -- but that's just a minor reason for the Court not wanting to do it. But, you brought up the notion of inconvenience and I do think that it

might result even in court staff making that stumble and refer to someone simply because that's our every day practice and I think everyone is certainly accustom to that.

So, the Court's going to deny your request that all parties or everyone involved would be required to refer to Mr. Whitcraft as "the deceased" or as to "Mr. Whitcraft" and I would allow both sides -- or, instruct both sides to obviously be respectful in all parts of reference here.

MR. SCALES: Thank you, Your Honor and we would respectfully accept your denial of that portion of my motion.

THE COURT: All right. Noted.

MR. SCALES: Thank you.

THE COURT: Now, with respect to an order as a result of this hearing, Mr. Campbell, would you prepare something? Really there have been a couple of decisions, probably the one with the most substance to it is one that the Court is not able to rule on today. But, if you could prepare something and have Mr. Scales review it so that we can have it be a part of the record that would be appreciated?

MR. CAMPBELL: I think that's going to be rather hard, most of your -- I don't know.

MR. SCALES: Well, is it the Court's intention to benefit the order to Issues B and C of my motion?

THE COURT: Well, --

MR. SCALES: Without addressing the issue that's --

THE COURT: The only two things that -- yeah. The only two things that were ruled upon.

MR. SCALES: Okay.

THE COURT: The victim issue --

MR. SCALES: Because I agree that we can't rule on Issue A until it comes up.

THE COURT: Right. And there was the stipulation as to evidence with respect to the victims, you had some -- you had proposed --

MR. CAMPBELL: Stipulations?

THE COURT: Let me just see. Prior acts of Mr. Whitcraft should be allowed to show defendant's state of mind. So, if your order could cover the things that have been agreed upon and then those portions that have been denied then I think that that will be sufficient. And anything left over will be dealt with at the time

of trial. Okay.

MR. SCALES: Thank you, Your Honor.

THE COURT: All right. Is there anything else? I know that we have a --

MR. SCALES: Wednesday.

THE COURT: We have a pretrial conference coming up on Wednesday.

MR. CAMPBELL: Would you like to -- there are some other issues that I probably should put on the record at some point, shall we --

THE COURT: If it needs to be put on the record this would be the time, Mr. Sandoval's here. And when we meet for the pretrial conference that's just to go over basically the nuts and bolts of the trial, it's not to talk about legal issues.

MR. CAMPBELL: I just have some things --

MR. SCALES: That'll be at the courthouse?

THE COURT: Yes.

MR. SCALES: Okay. Thank you.

THE COURT: I have some things jotted down and maybe you can tell me which we should do then and which now.

THE COURT: Okay. All right.

MR. CAMPBELL: I -- for the record I have served the Court and Mr. Scales with a jury -- my jury instructions, a verdict form and a witness list. The Court's -- yes, I've done that. The parties have stipulated between each other that there were a number of forensic test and that we can get into those, either side, through John Amish or introducing a report, if relevant. We're not giving up other objections. But, we've agreed to that.

There's some DNA evidence, there's some tool marker evidence matching the casing to a firearm in the case. There's some blood and urine evidence, I don't believe the urine evidence will be coming in. But, we would agree if it were relevant it could be introduced through John Amish; is that correct, Counsel?

MR. SCALES: Right. Yes.

MR. CAMPBELL: We've agreed between us that the 9-1-1 tape that probably both of us would want to use, we don't need to produce the operator as a foundation witness for that.

MR. SCALES: I'm sorry, I didn't hear that last part, Mr. Campbell.

MR. CAMPBELL: The -- we don't need to

produce the 9-1-1 foundation witness.

MR. SCALES: Yes, I stipulate to that.

THE COURT: Mr. Campbell, as you're going through these would it be possible for you to include those in the order?

MR. CAMPBELL: Okay.

THE COURT: So, again, we have a written document with the stipulations.

MR. CAMPBELL: Yes.

THE COURT: Okay.

MR. CAMPBELL: We've had some discussion about photos, but I don't think I'll put that in the order. I think we have an understanding between ourselves.

The other -- I had noted to talk about jury view at some point.

THE COURT: Mm hm.

MR. CAMPBELL: Would you like to do that today or in another meeting?

THE COURT: Well, I know some issues have been raised as to the scope of the jury view and particular points that at least I think, Mr. Scales, you've indicated that you think should be pointed out to the jury and --

MR. SCALES: Correct.

THE COURT: -- I believe you indicated that you had spoken to Mr. Campbell, so perhaps there's a stipulation on that?

MR. CAMPBELL: Well, we haven't talked against since I got his letter. I have a number of other addresses I would like to add to that. You know, and I assume this bus will just go through that section and then we'll go down Hussey and they will be able to see a number of locations where the witnesses will come from.

THE COURT: All right.

MR. CAMPBELL: And then it will -- we -- I think we need to drive it down Steelhead Lane and Cliffside Lane where the defendant lived and one of my witnesses also lived. But --

THE COURT: Okay.

MR. CAMPBELL: So, I can get that list.

THE COURT: So, if the two of you can agree with a location list, a stop list of sites, if you can agree on that that would be helpful.

Now, let me just ask you, are you anticipating that we're actually going to stop the bus and jurors are going to get off or are we going to take a slow tour of these areas?

MR. CAMPBELL: It's his motion so I'll

let him answer that first.

MR. SCALES: Well, I think obviously the jurors need to be able to get out at the actual scene where the incident happened. As far as just showing addresses of where the individual witnesses are from, most of them I don't think the jurors need to -- they don't need to get off of the bus. I think it's important that -- I think they need to be -- and this is -- this is very close to the scene. There is Harvey Callahan I believe at 770 Picket Creek Road, that we can take care of when they get off the bus to look at where the vehicles were and where the --

THE COURT: Mm hm.

MR. SCALES: -- actual shooting took place.

Without seeing the list that Mr. Campbell is proposing I think most of just the -- the addresses of the witnesses we don't need to get off the bus.

MR. CAMPBELL: I agree with that, Judge.

THE COURT: Okay.

MR. CAMPBELL: I think they can just slowly drive through the area. Are you going to have a bailiff doing this or what?

THE COURT: Well, I think that we have learned that it's better for the judge to have a scripted list of locations --

MR. SCALES: Sure.

THE COURT: -- that's written out so that there's no mistake, there's no missing something.

MR. CAMPBELL: And the --

THE COURT: So --

MR. CAMPBELL: -- Court will simply say "Note this location"?

THE COURT: Not this address.

MR. CAMPBELL: Okay.

THE COURT: If there's a name associated with it I can state the name. But, again, it's up to the two of you to tell me what those important sites are and then we would stop at the scene of the event. And I've not been out there, of course I'm familiar with the general area, but I don't know where the exact scene is. So, can either of you tell me, is there a place for a bus to safely park and have a group of --

MR. SCALES: I think there is.

THE COURT: -- 14 plus jurors

MR. CAMPBELL: I think there's enough room to pull off the road and have them --

THE COURT: Okay.

MR. CAMPBELL: -- get out and it's -- it's between Hussey Lane and this 770 Picket Creek residence that Mr. Scales just mentioned, it's fairly -- it's not a -- not a big area.

THE COURT: Okay. It would be very helpful if the two of you could finalize your list of sites before we meet on Wednesday.

MR. SCALES: Okay.

THE COURT: And let us -- at that point we could actually have our final script, our final information. We need to give that the bus driver so that they can be prepared for that and then we will be set.

But, in answer to your question, Mr. Campbell, I will be doing that myself. And it sounds like I will probably ride on the bus with my clerk and the jurors and the bailiff. And then, Counsel, if you could tell me what your plans would be?

MR. SCALES: I would be driving out separately, I wouldn't be riding on the bus.

THE COURT: So, following the bus? All right. And has your client waived his right to be present?

MR. SCALES: I'm going to ask him to do that.

THE COURT: All right. Go ahead. Stand up, Mr. Sandoval. Mr. Sandoval, you've head us talk about a jury view, do you know what that means?

THE DEFENDANT: Yes, ma'am.

THE COURT: That means, you know, where we will put the jurors on a bus, we'll go out to the area and as you've heard me instruct the two attorneys they will give a list of pertinent locations that the Court will just simply ask the jurors to note, there will be no statement about "This happened there" or "This is suspected", nothing like that, just "Note this address. Note this location." And so that will be taking place right at the very first part of the trial.

Now, you as a defendant as a party you have a right to be present during that part of the proceeding. Do you wish to be present?

THE DEFENDANT: Your Honor, I wasn't present the last time so I don't think it would be relevant for me to be there.

THE COURT: Okay. And you've had a chance to talk with your lawyer about this?

THE DEFENDANT: Yes, ma'am.

THE COURT: So, you understand your rights and no one's forcing you not to participate, but you've made the decision after consulting with your lawyer that you do not wish to be present?

THE DEFENDANT: That's right, ma'am.

THE COURT: So, you're basically waiving your right to participate in that part of the --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- proceeding? All right. Thank you, Mr. Sandoval.

THE DEFENDANT: Thank you.

THE COURT: Okay. So, that's one further thing that we can consider completed, at least partially at this point and we will await your list of locations to note. And, by the way, that will become a part of the record, the written script will become ma part of our record.

MR. CAMPBELL: Very well.

THE COURT: All right. Any other pretrial things that you wish to go over today?

MR. CAMPBELL: The -- I just wanted to mention on the witness list I have submitted a number of witnesses that are subpoenaed as

potential rebuttal witnesses if there's a prior inconsistent statement or memory loss or something. So, I would want the Court to emphasize that they're just potential witnesses because I -- and so that they don't expect me to call all of them. And I'm sure they'll be happy that I don't call of them.

THE COURT: The way that's going to happen, Mr. Campbell, is the list is going to be attached to the jury questionnaire and it will -- they'll actually be described as "potential" and I think you've written it on there, "potential witnesses". What we will be doing is we will be redacting any connection to either State or Defonse so we'll just have one list --

MR. CAMPBELL: Okay.

THE COURT: -- that says "potential witnesses". So, when the jurors -- potential jurors read through this list they will just see a list of names. And that would also mean we would need to redact any addresses, we don't want people to have addresses of witnesses. So, on the jury questionnaire that I believe you've both signed off on, you're both agreeable it does state under Question 39 it says, "Attached to this

questionnaire is a list of people who may be called to testify in this case. If you know any of them or are acquainted with any of them please circle the name and indicate your relationship with that person." So, attached to this will be one list, no -- no designation to State or Defense and no addresses.

MR. CAMPBELL: Okay.

THE COURT: Okay?

MR. CAMPBELL: Yeah. That was another thing I had on my list.

THE COURT: Okay.

MR. CAMPBELL: Two more things.

THE COURT: Okay.

MR. CAMPBELL: The -- I have some witnesses that are fearful of the defendant and don't want to give addresses. I certainly don't intend to say that in front of a jury, but I would -- if I object to their address that's the reason I would do that.

THE COURT: Address? When?

MR. CAMPBELL: Yeah.

THE COURT: When would it come out?

MR. CAMPBELL: When you identify the witness. Normally we would ask a witness, "And

where do you live?" and --

THE COURT: You mean when they're testifying on the stand?

MR. CAMPBELL: Yeah, when they're testifying on the stand.

THE COURT: I don't believe that's necessary, Mr. Campbell. It's not necessary for you to have them state their address so long as we have their name.

MR. CAMPBELL: Right. But, sometimes the Defense says, "Well, where do you live?" you know? They may, you know? So -- and I would say "Objection", that would be why.

THE COURT: Understood.

MR. CAMPBELL: Most of them the defendant knows where they live, so --

THE COURT: Okay.

MR. CAMPBELL: -- that's not going to be a problem.

MR. SCALES: I can assure you that -- on two grounds, one, I would not do that if they have concerns; and, two, I never ask that question.

THE COURT: And I haven't seen that as a practice with Mr. Scales, so --

MR. CAMPBELL: Okay. The last -- and my

last issue is one that came up just Friday when I got the defendant's witness list and that is that he's listed a psychiatric doctor and I'm not sure he's ready to fully discuss that with the Court today. But, there has been no notice of mental disease or defect for guilty but insane, there has been no notice for mental disease or defect as it relates to mental state. And, of course, if the defendant were to try and put on psychiatric testimony we would have had a right to have our own examination under those statutes.

And, so, I'm going -- I believe I'm going to object. I don't know why the doctor -- we've had little discussion today about it, but I believe I'm going to be objecting to any psychiatrist testifying in this case. And it's, as number one, not helpful to the fact finder and not relevant. So, I don't know when we want to take that up more -- perhaps the Court can ask Mr. Scales why he would call that witness. But, certainly I wouldn't want that witness on the stand before I had a chance to have an in camera hearing.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor. And

I wanted to address Mr. Campbell's concerns. First Dr. Larson is a psychiatrist, an extremely experienced and imminently qualified psychiatrist, in my opinion. However, I put him on the witness list not because I'm intending to call him to testify as to mental disease or defect, extreme emotional disturbance, anything related to a mental health nature as it relates to Mr. Sandoval.

I guess more than anything it would be a situation if the door was opened regarding mister -- well, specifically what I'm referring to, in the first trial there was argument by the State with respect to some of the statements that Mr. Sandoval made that they were inconsistent, that it was -- it was -- and I'm not trying to mischaracterize this, but obviously persuasively they were trying to show that Mr. Sandoval was lying because he would be misspeaking or he would say, "I came from such and such that morning. Well, no, I came from my house."

Dr. Larson I think could testify generically in very general terms as to how a person could potentially be acting under the stress of having just shot and killed another

person. I think it is relevant because the State is going to be show -- trying to show some of the inconsistencies in his statement. The Court is not aware, but he was actually interviewed at the scene, he was not interviewed in a, you know, in a sitting down at a table type of setting, he was interviewed in the patrol car. I can't remember if he was handcuffed still or if they had taken the handcuffs off of him, he had been taken into custody. But, the actual shooting took place about an hour and fifteen minutes earlier.

And if necessarily I think Dr. Larson is certainly qualified to testify, like I said, in general terms how a person might react under the stress and the pressure of having just been involved in a homicide.

I can assure Mr. Campbell that we will not be trying to backdoor any type of evidence or testimony regarding Mr. Sandoval, that would be inappropriate. And I agree with him completely that the State would have an opportunity to have had Mr. Sandoval evaluated well in advance of when I just let him know this.

So, that's pretty much the reason that I would be calling Dr. Larson, if I call him. But,

rather than make the decision that I'm not going to call him I wanted to put him on the witness list.

THE COURT: All right.

Do you care to respond to this now, Mr. Campbell?

MR. CAMPBELL: Just so the Court's thinking about it. What I just heard is not appropriate for expert testimony and an expert would no be helpful. That's common sense jury consideration. And to put a psychiatric tag on a witness and have him testify to that kind of common sense testimony is I just think not right and we would object to it.

THE COURT: All right. Let me just handle it like this, Mr. Scales. And, again, I'm not telling you in advance how I would rule. But, I can tell you that based on the information that I've been given from both sides now the Court would not be inclined to allow such testimony. However, if you feel strongly about this then if you -- if you would care to brief this and provide some sort of a basis for the Court to allow such testimony, of course Mr. Campbell would have a chance to respond --

MR. SCALES: Mm hm.

THE COURT: -- in writing, then I would I certainly review that and would consider anything presented.

But, at this point I don't know of any basis for allowing that type of general testimony that would be offered by way of explaining why a person reacted or made the statements that they made. I'm not saying you don't have a basis for it, but I would allow you the opportunity to brief that if you choose to do that. Again, I would just appreciate if we could do as much as possible ahead of time so it's not five minutes beforehand.

MR. SCALES: And I appreciate that, Your Honor, and I will represent to the Court that I am leaning heavily towards not calling Dr. Larson.

THE COURT: All right.

MR. SCALES: It's -- I just wanted -- this was something that in my discussions with my investigator and the rest of my defense team that it was something that we decided to do rather last minute.

THE COURT: Okay.

MR. SCALES: And I wanted to at least give Mr. Campbell notice. I don't think it needs

to be a big deal.

THE COURT: All right.

MR. SCALES: It's not -- even if he testifies, I'm not conceding that it's not relevant, but it's very limited, very specific in its scope and, as I stated, it would not be regarding Mr. Sandoval particularly.

THE COURT: All right.

MR. SCALES: So --

THE COURT: Well, you've --

MR. SCALES: I will try to brief it, but if I --

THE COURT: -- put his name on the list and that would be for the purpose of allowing potential jurors to know that this --

MR. SCALES: Absolutely.

THE COURT: -- person may testify. I don't want you to do -- I don't want either one of you to do extra work that's not necessary, particularly because we are so close to trial. But, again, if you decide you want to go that direction please provide me with a written brief, obviously it doesn't have to be long. But, just some basis or whatever your basis is for allowing that testimony, Mr. Campbell would be allowed his

opportunity to respond.

MR. SCALES: I will have a decision whether I go forward with that by tomorrow.

THE COURT: Okay. Very good.

MR. SCALES: Thank you.

THE COURT: Okay. Anything else then to go over today while we're on the record and Mr. Sandoval is able to be present?

MR. CAMPBELL: Not from the State, Your Honor.

MR. SCALES: Nothing from the Defense, Your Honor.

THE COURT: Okay. Well, we've actually covered a lot of ground that we would have covered just in our informal conference, pretrial conference, which will make that go pretty fast and we'll finalize the information on the jury view and so forth and take care of that and review what we're going to do with our jury orientation and so forth, jury selection.

Okay. If that's everything then, Mr. Campbell, again, if you would prepare the order from today? And then our next meeting will be the pretrial conference, which will be the informal conference and then next week we will start our

trial.

MR. SCALES: Thank you.

THE COURT: All right. Thank you all very much. We are adjourned.

(On February 9, 2009, at 3:11 p.m. the above entitled matter was concluded.)

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GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 18, 2009; 9:46 A.M.

12 PERSON JURY TRIAL - DAY 1

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

--oOo--

THE COURT: Please be seated. All right. Good morning. This is the time set for the jury selection in State vs. Sandoval and that is Case 01CR0641. And I understand Counsel has something that we need to go over before we start that process.

MR. SCALES: That is correct, Your Honor.

THE COURT: Mr. Scales?

MR. SCALES: Thank you. Your Honor, in reviewing the jury questionnaires for the first panel Juror No. 44, I believe, Peter John, and I'm probably mispronouncing his last name, Jenista I believe is how it's pronounced.

THE COURT: Mm hm.

MR. SCALES: Looking at the jury questionnaire I'm familiar with Officer Jenista with the Grants Pass Police Department. And I am requesting that we have an opportunity to question him outside the presence of the jury pool. He has

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stated in his questionnaire that he has information about the case, he's familiar with the case through his employment and conversations with officers who participated in the investigation. The reason I would like to -- I'd like an opportunity to flesh that out a little bit and I'd like to do that outside the presence of other jurors.

THE COURT: All right.

Mr. Campbell, given that information do you have any objection to that procedure?

MR. CAMPBELL: No, we had actually discussed it. I did no agree to him just being excused because I think if he represents he can be fair and only decide it based on the facts in the courtroom that he can serve. And so -- but, I have no problem with him coming in and if he's unable to then we can save him some time.

THE COURT: All right. Then procedurally I would hear from Counsel on your recommendations. Typically when we bring in the large group of potential jurors the Court would be giving them the initial instruction, reading the charges and all of that. And I would be interested in hearing what your suggestion would be if we're doing this

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separately if Mr. Jenista is not present for that or if you would suggest that he come in with the full group and then the full group leaves and then you do your separate? I don't want to have too many --

MR. SCALES: Sure.

THE COURT: -- instances where we're bringing jurors in and out of the courtroom.

MR. SCALES: Right. Maybe with what the Court has just mentioned, bringing him in with the entire jury panel, reading the instructions so there's no -- so he's here, but all of the other jurors are present and then perhaps we could question him individually at the end of our questioning of the other jurors. That way it alleviates the problem of other jurors wondering, "Well, what's going on with this guy?" That's what I would suggest. If that's -- if that is -- if that is a concern of the Court, that the other jurors are going to be wondering what is happening with this particular juror I would suggest that we do it that way.

THE COURT: Well, the only thing about that is we would have to inform potential juror Jenista that that would be the process. Otherwise

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every time the Court or one of the attorneys asks, "Are you familiar with any of the facts?" of course --

MR. SCALES: Sure.

THE COURT: -- he's going to raise his hand and --

MR. SCALES: Right.

THE COURT: -- off we go.

So, Mr. Campbell, do you have a different suggestion?

MR. CAMPBELL: I actually thought we'd just bring him in. We didn't need to go through all of the preliminaries, just talk about his particular situation and then I think he could join the whole -- the whole process --

THE COURT: All right.

MR. CAMPBELL: -- if he's going to stay.

THE COURT: Since he has already indicated that he has some level of information, and I have not yet reviewed his questionnaire, but you indicate that he wrote that in his questionnaire --

MR. SCALES: Right.

THE COURT: -- then probably he has enough information to go ahead with the

questioning. So, I think maybe it would be better to --

MR. SCALES: Okay.

THE COURT: -- bring him in first.

MR. SCALES: Okay.

THE COURT: And you can ask your questions, I will just let him know why we are doing it this way and then he would remain with the rest of the group if he is not earlier excused.

MR. SCALES: Thank you, Your Honor.

THE COURT: If both sides are agreeable to that process that's how we will do it.

MR. CAMPBELL: Yes, Your Honor.

MR. SCALES: I am.

THE COURT: Any other issues that we need to address before we begin that step?

MR. SCALES: Not from the Defense.

MR. CAMPBELL: No, Your Honor.

THE COURT: Okay. All right. We need to get potential juror --

(At 9:50 a.m. a brief recess was taken.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 18, 2009; 9:53 A.M.

12 PERSON JURY TRIAL - DAY 1

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

--oOo--

THE COURT: All right. This is the case, State vs. *Sandoval*.

Mr. Jenista, you are a potential juror in this particular case. And in view of your business background have -- have requested that this Court conduct an individual voir dire in your particular case. And so what the procedure will be is the lawyers basically will have an opportunity to ask you questions, you're the only potential juror in the courtroom now. And then we would ask, if you're not excused at that point, we would ask that you remain in the courtroom and continue with the remainder of the examination.

MR. JENISTA: Yes, Your Honor.

THE COURT: So, before we get started I do have to have you sworn in.

MR. JENISTA: Sure.

THE COURT: So, please -- it will be by the bailiff.

MR. JENISTA: Okay.

THE COURT: You need to swear him in as a juror.

THE BAILIFF: Oh, I'm sorry. Juror's first oath?

THE COURT: First oath, yes.

THE BAILIFF: Do you, not each of you, do you solemnly swear that you will correctly answer all of your questions asked of you hedging upon the qualifications as juror, so help you God?

MR. JENISTA: I do.

THE COURT: All right. Mr. Jenista, I'm actually going to have you seated in the jury box please?

MR. JENISTA: Oh, okay.

THE COURT: Since you are a potential juror. And I'll ask that you speak up because you're some distance away from the microphone, but just any of those chairs right in front. And as you are aware from the jury orientation you have been called in for a potential juror in the case of State vs. Sandoval. You were earlier instructed that this would be a case lasting throughout the rest of this week and next week. You have filled out a jury questionnaire where I

assume that you have indicated your acquaintance with any of the potential witnesses. The lawyers each have your questionnaire. And I will not give you any further detail about the case now, we'll simply turn it over to the lawyers to do their examination of you.

So, Mr. Scales, you may go first.

MR. SCALES: Thank you, Your Honor.

***

PETER JENISTA,

was called as a potential juror

was sworn and

answered questions as follows:

BY MR. SCALES:

Q. Good morning, Mr. Jenista.

A. Good morning.

Q. Did I pronounce that correctly?

A. You did.

Q. Okay. And I'm just going to -- I'm going to kind of move quickly.

A. Okay.

Q. I'm sure you've seen some of these happen before.

A. A few.

Q. Okay.

A. Am I speaking loud enough?

Q. Yes, at least for me.

THE CLERK: Mr. Scales, you could speak up a little bit.

MR. SCALES: Okay. All right.

BY MR. SCALES:

Q. Mr. Jenista, you are -- correctly me if I'm wrong, you're employed with th Grants Pass Police Department?

A. That is correct.

Q. Okay. And I read your jury questionnaire and I want to specifically ask you some questions related to your prior knowledge of the case. I'm -- just to refresh your memory, if you could look at Question No. 1 and your response there. You don't need to read it out loud.

A. Okay. Yes.

Q. And I believe there was a similar response near the end of the questionnaire, Question 38.

A. Yes.

Q. Okay. And first I want to thank you

for your candor in letting us know that you've had some conversations. Essentially what I want to find out is what do you know about this case or have you had conversations with the investigators about the details of this case and if you could elaborate on that a little bit?

A. The reason for my answer the questions the way that I did --

Q. Mm hm.

A. -- was from an abundance of caution.

Q. Mm hm.

A. I can tell you at the moment I don't recall much of those conversations or much of the evidence that I viewed, other than I did view photographs from this case in a capacity of an investigator, not as a juror, I wasn't here present in the courtroom --

Q. Right.

A. -- or anything like that. My caution and the reason that I answered the questions that way is for fear that should I hypothetically get on to the jury pool and --

Q. Mm hm.

A. -- get on to the jury and well in to the case I suddenly remember that I've had

specific conversations that might entitled me to know things that the rest of the jury didn't know or that they're not entitled to know because that evidence is excluded --

Q. Right.

A. -- or those photographs are excluded. I fear, first of all, for having that knowledge just in my head.

Q. Mm hm.

A. And, secondly, in all honesty that it would effect my judgment. And I'm -- I know hypothetically I'm just supposed to exclude that information when making a judgment or consideration, but I'm being honest.

Q. Okay. And I appreciate that. And just to clarify, you're saying that right now at this point in time you're not recalling anything specific --

A. No.

Q. -- about the details of this case?

A. Nothing more than the newspaper articles, which obviously everybody's entitled to.

Q. Also, by way of clarification, you said you had seen some photos not in the capacity as a juror, but as an investigator, can you tell

me how was it that you saw these photos?

A. Not assisting with the investigation, but I had seen the photos laying out and looked through them.

Q. Okay.

A. I'm fairly sure that that is the capacity in which I saw them. You've got to understand that was six years ago.

Q. Mm hm.

A. So, the exact capacity, I can't tell you, the exact circumstances, location, whatever, I can't tell you.

Q. Well --

A. However, I should emphasize, I worked in the narcotics unit --

Q. Mm hm.

A. -- and the narcotics unit and the major crimes unit were virtually side-by-side and one in the same. So, that I would have seen those photographs was no breach or anything like that as a security and --

Q. Oh, and I'm not suggesting that it is.

A. Right. What I am just saying is that I was down with other investigators --

Q. Sure.

A. -- and, you know, I would see numerous pieces of evidence from other officers or deputies or investigator's cases.

Q. Is there any overlap between the major crimes unit and the narcotics unit in terms of personnel? Is there somebody who's designated for both teams or --

A. Not so much designated, often deputies or detectives from the Sheriff's office who were assigned to the narcotics unit would often called to assist in investigations of major crimes --

Q. Mm hm.

A. -- even though they were primarily a narcotics detective.

Q. And you saw these photos, is it safe to assume -- I know you don't recall the location, but is it safe to assume that it was in a facility, a police facility, a law enforcement --

A. Yes.

Q. Okay. And you're saying right now you don't recall specifics, but are you concerned that you could recall or could remember some things? During the course of the trial you're

going to see a lot of things that may or may not jog your memory.

A. Yes.

Q. Is that a concern of yours that you are going to remember things that say -- well, you stated it very eloquently, are not admissible, that the other jurors would not be privy to?

A. Yes.

Q. Is that a concern of yours?

A. That is why I answered the questions the way I did.

Q. Thank you, Officer Jenista.

MR. SCALES: I -- Your Honor, I think given -- first off Officer Jenista's been very honest and candid about -- with his responses. I understand he believes at this point in time, and I certainly believe him that he doesn't recall anything at this point in time. But I think the risk is too great that once we get into this trial, once he sees photos and hears evidence that he's going to recall something that the average juror is not going to be allowed to be privy to. He can make -- he can certainly promise not to share that with the other jurors. But, I think my client's right to a constitutionally fair trial to

an objective jury I think overrides that. And I think for that reason I would ask that Officer Jenista be excused for cause.

THE COURT: All right.

Mr. Campbell, do you wish to question the potential juror?

MR. CAMPBELL: Yes, I do, Judge.

THE COURT: Go ahead then.

BY MR. CAMPBELL:

Q. Officer Jenista, you know that some defendant's waive jury and try their case to the judge, don't you?

A. Yes.

Q. And do you know -- you know that judges may try a defendant that they've tried three times before and sentenced before; correct?

A. That's correct.

Q. Okay. And the rule is that if you're sitting as the fact finder you decide the case just by the evidence that comes in the courtroom and you disregard anything else you know, you understand that that's the exercise judges go through?

A. Absolutely, positively.

Q. Okay. My question is why -- can you do the same thing? Do you feel you can do the same thing?

A. Here's my answer, my answer is intellectually absolutely I believe I can do that. From my heart I would have difficulty.

Q. I guess that's the question you'll have to answer. Would you decide the case from the evidence that comes from the witness stand and not share any other things that came back to mind with the other jurors?

A. There's no way I would share, I mean, that's the intellectual part. There's no way I would ruin the case by sharing that information or anything like that.

Q. Okay.

A. Where I would find difficulty is for myself when I went to be polled for my opinion and my vote it would be extremely difficult for me knowing that there was a piece of evidence that may convict him that was excluded. And I mean a make or break type of evidence or photo or something like that that I had recalled during the case. It would be very difficult for me to make an honest or to cast and honest vote that excluded

that prior knowledge completely.

Q. Okay. No one said jury duty isn't difficult. Can you -- the question is can you do it? I mean, it may be difficult, but can you do it?

A. Yes.

THE COURT: Mr. Scales?

MR. SCALES: I'd like to inquire a little bit further, Your Honor.

BY MR. SCALES:

Q. Officer Jenista, I completely understand what you're saying about intellectually you can promise not to share any information that would be excluded and inadmissible, something that could potentially help determine guilt or lack of guilt. But, are you saying that you are -- let's talk about the emotional aspect of it. Are you saying that you are able to completely compartmentalize and shut off things that you know that are hidden deep within your subconscious, maybe these are memories or things that you've forgotten, but they're going to be -- they're going to be rekindled, they're going to be stoked and they're going to come back to the forefront of

your mind and are you saying that you are going to be completely able to shut those out and based your decision only on the facts while consciously disregarding other facts that are in your memory?

A. Can I divide the answer in to two pieces?

Q. Please.

A. The first part is in regard to the other jurors, absolutely, that's not a difficulty. I do it all the time.

Q. Sure.

A. And I don't find difficulty. The difficulty is I've expressed already is in regard to my vote and my decision being completely objective and completely based upon only the evidence that's presented. I understand how the Court --

Q. Sure.

A. -- works after 22 years of doing this, but I haven't sat here --

Q. Mm hm.

A. -- and had to make that decision. And so there's my caution. Intellectually do I think that I'm capable of doing that? Yes.

Q. And I'm sure you are. But, are you

-- you make decisions every day whether to arrest, whether to pursue this lead and a lot of times you follow the things that are in your gut, your instincts?

A. Yes.

Q. That just comes from being an experienced police officer, you've developed that sense. But, getting back to the heart of the matter, are you saying that you are going to be able to be fair, unbiased, impartial and come in here with a clean slate?

A. I believe Mr. Campbell put it very well, it's difficult and hard, but I think I can do that. I believe I can do that.

Q. You think you can do that, but are you saying that there's the possibility that we get into a trial and then, "Oops, I remembered something, that's going to effect my ability. I'm not talking about the other jurors, my vote and my vote alone."?

A. I guess you would like a very black and white, very absolute answer and the reason I can not provide an absolute answer is because I have not sat in this chair and been in that room and had to weigh someone's fate and had to do

that. You'll notice I've never been a juror.

Q. Maybe to assist you with that answer, are you saying that we should wait until we get to the deliberations before you make that determination if you can be fair or not?

A. No, obviously, I need to have that assurance and you need to have that assurance, the --

Q. And not just me, the entire --

A. I realize that.

Q. -- the whole process needs that assurance.

A. I understand. As much as I would like to make you have to kick me off the jury, I can not give you that assurance, I can not give Mr. Campbell that assurance wholeheartedly.

Q. Okay. I appreciate that, Officer.

MR. SCALES: Your Honor, I would renew my motion to have -- to excuse Officer Jenista for cause. I think he has stated very clearly that he can not assure the Court that he can be fair and impartial. I think it's a fairly easy decision and I'd ask the Court to excuse him.

THE COURT: All right.

Mr. Campbell?

MR. CAMPBELL: I won't argue further, Judge. I think the Court has information you can leave him on. There's no juror that can make a complete assurance. Everyone sits in a seat like he does today.

THE COURT: All right. I've heard enough argument, I understand your various positions.

Mr. Jenista, I thank you for being candid today. The Court is going to excuse you for cause. I do appreciate the difficult position you have been in, but I do believe that you were honest in your responses. And, frankly, the Court concludes this is a trial that would be too difficult for you to sit on and really be fair and impartial, as much as you intellectually could do that, the Court is going to excuse you for cause.

Thank you for coming in. And you are excused for the remainder of jury service.

MR. CAMPBELL: Thank you, Your Honor.

MR. JENISTA: Thank you.

MR. SCALES: Thank you.

THE COURT: All right. Any further matters before we bring in the first, I believe it's 44, 45 people?

MR. SCALES: Not from the Defense, Your

Honor.

THE BAILIFF: 43 now.

THE COURT: Mr. Campbell?

THE BAILIFF: Total we have 43.

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. So, what we will do is we will bring them in and once they are in here the clerk will call them out by their juror seat name in terms of the chronological order. Both Counsel had received their lists so you have that ahead of time. Again, those names were randomly selected in that order.

And at this time you may go ahead and bring in the remaining potential jurors.

(From 10:14 a.m. to 3:51 p.m. jury voir dire was held - not transcribed.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 18, 2009; 3:51 P.M.

12 PERSON JURY TRIAL - DAY 1

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

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THE COURT: All right. We are continuing our trial, State vs. Sandoval. And before we bring in the jurors for our 4:00 peremptory process we have at least one housekeeping matter to attend to and that is the request for media coverage that the Court received. And this has been submitted by the Daily Courier and specifically by Shawn Hall, one of the reporters from the newspaper.

Counsel have both received copies of this media request and so you have notice of this. I would ask if either of you have any comments about the request? I assume both of you have had an opportunity to review the trial court rule over the break?

MR. SCALES: Yes.

MR. CAMPBELL: I have.

THE COURT: Mr. Scales?

MR. SCALES: Your Honor, I don't have

anything with respect to the media request, I'm okay with it. I mean, personally I would prefer that there not be cameras in the courtroom, but I don't think that there's a basis for us to object to that.

THE COURT: Okay. All right. Just -- and I'll hear from Mr. Campbell too. One thing I wanted to point out, handwritten on the form under "television", but I think it's a separate thing, he is requesting a handheld video camera and I believe the rule requires that it be on a --

MR. SCALES: Tripod

THE COURT: -- tripod, so that would be required by the Court.

Mr. Campbell, the State's position?

MR. CAMPBELL: Yes. And the Court can require that be in an obtrusive place, you know, so that it -- you know, he's not hanging it up and around, which we would I think request.

I don't like cameras in the courtroom, I think they do interfere with the -- with the whole process. They are distracting, sometimes effect the comfort of the witnesses testifying and that's -- I think the Court could make findings under Subsection 3(a), that the what -- the subsection

that I referred to the Court when we spoke in chambers is Subsection 4, "A judge may summarily prohibit public access coverage of a particular witness only if the judge finds on the record that public access coverage would endanger the welfare of the witness or materially hamper the witness' testimony."

I've only been able to talk to one witness who's here today and I don't think I would represent that it would materially hamper her testimony. But, I would at least ask the Court to the -- leave that question open as I have contact with witnesses for me to raise that before they come in and -- if the cameras happen to be in the courtroom.

I'm also -- this does tell me when they're going to be here and how often they're going to be here and hopefully we can get an idea of that also.

But, other than that that's really all I have to say.

THE COURT: All right. Well, at this time the Court has no basis to make findings that would prohibit media access during the course of this trial. I will authorize or approve this

request on certain conditions. One will be the condition that the handheld video be placed on a tripod and be placed in an area of the courtroom that is not distracting or intrusive.

And certainly the operator of the equipment must follow UTCR 3.180 and they do have -- and they have indicated that they are familiar and they have agreed to follow that procedure. So, that's how the handheld will be operated.

With respect to dates and times, typically, Mr. Campbell, the Court is not given that. We can certainly ask for that schedule, but usually the operator comes and goes and so there's not any real schedule on that.

The final condition for approving this would be that if either side informs the Court that you have a particular witness who has indicated that this media access might in any way effect testimony or cause some sort of a problem in that witness' testimony so as to fall under Subsection 4 then I would just ask that you bring that to the Court's attention and we will address it at that time. And we'll just simply put The Courier reporter on notice that that's always a possibility, that it could be conditionally revoke

for any particular witness after that is brought up to the Court. So, that's how we'll handle that.

Anything else then that we need to discuss before we move on with our peremptories? Both sides comfortable with the procedure on the peremptory challenges? I do just ask that as we go through the challenges that you make it very clear which potential juror you are challenging. So, if you want to put name and seat number just as a double check that would be helpful to the Court.

MR. CAMPBELL: I guess that was my question, do you want -- would seat number be better for the Court or juror numbers?

THE COURT: Not -- well --

MR. CAMPBELL: Seat number?

THE COURT: -- seat number, again, using -- using the chart, Number 1 being in the front row on the far right.

MR. CAMPBELL: Right.

THE COURT: 1 through 6 and then 7 through 12. But, again, I do think the best way to do it is for you to put Seat No. 1 and then put the last name, if that's convenient for you, just

to make sure that we don't -- we do have several jurors that share the same last name and I certainly don't want any mistakes. I don't know if they ended up in the final 12 at this point -- or, the first 12 at this point, but certainly don't want any mistakes. So, if you just would put a double check on that that would be appreciated.

And then you both have received just the Court's notes on the procedure in terms of going two and two on that? Okay. All right. Then we'll go off the record. We've got a few minutes before all the jurors are expected back in.

(From 4:10 p.m. to 4:31 p.m. jury voir dire was held - not transcribed.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 18, 2009; 4:31 P.M.

12 PERSON JURY TRIAL - DAY 1

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

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THE COURT: All right. Ladies and gentlemen, what we're going to do next is I'm going to ask the bailiff to swear you in as jurors for this particular trial. So, I would ask that you all please stand and raise your right hand and be sworn in.

THE BAILIFF: Do you and each of you as jurors solemnly swear that you will well and truly try the case at issue between Plaintiff and Defendant and a true verdict give according to the law and evidence as given on the trial, so help you God?

THE JURORS ANSWER IN UNISON: I do.

THE BAILIFF: Thank you.

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Ladies and

gentlemen, I'm not going to keep you much longer today because I realize that you've had a long day for this jury selection process. But, I do want to tell you what the next steps are. We're not going to actually proceed with the opening statements today because of the lateness in the hour.

So, what I will be doing in the next few minutes is I will be excusing you for the evening and having you report back tomorrow morning. But, I do want to tell you that tomorrow morning first thing we are going to be going on a jury view and that means we will all go out on a bus together to view a particular location. And I tell you that ahead of time because the weather's a little unpredictable and so if you want to dress more comfortably perhaps we might be stepping off the bus doing a little bit of walking, not anything terribly strenuous. But, I just wanted to give you a heads up on that.

Now, with respect to just some precautionary instructions, when we did the original orientation I instructed you at that point, and that was when you were all just potential jurors, but now you are jurors on this

case. So, you are now formally instructed that you are not to discuss this case with anyone, and that includes each other or any court staff, your families or anyone else. I will be giving you a more detailed instruction in the morning, but I didn't want to send you off this evening without giving you that instruction to remind you that you now can not discuss this case with anyone.

Also, and related to that somewhat, you are not to review any media coverage of this case. And, again, no one can predict when that may or may not happen. But, please, just think ahead and if that means you don't pick up a newspaper and just start thumbing through it then please keep that in mind because I don't want someone to make a mistake. And that would certainly jeopardize our whole trial here. So, if you'd please be very, very cautious about that?

When you leave the courtroom today the bailiff is going to take you back into the jury room. When she takes you back in there -- and by the way that will be the jury room now that you will spend your time when you're not in the courtroom you will be in there during breaks and so forth.

When she takes you back in there she is going to issue each one of you a juror badge. I ask that you wear those all the time when you're here in the courtroom, when you're in the vicinity of the courthouse and as you go out to the parking lot to get in your car to go home. The reason that I ask that you all wear juror badges is because it's hard for all of us to remember who the jurors are on any particular case.

And please bear in mind you're not the only jury that's working a trial in this courthouse, we have juries all over. So, again, to avoid any situation where someone might come up to you inadvertently, strike up a conversation, ask you, "What are you doing in the courthouse?" and then maybe having you inadvertently say something that you shouldn't be saying about the trial. So, please wear the juror badges.

Obviously during our lunch breaks, during the course of the trial you'll be able to go wherever you wish to go for your own lunchtime, you can go home, you can take care of business, go to restaurants, take the juror badge off at that time if you want to. But, put it on when you're in the vicinity of the courthouse or you are

actually in the courthouse.

We will have you return tomorrow morning at 9:15. And every day I will tell you the return time. We would like to stay consistent, but sometimes we need to adjust the times a little bit because of the things that the Court needs to do. So, tomorrow morning it's 9:15.

When you come back, as you will every day when you come back, you will check back in to the same jury room, the same deliberation room that you will be taken to now. So, just become acquainted with that, that's where you will always come and check in.

Finally, again, along with the instruction that you are not to listen to any media, please recall -- or, perhaps you have not been given this instruction yet. Please understand that you are not to do any independent investigation. You may be curious because you really don't know anything about this trial, except a few names that have been given and so forth. It's critical that you not participate in any investigation or evaluation or anything on your own. Again, you are to evaluate only what's presented to you in the courtroom.

And tomorrow morning I'll give you a more complete instruction on all of that. But, again, I just wanted to give you that heads up this evening as you leave the courtroom and go home.

So, at this time, unless Counsel had anything else in terms of announcements?

MR. SCALES: Nothing from the Defense, Your Honor.

THE COURT: Mr. Campbell, anything?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right.

Then, ladies and gentlemen, again, thank you for your cooperation today and you are excused now to go with the bailiff into the jury room. Thank you all.

(At 4:37 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Then unless

Counsel has anything else now we'll be adjourned until tomorrow morning at 9:30.

(On February 18, 2009, at 4:38 p.m. the above entitled matter was concluded for the day, to reconvene on February 19, 2009, at 9:30 a.m.)

GRANTS PASS, OREGON

THURSDAY, FEBRUARY 19, 2009; 9:34 A.M.

12 PERSON JURY TRIAL - DAY 2

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. All right. Good morning. Time for State vs. Sandoval. Anything from Counsel before the jury comes in?

MR. SCALES: Your Honor, I have submitted for the Court's signature a motion and order to transport. I had previously submitted a motion and order to transport the witness, Robert Crowe, from the Department of Corrections back to the Josephine County Jail, but apparently they need it from the jail to the courthouse. So --

THE COURT: Okay.

MR. SCALES: -- that's a supplemental motion and order.

THE COURT: All right. Thank you.

MR. SCALES: Thank you.

THE COURT: I can take care of that.

Anything further?

MR. CAMPBELL: Well, at some point, Judge, I guess we need to take up witness exclusion. I think the parties are agreeing that witnesses would be excluded during the trial. The State would designate Detective Gerald Rylander as a party representative. He will not be with me all the time, but I would like him to be able to come in when he is here and sit with me.

THE COURT: All right. And you said Detective Rylander?

MR. CAMPBELL: Correct.

THE COURT: Okay.

MR. CAMPBELL: We -- Mary Carlson, who is the common law wife of the victim definitely suffered psychological damage as a result of this crime. And we would ask that she be allowed to exercise victim's rights being present during the proceeding. And she was here yesterday, Judge, in the back.

THE COURT: Yes. Okay.

MR. CAMPBELL: And other than that I think that's what I would have at this time.

THE COURT: All right.

Mr. Scales?

MR. SCALES: Your Honor, with respect to witness exclusion, my investigator, Mitch Howe, is in the courtroom. I do not anticipate calling him as a witness. There's nothing that he would be testify to that's not already in his reports. He would potentially be used for rebuttal, but there would be nothing that he would present on the witness stand that's not already included in his witness -- or, his investigative reports. I would ask that because I need his assistance during trial that he be allowed to remain in the courtroom during the proceedings.

THE COURT: Mr. Campbell, do you wish to be heard on that?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. Well, again, so that I understand what you're asking for, you are telling the Court or informing the Court that potentially you may need to call him as a rebuttal witness?

MR. SCALES: Only for rebuttal, Your Honor.

THE COURT: All right.

And, Mr. Campbell, you are satisfied

that if his testimony is limited to only information contained in his report, which I would expect you have, that that would be acceptable for him to remain in the courtroom?

MR. CAMPBELL: I'm not going to object to him, Judge. I've met him and I believe --

THE COURT: All right.

MR. CAMPBELL: -- that he's not going to be swayed, so --

THE COURT: All right. So, that will be an exception to the exclusion of --

MR. SCALES: Thank you, Your Honor.

THE COURT: -- witness rule.

Anything further?

MR. SCALES: Nothing from the Defense, Your Honor.

THE COURT: All right.

And I just wanted to inquire of Mr. Sandoval, I see that you're wearing the headphones that are the hearing devise, are you able to hear okay?

THE DEFENDANT: With these, yes, ma'am.

THE COURT: Okay. So, if you would please let your attorney know anytime you're not able to hear.

THE DEFENDANT: Thank you.

THE COURT: And if I don't -- if I'm not informed differently I'm going to assume that you're hearing, you're able to hear everything that's going on in the courtroom.

THE DEFENDANT: Okay.

THE COURT: Okay.

THE DEFENDANT: Thank you.

THE COURT: So, if you're having any trouble let Mr. Scales know and if he's otherwise occupied then get the attention of my clerk so that we can correct the situation.

THE DEFENDANT: Thank you.

THE COURT: Okay.

THE DEFENDANT: Thank you.

THE COURT: All right. Then if there is nothing further to cover now we'll go ahead and bring in the jurors. And the program for this morning was that we are going to have really just a couple of the jury instructions and then we will commence with the jury view.

(At 9:41 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. We are continuing our trial today, State vs. Sandoval. Before we proceed with the jury view that spoke to the jury about yesterday I do have a couple of preliminary jury instructions. So, after we go through these then we will go ahead and go out on the bus and go on the jury view.

Members of the jury, the law that applies to this case will be given to you in part in these precautionary instructions. After you have heard the evidence and after the arguments of the lawyers I will give you further instructions regarding the legal rules you must follow in deciding this case.

Your duty is to decide the facts from the evidence. You and you alone are the judges of the facts. You will hear the evidence, decide the facts, and then apply those facts to the law I will give you. That is how you will reach your verdict. In doing so you must follow the law whether you agree with it or not.

To be an effective juror you must not be influenced to any degree by personal feelings, sympathy for or prejudice against any party, witness, or lawyer or any other participant in this case.

The evidence you are to consider in this case consists of testimony of the witnesses, exhibits received in evidence. Exhibits are physical things such as letters, photographs, charts or physical objects. You will be able to examine the exhibits while you deliberate. You may draw any reasonable inference from the evidence, but you must not engage in guesswork or speculation.

The fact that a criminal charge has been filed against the defendant is not evidence. The defendant is innocent of any crime unless and until the State proves the defendant's guilt beyond a reasonable doubt.

From time to time a lawyer may make an objection to evidence. I will decide whether or not it is proper under the law for you to consider such evidence. Do not speculate about why the objection was made or about why I ruled as I did. If I overrule an objection the question may be

answered or the exhibit received. If I sustain an objection the question can not be answered or the exhibit can not be received. Whenever I sustain an objection to a question, ignore the question and do not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. When you are deciding the case you must not consider the evidence that I told you to disregard.

The opening statements and closing arguments of the lawyers are intended to help you understand the evidence, although their statements and arguments are not a part of the evidence.

You must not interpret any statement, ruling or remark I make during this trial as any indication that I have formed any opinion about the facts or outcome of this case.

You and you alone are to decide the facts. You must decide how believable the evidence is and what weight or value you will give that evidence.

You may take notes if you wish during the trial. However, please keep in mind that each party is entitled to the considered decision of

each juror. Therefore, during deliberation you should not give undue weight to another juror's notes if those notes conflict with your recollection of the evidence. Do not allow your note taking to interfere with your ability to observe and evaluate testimony. Whenever you leave the courtroom your notes should be left in the jury room.

Do not discuss this case during the trial with anyone including any of the lawyers, parties, witnesses, your friends or members of your family. Do not discuss this case with other jurors until you begin your deliberations at the end of the case. Do not attempt to decide the case until you begin your deliberations.

Ignore any attempted improper communication. If any person tries to talk to you about this case tell that person that you can not discuss the case because you are a juror. If that person persists simply walk away and report the incident to the Court.

Do not make any independent personal investigations in to facts or locations connected with this case. Do not look up any information from any source. Do not communicate any private

or special knowledge about any of the facts of this particular case to your fellow jurors. Decide the case only on the evidence received here in court. Do not read any news stories or listen to any radio or television reports about this case or about anyone involved in this case.

When we return from the jury view, after lunch we will hear the opening statements in which the lawyers will outline the evidence as they expect it to be. After the opening statements the evidence will be presented. At the conclusion of the evidence the lawyers will make their closing arguments to you. I will then instruct you about the law that applies to this case and you will begin your deliberations.

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult and it will not be possible for the court reporter to read back testimony. I urge you to pay close attention to the testimony as it is given.

This is the instruction on the jury view. The Court has arranged for a jury view in this case. This is an opportunity for members of

the jury to look at some particular location. The jury view itself is not evidence, but is taken simply to enable each of you better to understand and evaluate the evidence that will be presented in the courtroom.

While on the jury view please stay together as a group. Either the Court or the bailiff may point out certain features for you to observe. Do not allow any person to talk to you about the case. Do not ask any person any questions about the case. During the jury view the law specifically prohibits any person, other than the judge or the bailiff, from speaking with the jury on any subject connected to the trial.

Now, along with that on the matter of the jury view, although we will be giving you notebooks to take notes during the trial, we'll give those to you this afternoon. You are not to take notes during the jury view.

Also, I see you all have your juror badges, so that's great to have those already. Remind you when we are in the courtroom if you have any cell phones or pages or anything that makes noise please make sure that they are turned off. That would also apply while we're on the

jury view, so while we're in the bus and going to the various locations make sure you have your cell phones turned off.

Okay. At this time then I would ask if Counsel have anything further?

MR. CAMPBELL: Nothing further on behalf of the State, Your Honor.

MR. SCALES: Nothing from the Defense, Your Honor.

THE COURT: All right. Very well then. We are going to recess at this point to go on the jury view. And then when we come back from the jury view the jury will be dismissed for lunch, so you will go to lunch. Now, when you go to lunch you're free to go wherever you would like to go. But, please just remember my precautionary instructions.

And then the trial will reconvene after lunch. The jury needs to report back at 1:15 back to the jury room. So, when you come back from lunch go right back to the jury room and then we'll plan on starting up here in the courtroom at 1:30.

So, at this time I would just ask that the jury go with the bailiff into the jury room, we're

going to get the bus set up.

(At 9:49 a.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Okay. Then we are adjourned until 1:30.

(At 9:50 a.m. court was in recess for the jury view and lunch, to reconvene at 1:30 p.m.)

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GRANTS PASS, OREGON

THURSDAY, FEBRUARY 19, 2009; 1:41 P.M.

12 PERSON JURY TRIAL - DAY 2

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are continuing our trial, State vs. Sandoval. Anything from either side before the jury returns?

MR. SCALES: Nothing from the Defense, Your Honor.

MR. CAMPBELL: No, Your Honor.

THE COURT: All right.

Please ask the jury in.

(At 1:42 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

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THE COURT: Good afternoon, ladies and gentlemen. We are continuing our trial, State vs. Sandoval. Before we start with the opening statements from the attorneys I just want to make sure that everyone is able to hear okay and if you are having any difficulties please do let us know right away. I see that one gentleman has one of the devices, so you'll have to let us know if that is working properly. Do you want to give it a try first, Mr. Friend?

THE JUROR: I don't see what bends here to --

THE COURT: It goes around the back of your head. Yeah. So, is it working now?

THE JUROR: Not yet.

THE COURT: Okay. Now can you hear me? Can you hear what's going on in the courtroom, sir?

THE JUROR: Yes.

THE COURT: All right.

THE JUROR: Thank you.

THE COURT: Fine. And is everyone else okay hearing wise? All right.

There was an earlier trial in this matter, you are not to speculate on the reasons

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why this matter is to be tried again. But, you are to focus only on your responsibilities as jurors in this specific trial. During the course of this trial you may hear references to the earlier trial, this is a new trial.

And with that we will have our opening statements. And, Mr. Campbell, you may go first.

MR. CAMPBELL: May it please the Court, Counsel, ladies and gentlemen of the jury.

We start most cases with the elements of the case so that you know what it is our burden to prove, what it isn't our burden to prove. So, let me go through before we start this journey. And it's going to be one that's longer than some jurors do, but not terribly done. I think we'll get done sometime in the middle of next week if we're lucky.

But, the charge is Murder. And you will look to see whether we've proved that this act occurred in Josephine County; the act occurred on or about the date alleged in the indictment; will we prove, and we submit we will prove, that this defendant intentionally caused the death of another human being who's name was Jack Whitcraft. And the judge will also have you answer this

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question, if you find that he did this did he do it with a firearm? It's not actually an element, but it's something that the jury considers.

How will we prove that? We will prove that -- those facts in this case by simply putting a tape into evidence of the defendant's statements. He admitted that he intentionally killed Jack Whitcraft. And I'll talk about his statements a little more later as I go through the opening, but he admitted that. And what he has said is that he did it in self defense. So, you will hear other instructions and it's important, I think, that you know what they are so you can evaluate the evidence as we go through it and listen to the evidence.

The judge will tell you that a person in Oregon can not claim self defense if they provoked the encounter and then they killed the person. There's a very similar instruction basically the same concept that says a person can not use self defense and claim a justified homicide if they are the initial aggressor.

So, those are the facts as you go through this case that we would encourage you to look for and consider.

What we would ask you to consider is who really has the right of self defense here? We believe that you will find that Jack Whitcraft had the right of self defense based upon the defendant's conduct, but the defendant's conduct was such that he never, Mr. Whitcraft, had a chance to defend himself.

I want to introduce a few -- they're not -- I'll call it "the cast" for lack of a better word, but some people that you're going to meet through this trial. Jack Whitcraft is number one, of course, Jack Whitcraft is the victim in the case. He was born on February 14th, 1954 in Detroit, Michigan. He was 47 years old at the date of his death. His death occurred on September 27th, 2001, which was a Thursday at about 9:45 in the morning. The 9-1-1 call comes in at 9:47 of that morning.

You're going to meet a woman named Mary Carlson. Mary Carlson was the common law wife of Jack Whitcraft at the time that he was killed. They'd been living together since 1996, so about five years. They lived on Peach Street out in Merlin. They had a very close relationship. They were together almost all the time. And as I begin

to describe you may note -- you'll note why Mr. Whitcraft was often with her was in an effort to protect her.

They live -- she was actually married to the defendant before this relationship with Jack Whitcraft. So, let's go there. She met the defendant in about in the '80's and I believe they were married in Arizona and moved to Oregon from Arizona. And Mary Whitcraft -- Mary Carlson lived with the defendant at 180 Cliffside Drive, a location that you had a look at today, during her marriage to the defendant.

Janice Rose is another person you're going to meet. Janice Rose is the woman that was the defendant's wife, common law wife albeit, but common wife or girlfriend at the time that the defendant shot Jack Whitcraft. She lived also on Peach Street. And part of the problems that really escalated were the result of the defendant going to see her on Peach Street and going there to get water for that Cliffside residence that he had -- that he didn't have water at, so he'd have to haul water out to that residence. What you saw today was a different residence out there, but you'll see a picture of what it looked like in

2001.

You'll also meet Robin Garten. Robin Garten was a woman that lived with the defendant between Mary Carlson and Janice Rose. And you're going to hear about, and I say "hear about" because he's now dead, Harvey Callahan. And he lived at 770 Picket Creek Road, which you saw today. As near as I could tell he was kind of an institution out there. He fixed people's cars, had a shop there. And he developed a pretty close relationship with Mr. Whitcraft because Mr. Whitcraft was a heck of a mechanic. Something they didn't tell you about him, that he was a very excellent mechanic and he had worked in mining some. He had also worked at Long Board Lumber out in Merlin.

But, as the cars got newer and Callahan kind of lost the ability to work on the newer stuff he would refer a lot of work to Mr. Whitcraft. And Mr. Whitcraft regularly went out in the morning to 770 Picket Creek Road, it as a regular route for him to go out there and to go to work there. And he was 60 feet away from that driveway when he was killed.

Let me talk about the scene that we find

on September 27, 2001. We believe the evidence will show at the scene between where Hussey comes in and 770 Picket you will see photographs of two vehicles in the roadway. The front vehicle was a 1964 pickup that Jack Whitcraft had basically put together himself. And I think it's white, red, black and maybe yellow, he'd put this truck together. And it was the front pickup.

Behind it at the scene when the police got there, when other citizens got there who did not touch the scene, defendant being gone from the scene at this point, when we got to the scene we make these observations about the front pickup. The driver's door in the front pickup was open and the engine was running. The vehicle was a 4-speed and it was in neutral. The driver's window -- the driver's door I said was open, the driver's window was up except for just a crack for maybe air to maybe clear it, just a crack on that window.

Jack Whitcraft was shot in the back, shot, to be precise, through the back of the head. And the bullet, you'll hear, went out through the -- some of the bullet, I should say, went out through the right eyebrow. There was a

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hole in the back cab. I believe the testimony will be 22 inches from the cab side and the back window, right where -- and, of course, Mr. Whitcraft's head was just inside of that. And there was damage to the front windshield from the fragments that went through Mr. Whitcraft into the front window.

And you'll hear testimony from Dr. Olson, the medical examiner for our district. He'll tell you that Mr. Whitcraft's spinal cord was severed. He was killed almost instantly by the shot. His body had fallen out the door and there's an injury to his head that can be seen and large blood pool and another large blood pool just out his door. Basically fell out like a sack of potatoes dead as he went out. His feet were still caught in the vehicle. They were actually caught in some wires in there. And so laying -- he's on he road with his feet up on the running board and hooked around some wires.

He'd been shot in the back of the head. Laying under him was a .44 revolver, it was loaded and cocked, but it had not been fired. It was so bloody at that point that we couldn't fingerprint it or do anything with it.

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Defendant's vehicle was in contact with the white -- the white multicolored pickup, Mr. Whitcraft's pickup. His bumper was on the back of Mr. Whitcraft's pickup. I want you to look carefully at the evidence on this. His bumper -- and you'll have better diagrams than I'm going to give you right now. But, that's the front pickup, that's Mr. Whitcraft's pickup. Mister -- the defendant's vehicle, which is a -- this is a '64 Ford, this is an '86 Bronco. The defendant's vehicle is half way over to the right if we're talking of the front vehicle or to -- giving this particular person an advantage over the front.

There was some minor damage to the Bronco that would have been made -- we'll hear -- you'll hear some experts testify about accident reconstruction, it'll take about 4.4 miles per hour for the front vehicle to hit into the back vehicle to cause the damages. There was -- in this vehicle the door was open, the driver's door was open. This vehicle was not running, the defendant's vehicle. The driver's window was down, all the way down.

And there was laying in this vehicle a 7mm Mauser rifle that was over the driver's seat

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and down -- I think the barrel was going down into the passenger section. Laying outside underneath this vehicle was a was a spent casing. And I'll call those casing or -- and let me talk about how the experts talk about these, just to make sure I get this right. A cartridge is a casing with -- that's loaded, with the bullet in. Okay? So, when you hear them talk about a cartridge that's a fully loaded bullet, 7 -- in this case a 7mm.

If it's discharged, if it's discharged and then you take what's left, the shell we often call it, out the experts call that the casing. And we had a casing from a 7mm rifle out underneath the vehicle. And you'll see pictures of it and you'll hear testimony that the Oregon State Police Crime Lab compared that casing to the rifle that was the defendant's, or at least in the defendant's possession that day, and confirmed that that casing had been fired in that rifle.

There was some Weed & Feed fertilizer in the defendant's vehicle. And there'll be a reason to note that later. The defendant's vehicle was in 3rd gear. And you'll hear testimony about how fast that vehicle has to be going to make it to 3rd gear. You'll have an expert on accident

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reconstruction that drove the vehicle and tested the vehicle. And he also tested it for how it would skid.

And while I'm thinking about skids let's talk about skids. On the front vehicle there was -- there was a skid mark 12.4 feet long. The experts going to do quite a bit with skid marks. They trace that, they know it was from the pickup because it met the tire. And they're able to say from that that pickup was going at a minimum speed, now it could have been going faster and slowed down before it laid down the skid. But, at a minimum it was going 16.1 miles per hour. And that's why I can tell you it would have been at that minimum speed in the driveway of Mr. Callahan within two seconds. Because the -- and you'll listen to the expert, they'll explain that to you.

There's going to be some evidence in regard to the damage to this vehicle that could have happened a couple of ways. We think one makes more sense. But, it -- if Mr. Whitcraft's vehicle stopped at the very end of the skid mark and did not roll past then the experts will tell you it had to be -- there -- it had to have some power in order to do the damage to this pickup.

But, if it had rolled naturally up the road and he came off the brake for some reason and it rolled 10 more feet, all it would have taken was 10 more feet, because that roadway is slopped back -- and you probably noticed that. You'll hear exact evidence on it. It's slopped back, the gravity would have just brought that truck back in there and done the damage that you'll see. It's not a lot of damage. Bronco's will be -- it doesn't take a lot to damage them.

There was no skid marks from this vehicle. This vehicle had skidded slightly. And you'll hear from the expert why he can say that. But, it had not skidded enough to lay down a skid mark. There's going to be some interesting testimony, I almost hate to kind of take the fun away. But, I'll explain that just a little bit to you. The skid mark that you see on pavement is actually caused by the tire getting hot enough to draw oils up out of the pavement. Many of you may have though that's rubber, but no, it skids for a while before the tire is hot enough to pull the oils up and leave a mark.

So, you'll her testimony that there's in every skid there is a shadow skid. There's a

certain amount of skid that the car, car or truck, does before it actually pulls the mark up, gets hot enough to pull the mark up. And so that's when I said a minimum speed from the skid mark is there. It's likely there was a shadow. In fact, in this case because the criminalist went and drove the truck he can tell you exactly how far a Bronco skids before the mark comes up on that particular surface.

There was no evidence at the scene of any acceleration marks. And I guess why I mention that now is the defendant will tell a story about Mr. Whitcraft accelerating his vehicle back. And there was no evidence that there was any -- there were acceleration marks. Which, I believe the testimony will be this on that, you -- there's a shadow on skid marks, as I've just explained. But, on acceleration marks particularly when you're talking about a light ended pickup the tires will almost spin -- they'll spin right in place right away and they heat up much faster and you're likely to get an acceleration mark in the rear very quickly. There were none.

The testimony about the angle of the shooting. The shot into the pickup was traveling

left to right. So, an angle like that (indicating). But, not a real sharp angle, but it was angled. And you'll hear testimony from John Amish he measured from the cab to the hole in the rear window and from the cab to the hole or damage in the front windshield.

You'll also see from the -- we have an x-ray that shows you where the bullet -- the bullet -- now, what happens when a hunting rifle bullet like this hit an intermediate object, the glass before it got to the victim, it starts fragmenting. So, you're going to see some fragments in Mr. Whitcraft's skull, but you will be able to see the main path straight through, which is where the fragments that came out and broke the windshield went.

You're going to hear the 9-1-1 tape of this being called in. And you will hear first a man named Steve Kruger, he lives at 190 Hussey Lane. He's -- he called 9-1-1 first. You'll hear Harvey Callahan called. You'll hear Debbie Carter called. And you're going to hear from all of these witnesses. The way you're going to hear from Harvey Callahan is we're going to play his sworn testimony from the prior trial since he's

dead and not available.

We're going to -- you will hear the defendant, Sandoval, on the 9-1-1 tape. And you'll hear Debbie Carter making a second call. And a Joshua Dehoot (phonetic) who is also deceased and so he won't be testifying at this trial.

Now, let me go through the history a little bit between these folks. Ironically Mr. Whitcraft, the victim, the dead man in this case, met the defendant through Mary Carlson. And while Mary Carlson was living with the defendant on Cliffside Drive the defendant needed some work done on one of his rigs and he got referred to Mr. Whitcraft and Mr. Whitcraft did some work for him. And apparently had actually been to the property, they weren't close and they weren't great friends, but he had done some work on the 180 Cliffside property.

In 1996 Mary Carlson decided she was going to leave the defendant. And she actually knew there was going to be trouble to leave him. It was going to -- she was going to have trouble. She actually made plans a month a head of time to have a place to live. And she also asked three

people to basically live with her to protect her. And Jack Whitcraft was one, there's a guy, a person she calls "Hippyville" and there's another person. And she moved into the Peach Street address that I talked about, the 19 Peach Street and Mr. Whitcraft and the other two lived with her. Over time Mr. Whitcraft and she developed a relationship and they became a couple and were -- they would consider themselves a common law married couple at the time of Mr. Whitcraft's death.

The evidence will show that essentially this divorce from the defendant never was over. It never got over. The defendant had a deep hatred for Mary Carlson that spread to Mr. Whitcraft. And Mr. Whitcraft to the extent he would -- could would protect her and he was hated just like she was. And defendant -- you'll hear evidence about animosity and some of the events that he showed and it comes in to show his motive toward Mr. Whitcraft.

He would -- he would go onto that Peach Street. The evidence will show, and we're going to concentrate more on evidence, in 2000, 2001 where this kind of activity escalated. Defendant

was harassing them all the time. He would fly the middle finger at them, curse at them, come down the road. You're going to have a neighbor that lived between the Rose and the -- the Rose and Mary's place that will testify about some of his conduct. He would drive by slow, he would attempt to intimidate, he would curse at them, would accelerate gravel onto their property. He at one point tried to -- I think Mary will testify about this and Jack Whitcraft told her this that he was out on the road and the defendant tried to Mad Max him off the road. And her understanding that that was kind of pit maneuver where you just try to drive a person off the road. She'll testify about a time where he pulled up and showed a gun to her.

You'll hear testimony from Robin Garten about the defendant's hatred toward the victim and Mary Carlson. You'll hear testimony that he once got in front of them and just slammed the brakes on to try to make them hit him in the rear. Because he was unemployed he had lots of time to harass them and try to intimidate them and make their life miserable.

It was so miserable by July 13th -- July 18th, 2001, Jack Whitcraft was at the Lil Pantry

Market in Merlin and the defendant pulled up in his Bronco and started cursing and there was cursing going both ways. The defendant opened his Bronco and started to get out and Whitcraft went over and Whitcraft beat him up that day. And as he was doing that he said, "Every time I turn around I just see you. You never leave us alone. Just leave us alone. Just leave us alone."

You're going to hear from Janice Rose. And the statement that -- from the defendant, you'll hear from Janice Rose that the defendant uttered and never expected to come before anybody because Janice Rose was his rose at the time, his girlfriend, was that "I'm going to --" this was about Jack Whitcraft, "I'm going to kill him in self defense and I'm going to get away with it. I'm going to kill him in self defense and I'm going to get away with it." He said it to her more than once and she'll testify about it.

She was the girlfriend at the time of the killing. She will testify that the defendant hated Mary and Jack. She will testify that the defendant after this killing tried to prevent her from testifying, in fact called her from the jail and told her not to testify at grand jury and that

she didn't have to testify and shouldn't testify. We'll introduce a letter to her after it was clear she was going to give evidence in this case where the defendant makes threats against her and it's basically -- you'll be able to judge it for yourself where he talks about statements that she -- he's read in police report and threatens her.

There will be witnesses on the stand that are quite fearful. And we -- I guess you can note that too as the case goes on.

When -- I think you'll notice this, and I think it's more common opening statement. When the defendant in his statement about Whitcraft -- in a statement about what happened, when he gets to Whitcraft he -- he can't help but just trash talk people and he makes some trash talk things that just aren't true. He says that Jack Whitcraft was an ex-con or a convicted felon, which is not true. He said he was a meth dealer, it's not true. He also, in fact, likewise in Ms. Rose in this letter you'll see how he goes about things in controlling -- frankly trying to control people.

There will be evidence in this case of actual threats. And I talked about evidence that

you'll hear implied threats and conduct, threatening conduct. Kim Garten, the woman in the middle that I've introduced, will testify that there were lots of times that he threatened to kill Mary Carlson and Jack Whitcraft. That he talked on multiple occasions about Ramboing them out. Ramboing both of them out.

You'll hear from a fellow named Gary Sell that was at the Riverbanks Market one day in the summer of 2000 and the defendant came in and learned that Mr. Sell was a friend of Whitcraft's. and he said to Mr. Sell that he was going to kill Jack Whitcraft and that he was going to fill him full of holes, a year before he shot him in the back.

You'll hear that the defendant told Carl Conrad, a neighbor that lived off of Paradise Gardens Road out there, a friend of the defendant's, that on the night before he shot him if Whitcraft did not quit harassing him he was going to shoot him.

You're going to hear evidence that the defendant prepared to kill Mr. Whitcraft. You'll hear that he is just about is obsessed with guns, perhaps, that he always had guns with him, always

carried a gun. But, you'll also hear that in the spring of 2001 he really increased his activity and practice with guns on his property. He was shooting all of the time. He was causing problems with the neighbors, they actually confronted him about it. We're not going to get into that much, but there will be some testimony about it.

He was during that occasion and out of the ordinary roaring -- he would drive his vehicle at a high rate of speed on to his property, shoot, drive off, drive his rig back on at a high rate of speed, according to a two or three witnesses, and shoot and drive off.

You're going to hear about the murder weapon. I told you it was a 7mm Mauser. It's got black or a dark barrel and it's got a tan stock. You'll hear how he got that weapon. There was a restraining order in effect against the defendant in 2001. And so he sent Janice Rose to buy the weapon because you can't buy one when you're on a restraining order, so he sent her to buy the weapon, the weapon used to kill Jack Whitcraft. And I believe she's going to testify that she believed it was May of 2001 when she went to purchase that weapon at the defendant's

insistence.

I want to move to an incident on September 13th, 2001. The death occurred on September 27th 2001, a Thursday I told you about 9:45 a.m. On September 13th, 2001, Jack Whitcraft was doing his regular, he was on his way out to 770 Picket Creek Road, Harvey Callahan's place, to work. And it was about 10:00 in the morning when he called this in. So, early -- this had happened earlier. He was driving out -- and I told you he lived in Merlin. He drove out normally Robertson Bridge Road and he'd go out Robertson Bridge until he hit Lower River Road and then to Robertson Bridge and then right at Picket Creek. Every -- now, you could -- you at least got on Lower River Road and across the bridge and up Picket Creek today.

He said while he was driving on Robertson Bridge Road the defendant came by him in his Bronco going the other direction. He continued on his way, the Bronco turned around and came in behind him, ran up behind him. He got to Robertson Bridge where -- Robertson Bridge back in 2001 was a green structure with metal and we had I believe it was one lane at that time with a light.

And Mr. Whitcraft said that he stopped at the light because it was red and that the defendant came up behind him, sat behind him and that a black rifle with a tan -- with a tan stock came out the window of the defendant's vehicle and was pointed right at him. And he -- the light turned, he went on across the bridge, turned went to Picket Creek, went straight to 770 Picket Creek, the defendant followed him all the way from the bridge to Picket Creek and then drove by very slowly and then he didn't see him anymore.

When Jack Whitcraft got to 770 Picket Creek he called 9-1-1 to talk to the police. The call came in about 10:00 a.m. He made a report to an officer named Jason Hines. He immediately also called Mary Carlson because he was afraid for her safety. And he told her this and she will testify that what he told her had occurred and he told her just what I've told you.

And at that point in time Mr. Whitcraft had -- did not carry firearms. There were occasions when he'd have a firearm, but he did not regularly carry firearms. From -- he and Mary sat down, they recounted this and from that point forward he decided he had to carry a firearm. And

Mary actually gave him a gun that was hers and it was that .44 revolver that was under his body on -- exactly two weeks later on a Thursday at basically the same time.

So, let's go to that Thursday. Mr. Whitcraft was going to have a normal day. Got up, what he was going to do that day was actually work for a guy named Verne Kims who lived a little further out on Picket Creek Road. Apparently he was working on some kind of a fuel tank, reducing it in size. And I don't quite understand the project, but I know that much about the case.

And so the first thing he need to do was go get some acetylene, and you'll see there's an acetylene tank in the back of his pickup. Went into Grants Pass, got a tank of acetylene. And also had a contact with Mr. Callahan saying he would be out and could he borrow a grinder because he needed to grind the metal after he cut it before he welded it, I guess, I don't -- I won't be able to tell you all those facts. But, that's what his plan was. And he did get the acetylene tank, he dropped that by their place in Merlin and made himself a sandwich, which you'll see on the front seat of his pickup. And he headed to work

at the normal time basically that he would be heading out there. And you heard me describe the scene.

I'm going to talk about Detective Rylander, he's the -- was the case officer from Sheriff's Office that was lead on the case. While I'm talking about him, he's retired now. I have to -- I've subpoenaed him in effect out of retirement. He is my case officer. You'll see he's not with me today, he will be here sometimes and not other times. He has another job.

But, he was on duty that day as an active detective and had 20 plus years of experience. He was actually in the field when the call came in and was rerouted to the scene. There were a number of officers, a Lieutenant Anderson, Sheriff Daniels, Dikes, there were several that were arriving at the scene at the same time as he. He had some assistance in securing the scene.

The pickup, the heavier vehicle, was resting against the Bronco that I talked about. At some point it actually moved back 15 inches. And Rylander saw Harvey Callahan, who came out to the scene while they were there, putting a rock behind the tire of the Bronco so it wouldn't move

anymore. And also let Mr. Callahan turn the pickup off so that -- it had been sitting there running and they turned that off at that time. He -- so, the scene was secured and taped off like you see crime scenes.

And then Rylander went to locate the defendant. We located him at 230 Hussey, they knew that from the 9-1-1 call, the 9-1-1 center will show addresses. And 9-1-1 had stayed on the phone to get an officer in contact with him there, they tried to keep him on the phone. At one point he does go to the restroom real quickly and comes back. So, Rylander has a contact with the defendant there at 230 Hussey, which is the Martin's residence.

The evidence about his statement will be this, the evidence will show that he couldn't keep his story straight, that he couldn't tell the same story twice, and that he changed his account on fundamental points numerous times.

That's Detective Rylander. So, Detective Rylander did tape record this statement on 9-27 and he had the defendant sitting in a vehicle, he had I think some kind of a Suburban type of vehicle, it's unmarked, set -- they sat

one in the front seat and then in the other -- in the driver's seat and he interviewed him. I'm not going to go through all the detail, you will hear the detail yourself. But, we'd ask you to listen for some of these -- some of these points or some of this evidence, you'll hear the evidence.

The officer tells him that he's tape recording the conversation and who he is and puts the time on the tape. And they begin and the defendant almost immediately stops the officer -- the detective and he says, "I've got a question for you." So, he says, "Okay. What is it?" He says, "Why have an investigation when it's self defense?" Why would we have an investigation when it's self defense? The defendant wanted to know. Of course you know the answer, every situation is looked in to and the officer told him that. But, we think the evidence will show the defendant did not expect the deep investigation, he thought he set that scene to make it look like self defense.

So, here's some points we'd ask you to listen for and look for. In a couple of different points he claims -- the defendant claims that he went to the nearest phone after -- he went to the nearest phone to call 9-1-1 after he killed Mr.

Whitcraft. Another time he said he panicked and ran and called 9-1-1. Here's what the real evidence you will hear is going to show. After he shot Whitcraft he walked down in to Mr. Callahan's property.

And Mr. Callahan actually heard the shot. And Callahan was in his shop when he heard the shot and it -- and I think it scared him. He'll -- he -- you'll hear in his testimony that he came out of his shop and went up around his house to try to see what was going on up there. And he saw the defendant walk down his driveway, walk to his shop and turn around and head back out. He didn't yell, "Call 9-1-1!" He didn't yell, "Harvey?" He didn't ask for anyone to help him, but went back up and out on Picket Creek. And Mr. Callahan went up to see where he tried to go. And I'm not -- you'll have to listen carefully to his testimony, I'm not sure he saw where he went.

The defendant went down Hussey Lane at that point. Remember he said that he went to the nearest phone, he -- he actually goes by Mr. Kruger's house. Kruger's actually out on the phone and he yells at Mr. Kruger, "I shot a man in

self defense, call 9-1-1!" And goes right on by Kruger. And Kruger does call 9-1-1, as I told you he's the first one in on 9-1-1. And then he goes to his friend's house, the next one down, the Martin's and says something similar, "I shot a man in self defense." I mean, he has his words, "I shot a man in self defense, we've got to call 9-1-1."

The officer, Detective Rylander, asked the defendant where he was coming from that day, early in the interview. And his first answer was, from Merlin. And then he changes that answer and he says that he was coming up Hussey Lane and he had stopped at the stop sign and then just taken a right there on Hussey Lane. There will be quite a bit of evidence about where he came from. But, that's what he said at first, Merlin and then he changed it.

On the scene this was the defendant's first statement about what happened. He said that defendant -- that Mr. Whitcraft had backed up his truck, he said that he then stepped out of his truck, Mr. Whitcraft stepped out of his vehicle, that he had his revolver, that he turned and pointed it at him and was going to kill him. He

was out, turned and pointed it at him and that's why he shot him. "He was just standing there, he was going to blow me away." and that's why he shot him.

He claimed that the victim was ready to shoot that day, this is another part of his statement. He said Mr. Whitcraft had this loaded gun and was ready to shoot him and this is what he did, he had this rifle behind his seat with not -- with some shells in it, but none in the chamber. And the guy -- the he -- Mr. Whitcraft was coming around to shoot him and this is what he reached back for the rifle, he brought the rifle through the seats, through the cab, says he racked one in it with the bolt action, it's a bolt action rifle, and that he put it out the window and he just shot and he just happened to be luck and got Mr. Whitcraft with that one shot.

This rifle has a scope on it, a hunting scope. And the scope was set -- you'll hear this from Amish, the scope was set at about 24 feet on the rifle, which was about the distance that Mr. Whitcraft was shot.

You'll hear evidence that he claimed that Mr. Whitcraft had the revolver on his right

side and then swung around at him and pointed it at him. The defendant will -- tells Rylander that he did not step out of his own vehicle. And we submit when you look at the evidence and see the evidence you will conclude differently, you will see that he was out of his vehicle and he did discharge that the shell out of his vehicle.

He was asked if he was trying to hit Mr. Whitcraft and he said, "Absolutely." He was asked "Did Mr. Whitcraft fire his gun?" and he said, "He didn't have a chance." But, he actually told another fellow, Carl Conrad, on the phone that Whitcraft had shot at him and that's why he shot him.

At the end of the statement there was a very interesting statement made by the defendant and it came as a result because Detective Rylander said, "Was there anything else that you wanted me to know, anything else you wanted to add?" I think was the exact words he used, and Mr. Sandoval said, "I didn't plan for all of this to happen."

After that tape was stopped defendant was removed from the scene in the custody of Detective Rylander. And on the trip in he wanted to change his statement. He changed his statement

in these regards, and perhaps others that you can listen to the evidence on, he said at this point and this is after some reflection and some time to reflect, that victim Whitcraft had not gotten out of his vehicle. He said that he had only fired one shot, he had not gotten out of his vehicle, he had not ejected a round and that Whitcraft had not had an opportunity to get off a shot. And that's in this statement while they're riding in and the officer made notes as soon as he had an opportunity.

On October 8th, talking about 10 days -- well, maybe 11, 12, there was another contact with the defendant, he was interviewed at the jail. I think it's important for you to know how that got set up. The defendant was contacting Janice Rose from the jail and telling her what to do out there, also talking about her not testifying to grand jury. But, she -- he told her to get Jerry Rylander, the detective, in touch with him, he wanted to talk to him at the jail. Rylander did go there. During that discussion, a fairly short one, the defendant claimed again that he had not ejected a shell from -- a shell or a casing as we talked about earlier, from his rifle. And he

alleged that Callahan had tampered with the scene, suggesting I guess that he had ejected the shot. And he admitted on this occasion -- he had earlier said he had not carried his rifle up to look at the victim after he shot him and he admitted now that he had carried his rifle up and then gone back and placed it in the car.

After you see all of the evidence in this case we will submit to you and have a chance to argue this evidence to you we will submit and we believe you will find this defendant's guilty of this charge of Murder. This is Murder, this is not Aggravated Murder, which is sometimes referred to it as simple murder. So, that's how the -- that's what -- how we'll end this case, as the Court has already told you.

And before I sit down I just had a couple notes. the Court has already told you this case was tried once before and so you will see us working with some transcripts from a prior trial and you will hear reference to prior testimony, as I've already indicated. So, that's something maybe a little different than the ordinary case.

Also, I'll let you know the numbering of the exhibits, if I had done that myself it been

done differently. I did not try this case before, this is new to me. So, the numbering of exhibits that come in to you, there's no magic to that. Really the numbers are there for the appellate court to be able to read the record and see what we were talking about. What's important to you is to know what we're talking about.

So, the numbers, I used the same ones as used in trial before. And so, for instance, the first exhibit I'm going to introduce is Exhibit 44 and you're going to wonder why didn't he use that as State's Exhibit 1? That's the reason.

And finally obviously trying a case eight years after it's happened comes with its difficulties. People die, people move away, you can't find some people. Mary Bargull's the first person on the scene, we've been able to find Kenneth Paris, a neighbor that lived on the Windy River Farm property and worked there we haven't been able to find. We have people from Windy River coming to testify, Peter Liebes, Judith Weiner. We have Charlotte Sperisen, who lived at 140 Cliffside right next door to the defendant.

But, I guess the point, when you're putting it together eight years later people -- I

may not be able to put the -- I know exactly how I would like to put this case on, but I'm going to have to work with schedules and flying people in from out of the area. And so you will see parts of this case here and parts of it there. I'll do my best to keep it in what I feel is a logical order, but I just wanted to let you know that before I sit down.

Thank you very much.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor. May it please the Court, Counsel.

Good afternoon, ladies and gentlemen. I assume that everyone had a pleasant bus ride? Good. Mr. Campbell and I opted out of that at the last minute, so -- well, this is the time when we finally get to discuss the facts of the case. And I think Mr. Campbell has done a good job of laying out a lot of the facts. And there are a lot of the facts, as probably will surprise you, that I actually agree with. Not everything is disputed in cases like this. However, it is those facts that are disputed that is at the heart of this matter.

I'm going to begin by asking you to --

well, an opening statement is kind of like a preview, it's kind of like a movie trailer. It has the highlights, the things that you should be looking for. And I'm going to try to briefly go through the things that I believe are significant and the things that you need to pay attention to. One thing I would caution you is that nothing that I say in my opening statement, nothing that Mr. Campbell has said in his opening statement is evidence. The evidence comes from the witnesses, it comes from the exhibits, that is what you must consider. So, what we've said here hopefully will just direct your attention to certain things, but it is not what you base your verdict on.

That being said, the things that I would ask you to look for is, first, in evaluating witness testimony it's important to look at what is the motivation that this person has?

MR. CAMPBELL: I'm going to object to argument, Judge.

MR. SCALES: I -- I haven't made any argument on that -- with that regard, Your Honor.

THE COURT: Overruled. You may continue.

MR. SCALES: What I'm asking you to look at is does this person have a motive? Does this

person have a reason to embellish or to put things in a certain light? Is there a goal or an objective? You are the only ones who will evaluate the credibility of witnesses. And I would ask you to focus on that and when you evaluate witness testimony at the same time consider what is this person's goal? What is this person's motive? What is their objective?

I would ask you to focus on the investigation. There was a significant amount of law enforcement investigation in this case. The evidence will show that Mr. Sandoval was arrested essentially at the scene. He was taken into custody, he was not formally charged with Murder until later that day. But, this was a very quick arrest. This is not argument, this is a fact.

The evidence will show that this arrest happened prior to the bulk of this investigation happening. Prior to overturning and unearthing the history between Mr. Sandoval and the deceased, Jack Whitcraft. And this arrest took place prior to having any of the forensic evidence, prior to having any of the accident reconstruction --

MR. CAMPBELL: I'm going to object, Judge, when an arrest takes place is not relevant

on this issue.

MR. SCALES: Well, this is a fact, Your Honor, I'm not arguing, I'm asking the Court -- I'm asking the jury to focus on this and consider that when they are evaluating the evidence.

THE COURT: You may continue, but you are summarizing the evidence as you expect it to be, is that the case --

MR. SCALES: That is exactly --

THE COURT: -- here, Mr. Scales?

MR. SCALES: That is exactly how I expect the evidence to be.

THE COURT: Okay. Go ahead.

MR. SCALES: And I expect it will come out through the testimony of the forensic personnel, through the investigators that this arrest happened prior to that.

I want you to listen closely to Mr. Sandoval's statement. Mr. Campbell talked a lot about his statement. It's important and I would ask you to focus on the context in which this statement was made. The evidence will show that Mr. Sandoval was taken out of the -- he was in the Martin's house, that is where he made the 9-1-1 call from. He was taken out, he was immediately

put into custody, he was interviewed at the scene. The judge will instruct you at the point in time where the judge gives you the actual instructions when evaluating the defendant's testimony did he say what he intended to say? Did he understand? Did he communicate what he wanted to say? And I would ask you to pay close attention to the statement that Mr. Sandoval made, the taped statement that he made to Detective Rylander at the scene, whether he communicated what he wanted top say.

Mr. Campbell had mentioned a number of inconsistencies in Mr. Sandoval's statement. And there are some inconsistencies and I want you -- the reason I'm asking you to focus on the context is to focus on the situation that he had just been in with the shooting of another person, being in custody and being so close to the event.

You are going to hear testimony of some bad behavior on the part of Mr. Sandoval. And I don't use "bad" in the sense that it's not nice, it was bad behavior. The divorce was messy. The relationship between him and Ms. Carlson afterwards never got any better. And there was animosity between him and Mr. Whitcraft. But,

that animosity went both ways. One of the things that you're going to hear is you're going to hear testimony by other witnesses that not only was Mr. Whitcraft scared of Mr. Sandoval, but you will hear testimony of other witnesses that Mr. Sandoval was aware of threats that Mr. Whitcraft had made against him and he too was in fear of his life from Mr. Whitcraft.

The incident at the Lil Pantry, you're going to hear that this was not just a fight, this was not just slapping and pushing, but that this was a brutal assault. The testimony will show that Mr. Sandoval -- the assault began while he was in his vehicle, he was pulled out and he was thrown to the ground and was punched and kicked and kicked in the face by Mr. Whitcraft.

With regards to Mr. Sandoval's statement, I believe the evidence is going to show that on the morning of September 27th, 2001, Mr. Sandoval had been at his home. He had stayed there all night. He'd had a telephone conversation with a friend who will be available to testimony. That he had asked him -- he had called Mr. Sandoval and asked him what was he planning on doing that day. Mr. Sandoval had

planned that day, and the evidence will show this, that he had planned to visit a Mr. Montgomery.

Now, today you folks road the bus up to Picket Creek and turned down Hussey Lane. Mr. Montgomery lived farther up Picket Creek about probably a mile or so. Mr. Montgomery I believe, and I'm probably misstating what his actual position was, but he worked for the County and helped veterans with their issues with benefits and things like that.

And that's another thing I wanted to point out, when Mr. Campbell had said -- just so we are clear on this. Mr. Campbell had said that Mr. Sandoval was unemployed, that is true to an extent, he was disabled, he's a disabled veteran. That is the reason why he had a lot of time on his hands.

That morning he had planned to go visit Tyrone Montgomery so he left his house on Cliffside, I assume he turned on Steelhead and came up Hussey Lane. I'm sure you all remember that today, it's probably much more fresh in your mind than it is in my mind. But, he came up Hussey Lane and was going to make a right turn to visit his friend, Tyrone Montgomery. After that

he had planned to visit with another friend, well, the friend that had called who was doing some, I believe, landscaping and wanted to get some grass seed. Mr. Sandoval had a half a bag of Weed & Feed, not grass seed, but Weed & Feed. He told his friend -- I think he assumed it was grass seed. But, there is testimony and there will be evidence that there was a half a bag of grass seed -- or, excuse me, Weed & Feed in the car.

He gets in the Bronco. The evidence will show that he got in the Bronco. And there was already a rifle in there. This was September 27th, 2001, very close to hunting season. And there will be evidence that Mr. Sandoval had intended to go hunting that year and had a hunting license at the time. The evidence will show that he turned right off of Hussy Lane onto Picket Creek Road.

Now, you're going to hear testimony from the accident reconstructionist, and there are two accident reconstructionists in this case, that Mr. Whitcraft's truck skid to a stop. And a lot of it is somewhat technical and maybe at the same time a little bit dry. But, I'm sure that Mr. Campbell would agree with me we would ask you to pay close

attention --

MR. CAMPBELL: At this point I'm going to object to him speaking for me at all in this trial, Judge.

THE COURT: Sustained.

MR. SCALES: Well, I certainly want you to listen closely to that evidence. The evidence will show that Mr. Whitcraft was going at least 16 miles an hour when he hit the brakes. He hit the brakes and left a skid mark of I believe 12.4 feet. And you're going to hear a lot of numbers, you're going to hear a lot of math and they're going to come up with he was driving X number of miles an hour. But, the evidence will show that Jack Whitcraft hit his brakes. The accident reconstructionist will testify, at least in her report, that this was an intentional ramming of Mr. Sandoval's vehicle that was behind Mr. Whitcraft.

You will see from the pictures that the State will introduce much is going to be made about this being half off, but the evidence will show that both vehicles were within the fog line and the center line. It's important to pay close attention to that because I anticipate that there

will be some evidence in that regard.

You will hear evidence from the accident reconstructionist that Mr. Sandoval's vehicle was stationary when it was rammed by Jack Whitcraft. In Mr. Sandoval's statement he stated that he saw Mr. Whitcraft reaching over to get a gun. Now, this is not any gun, this is a huge gun that you will see pictures of. He sees him grab the gun, he reaches over. As was already stated, Mr. Whitcraft, his legs were caught in some speaker type cable that was underneath the dashboard, he was not able to get out and turn around and fire that shot. The evidence will show that Mr. Sandoval saw that gun, that he grabbed his gun and with one shot he shot and killed Mr. Whitcraft.

The evidence will show, the forensic experts will show, they will testify, at least they put it in their report, that Mr. Sandoval had come from his house that morning, that Jack Whitcraft hit his brakes 60 feet from his destination, 770 Picket Creek Road that you saw this morning. As I think you've already heard, the evidence will show that he was less than two seconds away from the driveway of 770 Picket Creek Road that goes down off to the side.

What I'm asking you -- well, I think there's one other thing that I wanted to touch on that I did not anticipate. The evidence will show -- there are going to be a number of witnesses, or at least a couple of witnesses that will testify that Jack Whitcraft carried guns fairly regularly, it was not simply in the last two weeks of his life that he started to carry guns.

What I would encourage you to do during this case, as we stated in yesterday's jury selection there will be a lot of evidence, and I am asking you to pay close attention to the evidence, to evaluate the witnesses testimony, look at their motivations and their biases. And that goes on -- for both the prosecution witnesses and the defense witnesses. Listen very carefully to the forensics because there are no other witnesses besides Mr. Sandoval to this incident. So, the State will be using a lot of forensic evidence as part of their case and I want you to listen closely to that.

What I believe, ladies and gentlemen, as at the close of the evidence the State will not be able to prove beyond a reasonable doubt that Leo Sandoval did not act in self defense. The first

aggressor in this case was Jack Whitcraft, he is not your victim. And I'm confident at the close of evidence you will find Mr. Sandoval not guilty.

Thank you.

THE COURT: All right. I believe we'll go ahead and take our afternoon break. When we come back then the State may present its case.

Ladies and gentlemen, if you'll just leave your notebooks on your chairs and go with the bailiff into the jury room we'll take 15 minutes.

(At 2:54 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are in recess until 10 after 3:00.

(At 2:55 p.m. an afternoon recess was taken.)

****** END OF VOLUME 1 ******

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF JOSEPHINE

--oOo--

STATE OF OREGON, Plaintiff-Respondent, vs. LEONARD CONTRERAS SANDOVAL, Defendant-Appellant.	JOSEPHINE COUNTY CASE NO. 01CR0641 APP. NO. A141783 VOLUME 2 OF 6

TRANSCRIPT OF AUDIO RECORD ON APPEAL
MOTION HEARING
OMNIBUS HEARING
12 PERSON JURY TRIAL - DAY 1
12 PERSON JURY TRIAL - DAY 2
12 PERSON JURY TRIAL - DAY 3
12 PERSON JURY TRIAL - DAY 4
12 PERSON JURY TRIAL - DAY 5
12 PERSON JURY TRIAL - DAY 6
12 PERSON JURY TRIAL - DAY 7
SENTENCING

Grants Pass, Oregon
August 15, 2002; 3:00 p.m.
February 9, 2009; 1:43 p.m.
February 18, 2009; 9:46 a.m.
February 19, 2009; 9:34 a.m.
February 20, 2009; 9:34 a.m.
February 23, 2009; 9:36 a.m.
February 24, 2009; 9:33 a.m.
February 25, 2009; 9:47 a.m.
February 26, 2009; 9:31 a.m.
March 6, 2009; 10:09 a.m.

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--oOo--

BEFORE:
THE HONORABLE GERALD C. NEUFELD, CIRCUIT JUDGE
(8/15/02 only)

THE HONORABLE LINDI L. BAKER, CIRCUIT JUDGE

--oOo--

APPEARANCES:

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FOR THE DEFENDANT: STEVEN JOHNSON(8/15/02 only)

DON SCALES
ATTORNEY AT LAW
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TRANSCRIBED BY: SUSAN E. LEFEBVRE
OFFICIAL COURT TRANSCRIBER

--oOo--

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CHRONOLOGICAL INDEX OF WITNESSES

PLAINTIFF'S

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FEBRUARY 19, 2009					
MARY SIZEMORE	231	270	286	288	2
MICHELLE CLAYBURN	291	302	--	--	2
JANICE ROSE	312	--	--	--	2
FEBRUARY 20, 2009					
JANICE ROSE	338	374	402 410	405 410	2 2
ROBIN SUE GARTEN	413	422	424	--	2
DEBBIE LYNN CARTER	430	440	442	443	2
BRIAN FLOYD MARKL	466	475(477)	--	--	3
DANIEL JAMES GALLAGHER	480	489	491	--	3
TYRONE MONTGOMERY	493	497	--	--	3
VERNON ERVIN TIMMONS	504	510	--	--	3
JAMES WRIGHT	519	527	529	--	3
GERALD CARL RYLANDER	530	--	--	--	3

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GERALD CARL RYLANDER	--	574	--	--	3,4
JOHN ANTHONY AMISH	579	667(707)	711	714	3,4
GERALD CARL RYLANDER	717	745	773	775	4
GARY SCOTT SELL	777	782	--	--	4
FEBRUARY 24, 2009					
DR. JAMES N. OLSON	787	809	--	--	4
RICHARD KUEHMICHEL	820(891)	906	938	939	4,5
STEPHEN LEE CURTIS	941	--	--	--	5
TRESSIE DARLENE MOLER	948	--	--	--	5
LISA LOCKE	954	959	--	--	5
FEBRUARY 25, 2009					
CHARLOTTE SPERISEN	994	1003	--	--	5
PEER LIEBES	1009	1015	--	--	5
JUDITH WEINER	1019	1026	1032	1034	5
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GEORGE INGLE	1063	1065	--	--	5
FLOYD MARTENS	1068	1075	1079	--	5
JOHN CRISSUP	1103	1112	1120	1123	6
TERESA HILL	1125 1138	-- 1139	-- --	-- --	6 6
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No. 3 - Photo - Hussey	537	538	3
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No. 6 - Photo - Pickup	537	538	3
No. 7 - Photo - Rear Close up of Bronco	537	538	3
No. 8 - Photo - Right Side of Bronco	537	538	3
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GRANTS PASS, OREGON

THURSDAY, FEBRUARY 19, 2009; 3:14 P.M.

12 PERSON JURY TRIAL - DAY 2

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE BAILIFF: All rise.

THE COURT: Please be seated.

All right. Before we bring the jury in, Counsel, the Court has received a communication from one of the jurors, Mr. Rogers, Seat No. 11. And he indicates that he lived at 195 Picket Creek Road 20 plus years ago and wanted that brought to everyone's attention.

MR. SCALES: Thank you.

THE COURT: And I don't recall that that was addressed at all during voir dire and I'm not sure what might have --

MR. CAMPBELL: We had a --

THE COURT: -- sparked the memory.

MR. CAMPBELL: We had a question on the

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questionnaire about --

THE COURT: Yes.

MR. CAMPBELL: -- where they lived, but we didn't ask where they had lived in the past.

THE COURT: All right. So, that information is given to the two of you.

And is there anything further before the jury returns?

MR. SCALES: Nothing, Your Honor.

THE COURT: Mr. Campbell?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. Please ask them in.

(At 3:16 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. We are continuing our trial, State vs. Sandoval.

Mr. Campbell, you may present the State's case.

MR. CAMPBELL: Thank you, Your Honor. The State calls Mary Carlson.

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THE COURT: Please step forward and raise your right hand to be sworn in, ma'am.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you could walk around the table, up the steps and have a seat behind the microphone, please?

***

MARY SIZEMORE,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name -- are you comfortable? Okay.

A. Getting there.

Q. Would you state your full name and spell your last for us, please?

A. Mary Eunice Carlson Sizemore,

S-i-z-e-m-o-r-e.

Q. Okay. And as of 2001 you went by the name Mary Carlson?

A. Mary Carlson.

Q. And in September of 2001 where did you live?

A. 119 Peach Street, Merlin, Oregon.

Q. And did you know Jack Whitcraft?

A. Yes, he was my husband.

Q. Okay. And can you tell us when Jack Whitcraft was born?

A. He was born February 14th, 1954.

Q. And where was he born?

A. Detroit, Michigan.

Q. Okay. And I'm going to show you right now State's Exhibit 44 and ask you if you can identify this, do you recognize that?

A. Oh, yes.

Q. And tell us what it is.

A. That's the portrait of me and Jack that was taken Christmas of 2000 in Phoenix, Arizona.

Q. Okay.

MR. CAMPBELL: We would offer State's Exhibit 44.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: 44 is received.

MR. CAMPBELL: May I hand it to the jury?

THE COURT: You may publish, yes.

MR. CAMPBELL: Thank you.

BY MR. CAMPBELL:

Q. Do you know the defendant?

A. Do I know him? Yes.

Q. Yeah. And tell us how you know him.

A. I met him in July of 1983, married him in April of 1985, lived with him continually, moved from Arizona to Oregon with him in 1994, divorced him in 1996.

Q. Okay. And did -- where did you live with him in Oregon?

A. 180 Cliffside Drive.

Q. And did you know -- how did you get to know Mr. Woodcraft --

A. He had --

Q. -- or, I'm sorry, Mr. Whitcraft.

A. He had been a mechanic for the defendant.

Q. And is that how you met him?

A. That's how I met Mr. Whitcraft.

Q. Was he ever at that location, 180 Cliffside?

A. Yes, he'd come over and do some mechanic work there. He did some tree work for the defendant there.

Q. And what happened then in 1996?

A. In 1996, January 31st I left the defendant and moved in to my own apartment. Mr. Whitcraft and two other friends moved in with mem to protect me from the defendant.

Q. And did -- did you let the defendant know you were moving out before you did?

A. I let him know on the 31st of January because I was afraid to tell him before that.

Q. Did you make prior arrangements for a place to live?

A. I did, I had the apartment arranged before I had my packing all done.

Q. And --

A. I was just waiting for my moment to leave.

Q. Did you file for divorce?

A. Yes, I did, I filed for divorce immediately, filed for a restraining order

immediately because he wouldn't leave me alone.

Q. Okay. And where did you move to?

A. I moved to 119 Peach Street in Merlin.

Q. And at that point in time did you and Mr. Whitcraft have a relationship other than he was agreeing to be a protector?

A. Absolutely not, we were only acquaintances, friends then.

Q. And what happened -- what happened over time?

A. Over time we just -- as we'd talk every day, every night and just talk with the other friends that were living there we just found that we hit it off and next thing you know we've gotten together and we fell in love.

Q. Were you aware of -- did you know Harvey Callahan?

A. Yes, I did.

Q. And did you know where he lived?

A. Yes, he lived at 770 Picket Creek, it was where Jack worked.

Q. Okay. And tell us about what Mr. Whitcraft did for a living.

A. He was a master mechanic and he did

that for the most part. Sometimes he'd cut trees for people if they needed them cut down. Sometimes he'd do welding for people if he needed -- if they needed that done. He was pretty much a Jack of all trades, but he was mostly a mechanic.

Q. Okay. Did he ever work at the lumber -- the lumber company out there?

A. Yes, he was the mechanic for all the big equipment at Long Board Lumber in Merlin.

Q. So, he was working on the rigs that they used?

A. Yes, their trucks and their -- their forklifts.

Q. Forklifts?

A. I couldn't think of what they were called.

Q. Okay. Was -- while you were married to and knew Mr. Sandoval was he a person that carried firearms?

A. All the time, they were -- they were a way of life with him.

Q. What kind of firearms did he carry and keep?

A. Usually he carried a 22 Derringer in his back pocket, but he -- he owned various

rifles, semiautomatic rifles, bolt rifles, deer hunting rifles.

Q. Did you know him to be without a firearm?

A. Never, unless he was in the shower. If he was in bed it was right there along side of him.

Q. So, after the divorce was -- why don't you describe were you -- how things went.

A. The divorce went terrible. He didn't -- he didn't want the divorce. He -- he made threats at the divorce hearing --

MR. SCALES: Your Honor, I think I'm going to object, relevance.

THE COURT: Mr. Campbell, is it related to the issue at hand on this trial?

MR. CAMPBELL: Yeah, I guess I'm looking at -- yeah, it is. I mean, the -- the malice, the feelings toward Mary Carlson and Jack are, in effect, the same, I mean, they're one, they're closely tied.

MR. SCALES: Your Honor --

THE COURT: Mr. Scales?

MR. SCALES: -- I think -- I think I would respond to that by saying the malice and bad

feelings that Ms. Carlson and Mr. Sandoval may have had prior to the divorce, this precedes her relationship with Mr. Whitcraft. I think anything that happened after she got together with Mr. Whitcraft is a different issue. But, what lead up to the divorce, what precipitated the divorce I think is irrelevant.

THE COURT: All right.

MR. SCALES: Doesn't directly have any bearing on Mr. Whitcraft.

THE COURT: All right. The Court does find that it is relevant to a limited extent. So, Mr. Campbell, you may proceed with this, but I ask you not to dwell overly on this.

MR. CAMPBELL: Yeah, I -- that wasn't the question, I wasn't asking for any details before the divorce.

BY MR. CAMPBELL:

Q. But, after the divorce did the defendant show malice or direct negativity toward you and Mr. Whitcraft?

A. Oh, constantly, he was -- he was forever harassing us, intimidating us. There would be people come over and warn us that he's on

the warpath again.

MR. SCALES: Objection, hearsay.

THE COURT: Sustained as to the last.

BY MR. CAMPBELL:

Q. And in that time frame and after you became close with Mr. Whitcraft you came to the point where you described you -- he was your husband?

A. Yes.

Q. How much time would you spend together normally?

A. 24/7, unless he was working at a job where I couldn't go to work with him. If he was at Harvey's I could probably go down there and do some kind of work like holding parts for him, getting parts for him or loading up firewood for Harvey, anything so that I could be with him.

Q. When you -- he worked at Long -- Long Board Lumber did you also work there?

A. I worked there for about eight weeks.

Q. Okay. Do you know when it was that he quit that job and just began doing, I guess it was kind of freelance mechanic work?

A. Right, he quit -- he quit there some

time in 2001, just after I did, and went back to just doing mechanics for everything -- everybody else and welding and --

Q. Where would he go to do his mechanic work?

A. Usually over to Harvey's.

Q. And so he'd do the work over at Harvey's?

A. Yes.

Q. Did Mr. Callahan set up jobs for him?

A. He did sometimes, sometimes somebody would contact Harvey and it was a job that Harvey didn't know how to do because it was too new of a car.

Q. Okay. And during the summer before Mr. Whitcraft's death can you give us a idea of how many times a week or how often he would be going to Harvey Callahan's?

A. I would say five, six times a week, five -- usually Monday through Friday and probably on Saturday.

Q. Okay. So, you -- I want to go back to Mr. Sandoval, you split up in '96, was there every before 2001 in that time frame was there ever a time when things at least went smoothly or

you didn't have much contact with the defendant?

A. Well, it seemed like in the late '90's he didn't disappear, but he didn't seem to bother us so much. It seemed like the woman that he was with must have been keeping him happy and so he didn't have to be so obsessed with me and what I was doing.

Q. Did -- do you know who that was, do you know her name?

A. Her name was Robin, but I didn't know her.

Q. After you left Mr. Sandoval did he -- and you began the relationship with Mr. Whitcraft, did -- were the -- did you ever get threatened, were you threatened?

A. Oh, many times before I was together with Jack, as far as more than friends, the defendant wrote letters to me --

MR. SCALES: Your Honor, I'm going to object anything that happened before Jack, if it's something that happened after she got together with Mr. Whitcraft I wouldn't contest the relevance of that. But, anything that lead up to that I would say is irrelevant.

THE COURT: All right. Sustained.

MR. CAMPBELL: May I be heard, Judge?

THE COURT: I didn't realize you wanted to, Mr. Campbell, I'm sorry. Go ahead.

MR. CAMPBELL: The -- I guess the marital relationship is one, they became one and malice towards her becomes malice towards Mr. Whitcraft.

THE COURT: Well, again, I think we have the issue of the timing on this. So, anything that predates that the Court finds would not be relevant, but following the divorce it would be. So, if you want to limit your question.

BY MR. CAMPBELL:

Q. So, you understand I'm asking about after you left the defendant you had a relationship with Mr. Whitcraft --

A. Right, I --

Q. -- were you threatened by the defendant?

A. I was absolutely, I got letters of threats, I got voice threats, he --

Q. What were the threats?

A. He would threaten to kill me. He wrote once, "If I can't have you, no one can." He would threaten to kill Jack. He would threaten to

kill anyone that was helping me.

Q. Okay.

A. There were times that I'd be walking down the road and he'd swerve so that he'd hit whatever was in my hand, he didn't hit me myself, but he'd hit a magazine in my hand.

Q. And was there some point that he began having contact with the Peach Street address or the area that you lived?

A. All of a sudden he started coming in there and I realized it was because he was seeing the -- first he was seeing the granddaughter of my neighbor, and then he quit seeing her and started seeing the daughter, the mother of this granddaughter. And she started visiting her mother regularly and so they were on Peach Street all the time.

Q. And do you know her name, who you're --

A. Janice --

Q. -- talking about?

A. Janice Rose.

Q. Janice Rose. And let me show you what's been marked as State's Exhibit 101, for identification, do you recognize what this is a

map of?

A. Yes, that's where I live -- lived.

Q. And this is Peach Street that you lived on here?

A. Yes.

Q. And this -- if you came in on Merlin Galice Road from I-5 you would come in this way?

A. Correct.

Q. Okay. This is where you and Mr. Whitcraft lived at 119?

A. Correct.

Q. And is this correct that Ms. Rose lived at 175, her mother lived there and she would -- started living with her at times?

A. Correct.

MR. CAMPBELL: We'd offer 101, Judge.

MR. SCALES: No objection, Your Honor.

THE COURT: Okay. And it's 101?

MR. SCALES: Yes.

MR. CAMPBELL: And we would offer at this time, maybe --

THE COURT: Received.

MR. CAMPBELL: -- it's a good time to offer 102 also, another diagram.

MR. SCALES: Oh, could I take a quick peak

at 102?

MR. CAMPBELL: Yes.

MR. SCALES: No objection to either 101 or 102.

THE COURT: Okay. 101 and 102 are received.

BY MR. CAMPBELL:

Q. Directing your attention to State's Exhibit 102, it appears to be a diagram of Picket Creek and some of the properties out there. Can you show us where when you lived at 180 Cliffside where that was?

A. That would have been this big black box there.

Q. Okay. So, the highlighted one is the 180 Picket Creek?

A. Yes.

Q. Can you describe in 2001 -- or, well, I guess the last time you lived there was '96?

A. '96.

Q. What kind of a residence was it?

A. It was a double-wide mobile home.

Q. And was -- did it have water?

A. No water unless we hauled it in.

Q. So, you were hauling water even in '96?

A. Absolutely, there was -- there were like four or five wells drilled and they were all dry.

Q. While you lived with the defendant at Cliffside did he shoot firearms?

A. He did, it was more of a target practice thing, it wasn't a regular thing.

Q. Okay. Did -- do you own firearms?

A. I did.

Q. Okay. You did when?

A. Back in 2001.

Q. Okay. So, Janice Webber starts to come over to her mother's house on Peach Street and what develops from that?

A. Well, he's with her all the time and the next thing you know there's -- it's like a racetrack up and down this road all the time. They're both tearing in and out of the road all the time and making gestures at me, I'm in my house, nobody should be looking in my window, I can stand in my window. And they'd make gestures at me and make faces at me and wave at me and smile at me and --

Q. How often would the defendant do this?

A. Three, four, five times a week, every time he came in.

Q. Okay. What kind of gestures would he make?

A. Usually the middle finger.

Q. Was Jack there when these would happen?

A. Sometimes he was, sometimes it would be early enough before he left for work.

Q. Would Jack -- did Jack ever describe similar activity toward him?

A. There were times that on his way to work or on his way home from work he'd tell me about a story that something that would happen to him where he had been confronted again or he had been gestured to or like the incident at the stop sign at the bridge.

Q. Okay.

A. Where the gun was pulled on him --

MR. SCALES: I'm going to object --

THE WITNESS: -- actually.

MR. SCALES: -- Your Honor, it's not responsive to the question. His question was has

he ever described certain or similar incidents of flipping the bird and things like that. We're getting into an incident that hasn't been discussed and I would be objecting to that when it comes up.

THE WITNESS: I'm sorry.

THE COURT: Mr. Campbell?

MR. CAMPBELL: I'll get to that later, Judge, that's fine.

THE COURT: All right. So --

MR. SCALES: Thank you, Your Honor.

THE COURT: -- sustained as to that objection.

BY MR. CAMPBELL:

Q. Was Mr. Whitcraft particularly found of firearms?

A. He knew how to use them, but they weren't -- he wasn't against them, but they weren't something that were real important to him.

Q. Did he carry firearms on a regular basis?

A. Not on a regular basis, he owned a rifle.

Q. Okay. How would you characterize the

next phase of escalation of animosity from Mr. Sandoval?

A. I'm sorry, would you rephrase the question? I'm not sure what you're asking.

Q. Did -- did the animosity directed at you and Jack increase in 2000, late 2000, 2001?

A. Absolutely, it seemed to get worse. It was like he had come out of hiding suddenly and spent the two years where he hadn't been bothering us just building this up and all of a sudden the confrontations were worse, he'd have worse things to say about us to us, he -- he'd follow me to the store and -- and wait for me at the edge of the building to come out and so I'd go to the other edge of the building when I walked to the store and then he'd drive up and catch me there. And he pretty much didn't let me go anyplace freely.

Q. Did you have concerns for your safety?

A. Absolutely.

Q. Did you share these incidents with Mr. Whitcraft?

A. Absolutely.

Q. Did he share the incidents of safety concerns with you?

A. Absolutely.

Q. And did Mr. Whitcraft ever describe any incidents where he was driving and there were -- the defendant directed animosity toward him in the vehicles?

A . Yes, there were several different incidents one that I saw in the back of the house, I was standing in the kitchen window doing dishes. And Jack had pulled out of the gas station and the defendant followed him very fast tailgating him on Jack's way to work. And then Jack called me when he got to work and the defendant had tried to run him off the road, what I call "Mad Maxing".

Q. Mad Maxing?

A. Right.

Q. And did --

A. Right, where he just comes and tries to just side you right off the road.

Q. Okay. And about when did that occur, when was that described to you?

A. I don't remember for sure, but I'm guessing some time in 2000.

Q. And did Mr. Whitcraft express fear of the defendant as a result of that?

A. Absolutely.

Q. What did he say?

A. He said that one of these times he's actually going to get him run off the road and he's afraid that one of these times that the defendant is going to pull a gun and shoot him when he's walk -- when he's driving.

Q. Did -- did -- what kind of a vehicle was Mr. Whitcraft driving at that point?

A. He was usually driving his -- I think it was a '75 Datsun.

Q. Okay.

A. A small pickup.

Q. When did he get the '64 -- or, put that '64 pickup together?

A. That would have been the late '90's I think that -- I think it was like '98 that he got it and it took him two years to build it, so it was probably 2000 that he got it all together so that he could drive it.

Q. Okay. So, did he -- are you saying he drove a different vehicle to Picket Creek unless he had to haul stuff out there or what?

A. Once what we called "Big Red", the big Ford, once it got driving he drove that most of the time, unless he was taking a trip into town

then the Datsun was just better mileage so he drove that. But, otherwise all his tools and everything were in the Ford.

Q. All right. Did you have occasion to apply in 2000 for a restraining order against the defendant?

A. Yes, I did.

Q. And was it issued by the Court?

A. Yes, it was.

Q. So, there was -- and was it served on the defendant?

A. Finally, yes, I was.

Q. So, a restraining order was in effect against him, do you know when it went in effect?

A. I don't know for sure, it seems like it was in 2000 some time.

Q. And did that address -- attempt to address some of the harassment and so forth that was going on on Peach Street?

A. Some of it, he had tried to hit me with his truck in the yard and --

Q. Okay. All right. Go ahead.

A. And I just wasn't going to take anymore of this with out at least trying to get him stopped.

Q. Now, were you made aware of an incident that happened at the Lil Pantry?

A. Yes.

Q. And how did you become aware of that?

A. Jack came home afterwards and told me about it.

Q. And how was Jack -- Jack had injuries when he came home?

A. Yes, he was bloody, his glasses frames, were cracked, his shirt was ripped off of him.

Q. How would you characterize his state of mind and his demeanor when he came in from that?

A. Very agitated.

Q. Okay. Did he express fear of the defendant based on that incident?

A. Yes, he was sure that because he finally got the better of the defendant that the defendant would retaliate and probably shoot him.

Q. And so now I want to go then up to September 13th of 2001, did you receive a call that day?

A. I did.

Q. Where were you?

A. I was at home.

Q. And was it from Mr. Whitcraft?

A. Yes.

Q. Do you remember what time of day?

A. Mid-morning.

Q. Okay. And how would you characterize Mr. Whitcraft's demeanor, state of mind?

A. He was very agitated, very scared, his voice was very shaky, said he had just talked to the Police Department -- or, the Sheriff's Department and told me why.

Q. Okay. And did he say why he was calling you?

A. Yes, because the defendant had caught him at the red light at the Robertson Bridge Road and pulled a gun on him and then followed him up to Harvey's when he went in there, but didn't follow him in and he was just afraid that he'd come back and shoot him.

Q. Did he -- did he also express fear for you?

A. Yes, he told me to watch out because now he's done this and he'll probably come for me next.

Q. Did you have a discussion with him

about that incident that he made some decisions?

A. After we discussed it for quite a while I agreed with him that he needed to start carrying one of the revolvers with him when he was out.

Q. Okay. And what revolver did he end up carrying?

A. I gave him my .44 revolver.

Q. And that was your gun?

A. That's mine.

Q. And how long had you had that gun?

A. I got it Valentine's Day of 1984 from the defendant when I asked him for it.

Q. So, it had actually been given to you from the defendant?

A. Yes.

Q. Okay. And so it was -- had the -- had Mr. Whitcraft, the victim in the case, had he carried a gun regularly before that?

A. Regularly, no. If we were together and going out of town, if we were going to go out target practicing, otherwise no.

Q. And so from the 13th or close thereto after that he began to carry a gun?

A. Daily.

Q. And where did he carry it?

A. He always carried it on the seat of the truck because I wasn't with him. If I was with him it was on the dashboard, if I wasn't with him it was on the seat.

Q. So, in plain view?

A. In plain view, always in plain view.

Q. Did you ever have incident where the defendant showed a gun or in conjunction with a vehicle or anything else?

A. Yes, I was coming back from visiting over at Vernon Lowe's house and I was coming off of Picket Creek just going to turn on to Robertson Bridge and the defendant and his former fiancé were driving across the bridge, I had to wait for them. And then defendant pulled up a pistol on the driver's side just above the window to show me, pointed it at me.

Q. And what vehicle was he in at that time?

A. I'm not absolutely sure, but I'm pretty sure that it was the blue pickup that he hauled water in.

Q. To, to your knowledge, he had two vehicles as of 2001?

A. Oh, he had several vehicles.

Q. Okay. Were you aware that he drove a Bronco as well?

A. Yes.

Q. And was ever -- the driving stuff that you've kind of described, was your property interfered with in some way, manner in his driving?

A. Well, he'd always drive through and to get down to Janice's house he had to go through what would have been my yard. And he drove through there like 40 miles an hour.

Q. Was there any other --

A. So, there was rocks all over the place.

Q. Threw rocks? Was there any other incidences with vehicles that you can recall --

A. Let's --

Q. -- maybe you were with Jack or you weren't with Jack and he related to you?

A. More than once I can remember that we were driving over to either Harvey's or over to Vern's and we'd be -- we would be on Robertson Bridge -- yeah, Robertson Bridge Road and all of a sudden the defendant would just be behind us. He

wouldn't have -- he had to have been laying in wait for us is all that we could figure out, he knew --

MR. SCALES: I'm going to object, Your Honor, she's speculating.

MR. CAMPBELL: I think it's a reasonable explanation of her testimony, Judge.

THE COURT: The objection is sustained.

BY MR. CAMPBELL:

Q. So, you --

A. We were -- we were very by the clock people and so our schedule was pretty well known by everybody what time we'd be going, where we'd be going and the routes we'd be taking. Because we just -- we didn't hide these things from people.

Q. And -- but to describe what would occur, you were driving along and all of a sudden he would just appear --

A. He would just --

Q. -- from behind you?

A. He would just appear from no where. It's not like as if you saw him coming up in the back in the rearview mirror, all of a sudden he's

just there.

Q. What would he do?

A. Just tailgate us. When we got to the stop signs stay tailgated, usually just throw us the bird, the middle finger. Then he either would or he wouldn't follow us to the next place we were going to go stop, sometimes he would, sometimes he wouldn't.

Q. The -- on the incident that you described on the 13th where he showed the gun and then followed him up to Picket Creek, did you see the defendant that day?

A. It seems like I saw him come tearing into the yard after that incident. I don't know that I saw him that morning, but he came -- after I had gotten the call to protect myself the some time after that he came just tearing in the yard.

Q. Okay. And I'm reading from Page 100 of the transcript, do you recall a question last time, "Do you have any independent recollection of observing Mr. Sandoval that morning yourself on Peach Street?" talking about September 13th. And you saying, "After the incident when he came tearing into the yard, yes, after Jack had already called me."?

A. Right.

Q. Is that -- so --

A. That's --

Q. Do you recollect that now?

A. Yes.

Q. So, he came actually to where you were also that day?

A. Yes, it seems like he tried everything to keep us both off balance, we never knew which one he was going to be after.

Q. I'm going to show you what's been marked as State's Exhibit 74 -- well, I -- and I don't want to not do it now with the jurors seeing it. This is -- I'm showing you State's 74, it's a handgun, do you recognize this or know this gun?

A. No.

Q. Okay.

A. No, never seen it.

Q. I'm going to show you what's been marked as State's Exhibit 79 for identification in the case and it is a sealed packet and there is a trigger lock on this. Do you recognize this gun?

A. Yes, that's my .44.

Q. That was actually your gun?

A. That's mine.

Q. Is that the gun that you say that you gave to Mr. Whitcraft?

A. Yes.

Q. Okay. When you gave it to him did you load it?

A. Yes, I did.

Q. Okay. And it's the one that he was carrying in his truck?

A. Yes.

MR. CAMPBELL: We would offer 79.

THE COURT: Any objection?

MR. SCALES: No, objection, Your Honor.

THE COURT: 79 is received.

BY MR. CAMPBELL:

Q. From the summer of 2000 up to the time that Mr. Whitcraft was killed how would you characterize the contacts from the defendant, were they increasing or decreasing?

A. Increasing.

Q. Do you have an opinion about Jack Whitcraft's character for peacefulness or violence?

A. He was a very peaceful man. He had changed his life around years before I met him.

He was very peaceful, very loving, would give the shirt off his back to anybody.

Q. And do you have an opinion about the defendant's character for peacefulness or violence?

A. Peace wasn't something that was a part of his life. Turmoil, anger --

MR. SCALES: I'm going to object, Your Honor, as non-responsive. The question is regarding violence and character for violence.

THE COURT: Overruled.

You may continue if you had more.

THE WITNESS: He seemed to need to get vengeance.

BY MR. CAMPBELL:

Q. Okay.

A. Seemed -- it just seemed like he thought everyone was out to get him and he was going to get even with them for that.

Q. Okay. Let me talk -- take you to September 27th, then. You were in the house when you got up that -- when Jack got up that morning, Mr. Whitcraft?

A. Yes.

Q. Okay. About when did you guys get up, do you recall?

A. Probably around 6:00, the same as always, watched the news in the morning, had our coffee in the morning.

Q. And were you aware of his plan for the day?

A. Yes, that day he had to go in to town and get some welding supplies and then he was going over to Harvey's house to get a tool to go finish some work that he was doing over at Vern's house.

Q. Okay. And did he in fact leave the house and go get welding supplies?

A. Right, he went in to town, got the acetylene, called me and asked me to make him a peanut butter sandwich so that when he came back from town he'd have it so he could just leave to go. And I forgot to make it, I was over at the neighbors, so I missed him when he came home and made it for himself. And he left and I didn't see him again.

Q. And when -- when did you first learn that he had been killed?

A. Noonish. Noonish, when the officers

came to my house.

Q. So, they came to your house to let you know?

A. Yes.

Q. Let me show you State's Exhibit 24.

MR. CAMPBELL: I'm not sure what Counsel's position is on this, perhaps I would offer at this time State's Exhibit 1 through 43.

MR. SCALES: If I an just look at them briefly, Your Honor?

THE COURT: All right. Go ahead.

MR. SCALES: I've reviewed them before.

THE COURT: Okay.

MR. CAMPBELL: Judge, I'm going to -- did I offer those?

THE COURT: Well, you said you were going to.

MR. CAMPBELL: Okay. I realize my foundation isn't complete on those yet and I didn't know if there would --

THE COURT: Okay.

MR. CAMPBELL: -- be an objection. So, I will just use the individual ones at this time.

THE COURT: Okay.

MR. SCALES: Thank you.

BY MR. CAMPBELL:

Q. Let me show you what's been marked as State's Exhibit 9 for identification and ask you if you recognize the mail vehicle in that picture?

A. Yes, that's Jack's truck, Big Red.

Q. Does it fairly and accurately show the way -- the condition it was in on September 27th?

A. Yes.

Q. Okay.

MR. CAMPBELL: We'd offer this one at least, Judge, Number 9.

MR. SCALES: No objection.

THE COURT: 9 is received.

MR. CAMPBELL: And I'll just walk it down.

BY MR. CAMPBELL:

Q. So, you said that he built this truck, kind of put it together himself?

A. Yes.

Q. Okay. What kind of a transmission did it have?

A. Standard.

Q. So, a standard, was it a -- was it a

4-speed?

A. 4-speed.

Q. Had you driven the truck?

A. I had.

Q. And can you tell us where reverse was on that transmission?

A. Let's see, granny, second, third, fourth, so reverse would have been way down -- way down bottom next to my leg.

Q. So, you're showing the jury in and down?

A. In and down.

Q. In and down?

A. Right.

Q. Okay. And were you familiar with some of his tools?

A. Oh, yes.

Q. And I'll show you what's been marked as State's Exhibit 24. You talked about an acetylene tank and I'm directing you to this photo, do you see his acetylene tank in that photo?

A. Right, that's the acetylene tank that he would have just gotten filed that morning.

Q. Okay. And does that appear to be the

back of his pickup?

A. Absolutely, that's his toolbox without a doubt.

Q. Okay.

MR. CAMPBELL: We'd offer 24, Judge.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: 24 is received.

MR. CAMPBELL: Can I just walk that down?

THE COURT: Yes, that would be fine.

Mr. Campbell, are you -- do you have that exhibit that's been received?

MR. CAMPBELL: Yes.

THE COURT: Why don't you just go ahead and give it to the clerk and she can mark them in once they've been received then. So, Number 9 and 24 if you still have those.

MR. CAMPBELL: I'm hoping to kind of keep them together for later, Judge, but yes.

BY MR. CAMPBELL:

Q. Was Jack Whitcraft a drug dealer?

A. No, absolutely not.

Q. Was he a convict? Had he ever been convicted?

A. Absolutely not.

Q. So, if he was called -- would "ex-con" be descriptive of him?

A. No.

Q. Okay.

A. No.

Q. Were you -- do -- were you convicted of a drug offense?

A. Yes, I was.

Q. Okay. And what was that?

A. Manufacturing marijuana.

Q. So, you had grown some marijuana plants?

A. Well, I had tried to, they were dead marijuana plants that got taken.

Q. Okay.

A. I wasn't very good at it.

Q. To your knowledge had the defendant been to Harvey Callahan's?

A. I'm sorry?

Q. Had the defendant, Leo Sandoval, been to Harvey Callahan's while you were there?

A. Ever been there?

Q. Yes.

A. Yes.

Q. Actually, when you were married to him you may have been there with him; is that right?

A. Yes, that's how I had met Harvey because he had stopped up to Harvey's one time asking about some vehicle work.

Q. Okay. So --

A. And that's how I met Harvey.

Q. Do you know whether the defendant was in fact then familiar with Harvey Callahan?

A. He knew who he was --

Q. And they had --

A. -- I know they were never friends.

Q. But, they had had enough contact he would know --

A. Who he was.

Q. -- who he was, his name?

A. Absolutely.

Q. Were there other incidents of threats or animosity you haven't described to the jury that come to your mind?

A. Well, there were many, many, many, but I can't think of anything specific. It was just an ongoing thing. It was a scary life.

Q. When -- you described these times

that you'd be driving out and all of a sudden the defendant was on your tail, how did you become aware he was on your tail?

A. Just looking in the rearview mirror and all of sudden there's a car and there had been nobody back there at all.

Q. And did you -- in describing those areas did you notice whether there were roads that came on to -- would that be on Robertson Bridge Road or Lower River?

A. Sometimes it was on Robertson Bridge Road, that was usually where it was and there were many side roads off of that where a person could lay in wait. It was a wooded area so it wasn't hard to hide.

MR. CAMPBELL: That's all I have at this time, Your Honor.

THE COURT: All right.

Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good afternoon, Ms. Sizemore.

Sizemore, is that -- that's your -- is that a new

married name or a maiden name or --

A. That's a new married name.

Q. New married name. Okay. Thank you for clarifying that for me.

THE COURT: Mr. Scales, I'm just going to ask you to really speak up because --

MR. SCALES: Okay.

THE COURT: -- where you're positioned you're in between microphones.

MR. SCALES: Would it be better if I did it at counsel table? I can go back there.

THE COURT: You're welcome to proceed from right there as long as you speak up.

MR. SCALES: Well, I can't guarantee that I'm always going to be speaking up, so I --

THE COURT: It's your choice then, sir.

MR. SCALES: -- better move right back just to preserve the integrity of the record.

THE COURT: Okay.

MR. SCALES: Sorry about that.

BY MR. SCALES:

Q. Ms. Sizemore, you testified that Mr. Sandoval would occasionally -- well, while you were with Mr. Sandoval he would shoot firearms at

the 180 Cliffside property; is that correct?

A. Yes.

Q. Okay. And is there -- are there a lot of critters, a lot of varmints, small animals and things like that out there?

A. Nothing to be shooting at, no.

Q. Nothing to be shooting at?

A. No.

Q. Okay.

A. There's neighbor's cats.

Q. Okay. And is it fairly common for there to be shooting out in that area, hunting and whatnot?

A. Only at hunting season.

Q. Okay. Now, you also shoot firearms as well?

A. I did.

Q. Okay. And you don't because of the marijuana incident; right?

A. Right.

Q. Is that why you no longer possess them?

A. Because of the marijuana incident.

Q. Okay. You testified and I think you've probably explained this in great detail, I

just want to make sure that I'm on the same page with you. After the divorce you testified that "He was always harassing us", is that -- is the harassing is that limited to the tailgating, the flipping the bird and things like that?

A. No, he would follow me in the Lil Pantry, he would -- he would just show up following me wherever when I'd be going someplace, driving someplace.

Q. And this is in the Merlin area?

A. Yes.

Q. Okay. And Merlin's a pretty small area?

A. Very small.

Q. Okay. So, it's safe to say it's probably not too uncommon to see people on a regular basis in a small area like that, would you agree?

A. Absolutely right.

Q. Now, you said that you went to -- well, let me back up a step. You said that Mr. Whitcraft would go to Harvey's up to five to six times a week, is that accurate?

A. Usually.

Q. Okay. And how often did you go with

him?

A. Two or three times a week.

Q. Okay.

A. As often as I could.

Q. You also mentioned some letters that Mr. Sandoval had written to you, do you still have those letters?

A. I still have them.

Q. Okay.

A. I don't have them with me, but I still have them.

Q. And were these letters written after the divorce or were they written before the divorce?

A. They were before the divorce just after I left him.

Q. I see.

A. Signed and dated.

Q. Did you ever shoot firearms at the Cliffside address?

A. I may have done target practicing once or twice, but --

Q. Don't ever --

A. -- not as a general rule because at $2.00 a shell I don't practice.

Q. $2.00 a shell?
A. For a .44 --
Q. Is that for the .44?
A. -- it's $2.00 a shell.
Q. Oh, okay. I'm not a shooter so I don't --
A. Yeah. No.
Q. Do you -- when you lived at Cliffside -- I assume that you're familiar with Peter Liebes, is that --
A. Yes.
Q. And do you recall Mr. Sandoval being asked by Mr. Liebes to do some shooting, shoot some muskrats and some other small rodents and things that were on his property?
A. Specifically muskrats in his pond, yes.
Q. Okay. Now, this harassment that you're talking about, the flipping the bird and the tailgating I assume that you never played into it and responded, is that what you're saying?
A. Correct.
Q. Okay. And despite your not playing into it, despite your not responding to it continued and continued and continued; is that

correct?
A. Absolutely.
Q. But, for a two year period it stopped, is that accurate?
A. It was about two years, I can't say exactly, I won't say two 12 month periods.
Q. Okay.
A. But, approximately two years.
Q. When Mr. Sandoval started dating Janice Webber Rose she was living on the same street that you were living on; is that correct?
A. At the time no she wasn't living there.
Q. She wasn't living there?
A. No.
Q. But her mother was living there?
A. Her mother was living there.
Q. Okay. And when you were living at the Cliffside address it was necessary to get water and bring it back to that property; correct?
A. Correct, we had to go in to the Fire Department in Grants Pass and get water. We would get as much as we wanted for $10.00 a month.
Q. So, it was -- it was fairly common -- well, let me rephrase that. After Mr. Sandoval

took up with Ms. Rose it was at that time that he started going to Mrs. Rose's mother's house to get water for the Cliffside address?
A. Yes.
Q. And when was that, approximately?
A. I'm just guessing in 2000. I don't -- I don't know what the date was, I'm sorry.
Q. Okay. I'm going to ask you regarding the Mad Maxing incident, I assume that was reported to the police?
A. Yes.
Q. It was?
A. Yes.
Q. And I just want to confirm this, you're stating -- the Lil Pantry incident, you were not a witness to that were you?
A. No.
Q. So, you had no idea what had happened there in terms of how the altercation happened, the dynamics of the scene; is that correct?
A. I didn't see it happen, no.
Q. Okay. But, it's your testimony that Mr. Whitcraft was bloodied and had cracked glasses?
A. The frames were broken --

Q. Okay.
A. -- and his shirt was torn off.
Q. Shirt was torn off?
A. Yes.
Q. Okay. You also testified, I believe, that after that happened that Mr. Whitcraft was very scared, he was worried about retaliation?
A. Right.
Q. Because he had "finally gotten the better of the defendant", I believe was your exact words?
A. Correct.
Q. When you say "finally gotten the better of the defendant" are you saying that in the past there had been prior altercations where he had not gotten the better of the defendant?
A. No, this was the first time that the defendant stopped his vehicle, got out of it and actually got into a physical altercation with him.
Q. Okay.
A. Otherwise the defendant had only driven by saying things.
Q. I see. So, up until the time that Mr. Whitcraft got into the altercation there had been no physical confrontation between the two?

A. Correct.

Q. Okay. Did you say he was scared after -- would you say he was scared after this incident?

A. Concerned, scared, yes.

Q. Okay.

A. He wasn't -- he wasn't afraidy cat type person, but yes he was very scared.

Q. He was scared? Do you remember testifying previously as to what Mr. Whitcraft's demeanor -- or, what his -- what he was feeling at the time what -- from what you were observed, was he scared or was he angry, I guess is what I should be asking?

A. He was aggravated, he was -- he was very angry that it had happened in the first place.

Q. I think you used the word that he was "pissed" --

A. Yes.

Q. -- is that correct?

A. Yes, I didn't know if that was proper language for the courtroom.

Q. It's probably not, but -- now, about this gun that's already been entered into evidence

that gun was given to you by Mr. Sandoval; correct?

A. The .44 Magnum, yes.

Q. Uh huh. And that was -- I think somewhere in your prior testimony you had said something like that was -- was it a Valentine's Day gift?

A. Valentine's Day 1984.

Q. And you had asked for that type of a --

A. I asked for that.

Q. Okay. So, you liked guns just like Mr. Sandoval did; is that correct?

A. My first husband liked .44 Magnums, Dirty Harry-like .44 Magnums, so I liked .44 Magnums.

Q. Have you shot that gun before?

A. You bet I have.

Q. Okay. Is it a powerful gun?

A. You bet it is.

Q. Is it -- is it a gun that's -- what kind of a -- what is that gun used for?

A. You can use it for hunting or self protection.

Q. Hunting?

A. Yes.

Q. Okay.

A. Oh, you can go bear hunting with it. You can go deer hunting with it.

Q. Let's talk a little bit about the safety features of that gun since -- because you've obviously testified to a familiarity with it. How many times do you have to -- or, how many clicks do you have to cock back the hammer before it's loaded and -- before it's ready to go?

A. Ready to go would be three clicks back.

Q. Okay. And it was after the incident -- and I'm sorry to be jumping around. It was after the September 13th alleged gun pointing incident that Mr. Whitcraft started carrying that gun?

A. Yes.

Q. Okay. And was it -- was it you who suggested he carry that gun or was it Mr. Whitcraft who actually asked?

A. That was me.

Q. Do you recall testifying -- and I'm looking at -- also at Page 100 of the transcript, you were asked a question, "What were Mr.

Whitcraft's concerns the day after this incident that occurred that he telephoned you about the morning of the 13th of September of 2001?" And your response, and I'm doing this to refresh your memory, "That the next time that Mr. Sandoval was going to go through the practice that he did that day and he needed to start carrying a gun to protect himself, he couldn't be caught unprepared." was it Mr. Whitcraft who in fact asked you for the gun?

A. No, I suggested that he start carrying it.

Q. Okay. How did Mr. Whitcraft carry this gun? I know -- and what I mean is you've testified that if you were in the front seat it would be on the dashboard, if you were not there it would be on the seat in plain view?

A. Right.

Q. Okay. What other safety precautions, to your knowledge, did he take to make sure that this gun didn't fire or accidently fire?

A. It was always holstered and it was always one click back, which was the safety so that even if it fell it didn't fire.

Q. Do you remember telling law

enforcement that sometimes he would even leave one of the chambers empty?

A. He didn't, I did.

Q. You did? Okay.

A. If I was carrying the gun I left one chamber empty in case I dropped it.

Q. Okay. And he kept it fully loaded?

A. He kept it fully loaded.

Q. Okay. Aside from September 13th to September 27th of 2001 is it your testimony that Mr. Whitcraft did not carry a gun or had never carried a gun? And I'm sorry, let me rephrase that, that's a poorly worded question. Prior to September 13th, 2001 did you know Mr. Whitcraft to carry a gun?

A. Ever?

Q. Ever.

A. Ever? Yes, if we went out of town we'd carry at least one of the guns with us.

Q. What about in town?

A. No, we had no reason to carry a gun in town with us, it was strictly a long distance travel thing.

Q. Okay. So, it was only when you were out of town?

A. Right.

Q. The 180 Cliffside residence just -- we all are aware of this, but it's in the Robertson Bridge area; is that correct?

A. Yes.

Q. And is Robertson Bridge Road is that a road that is -- that links up Merlin and the Picket Creek area?

A. Yes.

Q. Okay. You testified that the increasing contact that you had with -- that you had increasing contact between summer 2000 up until the time that Mr. Whitcraft was killed, it increased with Mr. Sandoval, is that --

A. Yes.

Q. And is that because he would be going to fill up water and visit with Misses -- with Ms. Rose's mother?

A. She had died by then, but -- so, by then Janice was living there.

Q. I see. So, he would go to visit his girlfriend?

A. He would go to visit there.

Q. Okay. I -- I was -- had a question, you said that -- you testified that your opinion

of Mr. Whitcraft's character or for peacefulness that he was a peaceful man?

A. Very.

Q. And you stated that he had changed his life around?

A. Yes.

Q. Are you aware that -- I mean, is that -- are you saying that prior to changing his life around that he was not a peaceful person?

A. He had grown up in the concrete jungles of Detroit, Michigan and so that's a little different than the farm life where I had grown up. It wasn't nearly as peaceful. He grew up in a family of 10 children --

Q. Mm hm.

A. -- and then he found God. And so there was -- there was no -- there was a right and wrong after that, that's all there was.

Q. Did he ever brag about those days growing up in the concrete jungles of Detroit?

A. Absolutely not, only the ones that were actual funny incidences, he never -- no, there was -- he'd have to answer to his dad if there had been any violence going on.

Q. Okay.

A. We're of that generation, we didn't answer to our parents if we could help it.

Q. Okay. Thank you, Ms. Sizemore.

MR. SCALES: I don't have any further questions at this time.

THE WITNESS: Thank you.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. I want to go back to the -- to -- when you lived at Cliffside you got your water at the Fire Station; right?

A. Yes.

Q. And they actually have a program that you can get your water there?

A. Yes.

Q. And is it -- do they -- is it more efficient to fill your water from there, can you get the water in your tanks much more quickly?

A. Oh, absolutely, it would take between five and seven minutes to fill up the 300 gallon tank, where down at the neighbor's it would two, three hours.

Q. And did you -- so the -- he was

choosing a completely inefficient way to get his water when he knew a more efficient one? Did -- did you think anything about that?

MR. SCALES: Your Honor, I'm going to object, I don't think she's qualified to determine if one way of getting water over another is efficient.

THE COURT: Overruled. You may answer that question if you're able.

THE WITNESS: I had to go get the water on occasion myself and it was much more efficient getting it from the City where you just hook up the big hose and it goes in there and it's over and done with and you don't have to wait for two or three hours twiddling your thumbs.

BY MR. CAMPBELL:

Q. Let me ask the question directly. Do you believe he used water as an excuse to harass you on Peach Street?

A. Yes, absolutely, I believe that.

Q. And in fact he could have gotten water much easier at the Fire Station?

A. Absolutely.

Q. The gun that you talked about, the

.44, do you know the difference between a single action and double -- I'm sure you do, what kind of action does it have?

A. It was a single action where --

Q. It was a single? O

A. -- where I have to pull the hammer all the way back every time I want to shoot it.

Q. So, would it -- you couldn't even fire it without pulling it all the way back?

A. Right.

Q. You had to to fire it?

A. You had to pull it all the way back to fire it every time, you couldn't -- you couldn't do it the first time and then just keep shooting, that would be a double action.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. SCALES:

Q. Ms. Sizemore, the Fire Station was this in Merlin?

A. No, it was in Grants Pass.

Q. In Grants Pass? And so that was

approximately how far from Cliffside?

A. Ten miles away.

Q. Ten miles away?

A. Right.

Q. So, a 20 mile round trip?

A. Right.

Q. With a 300 gallon tank?

A. Right.

Q. And what type of a vehicle would you typically use to go to Grants Pass, was it a truck or a --

A. It was a -- it was a blue Ford pickup truck, I can't remember what year it was, but --

Q. Okay. So, he couldn't --

A. -- relatively gas efficient.

Q. I see. He couldn't -- you're saying it took two to three hours to fill it up at the residence; correct?

A. Right.

Q. But, is it safe to say that during those two or three hours he could also be visiting Janice or her -- or his future mother-in-law?

A. He could if there were there.

Q. Thank you.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further, Judge.

THE COURT: All right.

You may step down.

THE WITNESS: Thank you.

THE COURT: Mr. Campbell, you may call your next witness.

MR. CAMPBELL: May I check the hall, Judge, before --

THE COURT: Sure.

MR. CAMPBELL: -- I announce?

The State would call Michelle Clayburn, Your Honor.

THE COURT: All right.

MR. CAMPBELL: If you'll step right up there and through counsel table, raise your right hand.

THE COURT: Please step forward and raise your right hand to be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you could walk

around the table, up the steps and have a seat behind the microphone, please?

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MICHELLE CLAYBURN,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Will you tell us your full name, please?

A. Michelle Dawn Clayburn.

Q. Okay. And let me just move the microphone to make sure everyone can hear you. Would you spell your last, please?

A. C-l-a-y-b-u-r-n.

Q. And where did you live in September of 2001?

A. Merlin on Peach Street.

Q. On Peach Street? And were you acquainted with Mary Carlson?

A. Yes, I was.

Q. And did you know Janice Rose?

A. I did and I still do.

Q. And I'm sorry?

A. I did and I still do.

Q. And you still do. Okay. Where did you live in conjunction to them?

A. I lived in the house between Janice and Mary.

Q. And if I show you what's been marked as State's Exhibit 101 for identification, do you remember the number you lived in?

A. 185.

Q. It was -- so, right between Mary and Janice's house?

A. That's correct.

Q. Before, like in 2000 was it Janice's house or was it someone else's house?

A. It was her mother's home.

Q. Her mother's home?

A. Mm hm.

Q. And do you recall Janice's mother dying some time in that time frame?

A. I do.

Q. Okay. And did Janice begin living at the property some time in that time frame?

A. Yes.

Q. Now, did you know the defendant, Leo Sandoval, before that?

A. Before Janice moved down there?

Q. Yes.

A. No, I didn't. I just have seen him go down to Janice's mother's house on occasion.

Q. And did you at least become acquainted with who he was after Janice was on that street?

A. Yes.

Q. And do you see Mister -- the person that you knew as Leo Sandoval in the courtroom today?

A. Yes.

Q. And is he -- where is he seated?

A. He's right there.

Q. Okay.

MR. CAMPBELL: Let the record reflect she pointed at the defendant, Your Honor.

THE COURT: So reflects.

BY MR. CAMPBELL:

Q. Now, how long did you live there on Peach Street?

A. That's been eight years ago. I --

it's been a long time ago. I can't -- I can't --

Q. Are you having a hard time remembering?

A. Yes, I am.

Q. Do you --

A. This is something that I have wanted to block out of mind, it's a very bad experience for me.

Q. And -- well, okay. In terms of -- do you recall when Mister -- did you know Jack Whitcraft?

A. Yes, I did.

Q. He was your next door neighbor?

A. Yes, he was.

Q. And do you recall when he was killed?

A. Unfortunately, yes, I do.

Q. And did you move from the neighborhood after that?

A. Shortly after.

Q. Okay. And if I look at the transcript, if you testified that you had lived there approximately two years does that seem right?

A. Yes, it was approximately that.

Q. And really why I'm calling you today,

did you see the defendant direct animosity toward Mr. Whitcraft or Mary Carlson, your neighbors?

A. Several.

Q. And I'd like you to describe the events that you can remember. Do you need a moment? We can give you a little break if --

THE COURT: Are there Kleenex down there? Do you have Kleenex?

BY MR. CAMPBELL:

Q. Would a cup of water help?

A. No, I'm fine. Thank you.

Q. Take a couple of big breaths, I'm going to ask you a couple more questions, okay? Did you know Mr. Jack Whitcraft fairly well?

A. Yes.

Q. Did you form an opinion about his character for peacefulness or violence?

A. He was very peaceful. He was a good man. He was --

MR. SCALES: Your Honor, I'm -- I have a question in aid of objection.

THE COURT: Go ahead.

MR. SCALES: Ms. Clayburn, how long did you know Mr. Whitcraft before he died?

THE WITNESS: The whole time I lived on Peach Street.

MR. SCALES: And can you tell me how long that was?

THE WITNESS: You didn't hear what I said, obviously, it was the whole -- it's been eight years ago.

MR. SCALES: I'm sorry, can you tell me exactly how long a period of time or just speak in general terms.

THE WITNESS: A couple years.

MR. SCALES: I'm just asking a simple question, ma'am.

THE WITNESS: A couple years.

MR. SCALES: A couple years? Okay. And a couple other questions, did you -- did you interact with him socially? Can you explain what the nature of your relationship was with him?

THE WITNESS: He was my next door neighbor and we were friends.

MR. SCALES: How often did you see him?

THE WITNESS: On almost on daily basis.

MR. SCALES: On a daily basis? For how long a period of time, was it just in passing or?

THE WITNESS: It all depended on the day.

If he was outside hanging out and I was out in my yard it was -- it was quite some time.

MR. SCALES: Okay.

Your Honor, I would object to -- that there hasn't been a sufficient foundation laid for her to testify as to her having an opinion as to Mr. Whitcraft's character for peacefulness.

THE COURT: Do you wish to respond?

MR. CAMPBELL: You've heard her explanation, I think it's clear.

THE COURT: The objection's overruled.

MR. SCALES: Thank you.

THE COURT: The Court finds that this witness would have the ability to form the opinion, if she is able to do that.

MR. CAMPBELL: And she's, in fact, answered it so we'll go on, Judge.

THE COURT: She has.

MR. CAMPBELL: You began -- the jury may consider the answer; correct?

THE COURT: The jury may consider the answer, I hope that everyone was able to hear the answer because there was an objection at the same time.

MR. CAMPBELL: Let's do it again.

BY MR. CAMPBELL:

Q. Do you have an opinion on whether -- on Mr. Whitcraft's character for peacefulness or violence?

A. He was very peaceful.

Q. Okay.

A. He was a kind hearted man and you guys need to know that, he was very kind hearted man.

Q. Did you know him to carry firearms?

A. No.

Q. Did -- was he a drug dealer?

A. No.

Q. Okay. And let's get -- did you observe the defendant to my right here, did you observe him engage in animosity toward Mr. Whitcraft and Mary Carlson?

A. Yes, I did.

Q. And will you describe for the jury what you observed?

A. I have observed him going by their house and almost coming to a complete stop; being verbal, violently verbal.

Q. In what manner? I mean, violently verbal, what kind of language are we talking?

A. Foul language, calling them foul names and saying foul thing to them while he was going by their home.

Q. Okay. And what else?

A. He would go by slow -- their home slow with animosity and then he would hit the accelerator and he'd go flinging by my house on several different occasions. And then --

Q. Is that a gravel road there?

A. Yes, it is.

Q. Did it toss gravel up? Did it endanger people?

A. There was a couple of different occasions where he had almost hit my children.

Q. Did you ever see him make gestures at Mary and Jack?

A. Yes.

Q. Okay. What else?

A. I don't know what else you want to know, I --

Q. Were there other occasions? Maybe you can give us an idea how often this would happen.

A. Almost every time he drove by.

Q. And how often was that?

A. Several times during the day.

Q. Okay. Did you observe what he would do at the Rose residence next door?

A. Yes.

Q. Did he ever intend -- intimidate you or attempt to intimidate you?

A. Yes, he did

Q. And how --

A. On several different occasions.

Q. How'd he do that?

A. He would --

MR. SCALES: I'm going to object, Your Honor, relevance.

THE COURT: Do you wish to be heard?

MR. CAMPBELL: No.

THE COURT: Overruled. You may answer, if you're able.

BY MR. CAMPBELL:

Q. How did he do that?

A. Most of the time when Janice wasn't home he would sit out in the yard. There was a picnic table, a round picnic table that used to sit out in the yard and he would sit out there in a chair and he would be sharpening knives at the

table. He would pack his firearms in and out of the home and put them in his vehicle.

He would -- when we -- when he had first moved down there he had -- would let his Pitbulls out and the Pitbulls -- my girls were playing in the driveway that was between their home and our home and it was fenced. The Pitbulls were so violent that they would hit the fence at my children and scare them on several different occasions.

There was also a time that when Mary and I were outside that he had drove by, he spat in Mary's face and said, "I'll get you." And he turned around to me and told me, he goes, "I'll kill you." And since that time before I moved I slept with a loaded shotgun beside my bed. My husband was a long-haul truck driver and that's the only way I felt safe and I still didn't feel safe.

Q. And how long after Mr. Whitcraft's death did -- before you moved out of --

A. Approximately a couple months.

Q. If you were to characterize Mary Carlson's relationship with Mr. Whitcraft while you lived and observed it how would you describe

that for the jury?

A. They had a very loving relationship.

Q. When -- the yelling and profanity that you've described, would it have to do with them and their relationship or their character?

A. I'm sorry, could you say that again?

Q. Yeah. I'm trying to get an idea of when you heard him yelling at the Carlson-Whitcraft house what was he yelling?

A. He was calling them foul -- it was foul language.

Q. Okay.

A. It was foul language. He was egging fights.

Q. Did he -- did he threatened them when you were hearing it?

A. Yes.

Q. What kind of threats?

A. He was egging on fights.

Q. Thank you.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

CROSS EXAMINATION

BY MR. SCALES:

Q. Ms. Clayburn, you're talking about Mr. Sandoval sitting in front of Janice's house taking out his guns; correct? You testified to that; is that correct?

A. I did not say that he was --

Q. It's a "Yes" or "No" question, ma'am.

A. I think you need to rephrase it.

Q. Very well. He would take his guns from Ms. Rose's house out to his vehicle; correct?

A. That's correct.

Q. Okay. And have you testified to that previously?

A. I was never asked that question or given the opportunity.

Q. Did you ever tell the police that?

A. Yes, I did.

Q. You did?

A. Yes, I did.

Q. So, what you're saying is you're telling us this for the first time in open court today?

A. This is the only chance I've been given.

Q. It's a "Yes" or "No" question.

A. Yes, it is.

Q. Okay. Thank you. And also you testified that he spat in Ms. Carlson's face and threatened to kill you; correct?

A. That's correct.

Q. Okay. And did you previously testify that he threatened to kill you?

A. I was never given the opportunity.

Q. But, you were asked about threats and aggressive behavior on the part of Mr. Sandoval; correct?

A. That was only between Mary and Jack, it was never offered to let me give my testimony on what he's done to me.

Q. So, that, again, is something that's being heard in the courtroom for the first time today?

A. Yes, it is.

Q. Eight years after the fact?

A. You better look in the police reports because it's there.

Q. Is that a "Yes"?

A. Yes.

Q. So, you're saying that for the first time today?

A. That's correct.

Q. Okay. Is your memory getting better with time, is that what you're saying?

MR. CAMPBELL: Well, I'm going to object, that's argumentative, Judge, and --

THE COURT: Sustained.

MR. SCALES: Well --

THE WITNESS: That was rude.

THE COURT: Please don't respond.

MR. SCALES: Okay.

BY MR. SCALES:

Q. And, Ms. Clayburn, you testified that Mr. Sandoval almost hit your children?

A. Yes.

Q. Did your children routinely play in the road?

A. No, they didn't, not after -- not after what he has done, no.

Q. But, prior to that you had allowed your children to play in the road?

A. Yes, because I felt safe until he moved down there.

Q. I see. So, the -- the "violently verbal", and that's to use your words, the "violently verbal" signs of aggression were

limited to profanity; correct?

A. Not just profanity.

Q. Is it fair to say that you didn't like Mr. Sandoval at all?

A. I didn't like Mr. Sandoval after he almost hit my children.

Q. Is it fair to say that you don't -- didn't like Mr. Sandoval at all?

A. I think you need to rephrase it.

MR. SCALES: Your Honor, I'm going to object, that's non-responsive.

THE COURT: Are --

MR. SCALES: It's a "Yes" or "No" question.

THE COURT: Are you able to answer the question, ma'am?

THE WITNESS: No, I don't like him.

BY MR. SCALES:

Q. Okay.

A. Would you like him if he threatened you?

MR. SCALES: Your Honor, I'm going to object and ask that the Court admonish this witness to limit her responses --

THE COURT: All right, Mr. Scales.

MR. SCALES: -- to direct questions.

THE COURT: Ma'am, just answer the questions that are asked and then when your answer is finished just wait for the next question, please.

THE WITNESS: Sure. Okay.

THE COURT: Mr. Scales?

MR. SCALES: I don't think I have any further questions, Your Honor. But, I might.

THE COURT: All right. Mister -- well --

MR. SCALES: I don't have any at this point in time.

THE COURT: At this time. Okay.

Mr. Campbell, did you have anything further?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. Are you asking that this witness be excused?

MR. CAMPBELL: I would ask that this witness be excused.

THE COURT: Mr. Scales?

MR. SCALES: Your Honor, we have not subpoenaed this witness, but there's a possibility we might call her back in our case in chief. Now,

if the Court requires we can issue her a subpoena. Otherwise, I would ask that she give a phone number to my investigator so that we can contact her should we call her back in our case in chief.

THE COURT: All right. So, you're basically asking that she not be excused at this point?

MR. SCALES: That she not be excused, yeah.

THE COURT: And be available --

MR. SCALES: But, I certainly don't --

THE COURT: -- if needed?

MR. SCALES: -- want her to have to go through the inconvenience of waiting here, so we would like to be able to contact her a day in advance if we -- if we do call her back.

THE COURT: All right.

Did you understand all of that, ma'am? You are -- you're finished with your testimony today, but you are not excused as a witness. Certainly you're free to go about. But, if you would leave a contact or perhaps Mr. Campbell has that.

Do you have that?

MR. CAMPBELL: We do.

THE COURT: All right.

In case you're needed again during the course of this trial.

THE WITNESS: Okay. I do need some notice though because I do have a job and I do have children that I need to take care of.

THE COURT: Okay. Well --

MR. SCALES: And we will try to give her at least 24 hours notice.

THE COURT: Would that be sufficient?

THE WITNESS: No, it's -- it's -- it's not. I do need a little bit more time because everybody in my home does work and somebody's going to have to take the time off and take care of the kids.

THE COURT: All right.

MR. CAMPBELL: She does live out of the area, Judge. If he has other questions I would not object to him asking them now outside of my --

MR. SCALES: Well, a lot of that is going to depend on how the State's case in chief progresses and what happens during that point in time. If there is an issue I would be, if the State would agree to this, I would have no problem with her testifying by telephone. I would just

ask that the Court remind her that she's still under oath.

THE COURT: All right. Then, why don't we do this? Again, you're released at this time to leave the courtroom, but you're not released as a witness. And if you would -- well, Mr. Campbell says he has your contact information. We would just -- someone would contact you if you were needed. We would attempt to give you as much notice as possible, sometimes we don't always have a great deal of notice, but we would give you as much as we could.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. All right. Thanks for coming in.

MR. SCALES: Thank you, Your Honor. Thank you.

THE COURT: All right. That's everything for today.

Mr. Campbell, do you have a very quick witness? I'm a little concerned over the time.

MR. CAMPBELL: Let me check the hall.

THE COURT: Okay.

So, you will not be able to stay in the courtroom since you've not been released as a

witness.

MR. CAMPBELL: Judge, I have a witness in the hall that I would not characterize her as a very short witness.

THE COURT: Would you prefer to just start with her tomorrow morning then?

MR. CAMPBELL: It's up to the Court. I would be willing to start and finish tomorrow, but --

THE COURT: All right. Well, then lets go ahead and bring her in, get started and then we'll use right up until 5:00 and make the best use of our time and then we'll have her return tomorrow.

MR. CAMPBELL: The State will call Janice Rose.

Step up right between the tables, raise your right hand.

THE WITNESS: Yes, sir.

THE COURT: Ms. Rose, please step right up here, raise your right hand and be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. You need to walk around the table, up the steps and have a seat behind the microphone, please.

THE WITNESS: All right.

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JANICE ROSE,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. And let's start with you giving us your full name, please?

A. My name is Janice Rose.

Q. Okay. And how do you spell your last name?

A. R-o-s-e.

Q. And were you sometimes known as Webber also?

A. Yes.

Q. Okay. And you don't -- I think we can hear you, you probably don't have to put -

your --

A. Okay.

Q. Hopefully. Do you know the defendant, Leo Sandoval?

A. Yes, I do.

Q. How do you know him?

A. I moved in to his home in June of 2000.

Q. All right. And where was that?

A. That was at 180 Cliffside Drive.

Q. Okay.

MR. SCALES: Your Honor, I have a quick question. Is the witness using notes to -- for her testimony?

THE WITNESS: Just dates.

MR. SCALES: Okay. If it's just dates I don't have any problem with that.

THE COURT: All right.

Go ahead, Mr. Campbell.

BY MR. CAMPBELL:

Q. And how did you meet the defendant?

A. I met him through my daughter.

Q. Okay. And where did you meet him?

A. Over on Heartsville Lane at my

daughter's home.

Q. Okay. So, how did it -- did you develop a relationship with him?

A. Yes.

Q. How would you describe your relationship with him? Let me lead you a little bit on this, did you become a couple?

A. Yes, we did.

Q. And you did live with him for how --

A. Yes, as a couple.

Q. Okay. In 2000 and moved in to Cliffside, how long did you live on the Cliffside property?

A. About six months.

Q. And you're looking at notes because you've been -- you were trying to collect dates from other information you had; is that right?

A. Yes.

Q. And from the -- from living on Cliffside where did you move to?

A. I moved in to my mother's home at 175 Peach Street in Merlin.

Q. Okay. And what caused you to make that move?

A. I wasn't happy where I was. My

mother had just passed away and I was very fond of my mom and I wanted to buy our family home.

Q. Okay. Did you continue your relationship with the defendant even though you weren't living full-time with him?

A. Yes, sir, that is correct.

Q. Where did you work?

A. I worked at Petro Stopping Center, I was a cashier for the full island in Medford.

Q. So, you had a steady job while you were with the defendant?

A. Yes, sir.

Q. And you drove to it from Cliffside and also from Peach Street?

A. Yes, sir.

Q. And if you didn't -- if -- for -- and on the weekends if you weren't working where did you stay?

A. Sometimes at my house and sometimes at Leo's.

Q. And would the defendant stay with you also?

A. Yes.

Q. Okay. So, he would stay at either location?

A. Yes, sir.

Q. Did -- did you know Mary Carlson before you met the defendant?

A. I had seen her in the neighborhood because she was one of my mom's neighbors and my mom said she used to have have coffee quite frequently. But, we really weren't friends.

Q. But, your mother had been a very good friend of hers; is that correct?

A. I believe so, they had coffee together, they chatted together.

Q. Did you meet Jack Whitcraft or at least know who he was?

A. I knew who he was, but I really never been really introduced to him.

Q. While you were with the defendant did he talk about them?

A. Yes, he did

Q. Okay. What would he say?

A. He was very angry with Mary and Jack and he -- every time they came in sight -- well, not every time, but quite frequently he would be so angry he would say, "You know, I just hate those people and they always carry guns in their cars and if they pull a gun on me I'm going to

have to kill them."

Q. Okay. And how would you characterize his feelings toward them if you had to describe it? You just used the word "hate", did --

A. Hate, distaste.

Q. Did he -- how deep was that hate?

A. At the time I didn't realize how bad it really was. To me I thought, Okay. Some people have lousy divorces and they get upset with each other and they say hateful things. But, that's as far as it goes.

Q. The defendant, was he interested in guns?

A. Oh, very much so.

Q. Did he always have a gun with him?

A. He had guns in his house when I moved in.

Q. Okay. Did he shoot his guns a lot while you were there?

A. Yeah, we shot guns quite often.

Q. And you would sometimes shoot with him?

A. Yes.

Q. Did he have a target out there?

A. Yes, sir, he did.

Q. What did he have?

A. He had a bucket that was on a fencepost and if we didn't shoot there we shot up at West Picket Creek up on top of the mountain.

Q. What kind of vehicles did he have?

A. He had a Bronco. When I first met him he had a Dodge, a small Dodge blue pickup. And he also had a large black Chevy pickup.

Q. Which one did he haul his water?

A. The black Chevy.

Q. And did you get water with him from the fire station?

A. A couple times. Most of the time we went over to my mom's house and got water there.

Q. Did he tell you why he'd changed from the fire station where it was easy to get water to over at your mom's house?

A. No, it was closer.

Q. Did you see him -- did you hear him make threats against Jack and Mary?

A. Yes, I have.

Q. And on how many occasions?

A. More times than I can count. I thought he was just talking through his hat. I didn't know he was serious.

Q. Did he ever threaten to kill Jack Whitcraft?

A. Oh, yeah, Jack and Mary both.

Q. Did he say how he would do it?

A. He said, "They will pull a gun on me and I'm going to shoot them and if I kill them I'm going to get away with it because it's going to be self defense."

Q. Did he say that more than once?

A. Yes.

Q. Did -- how close in the time -- do you know when Jack Whitcraft was killed?

A. Yes, I did.

Q. And --

A. September 27th of 2001.

Q. And in terms of that time, how -- how close in time before that was he saying he would kill them in self defense and get away with it?

A. He said it quite often.

Q. Did he give any more description than that to you?

A. No, not that I can recall. May I have some water?

Q. Yes, you may. Were you familiar with the guns that he had?

A. Not really, I'm -- I really don't know that much about guns.

Q. Did he have a lot of guns? How many guns were you aware of?

A. I couldn't even tell you how many guns he had, to tell you the truth now. I'm sure he had -- well, he had a gun that he stole from me.

MR. SCALES: I'm going to object, Your Honor --

THE WITNESS: And --

THE COURT: Sustained.

THE WITNESS: -- he had --

MR. CAMPBELL: Judge, I'm going to have her go in to -- I'm going to show you why that's relevant, I guess.

THE COURT: Well, go ahead --

MR. CAMPBELL: All right.

THE COURT: -- with your explanation.

THE WITNESS: And then --

THE COURT: Hold on just --

MR. CAMPBELL: Wait.

THE COURT: -- one second, ma'am.

MR. CAMPBELL: Wait.

THE WITNESS: Oh, I'm sorry.

BY MR. CAMPBELL:

Q. I'm going to show you what's been marked as State's Exhibit 74 for identification and ask you if you recognize this gun?

A. Yes.

Q. Who's gun is that?

A. This happens to belong to Doug Webber, he's my husband that passed away.

Q. Well, then after he passed away it was your gun; right?

A. Yes, he passed away May 3rd of 2001.

Q. And he --

A. A sheriff came out to the house and told me that I had -- he had weapons at the police impound over there and that I could go pick them up anytime I wanted. They gave me the keys to our family home over in Medford on Papango Drive.

Q. Okay. Now, you're probably going in more detail than I wanted to. So, these guns were after your -- your husband died they were taken to the police, did you end up getting those?

A. Yes.

Q. And under what circumstances?

A. Leo and I went over together.

Q. And did you pick up that gun from --

A. Yes.

Q. -- after your husband had died?

A. I picked up this one, I picked up a couple other weapons.

Q. What happened to that gun?

A. This one Leo took a good look at and he told me that the firing pin was bad on this gun and he didn't want me to shoot it. And he really knows a lot about guns so I took it at face value.

Q. Did he -- now, did he do this in front of you or did he take the gun somewhere else, disappear with the gun and then tell you that?

A. He had a safe in the bedroom, when we got over to his house the guns went inside the safe.

Q. Okay.

A. And --

Q. So, anyway, he told you it's a bad gun and does he tell you what -- did you see the gun again after he took it?

A. No.

Q. Did he tell you what he'd done with the gun?

A. He said that the gun was in bad shape

so he took it apart and he buried the parts in different places around his property on Cliffside because he didn't want anybody to get hurt with this gun.

Q. Did you know where that gun was on September 27th, 2001?

A. No, sir.

Q. Did you give him permission to keep that in his truck next to his driver's seat?

A. No, sir, I did not.

Q. And, in fact, he told you it was destroyed or buried at that time?

A. Yes, it was taken apart and buried in different spots so the gun couldn't be put back together again.

MR. CAMPBELL: We'd offer --

THE WITNESS: If somebody found a barrel they couldn't find anything else.

MR. CAMPBELL: We would offer 74 at this time.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: 74 is received.

Mr. Campbell, is this a good place to stop?

MR. CAMPBELL: It would be fine, yes.

THE COURT: Are we in between subject matters?

MR. CAMPBELL: That would be fine.

THE COURT: All right. Well, we are at 5:00.

And, ma'am, you can go ahead and step down. We're going to have to call you back tomorrow because we're at the end of the day now.

THE WITNESS: Yes, Your Honor.

THE COURT: Ladies and gentlemen of the jury, please do leave your notebooks on your chairs and remember my precautionary instructions that you are not to discuss this case with anyone, you are not to read or listen to any media accounts about this matter or about anyone involved in this matter.

I will ask that you return tomorrow at 9:15, you'll check back in to the jury room just as you did today. So, have a nice evening.

(At 4:59 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are in recess until 9:30.

(On February 19, 2009, at 5:00 p.m. the above entitled matter was concluded for the day, to reconvene on February 20, 2009, at 9:15 a.m.)

GRANTS PASS, OREGON

FRIDAY, FEBRUARY 20, 2009; 9:34 A.M.

12 PERSON JURY TRIAL - DAY 3

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. This is the time set for State vs. Sandoval. Either side have anything before we ask the jury back in?

MR. CAMPBELL: No, Your Honor.

MR. SCALES: Yes, Your Honor. A couple of --

THE COURT: Mr. Scales?

MR. SCALES: A couple of items, these are by way of a motion in limine. Ms. Rose, who is currently testifying, I just want to make sure, there's some things in her testimony that I anticipate might be coming in and I -- let me get her statements. Your Honor, in the last trial there was -- it was excluded, but there was some potential testimony regarding an incident that Ms.

Rose had with Mr. Sandoval, it was a -- it was regarding their breakup. I think she was going to testify that she had talked with him at the jail, he was upset with her because she was breaking up with him at that time. And he allegedly made a threat on her life, put the phone down at the jail visiting area, put his hand across his throat like he -- indicating that it was a threat to her life. And there was a threat allegedly about her testifying at grand jury.

That is nothing other than character evidence, I don't see how it can be offered for anything other than for an inadmissible character purpose, I think it's irrelevant and I'm asking that that be excluded. And it was excluded in the first trial.

THE COURT: Did you have other issues to raise or do you --

MR. SCALES: There is and I didn't know if you wanted me to go on or not. I can't --

THE COURT: Are they related to this -- to Ms. Rose's testimony?

MR. SCALES: It's a different -- it's a different witness.

THE COURT: All right. Let me go ahead

and her from Mr. Campbell first on --

MR. SCALES: Thank you.

THE COURT: -- on your first issue and then we'll come back on your next issue.

Mr. Campbell?

MR. CAMPBELL: I don't recall that that wasn't in the trial. But, it clearly is relevant, Judge, a threat against a witness who has information about this case by the defendant is evidence of guilty knowledge. And I think she'll -- there's case law in the evidence code on that. And it just intuitively is correct, Judge. If he is trying to interrupt a witness from testifying to what -- to information that they know about and in his own trial that's evidence of guilty knowledge.

THE COURT: Mr. Scales?

MR. SCALES: If I could just lay the foundation here a little bit more, Your Honor? In the first trial the prosecution was going to bring in a conversation Mr. Sandoval had in May of 2002 with Ms. Rose and it was objected to, there was a sidebar. After that apparently she did not -- they did not talk about the breakup itself, they did not talk about the threat on her life. There

was some questions about "Did you know that he had testified at grand jury?" I don't think it is evidence of guilty knowledge. The testimony was limited, he was angry about her testifying at grand jury, that's fine.

But, there was no testimony that he had ever asked her to not testify or threatened her in relation to her grand jury testimony. The alleged threats that Ms. Rose had talked about, and they were documented in police reports, my recollection is that he was upset over the breakup, not upset over her testimony at grand jury.

THE COURT: So, are you limiting your request to that type --

MR. SCALES: Just --

THE COURT: -- of testimony?

MR. SCALES: Just to that. What I want to keep out, Your Honor, what I'm trying to limit out is anything regarding their breakup. Their breakup is something that happened after the shooting, months after the shooting, it's irrelevant.

THE COURT: All right.

MR. SCALES: And even if the Court does find relevance it is -- it's extremely prejudicial

and substantially outweighs the probative value. It can be offered for no other purpose than to show his evil character.

THE COURT: All right. So, the specific request is testimony with respect to the breakup?

MR. SCALES: Exactly, and the threat that was -- and the threat on her life that was related to the breakup.

THE COURT: Mr. Campbell?

MR. CAMPBELL: I would agree with Counsel if the threat is only against her unrelated to her being -- also being a witness. But, if she says the -- and she will testify that she was threatened, we have a letter where he says, "I read your statements." and then he begins to threaten her. It clearly is related to her being a witness. And she -- he also speaks specifically to her about grand jury trying to get her not to cooperate.

As far as a direct threat against her if it's no related to her relaying information in this case, I agree.

THE COURT: All right.

Well, at this point then, Mr. Scales, and again I want to be certain about this because

you have indicated that you're asking for a limitation with respect to testimony about the breakup.

MR. SCALES: Exactly.

THE COURT: And so the Court would agree with that, would grant that. But, Mr. Campbell is correct with respect to other type of evidence that would relate to other issues.

MR. SCALES: And I'm not disputing that.

THE COURT: Okay.

MR. SCALES: That was allowed in in the first trial, Your Honor.

THE COURT: All right. Okay. So, are both sides clear on where we're going here?

MR. CAMPBELL: Okay. I want to make sure I am.

THE COURT: See, because I don't know --

MR. CAMPBELL: Yeah.

THE COURT: -- the exact testimony that the two of you perhaps do know.

MR. CAMPBELL: I realize that. I'm not hearing the Court tell me she can't say they did breakup?

THE COURT: She can say they broke up.

MR. CAMPBELL: But, she can't give

details about threats to her that weren't related to activity on this case, is that --

THE COURT: Well, maybe that's --

MR. CAMPBELL: -- or are you saying --

THE COURT: -- a little too general, "activity on this case". Limitation relates to testimony about threats relating only to the breakup. Threats that go outside of that would be allowable, okay? And she can testify to the fact simply that they broke up.

MR. CAMPBELL: Yeah. I think I understand.

THE COURT: Just the generic fact that they broke up because I think that that is relevant. All right.

Mr. Scales are --

MR. SCALES: Yes, the other issue, Your Honor, I anticipate today that the State will be calling a Robin Garten, she is a -- she was the girlfriend of Mr. Sandoval after the divorce with Ms. Carlson and before the relationship with Ms. Rose. I think the only thing that I'm asking the Court to do -- I know she's going to be testifying to some things regarding statements he made about Jack Whitcraft and I'm not contesting the

relevance of that.

She did make a reference in her testimony to Mr. Sandoval beating her children. I don't think the State in the first case anticipated that she was going to say that. But, nonetheless I would ask that that -- that she not get in to anything regarding Mr. Sandoval and her children. I think she can be advised ahead of time, "You're not to talk about Mr. Sandoval's relationship with your children."

THE COURT: What was the name of that --

MR. SCALES: Once again --

THE COURT: -- witness again?

MR. SCALES: That's Robin Garten, it's like Garden only with a T.

THE COURT: Okay. I see it now, yes. So, the anticipated testimony would be relating to defendant beating her children, is that --

MR. SCALES: Yes.

THE COURT: -- clarify it?

MR. SCALES: Yes.

THE COURT: Mr. Campbell?

MR. CAMPBELL: I generally agree with that point, Judge. Although, I could see the door opening if Mr. Scales cross exams like he did

before for her to express those things on why she may have a dislike and maybe if he suggests she has an unfair bias in reporting what she reports that may be an answer back of why she has the feelings she does.

So, I think he needs to tread carefully because I think potentially I would be allowed to go there.

MR. SCALES: I don't know if I would necessarily agree with that, but I didn't plan on getting in to that particular area with her.

THE COURT: All right. So, the base -- baseline decision is that it would not be admissible, but the Court is not going to close the door for the possibility of it otherwise becoming admissible for some other reason.

MR. CAMPBELL: And I'll say this, I will approach the Court if I believe that I can go there --

THE COURT: Okay.

MR. CAMPBELL: -- based on what has gone on I'll approach the Court for permission before I do that.

THE COURT: Fair enough.

MR. SCALES: Fair enough.

THE COURT: All right.

MR. SCALES: And, Your Honor, I would ask that the witness be admonished ahead of time that she not get in to that. Because I don't think the State intended for that to come in last time, but it did. It came in at the tail end of one of her responses. And so I would ask that she be warned of that in advance.

THE COURT: You're talking about by Mr. Campbell, not by the Court?

MR. SCALES: Exactly.

THE COURT: Will you do that, Mr. Campbell?

MR. CAMPBELL: I will try. Maybe -- yes.

THE COURT: Sometimes it's difficult, I understand.

MR. CAMPBELL: You know, you've got a hundred thing going and --

THE COURT: I know, I understand.

MR. CAMPBELL: -- I do not want to forget that, but, yes.

THE COURT: All right.

MR. SCALES: And one last thing, Your Honor. Just to preserve the record we wanted to -- yesterday the Court overruled and object

regarding the testimony of I believe her name was Michelle Clayburn. She had testified to some things that -- on cross examination and I was -- I was allowed to talk about that. But, I believe she can testify that Mr. Sandoval had made a threat to her, that he had let his Pitbulls out to run up against the fence and also would sit in front of -- and I'm trying to go from memory here, he would sit out in front of Janice's house and would bring his weapons from out of the house and in to the car. We had objected to that and the Court overruled that and I just wanted to respectfully except to that just for preservation of the record.

THE COURT: All right. And that is noted for the record.

MR. SCALES: Thank you, Your Honor.

THE COURT: All right. Does that take care of everything that we need to cover outside of the presence of the jury?

MR. SCALES: It does, Your Honor.

MR. CAMPBELL: Yes, Your Honor.

THE COURT: All right.

Then we're ready to have the jurors in, please.

Do you want to get your witness?

(At 9:45 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Good morning, ladies and gentlemen, we are continuing our trial, State vs. Sandoval.

And I would just ask that the witness please come forward? I'm going to have you sworn in again today since this is a new day, even though you testified yesterday.

THE WITNESS: All right.

THE COURT: Please raise your right hand.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat behind the microphone, please.

THE COURT: Mr. Campbell, since we are in

a different day if you would just please go over the witness' name again so we'll have that on the record?

***

JANICE ROSE,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name, please?

A. Janice Rose, R-o-s-e.

Q. Okay.

THE COURT: Thank you.

BY MR. CAMPBELL:

Q. Ms. Rose, I think where we stopped yesterday we were talking about weapons. And I want to show you what's been marked as --

A. Don't. I don't want that thing that close to me.

Q. I want to show you what's been marked

as State's Exhibit 70 in this matter, do you recognize this?

A. Oh, yeah, I know that gun.

Q. Okay. And why do you know this gun?

A. Because I bought it.

Q. And what were the circumstances under which you bought it?

A. It was supposed to be a hunting rifle for an elk.

Q. And who asked you to buy this rifle?

A. Leo Sandoval.

Q. And why did he ask you to buy the rifle?

A. Because he couldn't buy guns.

Q. And why was that?

A. He was on -- he had a restraining order against him.

Q. And so how did you come to find out where this rifle was located where you could buy it?

A. He went to the hock shop and found it and said, "I found an excellent rifle, Jan, will you come down and get it for me?"

Q. Okay. After --

MR. CAMPBELL: We would offer State's 70.

THE COURT: Mr. Scales, any objection to 70?

MR. SCALES: No objection.

THE COURT: 70 is received.

BY MR. CAMPBELL:

Q. And after you purchased this gun did you take possession of it?

A. Yes, he did.

Q. Did he practice with it?

A. Yes.

Q. Did he carry it with him?

A. He carried all of his guns with him.

Q. In his vehicle?

A. Yes.

Q. Again, that little .22 semi-automatic we looked at yesterday you didn't even know he still had that?

A. No, I did not.

Q. Were you aware during your relationship with Mr. Sandoval that he had been married to Mary Carlson in the past?

A. Yes.

Q. How did you become aware of that?

A. Leo told me.

Q. And I want to talk about that. How did -- how would you describe the way he talked about Mary Carlson and Jack Whitcraft?

A. Well, when I first met him he let me know that he had been divorced for six years and it didn't really -- it was just like matter of fact that they were married and now they were divorced.

Q. Did that change over time as you got to know him better?

A. Yeah, at the time I was going through an ugly divorce and we talked back and forth about situations in our divorces and the terrible things that each person did to you and that kind of thing.

Q. As you learned about how he felt about Mary Carlson and -- were his feelings the same against Jack Whitcraft?

A. I don't really recall what they were were. It's been a long time.

Q. Last time you testified that he was preoccupied with particularly Mary Carlson, is that true? And I --

A. Yes, it is.

Q. And I want you to then explain that

to the jury, what about what he would say or --

A. Well, Mary and I were neighbors and Mary would be walking to the store and the first time I saw Mary when I was with Leo he said "Hi, Mary." really nice and cordial. So, it felt like their divorce was just like a mutual thing. And then as time went on I found out that he had a real hatred for Mary and that there was a big battle in their divorce over the property out there on Cliffside at 180. And -- and as time went on I could see the anger in him building, I guess he felt more confident with me and kind of let his guards down. And he -- like if we were in a vehicle when we saw them it was totally --

MR. SCALES: Your Honor, I'm going to object, she's getting beyond the scope of his question. His question was regarding her -- his feelings towards Mary, now she's getting in to specific events.

THE COURT: All right. Mr. Campbell, go ahead and ask your next question.

BY MR. CAMPBELL:

Q. You're describing now when he was in a vehicle did he do things?

A. Yes, he did.

Q. What did you see him do?

A. He would -- there was one particular time that I remember that we were driving down Merlin/Galice Road and then we turned on to Merlin Avenue, which is a street that's right behind my house, and Jack was in his pickup and Leo was in his large black pickup and he was getting real close to the bumper, getting very aggressive. I felt very threatened. I started screaming at Leo, "Why can't you just leave this alone? You know these people are together, just back off. Step on the brake." Jack got so scared that he pulled over into the oncoming lane and Leo just hit the gas and got side-by-side with him and they were flipping each other off.

I remember a time when we were going from Merlin, my house, out to his house, which is approximately six miles. And we were going over Robertson Bridge and Jack and Mary were in their vehicle and Leo was driving his big black truck and I was in the passenger seat and he'd just get real close to the bumper and start cussing and -- and acting very angry and volatile. And then I started acting up and screaming at him, "Stop

this. Stop this. Leave them alone. Let them be. Live your own life. That's what you said you wanted to do, you wanted to leave them alone and you wanted to have your own life, just do it."

Q. Would he explain why he was doing it or just do it?

A. No, he was just angry, just a rage.

Q. How -- how would you characterize his feelings of -- of -- against Jack Whitcraft?

A. Oh, it was pure --

MR. SCALES: I'm going --

THE WITNESS: -- hatred.

MR. SCALES: -- object, Your Honor, she's -- I don't think she's qualified to understand what Mr. Sandoval's feelings are. Something that he has said directly she can testify to, but what his Mr. Sandoval's feelings are she has no basis of knowledge.

THE COURT: Well, Mr. Campbell?

MR. CAMPBELL: She's basically a wife-figure in his life. If you want me to rephrase I can.

THE COURT: Rephrase.

MR. CAMPBELL: I --

THE COURT: Yes, rephrase.

BY MR. CAMPBELL:

Q. Did he -- over time did he express his feelings to -- about Jack Whitcraft to the extent you could form an opinion about them?

A. Yes, he did, he said straight up that he hated him and that he hated Mary.

Q. Now, you -- you talked about yesterday that he had said he was going to kill him in self defense and get away with it?

A. Yes, sir.

Q. And you didn't say it exactly that way, but did he say it that way some of the time?

A. Oh, yes, he did

Q. And --

A. And then some of the time he would say, "Mary has a gun in her car at all times so if they come out of the car with a gun from the car I'll shoot them, it'll be self defense." I felt that I was being groomed.

Q. The -- was there ever a time that you --

MR. SCALES: Your Honor, I'm going to object and ask that that last comment be stricken.

THE COURT: As non-responsive, is that your basis?

MR. SCALES: Yes, Your Honor.

THE COURT: The last remark is stricken.

BY MR. CAMPBELL:

Q. Did -- did you -- did you have any feeling that he was trying to involve you in -- in this hateful exchange?

A. Yes.

Q. Okay. Was -- were you ever with him when you basically laid in wait to get in behind Mr. Whitcraft?

A. No, sir.

Q. Did he ever describe that he had done that?

A. No, sir.

Q. Did he ever pull off in places on the way out to Cliffside, did he have places to pull off that you're aware of?

A. Sometimes he'd go down to the boat ramp on the way to the house just to look at the river.

Q. Okay. There's a boat ramp before you get to the Robertson Bridge there?

A. Yes, sir, it's about a quarter of a mile maybe.

Q. The --

A. Do you mind if you give me a glass of water?

Q. No, I'd be happy to. The threats to kill him in self defense and get away with it, did you hear those -- how close in time to the actual death of Mr. Whitcraft were you hearing those kinds of statements?

A. I really can't recall, but it seemed like it was fairly recent.

Q. Were you aware, did the defendant tell you about an incident on September 13th, 2001, a Thursday two weeks before he death, did he tell you that he had had an altercation with Mr. Whitcraft out on the road?

A. No, sir.

Q. He didn't tell you that he pointed a gun at him?

A. No, sir.

Q. I want you to think about that two weeks before, can you -- do you recall the defendant's attitude being different or his demeanor being different in that two weeks before Mr. Whitcraft's death?

A. Yes, I do.

Q. And I want you to describe that for the jury, tell the jury about that.

A. We were over at the house with my girlfriend Patty's daughter and I'd made dinner and he said he wanted to have a cigar to smoke. So, I gave him $20 and he went over there to buy a cigar at the Lil Pantry, which is in visual distance from my house. And he got in a fight with Jack Whitcraft at the store.

Q. Okay. Now, that was in July wasn't it?

A. I don't recall.

Q. You don't recall the date? I'm -- now -- right now I'm talking to you about two weeks before the death, September 13th.

A. Oh, well, it seemed like his attitude had changed after that incident at the store he was more anxious and more angry.

Q. Okay. So, from July on he was different?

A. Yes.

Q. Okay. Let's talk about that a little bit, did he told you he'd been in a fight with Mr. Whitcraft at the store?

A. Oh, yes, somebody came over and told

me and I ran over to the store to see what was going on. The sheriff was already there, they were questioning people.

Q. Okay. And they -- did the defendant follow up with the police after that? Did he contact them again or?

A. No, I don't think so.

Q. No? Okay. So --

A. I don't recall if they did.

Q. -- did he say how he intended to handle that if he wasn't following up with the police?

A. I don't recall any specifics.

Q. Well, I'm ask -- now, does that refresh your recollection at all in the threats that you began -- whether or not these threats you've testified to were in that time frame?

A. Oh, yeah, the threats were during that time.

Q. And this -- I'm asking this to refresh your recollection, because you did come and talk to me at my office in the last couple of weeks and --

A. Yes.

Q. -- do you recall telling me that

about two weeks before you noticed -- before he was killed you noticed a difference in the defendant?

A. Yes.

Q. And can you describe that?

A. It was like he -- like he was a different person, like he wasn't the person that I had known. He was very angry, he was very nervous, he couldn't stay in one spot very long, very agitated.

Q. Had -- at the time that he killed Mr. Whitcraft did you intend to continue your relationship with the defendant?

A. For a short time I did.

Q. Did -- had you had a discussion before he shot Mr. Whitcraft that you were going to leave the relationship?

A. I had talked to him that I wasn't happy with the way things were going and I was trying to breakup with him and at the same time I was scared because I saw the way he treated Mary. So, I was trying to be gentle and back out of the relationship.

Q. I think last time you -- at the last -- the last time you testified under oath you

talked about being in a boat on the river and telling him that you were going to leave?

A. Yes.

Q. And how did that go?

A. Like I didn't say anything. He -- it just didn't acknowledge in his brain, he acted like, well, you know, you're mine and that's all there is to it.

MR. SCALES: I'm going to object, Your Honor, that's non-responsive.

THE COURT: Sustained.

BY MR. CAMPBELL:

Q. Let me show you what's been marked as State's Exhibit 41, 42 and 43. And I might get one more out here. First 41, 42 and 43, I want you to look at these and tell me whether you recognize what's depicted in those pictures?

A. Yes, that's a bucket that's on the --

Q. Okay. And --

A. -- fence post.

Q. First I want just want to say "Yes" -- "Yes" or "No" --

A. Oh, I'm sorry.

Q. -- wether you recognize that.

A. Yes, I recognize --

Q. Okay.

A. -- this area.

Q. My next question is a foundation question, is -- do they fairly and accurately depict what is show there?

A. Yes.

Q. Okay.

MR. CAMPBELL: And I would offer 41, 40 -- is it --

THE WITNESS: 2 and 43.

MR. CAMPBELL: 41, 42 and 43.

THE COURT: Any objection?

MR. SCALES: Can I take a quick peak at those just to refresh my memory?

THE COURT: All right.

If you'd show those to Mr. Scales, please?

MR. SCALES: No objection, Your Honor.

THE COURT: 41, 42, 43 are received.

BY MR. CAMPBELL:

Q. And so what does 41, 42 and 43 show?

A. It shows the side yard in front of the mobile with the fence --

Q. That's 180 Cliffside?

A. Yes, sir.

Q. And it shows a bucket that's on a fencepost. And 42 shows back towards the trailer with the bucket on the fencepost.

Q. What's the bucket?

A. It is a -- how do you describe a bucket?

Q. Well, is it -- was it -- how was it used, is what I'm asking.

A. It's a cooking pot. Oh, it was a target.

Q. That's what the defendant was shooting at; right?

A. Yes.

Q. Okay. That's his -- one of his shooting areas?

A. Yes.

Q. Okay.

MR. CAMPBELL: May I show those to the jury?

THE COURT: You may.

BY MR. CAMPBELL:

Q. And I'll show you what's been marked

as 48 and ask you if you recognize what's depicted there?

A. Yes, I do.

Q. And --

A. That's the property at 180 Cliffside.

Q. Okay.

MR. CAMPBELL: We'd offer 48.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: 48 is received.

BY MR. CAMPBELL:

Q. This is how it looked in September of 2001?

A. Yes.

Q. Okay. Did the defendant hunt deer?

A. No, he never hunted.

Q. And did the defendant tell you he had any plans to hunt deer in 2001?

A. No. May I rephrase that?

Q. Yes.

A. The plans was for me to shoot the elk and he was going to help me clean it because I'd never cleaned an animal by myself.

Q. All right. But, I asked about deer

hunting, did he say he was --

A. No.

Q. So -- okay. He didn't tell you he was going to deer hunt and he had never deer hunted before, that you knew of?

A. Oh, no, I knew he deer hunted when he was a boy in Arizona growing up. But, not in Oregon.

Q. Okay. So, when you -- since you had been with him you didn't know him to hunt in the official hunting seasons?

A. No, sir.

Q. Okay. While I know you weren't out there a lot of the time and living on Peach Street, but while you were out there when defendant was shooting did he have a preference for a gun, did he shoot one gun more than other guns or?

A. It depended on what was new.

Q. What was new?

A. Mm hm.

Q. Okay. The ammo for that big hunting rifle was fairly expensive; right?

A. I believe it is.

Q. Did you ever price it yourself?

A. No.

Q. Did you -- did he shoot it a lot in spite of that?

A. Not when I was with him.

Q. Okay. Did the defendant tell you why he always carried guns?

A. He said it was for defense and for if a wild animal came upon him.

Q. Had he to your knowledge ever shot a wild animal?

A. No.

Q. While carrying guns, did he ever relate an incident where he stopped and shot wild animals?

A. Not in Oregon.

Q. Okay. Did you know Carl Conrad when you were living out there in that neighborhood, Cliffside?

A. He was a neighbor of ours.

Q. How would you describe defendant's relationship with him?

A. It was close, it was cordial.

Q. Do you have an opinion on the defendant's character trait for violence?

A. Yes, I do.

Q. What is that opinion?

A. I think he's very violent.

Q. Did you know that from the get go or was that a learning process?

A. That was a learning process.

Q. Did you know the Martin's that lived at 230 Hussey?

A. Yes.

Q. And did the defendant know them?

A. Yes.

Q. And how would you describe his relationship with them?

A. They were friends and they were a very likeable elderly couple.

Q. Had you visited with them in the presence of the defendant?

A. Yes.

Q. Okay.

A. I went over and had coffee and --

Q. Did the defendant go over there with some regularity?

A. I think I was there three times, I don't know how many times he was.

Q. Okay. Was the -- was the defendant, Leo Contreras Sandoval, was he afraid of Jack

Whitcraft?

A. No, sir.

Q. He wasn't?

A. No.

Q. And how do you know that?

A. Because I know he wasn't, he had no fear of Jack whatsoever.

Q. I want to go then now to the day that Mr. Whitcraft was killed, September 27th, 2001. You said you worked at the Petro station over in -- the truck Petro station in Medford; right?

A. Yes.

Q. And what shift were you working?

A. I was working the graveyard shift.

Q. So, when would you get home?

A. I would get home around 9:00 in the morning.

Q. Okay. And go to you -- at that point going to your Peach Street house?

A. Yes, sir.

Q. And did you have contact with the defendant that day, the day that Mr. Whitcraft was shot?

A. No, sir.

Q. Okay. So, you went home around 9:00

and what, do you go to bed and get some sleep?

A. No, Leo was supposed to come over to the house and I was going to make him breakfast that morning. And on my way home I had to pull over to the side of the road and watch two sheriff's cars bouncing by me at a very high rate of speed and I was thinking, "Wow, another accident on the river." you know? And I went home and --

Q. Were they headed out west at that point?

A. Yes, they were.

Q. Okay. So, then you went home?

A. And then I went home and I waited for Leo to show up, he didn't show up, I got terribly tired and I went to bed.

Q. And how was it that you found out that Mr. Whitcraft had been shot and Mr. Sandoval had shot him?

A. I was awoken to a knock on my door, I got up, there were two sheriff's at my door, I couldn't imagine why they were there. I invited them into my house. I sat down and I spoke with them and I asked them, "Why are you here?"

Q. Okay. And they interviewed you for a

while, was it Mario Torres that talked to you?

A. I don't remember the officer's name, but I'm sure it's in the report.

Q. Okay. And at some point during their contact with you they did tell you that the defendant had killed Jack Whitcraft, didn't they?

A. Yes.

Q. And that's on -- you had a very strong reaction of anger; is that true?

A. Yes, sir, I did.

Q. And why were you so angry? You were angry at the defendant weren't you?

A. I was angry at him for shooting Jack.

Q. Okay. And I guess I -- I want you to explain to the jury why that was the reaction that came out of you when you heard that that's what he'd done.

A. The whole time he said, you know, "It's going to be self defense. It's going to be self defense. I want you to remember this, Janice. You know, you have a lousy memory and I want you to remember that I said it was going to be in self defense." And when that police officer told me that it was -- it just was like a big slap in my face because I didn't really believe he

would do it. Up until that time I thought, "Oh, you can't be that mean."

Q. Did you talk to the defendant in -- and you had conversation with him in jail then after that; is that right?

A. I think my first conversation was on the phone.

Q. Okay. And had he placed a call from the the jail to you?

A. Yes.

Q. And I want to talk about that, did -- was -- what was -- was he directing you to do anything?

A. Yes, he was. He --

Q. What was he telling you to do?

A. He was telling me the first thing was, "Janice, I'm sorry, I had to do it. I want you to please stay by my side and help me take care of everything." Like I was supposed to clean up this mess.

Q. And did you help him for a while?

A. Yes, I did.

Q. Did -- were you directed at some point to contact Detective Rylander on his behalf?

A. Yes, sir.

Q. And what were you told to do by the defendant?

A. At that -- the first time I saw him he kept telling me how innocent he was and how he had to do it and we spoke about he wanted me to go and so I could get an appointment with him to get a -- to speak to Leo while he was in jail.

Q. Okay. Did the name Tyrone Montgomery come up, did he talk about him to you?

A. Oh, yeah, "Remember Tyrone. Remember Tyrone when we met him at the boat ramp."

Q. So, he was -- and what did you take that conversation -- what was the point of that conversation as you understood it from the defendant?

A. At the time it seemed like an alibi.

Q. Okay. So, he was trying to get you to remember, did he tell you to tell the police that you now remembered Tyrone Montgomery and he'd had a contact with him?

A. Yes.

Q. Did he explain why he thought that was important?

A. No, he didn't.

Q. Okay. Did you ever have -- you were

subpoenaed as a witness to the grand jury in this matter, weren't you?

A. Oh, yes.

Q. And --

A. I was.

Q. -- did the defendant ever speak to you about being a witness?

A. Yes, he did.

Q. And what --

A. He didn't like the idea that I was going to be there, he said, "You don't have to testify." I said, "Yes, I do, I'm subpoenaed."

Q. And what did he say?

A. He didn't want me to testify, he wanted me to remember Tyrone. He wanted to remember that it was in self defense.

Q. And did -- he said you didn't have to testify?

A. Yes.

Q. Did he encourage you not to testify?

A. Yes.

Q. Do you think the defendant trusted you in those months up until the shooting? Did you have a relationship where -- I guess you know some more things now --

A. I --

Q. -- but --

A. I thought about it at the time that he could trust me and I could trust him.

Q. Okay.

A. I thought so.

Q. Did he make any threats about you testifying?

A. I don't remember any. I can't say it didn't happen.

Q. Do you remember saying --

A. It's been quite some time.

Q. Do you remember saying he told you you'd be sorry if you testified?

A. Yes, in a letter.

Q. I'm going to show you what's been marked as State's Exhibit 95 and ask you first just to take a look at it, don't say anything, just see if you recognize it.

A. Yes, I do.

Q. Okay. And is that a letter to you?

A. Yes, it is.

Q. And who is it from?

A. It's from Leo Sandoval.

Q. And do you recognize --

A. And it's addressed to "Janice Darlene Step Webber-Rose".

Q. And what's significant about that to you?

A. Well, I had changed my name to Rose and Webber had already passed away and I legally had changed my name with the courts here --

Q. So --

A. -- in this county. So, I should have just been "Janice Rose" and Step was my maiden name.

Q. So, you think he was just putting all those names down to suggest you jumped around with people or was it meant in any way that was --

A. It looks --

MR. SCALES: Your Honor, I'm going to object to the relevance of this line of questioning.

THE COURT: Sustained. Sustained.

MR. CAMPBELL: This is a letter we're introducing, Your Honor.

THE COURT: Sustained.

BY MR. CAMPBELL:

Q. Is it --

A. Can I finish my --

Q. No.

A. -- statement? Okay.

Q. The judge has ruled. Do you recognize the handwriting of the letter?

A. Yes, I do.

Q. And who's is it?

A. It's Leo's.

MR. CAMPBELL: We would offer State's 95, Judge.

THE COURT: Any objection, Mr. Scales?

MR. SCALES: Yes, Your Honor. I've heard no testimony that there's any type of threat of physical harm to Ms. Rose as a result of this letter. I -- without getting into the content I can say that it's limited basically to legal action against her, as well as some expletives. But, there's nothing about a threat of physical harm, so I don't see the relevance.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Well, that's just false, I think the fact finder will make the decision, Judge. But, the context of the letter will --

THE COURT: Let's see it.

MR. CAMPBELL: -- show the relevance.

(Brief Pause)

THE COURT: All right. Mr. Scales, did --

MR. SCALES: Your Honor, if I could just --

THE COURT: -- you have something further?

MR. SCALES: -- add one thing? Yes, please. There's nothing, unless I missed it in the letter, there's nothing regarding threatening her in relationship to her grand jury testimony, there are no threats on her -- threats of physical harm, there's a lot of angry words. I see it offered only for a character purpose and it's, thus, inadmissible.

THE COURT: All right. Well, the Court has reviewed the proposed -- the exhibit marked as 95, the Court has read that exhibit and the Court does find that it is admissible. So, it will be received over the Defense's objection.

MR. SCALES: All right. And, Your Honor, just for the record we take exception to your denial of our --

THE COURT: Noted.

MR. CAMPBELL: The --

MR. SCALES: -- objection.

BY MR. CAMPBELL:

Q. Was this -- there's a separate page written in little -- in printing, was that in the same envelope with the letter?

A. Yes, it was.

Q. Okay. And do you recognize that printing also?

A. It's Leo.

Q. And -- okay.

A. Would you like me to read that letter for the Court?

Q. Well, the jury will have a chance to read it. But, it does refer that he says he has read the statements about you lying; right?

A. Yes.

Q. And he was getting police reports of what you were talking about?

A. Yes.

Q. And I think that's all we need to cover. Ms. Rose you used the word at one point in a conversation of -- to describe the defendant the word "conniving" how did -- how did you mean that?

A. He was an individual that knew how to

get what he wanted --

MR. SCALES: Your Honor, I think this is definitely getting in to just bad character evidence and I strongly object. There's -- this is not relevant to the issue at hand.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Perhaps I could try to rephrase it, I understand that objection.

THE COURT: All right. Please go ahead.

BY MR. CAMPBELL:

Q. In -- in making that statement about the defendant is that a -- can you -- if you answer this question does it relate to his feeling and conduct toward Mr. Whitcraft or Mary Carlson -- if I -- I don't want you just to talk about generally those feelings.

A. Let me stop and think for a moment.

Q. Okay. Why don't we just go on. I'll withdraw that question. Can you tell me did the defendant reload ammunition or save his brass, the casings?

A. I used to save mine. No, he never did reload.

Q. Okay. Didn't have reloading

equipment?

A. No, I did.

Q. Did you in your conversations with the defendant when you would talk about Mr. Whitcraft and Mary Carlson did -- did he ever tell you that he was familiar with where and when Mr. Whitcraft traveled places?

A. Oh, yeah. There was a man up at the -- up at the top of the road on -- of course now I can't think of the name of the road.

Q. Are you thinking of Picket Creek?

A. Picket Creek.

Q. Yeah.

A. He lived just right now from Hussey --

Q. Toward --

A. -- and he went there and he worked for the gentleman, I -- as I understand it Mister -- Jack worked on mechanics a little bit, worked with lumber, did all kind of different things for the gentleman.

Q. Does -- would -- does the name Callahan ring a bell?

A. Yes, it does.

Q. Is that who you're talking about?

A. It was Mr. Callahan.

Q. And that was my question, did -- was the defendant familiar with the fact that Mr. Whitcraft went to Callahan's house on a regular basis?

A. Yes.

Q. And you had heard that in conversation with him?

A. Yes.

Q. Okay. Thank you, ma'am.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

MR. SCALES: Your Honor, I anticipate this is going to be fairly lengthy. Would this be a good time to take a break?

THE COURT: We could do that if --

MR. SCALES: Okay.

THE COURT: -- you're going to take some time.

We will go ahead and take our morning break now, ladies and gentlemen. Just leave your notebooks on your chairs and if you would please go with the bailiff in to the jury room?

THE WITNESS: May I go have a cigarette?

THE COURT: Yeah, just one second.

THE WITNESS: Okay.

(At 10:30 a.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are in recess for 15 minutes.

(At 10:31 a.m. a morning recess was taken.)

GRANTS PASS, OREGON

FRIDAY, FEBRUARY 20, 2009; 10:48 A.M.

12 PERSON JURY TRIAL - DAY 3

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Is the witness in the courtroom? Why don't you go ahead and retake the stand.

And, Debbie, you can go ahead and call the jury in.

(At 10:49 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, we are continuing our trial, State vs. Sandoval.

Mr. Scales, you may do your cross.

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good morning, Ms. Rose.

A. Good morning.

Q. And I just want to make sure, it -- in 2001 it was Rose-Webber, it's Rose today; correct?

A. Yes.

Q. Okay. Thank you. I just wanted to make sure I wasn't addressing you incorrectly. You testified, and I'm going to go over some of the things first that you testified to yesterday. You and Mr. Sandoval were a couple in 2000 and 2001; is that correct?

A. 2000.

Q. Okay. And it was about 18 months that you were together?

A. Well, about that.

Q. Okay.

A. About a year and a half.

Q. I'm sorry, I can't hear you very

well.

A. About a year and a half.

Q. Okay. About 18 months then. And just so I'm clear, you moved back to your mother's house somewhat -- some time after your mother had passed away; is that correct?

A. Yes.

Q. And that was because you were going to be purchasing that house?

A. Yes.

Q. Okay. But, you -- you --

A. But, not at the time, I didn't know I was going to be buying the house.

Q. I see. But, you were still spending time out at the 180 Cliffside address; is that correct?

A. Yes.

Q. Okay.

A. No, that's incorrect, I did know I was going to buying that house.

Q. Okay. Thank you. Now, I've had an opportunity to read the police reports and your previous testimony, do you remember how many times you talked with the police, approximately? Just take a guess, was it more than once?

A. Oh, yeah, it has to be at least -- at least six, seven times, probably more.

Q. Okay. That's talking to the police, to District Attorney, everything; correct?

A. Yes.

Q. And you've previously testified one time; right?

A. Yes.

Q. Okay. The reason I ask is yesterday there was a statement that you had made and I want to ask you about this. You said that Mr. Sandoval said, "They're going to pull a gun on me and I'm going to kill them in self defense and I'm going to get away with it."?

A. Yes.

Q. Is that accurate?

A. Yes, it is.

Q. Okay. And in all these times that you've talked with the police -- in all these times that you've talked with the police and other investigators, the District Attorney did you ever tell them this statement? Did you ever make this statement to them?

MR. CAMPBELL: I'm going to object to the question, Judge, because it really calls for

speculation. She -- this witness would not know why one attorney would ask her a question and not another or a police officer. It really it's trying to suggest something --

MR. SCALES: May I respond, Your Honor?

THE COURT: Yes.

MR. SCALES: I'm not asking anything about the why the question was asked, I'm asking her did she ever say this to anybody prior to yesterday.

THE COURT: The objection is overruled. You may answer if you're able to.

THE WITNESS: Yes, I have.

BY MR. SCALES:

Q. Okay. So, you're saying -- can you tell us who you said it to?

A. No, I've spoke to quite a few different -- the police department.

Q. Do you recall testifying in the first trial?

A. Barely.

Q. Okay. Do you recall whether you said that statement in the first trial?

A. I don't believe I did.

Q. Okay. So, you don't remember?

A. No.

Q. If I was to ask the police officers who interviewed you to look at their reports that they took at the time they interviewed you --

A. Which time, sir? Can you be --

Q. Well, let me finish my question, please.

A. Okay.

Q. And if your -- that statement is not in any of their reports are you telling me that their reports are inaccurate?

MR. CAMPBELL: Your Honor, that's an improper question, object.

THE COURT: Sustained. Could you rephrase that --

MR. SCALES: You bet.

THE COURT: -- Mr. Scales?

BY MR. SCALES:

Q. Ms. Rose, what I'm asking you is for the first time yesterday -- are you telling us for the first time yesterday that's the first time that you've said "They're going to kill him that day?"

MR. CAMPBELL: Objection, that's been asked and answered, she said --

THE COURT: Sustained.

MR. CAMPBELL: -- she said that before.

THE COURT: She's already answered that question.

MR. SCALES: She actually hasn't answered the question, Your Honor, she is saying she has said it before to the police and I want to dig in to that a little bit, Your Honor. I think I'm entitled to.

THE COURT: Well, you are entitled to dig in to it, but she did testify that she had said it before.

MR. SCALES: Okay.

BY MR. SCALES:

Q. You didn't testify to that previously in the first trial, did you?

A. Would you like to know what happened at the first trial?

Q. My question is you did not testify to that at the first trial did you?

A. I was under duress at the time and no, I did not.

Q. So, what you're saying then is yesterday was the first time that you've made that statement; is that correct?

A. In court?

Q. Yes.

A. I don't really recall --

Q. Were you under duress --

A. -- everything I testified to --

Q. Sorry.

A. -- at the first trial my favorite sister had passed away less than two months before the first trial, I barely remember sitting here.

Q. Okay. But, you were not under duress when you met with the investigators, with the police officer on those several six or seven occasions; is that correct?

A. How do you figure I wouldn't be --

Q. I guess what I'm asking, Ms. Rose -- well, let me -- let me get this straight, you're saying two months prior to the trial your sister passed away and you were under duress two months later; correct?

A. Yes.

Q. Okay. Now, you met with the investigators some time before, some time before

your sister passed away?

A. Yes.

Q. And my question is you were not under duress at that time were you?

A. I was when Leo shot Jack.

Q. My question was you were you not under duress at that time?

A. That is not correct, I answered --

Q. Okay.

A. -- your question, sir.

Q. So, is it your testimony that the duress when Leo shot Jack that caused you to not remember to tell the police this very important information?

A. You know, I don't remember everything I even said to the investigators the first day that they came when I found out that Leo had shot Jack.

MR. SCALES: Your Honor, I'm going to object it's non-responsive, it's a "Yes" or "No" question.

MR. CAMPBELL: I --

THE WITNESS: I don't get it it's "Yes" or "No". I'm sorry, sir.

THE COURT: Okay. All right.

THE WITNESS: I don't get it.

THE COURT: Let's just start over. Ask your question again.

And then, ma'am, just try and answer the question that he --

MR. SCALES: Okay.

THE COURT: -- asks right at the minute.

BY MR. SCALES:

Q. I'll move on and I'll come back to that, Ms. Carlson.

A. Rose.

Q. I'm sorry, Ms. -- Thank you. I'm sorry.

A. You're welcome.

Q. You get a lot of names in these courtrooms and it's easy to forget. My apologies. You testified yesterday, and correct me if I'm wrong I don't mean to put words in your mouth, "I can't count how many guns he had."; is that correct?

A. That's correct.

Q. Do you recall testifying in the first trial that Mr. Sandoval when you were asked how many guns he owned or what types of guns he owned

you had testified that, and I quote, "He had some Army rifles and he had shotgun." Page 151.

A. Yes.

Q. And do you remember telling Detective Rylander -- do you remember Detective Rylander?

A. Yes, sir, he's --

Q. Is he the gentleman --

A. -- sitting right there.

Q. Okay. So, you recall talking with him?

A. Yes.

Q. Okay. Do you remember telling him that Mr. Sandoval had two Vietnam sniper rifles, an old rifle and a shotgun?

A. Yes.

Q. Okay. So, when you say yesterday "I can't count how many guns he had." is that because you can't remember --

A. Well, actually there's more guns than that. He also had a 357 pistol, he also had my .22 that I didn't know he had. So, I guess I really can't count all of his guns can I?

Q. So, are you saying that you did not give an accurate statement to Detective Rylander when you talked with him?

A. I did it to the best of my knowledge at the time.

Q. Okay. And in the trial several months later you still testified to the same, some old rifles and a shotgun; is that correct?

A. Is that what it says there, sir?

Q. Is that correct?

A. I don't recall.

Q. Let's talk a little bit about the pistol, is that a .22 pistol or is it --

A. It's a .22.

Q. It's a .22? Okay. Thank you for clarifying that for me. And you testified in the first trial -- or, actually, you testified yesterday, "He told me he didn't want me to fire it." because it was in bad shape and might blow up in your face; is that correct?

A. Somewhat, what he said to me was it had a bad firing pin in it, it's in really bad shape, if you shoot it it will blow up in your face.

Q. Okay. And you're pretty familiar with guns; correct?

A. Not really.

Q. Familiar enough to have your own

reloading equipment and a number of guns of your own?

A. It wasn't my reloading equipment, it was my husband's that passed away.

Q. Okay.

A. Leo had to teach me how to clean a gun because I really didn't even know how to clean a gun.

Q. Okay. So, did that -- did that seem strange to you if this gun was possibly going to malfunction that he didn't want you to fire it?

A. Ask that again, please?

Q. Did that seem strange to you that he didn't want you to fire a gun that might blow up in your face?

A. No.

Q. Okay.

A. Not at all.

Q. And you testified yesterday that -- I believe you went in to some detail that he told you that he took the gun and buried parts in different places on the property so nobody would find it?

A. The following week when it was my days off I asked him what happened to that .22

because i didn't see it anymore. And he told me at that time that he had taken it apart, he disassembled it and he buried it in different parts around the property because since it was a bad gun he didn't want anybody to be hurt with it so he buried it in the earth. And I thought that was the truth.

Q. You previously testified that he told you he was going to destroy the gun and he told you he destroyed the gun; is that correct? And I'm referring back to the first trial.

A. Yes, he told me he was going to destroy it and he did.

Q. You didn't testify that -- you didn't go in to the same detail that you went in to yesterday that he had disassembled the gun and buried it in the property?

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

Q. You didn't? Okay. So, what we heard yesterday we heard for the first time; is that correct?

A. Yes, sir.

Q. In all the times that you talked with the law enforcement officers did you ever mention any of the bad driving, the tailgating, the

driving up next to the side of Mr. Whitcraft's vehicle, did you ever mention any of that to the police?

A. Yes.

Q. So -- okay. I'll -- we'll ask the police about that. You testified today that the -- the rifle, which I'm not going to bring up here, I know that --

A. Thank you.

Q. -- you don't want that. You testified that Leo asked you to buy that gun; is that correct?

A. Yes, sir, it is.

Q. Do you remember talking to, once again, Detective Rylander and telling him that when you came to the relationship you also brought some weapons?

A. I had one gun.

Q. My question is do you remember telling him that you had brought weapons to the relationship?

A. I don't recall.

Q. Do you remember telling Detective Rylander that you had a .38 caliber Smith and Wesson revolver; a .357 caliber Smith and Wesson

revolver; a .357 caliber Ruger pistol; a .22 caliber rifle; a .45, I'm going to mispronounce this --

A. .45-70.

Q. .45-70 Springfield rifle; and the 7mm Mauser that Sandoval had on the day of the shooting?

A. Can you say those guns again because I think one -- there's two of them that don't -- don't jive.

Q. Okay.

A. The .45-70 was actually a present to Leo on his 50th birthday.

Q. I'll --

A. That's what he wanted for his birthday and the --

MR. SCALES: I'm going to object, Your Honor, --

THE WITNESS: -- Smith and Wesson .357 --

THE COURT: Hold on just a minute, ma'am.

MR. CAMPBELL: Let her -- Judge, I object to him interrupting her answering the question.

MR. SCALES: Well, the question -- she first asked me to read the guns back to her and my question was did you tell Detective Rylander that

these were the guns you brought to the marriage? If she'd like to answer the first question before getting to the second part of the answer --

MR. CAMPBELL: He asked her a question and she was answering.

MR. SCALES: -- that I have no problem with. If I may finish, Your Honor?

THE WITNESS: Well, actually all those guns are in my name.

THE COURT: Hold on just a minute, let me straighten this out first.

Mr. Scales, I don't want the jury to be confused with what's --

MR. SCALES: Right.

THE COURT: -- going on. Please start over with your question.

MR. SCALES: I will do so. Thank you, Your Honor.

BY MR. SCALES:

Q. And I'm sorry for the confusion, Ms. Rose. Would you like me to read those guns off first, would that help? Okay. A .38 caliber Smith and Wesson revolver; a .357 caliber Smith and Wesson revolver; a .357 caliber Ruger pistol;

a .22 caliber rifle; a .45-70 --

A. It's .45-70.

Q. Thank you. .42-70 Springfield rifle; --

A. Yes.

Q. -- and the 7mm Mauser that Mr. Sandoval had on the day of the shooting. My question was did you tell Detective Rylander that you had brought these guns to the relationship?

A. I might have.

Q. And are you saying today that that was an inaccurate statement?

A. Those are the guns. I don't know if I said that to the detective or not.

Q. Let's talk about the 7mm Mauser.

A. That has been how many years ago now?

Q. Let's talk about the 7mm Mauser, you testified very clearly today that Leo had asked you to buy the gun because he couldn't buy it because he had the restraining order against him; correct?

A. Yes.

Q. Did you ever tell law enforcement or previously testify that you purchased that 7mm Mauser for Leo at the pawn shop?

A. Have I ever told a detective this?
Q. Have you ever told anybody prior to coming in and saying that today?
A. Oh, yeah.
Q. You have?
A. Yes.
Q. And who was that?
A. I've told the detectives, our friends when he showed the gun to our friends.
Q. Which detective was that, ma'am?
A. I don't know which one it was.
Q. Okay.
A. It was probably Detective Rylander.
Q. Probably Detective Rylander. And we'll have an opportunity to ask him about that. Now, you said that Mr. Sandoval had made this statement numerous times that he was going to kill Jack in self defense?
A. Yes.
Q. Okay. He's going kill Jack on self defense. Did you also testify today that "They're going to pull a gun on me and I'm going to kill them in self defense."?
A. This was another statement he did make.

Q. Okay. So, he prefaced that by saying, "They're going to pull a gun on me and I'm going to kill them in self defense."?
A. Yes.
Q. Okay.
A. And get away with it.
Q. You were asked, Ms. Rose, whether Mr. Sandoval expressed any concern for his safety from Mr. Whitcraft; is that correct?
A. State that again?
Q. Did he ever say he was scared of Mr. Whitcraft?
A. No.
Q. Okay. Who was he scared of?
A. He was scared of Mary.
Q. Scared of Mary? Okay. Did you ever have any difficulties with Mr. Whitcraft and Ms. Carlson?
A. Yes, I have.
MR. CAMPBELL: Objection, irrelevant.
MR. SCALES: Well, the --
THE COURT: Mr. Scales?
MR. SCALES: -- relationship, Your Honor, of these people has been out here for everybody to examine and I think it is relevant. You've got

all of the relationships out here, we've got the relationship between Mr. Sandoval/Ms. Carlson, Mr. Sandoval/Mr. Whitcraft, there was testimony yesterday from Ms. Carlson that Ms. Rose was involved in some of the bird flipping and was there when some of the tailgating incidents happened. So, I think it's very relevant to explore the entire relationship between these four persons.
MR. CAMPBELL: Judge, we've got to play by the same rules, he's been objecting to me having other people talk about their problems with the defendant.
THE COURT: I think that goes outside of the scope here, Mr. Scales.
MR. SCALES: That's fine, Your Honor.

BY MR. SCALES:
Q. Did you ever observe any harassment on the part of Mr. Whitcraft or Ms. Carlson to Mr. Sandoval?
A. Yes.
Q. And can you elaborate on that a little bit?
A. Cussing each other out, flipping each

other off.
Q. And who was doing that, from what you observed?
A. Both parties.
Q. Both parties? So, this -- this behavior -- this bad behavior is going on from both sides, wasn't it?
A. Yes, sir.
Q. Okay. What about bad driving on the part of Mr. Whitcraft or Ms. Carlson, did you ever observe any of that?
A. No.
Q. You didn't? Okay.
A. Except for Jack getting over in to the oncoming traffic that one time was the only time I ever saw him do something that was really against the driving rules.
Q. And when he pulled in to the oncoming traffic he did the same thing, cussed and flipped the bird, at Mr. Sandoval; is that correct?
A. Mr. Sandoval accelerated and got side-by-side and started flipping Jack off and Jack was flipping him off and --
Q. I see.
A. -- I was trying to get Leo to stop.

Q. You testified today that two weeks prior to the shooting that you noticed he was a -- he was like a -- like he was a different person?

A. Yes.

Q. You said he was very nervous?

A. Yes.

Q. Very agitated; is that correct?

A. Yes.

Q. And you never told any detective that two weeks prior to the shooting he seemed nervous or agitated?

A. I don't know if I have --

MR. CAMPBELL: Objection, irrelevant.

MR. SCALES: It's very relevant, Your Honor. She has made a statement today that we're hearing for the first time.

THE COURT: The objection is overruled. You -- I believe she's already answered.

MR. SCALES: With respect to other things, but not with respect to what I just mentioned.

THE COURT: No, I mean, I think she answered your question.

MR. SCALES: Could I ask the question again? I didn't --

THE COURT: Okay. Go ahead.

MR. SCALES: -- hear. I'm sorry.

BY MR. SCALES:

Q. You have not previously told any detective, nor have you previously testified that two weeks prior to the incident that Mr. Sandoval was agitated, nervous and like he was a different person; correct?

A. That is not a correct statement.

Q. So, who did you tell, Ms. Carlson -- or, Ms. -- I'm sorry. Ms. Rose.

A. Mary, Janice, Mary, Janice. I don't know if it was something I said to the District Attorney or something that I spoke with Detective Rylander. But, yes, I did.

Q. Something that you said recently?

A. Actually, I think it was a little bit longer than two weeks, to tell you the truth.

Q. My question is it was something that you said just recently to the investigators?

A. No.

Q. Okay. So, you're telling us that when you testified to this yesterday for the first time that you had actually told somebody before

about it; is that correct?

A. Yes.

Q. Or do you remember? Do you remember?

A. Do I have to answer that?

MR. CAMPBELL: Well, I object because the question has been answered, she did answer it "Yes".

THE COURT: She did answer "Yes".

MR. CAMPBELL: She had told someone else.

MR. SCALES: Okay. I'll withdraw that last question.

BY MR. SCALES:

Q. The bucket on the fencepost --

MR. SCALES: If I could, Your Honor?

THE COURT: I believe it's on the jury table.

MR. SCALES: Oh, thank you.

BY MR. SCALES:

Q. Just to refresh your memory. The bucket on the fencepost, where was that at on the property? I'll show you this, ma'am.

A. You can see it so much better from that picture, you can see where the --

Q. I --

A. -- trailer house right to where the fence line is.

Q. Can you help me on this property so the jury can get an idea of where in relation to the property --

A. Sure, I can.

Q. -- the bucket was?

A. You come in the property -- pardon me, right here, the back of the mobile home is at this direction, the front of the mobile home is at this direction, the satellite dish is in front of the mobile home, the bucket on the fence is right down in here.

THE COURT: Can we make sure all the jurors over on the side can also see where she was pointing?

MR. SCALES: Does everyone see where she was pointing?

A JUROR: No, I didn't.

MR. SCALES: I'm sorry.

BY MR. SCALES:

Q. Could you point that out one more time.

THE COURT: Do you have a pointer?

MR. CAMPBELL: Your Honor, for the record, Defense Counsel is showing State's 101 to the witness.

THE COURT: All right. And we --

MR. SCALES: Thank you.

THE COURT: -- have a pointer here.

THE CLERK: Mr. Scales.

THE COURT: Might be helpful.

THE WITNESS: When you come in the property this way the back of the mobile home is here, there's a circular drive in the front, the front of the mobile home is facing towards the river, there's a fence line here and the bucket sits right in there.

BY MR. SCALES:

Q. I see. Thank you. Is it fair to say the bucket's on the back side of the property?

A. I guess it depends on what you think the back side is, is it the road to north/south? I don't know. Are you asking is it on the fence line? Yes.

Q. And you actually -- you shot at that bucket as well; right?

A. Yes.

Q. Okay. And it was down a little bit lower in a ravine; is that correct?

A. Yes.

Q. Okay. So, you didn't think it was a big deal to be shooting down -- downward trajectory towards the bucket --

A. No.

Q. -- is that correct?

A. Not at the time.

Q. Good. You also testified that you didn't know him to hunt and didn't -- he didn't plan on hunting; is that correct?

A. Yes.

Q. And were you aware that he had a hunting license at the time?

A. No.

Q. Hadn't told you?

A. Hadn't told me.

Q. Okay. Let's fast forward to the date of the incident, September 27th, 2001. You testified that you were coming home and you saw two sheriff's cars bouncing by?

A. Yes, with their sirens at a high rate of speed.

Q. High rate of speed. Have you testified to that before?

A. Yes, I believe so.

Q. Was it anywhere in your prior testimony? We can replay your testimony if you'd like?

MR. SCALES: Your Honor, once again I'm trying point out -- can we have a sidebar, please?

THE COURT: Okay.

(Sidebar - Not Transcribed)

BY MR. SCALES:

Q. Just a few more questions, Ms. Rose. You said that you had a conversation with Mr. Sandoval that he wanted you -- I think you characterize as "clean up this mess". Isn't it true that you had power of attorney for Mr. Sandoval and he was asking you to take care of some of his legal matters?

A. Yes, I did.

Q. Thank you. And you remember actually seeing -- you talked about him repeatedly asking you to remember Tyrone, Tyrone, remember Tyrone. Isn't it true that approximately three days before

the shooting you were with Mr. Sandoval and saw him talking with Mr. Montgomery, Tyrone, at the Robertson Bridge area?

A. Yes, at the boat landing.

Q. Thank you. And in this letter which has been put in evidence, I believe it's been marked as State's Exhibit 95, Mr. Sandoval is very upset with you over things that you said in the statements; correct?

A. Yes.

Q. Okay. And he threatened legal action against you; is that correct?

A. Yes.

Q. Okay.

MR. SCALES: Your Honor, that's all I have at this time.

THE COURT: All right.

Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Ms. Rose, I'll be brief. The first trial that you've been talking about, that happened in October of 2002?

A. The first trial was, yes, in October

2002.

Q. So, about a year after the killing and about seven years -- not quite seven years ago; right?

A. Yes.

Q. When you -- when you gave statements to the police officers did you have any control over what they wrote down of your statement?

A. No, sir, I did not.

Q. Did they let you proofread their report to have you tell them whether they got everything you said in it?

A. No.

Q. Did you control in the first trial what questions the attorneys asked you?

A. No, I did not.

Q. Okay. And have you been asked different things this time around?

A. Yes

Q. Okay. And you indicated that you had been -- your life was in trauma because of a death in the family around the time of the first trial?

A. My favorite sister.

Q. Okay. Just one other point, I'm going to go back to the transcript. The Defense

Counsel has asked you about the State's Exhibit 70, which is the rifle that we --

A. Why do you get a transcript of the last trial and I don't.

Q. I ask the questions, you answer them, okay?

A. I'll try.

Q. I'm not -- I'm not --

A. But, I don't think that's fair.

Q. You mean to have up in front of you?

A. Yes.

Q. Well, I'm going to talk about that gun, which is State's Exhibit 70. Did you testify as follows, the question was -- after you had identified State's Exhibit 70 the question was: "Do you know whether Mr. Sandoval was in possession of this gun at some time?" you said, "Yes, he was." And the next question, "How did he come in to possession of it?" And your answer, "He picked it up out of the pawn shop and I went down and bought it. He picked it out at the pawn shop and I went down and bought it. He said it was a beautiful gun and he wanted it." is that what --

A. Yes.

Q. -- you said?

A. Yes.

Q. Okay.

MR. CAMPBELL: That's all --

THE WITNESS: He really enjoyed guns.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

RECROSS EXAMINATION

BY MR. SCALES:

Q. But, you did tell the police early on that you brought it to the marriage, you brought the gun to the marriage; correct?

A. There was no marriage.

Q. I'm sorry, to the relationship.

A. Well, yes, I did bring it to the relationship, but --

Q. Thank you.

A. -- not at the time --

Q. Thank you.

A. -- that we got together.

MR. SCALES: Your Honor, I have a couple other questions that might exceed the scope of the redirect. I'd ask for a little bit of leeway. Questions that I probably should have asked on my

initial cross.

THE COURT: Mr. Campbell?

MR. CAMPBELL: He -- I don't object to that.

THE COURT: All right.

MR. SCALES: Thank you.

THE COURT: Go ahead.

BY MR. SCALES:

Q. Getting back to one of the questions you were just asked, you were asked if you were allowed to freely answer these questions and you had no control over the questions that were asked by the investigators; is that --

A. Yes.

Q. -- correct? Okay. But, you were given a chance to respond to what you felt was relevant to the investigation; is that correct?

A. What was relevant? What I remembered?

Q. Mm hm.

A. At the time.

Q. So, nobody was keeping you from volunteering information, you were allowed to say whatever you knew; is that correct?

A. I guess.

Q. Okay. You testified that you felt that Mr. Sandoval was a very violent man; is that correct?

A. Yes.

Q. Do you remember telling Detective Rylander that Mr. Sandoval was good to you and that he had not beat or fought with you, nor did he raise a hand to you?

A. That's the way it was at the first of our relationship.

Q. Okay. Do you remember telling Detective Rylander that Mr. Sandoval had not previously asked you to lie or conceal evidence or do anything unusual regarding the shooting incident?

A. No, I don't recall saying that.

Q. You don't recall that? Okay. I'm probably going to need my memory refreshed, you were asked what Mr. Sandoval told you as to why he would carry guns, can you refresh my memory what did you testify to? Was it --

A. He said he wanted it for protection and for defense.

Q. Do you remember telling Detective

Torres, I believe he was the first detective that spoke with you, that Mr. Sandoval would usually carry a rifle or handgun, you couldn't tell him why but thought he carried it just in case it was needed?

A. I might have said it.

Q. Okay. You also testified at length about Mr. Sandoval's anger toward Mr. Whitcraft and I believe you testified early yesterday that he hated them, "I hate those people." is that --

A. Yes.

Q. Is that accurate?

A. Yes, it was.

Q. I'm sorry, I'm putting two different statements together there. Once again, Detective Torres, did you tell Detective Torres that you did not know how Sandoval felt about Whitcraft saying that he hasn't said anything about Whitcraft?

A. I don't remember that.

Q. You don't remember that? Okay. Could you have said that?

A. I probably could have said the cow jumped over the moon, if I don't remember I don't remember.

Q. Fair enough.

A. They woke me up out of a sound sleep. I'd only been sleeping a short time.

Q. Do you remember telling Detective Torres that there was no reason why Leonard Sandoval would have to kill Whitcraft?

A. I don't remember saying that.

Q. Do you remember --

A. I remember saying that Leo was Mary's ex.

MR. SCALES: I'm going to object, Your Honor, that the question is do you remember telling Detective Torres, because we're going to get in to that later.

THE WITNESS: I don't remember.

BY MR. SCALES:

Q. Okay. You didn't tell him repeatedly that Mr. Sandoval had no reason to kill Mr. Whitcraft?

A. I think I answered that, I don't remember.

Q. No, my question was you didn't tell him repeatedly?

A. I don't remember.

Q. Thank you, Ms. Rose.

MR. SCALES: Nothing further at this time, Your Honor.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Ms. Rose, were -- you've already touched on this in your testimony, were you protecting the defendant early in the investigation?

A. Yes, I was.

Q. And were you more forthcoming after you had a break with the defendant?

A. Yes.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

RECROSS EXAMINATION

BY MR. SCALES:

Q. Did that break also include finding another boyfriend?

MR. CAMPBELL: Objection.

THE COURT: Sustained. Anything else, Mr. Scales?

MR. SCALES: Nothing further, Your Honor.

THE COURT: Mr. Campbell?

MR. CAMPBELL: No.

THE COURT: All right. You may step down, ma'am.

THE WITNESS: Thank you.

MR. SCALES: Your Honor, before the witness is excused, I do anticipate calling Ms. Rose back in our case in chief. I would ask that she be advised that she does need to be available and we will try to give her as much notice as possible, at least a day in advance. So, if she could leave a phone number or contact information or if we could get that from the District Attorney?

THE COURT: All right.

MR. SCALES: But, we will need her probably Tuesday next week or Wednesday.

THE COURT: All right.

Mr. Campbell, you have the contact information?

MR. CAMPBELL: I do, Judge.

THE COURT: All right.

Ma'am, what this means is that you're dismissed from today, you don't need to stay any longer during the course of this trial. But, you

are not excused from being called back. So, you may be called back.

THE WITNESS: All right.

THE COURT: Okay. So, we'll contact -- someone will contact you if you're needed further in this matter.

THE WITNESS: Okay.

THE COURT: And then also you do recall that witnesses are excluded, so you can not discuss your testimony with anyone.

THE WITNESS: Yes.

THE COURT: All right. All right. Thank you.

And then, Mr. Campbell, you can go ahead and call your next witness.

MR. SCALES: Thank you.

MR. CAMPBELL: Judge, the State will call Robin Garten.

THE COURT: Okay.

MR. CAMPBELL: Come in and go right through counsel tables and raise your right hand.

THE COURT: Please step right up here, ma'am, and raise your right hand so my clerk can swear you in.

THE CLERK: Do you swear the testimony

you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. You need to walk around the table, up the steps and have a seat behind the microphone.

***

ROBIN SUE GARTEN,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last, please?

A. Robin Sue Garten, G-a-r-t-e-n.

Q. Okay. And, Ms. Garten, do you recognize or do you know the man seated at this counsel table next to me?

A. Yeah, I lived with him for a few years.

Q. And do you know him by what name?

A. Leo.

Q. Leo Sandoval?

A. (No audible response)

Q. Okay. And --

THE COURT: Would you answer out loud, ma'am?

THE WITNESS: Oh, I'm sorry.

THE COURT: Make sure your answer comes out out loud.

THE WITNESS: Sorry about that.

THE COURT: All right. Your answer was?

THE WITNESS: Yes, Your Honor.

BY MR. CAMPBELL:

Q. Yes. Okay. And when did you have a relationship with him?

A. It was just as his divorce was becoming final and we met, I was working at a restaurant in town and we met there.

Q. And in which town?

A. In Merlin. In Merlin.

Q. In Merlin?

A. Mm hm.

Q. Okay. And when you -- did you become aware of who Mary Carlson was when you got to know

the defendant?

A. Yes.

Q. And who did you understand she was?

A. His ex-wife.

Q. And did the defendant talk about her and her new husband?

A. Yeah, constantly.

Q. Okay.

A. He always had something bad to say about them.

Q. And when you were with the defendant where did you live?

A. We lived in Merlin on -- he had a house on five acres of land by the river, I can't remember the name of the street anymore.

Q. Was it out across Robertson Bridge out there?

A. Yes. Yes. Yes.

Q. Okay. Let me show you a map that's already been entered as 102, and exhibit, do you remember the street Cliffside? Is this property you're talking about --

A. Yeah.

Q. -- out here?

A. Mm hm.

Q. 180 Cliffside?

A. Yes.

Q. Does that address ring with you now?

A. Yeah.

Q. And did you have mail that you got out in that area or did you --

A. I usually sent my mail to my mom's house.

Q. Okay. And so how long were you with the defendant?

A. A couple of years.

Q. Okay. And as you spent time with him you've indicated that he talked about Mary Carlson and Jack Whitcraft?

A. Yes.

Q. Did he ever make threats against them?

A. Yes, constantly.

Q. And before I go in to that what -- did he have firearms while you were with him?

A. Yes.

Q. Was he --

A. He had firearms.

Q. Was he active with his firearms?

A. Yeah, he used to blow TV's up, shoot

TV's and stuff like that on the property.

Q. And did -- did you know him to carry firearms?

A. Not in his vehicle, not usually.

Q. He wasn't at that time?

A. Not that I know of.

Q. Okay.

A. He did have firearms in his house though.

Q. How many -- what kind of vehicles did he have at the time?

A. He had a Camaro, some kind of a Jeep truck type vehicle and a little car that I don't remember the name of it.

Q. Did -- did you -- did you have water at the house at 180 Cliffside?

A. We had to go and get water from the fire house.

Q. And did you have a vehicle to haul that in?

A. Yeah, he hauled it with his Jeep that -- I think it was Jeep.

Q. Okay.

A. It was blue and beige, I remember that.

Q. Was it a pickup type thing?

A. Yeah.

Q. Okay. And you'd go to the fire house in Grants Pass?

A. In Grants Pass, yeah.

Q. Describe for the jury the defendant's feelings that he expressed toward Jack Whitcraft and Mary Carlson?

A. He had a phrase that he used to always use that he was going to go and "Rambo out on them". One time she was hiding up in the mountains somewhere and he mentioned that and other times too, which meant that he was going to go up there, where she was, cause harm to her or kill them both. He was going to kill them.

Q. Is that what "Ramboing them out" meant?

A. That's what that meant, yes.

Q. Did he ever define "Ramboing out" --

A. Yes.

Q. -- to you?

A. Oh, yes.

Q. Okay.

A. He was going to go up there and just make a blood bath out of it and kill them.

Q. And did he express why he was going to do that?

A. He hated her, he -- he just hated both of them, he hated them.

Q. Were you ever with the defendant when he engaged in threatening behavior toward them or he made -- there was behavior directed toward those two?

A. There was a few times where we'd go to the little store there in Merlin, and I guess she liyed somewhere close by, and he would -- if he saw her he'd pull around and stop real quick, you know, and try to intimidate her. And he'd drive by where she lived a lot just to intimidate her.

Q. What would he do when he drove by?

A. Oh, just drove by slow, make sure that he could catch eyes with her, or -- you know, anywhere she was at. And he would come back and a lot of times when I wasn't with him and tell me about him driving by where she lived.

Q. Okay. And when he was recounting this how would he describe it?

A. Just vicious, mean, just he wanted to frighten her, he wanted to tear her up more than

he already had, he wanted to tear her up.

Q. How about with regard to Mr. Whitcraft?

A. He just -- he hated the man I think because she was not his wife anymore and with someone else and he just hated him.

MR. SCALES: I'm going to object, she's speculating.

THE COURT: Sustained as to the --

THE WITNESS: I don't --

THE COURT: -- speculation.

THE WITNESS: -- understand what that means.

THE COURT: That's fine. Mr. Campbell will ask another question.

THE WITNESS: All right.

BY MR. CAMPBELL:

Q. Did you -- okay. You described him intentionally going by intimidated the house. Was there any other incidents out on the road --

A. Yeah.

Q. -- that -- okay. I want you to talk about those, what did you see?

A. That mostly happened when we were

going through town or coming back in. There's a little store there called the Lil Pantry. Anytime he -- a few times he saw her walking toward the Lil Pantry and he'd swing off the road, off the two-lane road and swing in to the parking lot in order to make sure she saw him.

Q. Would he do anything other than that, did he --

A. He never spoke to her.

Q. -- make gestures or speak or --

A. Just -- he never said -- he looked at her real hard and he pointed at her, other than that --

Q. Did you ever attempt to intervene or get him to try to change this behavior?

A. No, I didn't because I thought he was -- I didn't think he was serious about really hurting her. But, he did talk about it a lot.

Q. This "Ramboing out" that he was going to go "Rambo them out and kill them all, there'd be a blood bath" was that more than one conversation or --

A. Yeah, he was say -- he said it so often that I just didn't pay much attention a lot times when he said it because I -- he said it all

the time.

Q. Would he be under the influence --

A. No.

Q. -- when he said it or?

A. No.

Q. And do you recall when it was that you broke up with him?

A. It wasn't very long before he killed Mary's husband. It wasn't long before that. A few months, maybe.

Q. And you moved from the Cliffside residence to where when you left?

A. Back to my mother's and then to Gold Hill after that.

MR. CAMPBELL: That's all I have right now, Judge.

THE COURT: Mr. Scales?

CROSS EXAMINATION

BY MR. SCALES:

Q. Ms. Garten, you said that he talked about "Ramboing out" all the time?

A. Yeah.

Q. Correct?

A. When he got angry, yeah.

Q. I'd like to read your testimony from the prior trial. We have -- we have a transcript.

A. Yeah.

Q. If I may?

A. That's fine.

Q. And I'm looking at Page 182, Line 2. You were asked, "And in what manner or fashion would Mr. Sandoval speak of them?" and your testified, "Well, there was one time he talked about going up the river. She was hiding and Ramboing out on all of them."?

A. Yeah, that time stuck out in my head.

Q. Okay.

A. Specifically.

Q. So, is it just one time or many times?

A. It was many times.

Q. Okay. In the prior trial it was once?

A. Well, I was frightened.

Q. And this statement was when you and Mr. Sandoval had gotten together shortly after his breakup with Ms. Carlson; is that correct?

A. His wife?

Q. Yeah, Mary.

A. Yeah.

Q. Okay.

A. It was right at the end of the divorce

Q. Right at the end of the divorce. So, the divorce was not yet final?

A. That's true.

Q. He was still pretty upset about the divorce?

A. Yeah, he --

Q. Okay.

A. -- was always upset about it.

Q. From what you observed. Okay. And just so I'm clear, you said that he used to drive by her house and look at her; is that correct?

A. Yeah, he'd drive by her house slowly.

Q. Okay. And look at her?

A. Yes.

Q. Okay.

MR. SCALES: That's all I have. Thank you.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Ms. Garten, so, you said he was always upset about the divorce, did that mean all the way through the relationship you meant?

A. Yes.

Q. Okay.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Nothing further.

THE COURT: All right. Are you asking that this witness be excused?

MR. CAMPBELL: Ask that this witness be excused, Judge.

THE COURT: Do you have any objection?

MR. SCALES: No objection. No.

THE COURT: All right. You are excused. Thank you for coming in.

Mr. Campbell, another witness?

MR. CAMPBELL: Could I ask a couple more questions of this witness?

THE COURT: Oh, of this witness?

MR. CAMPBELL: Yes.

THE COURT: All right.

Ma'am, you're no longer excused. Get back on board.

REDIRECT EXAMINATION (CONT.)

BY MR. CAMPBELL:

Q. Two things I forgot to ask you, did the defendant hunt deer when you were with him?

A. No.

Q. Okay. He's a veteran so he has a veteran's license anytime he wants; right?

A. To go fishing.

Q. Yeah.

A. That's the only one I knew about.

Q. And did he ever state an intent to hunt, hunt deer?

A. No.

Q. Okay. Do you recall telling Rylander that "He always kept weapons in his vehicle."? Because I know you said something different today, but then you --

A. Right, he always had weapons, but he didn't always have them in his vehicle.

Q. And do you have an opinion about his character for peacefulness or violence?

A. He's abusive. He's an abusive person. He verbally abused me and I know he physically and verbally abused --

MR. SCALES: Your Honor, I'm going to --

THE WITNESS: -- his wife.
MR. SCALES: -- object.
THE COURT: Mr. Campbell?
MR. CAMPBELL: Well, I didn't hear the rest of --
THE WITNESS: Am I saying it wrong?
MR. CAMPBELL: -- the answer. If she's --
THE COURT: Well --
MR. SCALES: Can we -- can we approach, Your Honor?
THE COURT: Okay.
THE WITNESS: I don't know.
THE COURT: I'm speaking to the alternate. Would you please remove your headsets when the attorneys come over here? Or you can turn it off if that's easier for you. Thank you, sir. You can turn it back on later.

(Sidebar - Not Transcribed)

MR. SCALES: I'll withdraw the objection at this point in time, Your Honor.
THE COURT: All right. Mr. Campbell, please reask your question.

MR. CAMPBELL: Okay.

BY MR. CAMPBELL:
Q. Ms. Garten, before I let you finish that answer I want -- we spoke outside of the courtroom about a court ruling; right? And you understood what I told you out there?
A. Not to speak with anyone?
Q. Well, no. Don't say it out loud. Okay. Do you know what I'm talking about right now?
A. I'm not positive.
Q. Okay.
MR. CAMPBELL: May I speak to her right over here?
THE COURT: Yes, you may.
Would you step down and have just a brief conference with the District Attorney?
And, sir -- okay.

(Brief Pause while Counsel confers with the witness.)

BY MR. CAMPBELL:
Q. So, the question again was do you

have an opinion about the defendant's character for peacefulness or violence?
A. He was violent.
Q. Okay.
MR. CAMPBELL: That's all I have, Judge.
THE COURT: Mr. Scales?
MR. SCALES: Nothing further, Your Honor.
THE COURT: All right. Now, again, are you asking that she be excused?
MR. CAMPBELL: Yes, Your Honor.
THE COURT: Any objection?
MR. SCALES: No objection, Your Honor.
THE COURT: You are excused.
You may call your next witness, Mr. Campbell.
MR. CAMPBELL: The state would call Debbie Garten -- or, I'm sorry. Debbie Carter.
THE COURT: Okay.
THE COURT: Please step forward, ma'am, raise your right hand and my clerk will swear you in.
THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.
THE CLERK: Thank you. Please walk around the table, up the steps and have a seat behind the microphone.

***

DEBBIE LYNN CARTER,
called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:
Q. Would you state your full name and spell your last, please?
A. Debbie Lynn Carter, C-a-r-t-e-r.
Q. And, ma'am, how are you employed?
A. I'm a realtor.
Q. And were you a realtor back in 2001?
A. Yes.
Q. And what realty company, if any, are you associated with?
A. Now with Coldwell Banker and at the time Lewis Realty.
Q. Lewis Realty? And on September 27th

of 2001 did you have occasion to be out in the area of Hussey Lane, Picket Creek Road?

A. Yes.

Q. And can you tell us what took you out to that area?

A. I was showing property to a gentleman.

Q. Okay. And what kind of a vehicle did you go out there in?

A. I had a white Chevy Blazer at the time.

Q. Okay. And where was the property that you were going to?

A. It was a property that was off of Steelhead.

Q. Okay. So, how did you approach that area, that -- that -- do you remember what -- when it was or what time of the day it was?

A. It was morning time.

Q. Morning time?

A. Mm hm.

Q. Okay. And do you recall the route? Did you come across Robertson Bridge?

A. I believe I came across Robertson Bridge, took a right on Picket Creek, right on

Hussey and a left on Steelhead.

Q. Okay. And who was -- do you recall the name of the client that you had with you?

A. Brian Markl.

Q. And how had you come in contact with him?

A. He had came -- came into Lewis Realty I believe the day before, we had looked up some listings, we met the next morning to go out and look at them.

Q. Okay. And the property on Steelhead, we have an exhibit that's in evidence already, State's Exhibit 102, which shows Picket Creek, did you turn here on Hussey Lane?

A. Yes.

Q. And then on to Steelhead Drive?

A. Yes. Mm hm.

Q. And do you recall how far down the property was that you were looking at on Steelhead?

A. I do not recall now, sorry.

Q. Was it in the area of Paradise Gardens?

A. It may have been, I'm sorry, I'm not sure exactly which property it was now.

Q. All right. When you -- on your way down you came up Picket Creek and turned right on Hussey?

A. Yes.

Q. When you were in this location was there anything in this roadway between Hussey and 770 Picket Creek Road?

A. No.

Q. It was clear?

A. Yes.

Q. No vehicles stopped?

A. No.

Q. And you turned and went down Hussey and did you then take a left on Steelhead Drive?

A. Yes.

Q. And are you driving the vehicle?

A. Yes.

Q. Okay. Now, talk about how you drove down there in terms of speed and so forth?

A. When we were on Hussey Lane I was explaining a little bit about the area and allowing the gentleman to look at just, you know, what the area was. So, I wasn't speeding down the road, I was probably going about 10 miles an hour or so and turned on to Steelhead. We were just

looking at things as we went there to see if that was an area that he might want to live in.

Q. And were you proceeding likewise slow on Steelhead?

A. Yes.

Q. And did any vehicles come by you when you came down Hussey or you operated on Steelhead Drive?

A. No.

Q. And how long were you at this piece of property?

A. Just a few minutes. We actually were not getting out of our vehicle, we just pulled in to the driveway, he was just looking for a piece of property to eventually build on. So, we pulled in to the driveway, looked around for just a few minutes, I backed back out and came down back towards Hussey Lane then off of Steelhead.

Q. Okay. And did -- you came exact -- you retraced the same path that you went down on?

A. Yes.

Q. See any vehicles --

A. No.

Q. -- that time?

A. No.

Q. Traveling on the road?
A. No.
Q. And when you got up to this stop sign at Hussey and Picket --
A. Yes.
Q. -- what did you observe?
A. There was two vehicles that was in the roadway. It looked like it had been a car accident, so we stopped. I was trying to find my telephone or my phone, cell phone, so that I could call 9-1-1.
Q. Was there another citizen there ahead of you?
A. I believe there was a -- either at the same time we were coming up to the stop sign or right afterwards there was another vehicle that pulled up.
Q. What did it look like?
A. I'm sorry.
Q. If you can recall.
A. I don't recall what that vehicle looked like.
Q. Do you recall describing a blue van perhaps in the past?
A. I'm sorry, I don't remember exactly

what it was. I remember there was a woman that got out of it.
Q. There was a woman?
A. Mm hm.
Q. And do you recall whether or not the fellow with you actually knew her name?
A. No, I don't recall that.
Q. Okay. And so you observed these vehicles, thought it was an accident at that point?
A. Right.
Q. And what did you do next?
A. I was calling 9-1-1 as we were getting out of the vehicles and the gentleman that was with me was walking ahead. I called 9-1-1 as I continued to walk forward and finished the conversation with the 9-1-1 operator that it was an accident. As I came around the backside of the vehicles and I could see in to the road there was a gentleman laying in the road and so I just told her that it looked like somebody had also been hurt and that she should send an ambulance.
Q. Okay. What happened next?
A. The gentleman I was with, of course, was walking quicker than me and got up there to a

certain point and after I hung up the phone he turned around, looked at me and said, "He's been shot." and we took off, I mean, I went the opposite direction back to my vehicle.
Q. And why did you leave that quickly?
A. I had no idea where the person was that had shot him, so --
Q. So, you were afraid?
A. Yes.
Q. Were there -- were -- now, you said there was one other female that got out about the same time as you?
A. Yes.
Q. Were there anybody else that you saw there?
A. There was another vehicle that had pulled up afterwards, he wasn't there when I -- when we first got there, but there was a man that was there. And as we went by the woman and the man we were saying he had been shot hoping that they would get out of the area too, so --
Q. Can you describe the vehicle that pulled up? I know we're a long time ago.
A. Yes. I'm sorry.
Q. If I -- if I reminded you from prior

statements and testimony a camouflage truck does that sound familiar?
A. I'm sorry, it doesn't. I don't remember the other vehicles that were there?
Q. Okay. Did you see anybody touch anything on the scene while you were there?
A. No, the other two people were still by their vehicles when we turned around and took off, so when I got in to my vehicle and pulled away they were still standing there. They weren't up by the vehicles.
Q. Would -- and where did you go? Where did you leave to?
A. We turned back across Robertson Bridge Road and I called 9-1-1 again and said that it had been a shooting, that it was not an accident.
Q. So, you called the second time to correct it wasn't an accident, it was someone was shot?
A. Yes.
Q. And I take it you have a cell phone?
A. Yes.
Q. So, as far as the property you looked at, can you tell the jury how long you were at

that property?

A. Probably just a couple of minutes. It was cold, I remember, and rainy and so we were not actually getting out of the vehicles. We just pulled up there, he liked the looks of the land and said that it was probably a keeper, we'd look in to it more and then we backed out and left.

Q. Okay. Did you hear any vehicles operate in the area in that time frame?

A. No.

Q. High speed, any collision or anything like that?

A. No.

Q. Did you hear a gun shot?

A. No.

Q. And were you -- did you have any contact with the police that day or was it some other day that you were actually interviewed?

A. When I got back to my office I actually called the police to let them know my name if they needed anything later, so --

Q. Okay. Thank you.

MR. CAMPBELL: That's all I have of this witness, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good morning, Ms. Carter.

A. Good morning.

Q. Now, when you were driving in your vehicle with Mr. Markl --

A. Mm hm.

Q. I'm going to hand you this pointer and I'm going to show you what's previously been marked as State's Exhibit, I believe it's 102, and I believe you just saw this.

A. Mm hm.

Q. Did you go past Paradise Garden Road when you were going to the property in question?

A. I'm sorry, I don't remember --

Q. You don't remember?

A. -- which property it was. Yes.

Q. You remember going past Cliffside Drive?

A. I'm sorry, I don't remember.

Q. You don't remember?

A. Yes.

Q. Okay. That's fine. Thank you. Now, you testified that you didn't see any other vehicles on the road, is that -- do you recall -- well, let me rephrase this, did you not see vehicles on the road or do you not remember seeing any vehicles on the road? I guess is what I'm asking.

A. I didn't see any vehicles on the road.

Q. Okay. Thank you. And when you got back -- when you turned around at the property, drove back down Steelhead and back Hussey -- up Hussey to Picket Creek --

A. Mm hm.

Q. -- and saw the vehicles, the three vehicles, did you see anybody besides Mr. Markl or the woman that was already there or a camouflaged truck that came up later?

A. No.

Q. Didn't see anybody --

A. No.

Q. -- perhaps crouching down behind the truck or anything?

A. No.

Q. Okay.

MR. SCALES: I have nothing further. Thank you.

THE WITNESS: Thank you.

THE COURT: Anything else, Mr. Campbell?

MR. CAMPBELL: Yeah, just a follow up on that.

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Did you walk -- the fellow was with you was Brian Markl; right?

A. Mm hm.

Q. Did you walk as far up toward the man on the ground as he did?

A. No, I was dialing the phone kind of lagging behind talking to her, so I -- he was quicker in getting up there than me.

Q. And in terms of how far you actually walked up did you get to the, say the back -- the first vehicle was a Bronco, you may not know what kind of vehicle it was, but did you get to the back of the vehicle, were you back from that or further up?

A. I was probably right about the back of the vehicle there of the Bronco.

Q. When you turned around and headed out?

A. Mm hm. Yes.

Q. And you headed out as a result of what Markl said, he'd been shot?

A. Yes. Mm hm.

Q. Thank you.

A. Thank you.

THE COURT: Mr. Scales?

MR. SCALES: Yes.

RECROSS EXAMINATION

BY MR. SCALES:

Q. The other woman that was flagging you down?

A. Mm hm.

Q. She was -- where was she in relationship to the two vehicles, was she --

A. She was standing by her car door.

Q. Okay. And did she go up to the other two vehicles, the two vehicles that looked like they were in an accident?

A. No, because when I turned around and was running she was still standing there by her vehicle.

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Q. I see.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further.

THE COURT: Are you asking that she be excused?

MR. CAMPBELL: I'd ask that she be excused.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: You are excused. Thank you for coming in.

And we are going to take our lunch break at this time. Ladies and gentlemen of the jury, please leave your notebooks on your chairs, go with the bailiff and I would request that you return back to the jury room today at 1:15. Please do remember the precautionary instructions I've given you earlier. Have a nice lunch.

(At 12:00 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the

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jury.)

THE COURT: All right. We are in recess until 1:30.

(At 12:00 p.m. a lunch recess was taken, to reconvene at 1:30 p.m. the same day.)

**** END OF VOLUME 2 ****

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF JOSEPHINE

--oOo--

STATE OF OREGON, Plaintiff-Respondent, vs. LEONARD CONTRERAS SANDOVAL, Defendant-Appellant.	)	JOSEPHINE COUNTY CASE NO. 01CR0641 APP. NO. A141783 VOLUME 3 OF 6

TRANSCRIPT OF AUDIO RECORD ON APPEAL
MOTION HEARING
OMNIBUS HEARING
12 PERSON JURY TRIAL - DAY 1
12 PERSON JURY TRIAL - DAY 2
12 PERSON JURY TRIAL - DAY 3
12 PERSON JURY TRIAL - DAY 4
12 PERSON JURY TRIAL - DAY 5
12 PERSON JURY TRIAL - DAY 6
12 PERSON JURY TRIAL - DAY 7
SENTENCING

Grants Pass, Oregon
August 15, 2002; 3:00 p.m.
February 9, 2009; 1:43 p.m.
February 18, 2009; 9:46 a.m.
February 19, 2009; 9:34 a.m.
February 20, 2009; 9:34 a.m.
February 23, 2009; 9:36 a.m.
February 24, 2009; 9:33 a.m.
February 25, 2009; 9:47 a.m.
February 26, 2009; 9:31 a.m.
March 6, 2009; 10:09 a.m.

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--oOo--

BEFORE:
THE HONORABLE GERALD C. NEUFELD, CIRCUIT JUDGE
(8/15/02 only)

THE HONORABLE LINDI L. BAKER, CIRCUIT JUDGE

--oOo--

APPEARANCES:

FOR THE PLAINTIFF: SCOTT TITZLER (8/15/02 only)
STEPHEN D. CAMPBELL
DEPUTY DISTRICT ATTORNEYS
500 NW 6TH AND C STREETS
GRANTS PASS, OR 97526

FOR THE DEFENDANT: STEVEN JOHNSON(8/15/02 only)

DON SCALES
ATTORNEY AT LAW
916 WEST 10TH STREET
MEDFORD, OR 97501

TRANSCRIBED BY: SUSAN E. LEFEBVRE
OFFICIAL COURT TRANSCRIBER

--oOo--

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JANICE ROSE	312	--	--	--	2
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ROBIN SUE GARTEN	413	422	424	--	2
DEBBIE LYNN CARTER	430	440	442	443	2
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GRANTS PASS, OREGON

FRIDAY, FEBRUARY 20, 2009; 1:37 P.M.

12 PERSON JURY TRIAL - DAY 3

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Either side have anything before we bring the jury back in?

MR. SCALES: None from the Defense, Your Honor.

MR. CAMPBELL: No, Your Honor.

THE COURT: All right.

Please ask them in.

(At 1:38 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Mr. Campbell, you

may call your next witness.

MR. CAMPBELL: The State calls Brian Markl, Your Honor.

If you could step in right between counsel tables.

THE COURT: Please step right up here, sir, raise your right hand and my clerk can swear you in. That's fine.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you'd walk around the table, up the steps and have a seat behind the microphone?

THE COURT: Thank you.

***

BRIAN FLOYD MARKL,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, will you state your full name and spell your last, please?

A. Brian Floyd Markl.

Q. Okay.

A. M-a-r-k-l.

Q. And let me put the microphone up. You're going to need to speak up so everyone can hear you, okay? And do you still -- do you still live in the Grants Pass area?

A. Yes.

Q. Okay.

A. Out in Hugo now.

Q. Where did you live in 2001, September?

A. 1100 Fruitdale Drive.

Q. Okay. Did you have occasion in September to look at property with Debbie -- the realtor Debbie Carter or Debra Carter?

A. Yes.

Q. And do you recall the day that you went out in to the Hussey Lane, Picket Creek area?

A. Yes.

Q. Okay. Were you familiar with that

area before that date?

A. Yes.

Q. How so?

A. I used to work at Windy River Farms.

Q. So, right down there off of Hussey -- Hussey lane?

A. Correct.

Q. And were you familiar with the defendant based on having worked down there?

A. I knew who he was.

Q. You knew who he was?

A. Correct.

Q. And how had you become aware of him?

A. He was the neighbor to the farm.

Q. Okay. And what kind of activity had he engaged in that drew your attention to him?

A. Shooting guns, a particular instant I was down at the pond one time and he shot off a gun and scared the heck out of me. He didn't know I was there.

Q. Was that -- you were on lunch or something?

A. Yeah.

Q. And did you have an exchange with him regarding that or?

A. No.

Q. When was -- when was the last time you worked at Windy River Farms, do you know?

A. It was prior to the incident.

Q. You hadn't been working there for a while?

A. Correct.

Q. Okay. Do you know if it was a year before?

A. Six months, a year.

Q. Six months, a year something like that?

A. Yeah.

Q. Did you -- had you talked to the defendant or had exchanges with him?

A. No.

Q. And did -- so, on the 27th you were going to go with Debra Carter to look at some property; right?

A. Yes. Correct.

Q. Okay.

A. Down on Steelhead Lane.

Q. And so can you describe for the jury how you drove out there, what route did you take?

A. Well, I remember going over the

bridge. I think we went up Riverbanks and looked at another place for sale or whatever. And then we went down to the place that we were looking at.

Q. Okay. And let me get the diagram out as I talk to you about that. And I don't know if you'll need this pointer. But, I'm directing your attention to State's Exhibit 102 and this is Picket Creek Road that comes up from Robertson Bridge, do you recognize that?

A. Yes.

Q. And this is Hussey Lane, you said you used to work down here at Windy River Farms; right?

A. Correct.

Q. When you drove -- did you drive up Picket Creek and come to this intersection with Hussey Lane, is that how you approached the property you were going to look at?

A. Actually, I don't remember, because I don't remember where the other house was that we were looking at.

Q. Okay. Well, did you say it was out -- would have been up Riverbanks?

A. Yes, I believe.

Q. Okay. So, you're not sure whether

you came up Picket Creek and turned on Hussey?

A. Oh, yes. Yes, we came up Picket Creek, but I don't remember whether or not we -- where that was.

Q. Okay. When you -- do you recall making this turn here?

A. Yes.

Q. And going down Hussey?

A. Yes.

Q. When you came to this intersection and made the turn were there any vehicles in the roadway up here?

A. Actually, after thinking about all of this and I know I testified in the trial before that there wasn't --

Q. And do you understand -- do you -- there wasn't?

A. That there wasn't.

Q. Yeah, and I'm asking you --

MR. SCALES: I'm sorry, could you -- I didn't hear what the question was and if there wasn't -- what was the question?

MR. CAMPBELL: Well, I'm trying to clarify and I'm making sure he's understanding my question, okay?

MR. SCALES: Oh, I didn't hear it.

BY MR. CAMPBELL:

Q. I'm talking about when you first went to the property now; right?

A. Correct.

Q. And when you took --

A. When we turned -- turned off of --

Q. -- this corner --

A. -- Picket Creek to Hussey Lane --

Q. Were there any vehicles stopped in the roadway?

A. I do not recall.

Q. You don't remember?

A. I think that the truck might have been there.

Q. Which truck?

A. The one that the guy was in that got shot.

Q. You think it might have already been there when you turned down there?

A. Yes.

Q. Okay. Do -- have --

A. Actually, I really do not recall.

Q. Has your memory changed on this, sir?

A. No.

Q. Okay. Well, then -- and you're really saying you don't remember today?

A. Correct, I do not recall. I just -- you know, this was eight years ago.

Q. All right. And that's fair enough.

MR. CAMPBELL: We're going to -- based on his lack of memory, Judge, we're going to offer State's Exhibit 55, which is prior testimony under oath. And because of his lack of memory he's unavailable. So, we would offer that at this time.

THE COURT: Mr. Scales?

MR. SCALES: Well, he's testified to a lack of memory as to the place he went and whether or not the truck was there. But, I don't think that necessarily indicates that he has a lack of memory with everything. If he's saying he has no memory of the incident whatsoever then I would have no objection. I'd like to know what exactly it's for, is it for everything or just portions?

THE COURT: Would you like to ask a question in aid of objection then?

MR. SCALES: I would, Your Honor.

THE COURT: Okay. Go ahead.

MR. SCALES: Mr. Markl, good afternoon. Your lack of memory, is that with respect to where you were going that day with Ms. Carter or is it --

THE WITNESS: No, whether or not the blue truck was there.

MR. SCALES: Whether or not the -- I'm sorry, what color truck?

THE WITNESS: Whether or not the blue truck was there.

MR. SCALES: The blue truck?

THE WITNESS: I believe it was blue.

MR. SCALES: Okay.

Your Honor, I don't have any objection.

THE COURT: All right.

And that number, Mr. Campbell?

MR. CAMPBELL: Was 55, Your Honor.

THE COURT: All right. Then 55 is received.

MR. CAMPBELL: And we'd ask that this witness be excused, Judge.

THE COURT: Any objection then, Mr. Scales?

MR. SCALES: Your Honor, I'd like a

moment to look at Exhibit 55.

THE COURT: All right. Go ahead.

MR. SCALES: I don't think the State intended on offering that.

MR. CAMPBELL: Yeah. I'm sorry.

MR. SCALES: Your Honor, I do have a couple of questions that I would like to ask. But, I'm concerned that, you know, he's not going to remember that as well.

THE COURT: Well, why don't you go ahead and ask your questions and see where that leads.

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Mr. Markl, did you recall hearing a gunshot?

A. Yes.

Q. And you were with Ms. Carter the whole time?

A. Yes.

Q. Okay.

MR. SCALES: I don't have anything further. Thank you, Your Honor.

THE COURT: All right.

Mr. Campbell, did you have anything else?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. And you're asking that he be excused?

MR. CAMPBELL: Yes.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: All right.

Sir, you are excused. Thank you for coming in.

And, Mr. Campbell, you may call your next witness.

MR. SCALES: Actually, Your Honor, I'm sorry. Can I unexcuse him? I do have a question for him.

THE COURT: You have one more?

MR. SCALES: I'm sorry. And my apologies to the jury as well.

THE COURT: All right.

Sir, would you please retake the stand?

MR. SCALES: That's the second time we've unexcused somebody.

THE COURT: Yes, it is.

CROSS EXAMINATION (CONT.)

BY MR. SCALES:

Q. Mr. Markl, I did have a quick question for you that I forgot to ask. Prior to today did you ever tell the police that you knew Mr. Sandoval?

A. I knew of him.

Q. Did you -- do you recall your testimony from the first trial?

A. Yes, somewhat.

Q. Okay. And if the question was asked of you "Did you know at that time who Mr. Sandoval was?" would you agree that your answer to -- your answer under oath was, "No."?

A. Yes, I agree to that.

Q. And you hadn't heard the name before at that time you were asked that question, you hadn't heard the name before at that time?

A. What, Sandoval?

Q. Yeah.

A. No, I knew who he was, I --

Q. No, I'm sorry. Maybe I should clarify, the question -- the next question that was posed to you was, "you hadn't heard the name before at that time?" And your answer was, "No.";

is that accurate? Would you agree that that's what your testimony was?

A. Yeah, but I knew who he was.

Q. So, were you not being truthful when you were under oath the last time?

A. No, probably because it was at the time a quick question and you can't answer nothing unless I'm asked.

Q. Okay. Well, when it was --

A. You know, it's "Yes" or "No" and --

Q. I'm sorry.

A. -- you know?

Q. Okay. Well, when you were talking to the detectives when it wasn't quick questioning did you ever mention anything to them about knowing Mr. Sandoval?

A. I never talked to the detectives.

Q. Well, you were interviewed by the police; correct?

A. No.

Q. You don't remember ever talking to any law enforcement officer?

A. No.

Q. You don't remember a conversation with a Detective James Mason, a big guy?

A. No.

Q. Okay. That's fine. So, what you're telling me then, Mr. Markl, is today for the first time you're telling us you knew who Leo Sandoval was and that he had scared the heck out of you down by the pond?

A. Yeah, I was eating lunch down there and he was shooting off rounds. There were a few other incidents where he was yelling at his dog and the dog was yelping and, you know? And I knew who he was after communicating that with Peter and Judy of Windy River Farms.

Q. Okay. And I guess I have a question, we've entered your previous testimony in to the record because of your lack of memory today, are you saying that this, what you're testifying to of Mr. Sandoval scaring the heck of you -- scaring the heck out of you down at the pond, that is something that you just recently remembered; is that correct?

A. No.

Q. Okay. So you -- but, this is the first time we're hearing it today, right now?

A. Correct..

Q. Okay. Thank you.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell, did you have anything else?

MR. CAMPBELL: No, Judge.

THE COURT: All right. You are excused now, sir. Thank you.

And, Mr. Campbell, you may call your next witness.

MR. CAMPBELL: The State will call Daniel Gallagher.

THE COURT: Please step forward, sir, raise your right hand and be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you'd walk around the table, up the steps and have a seat behind the microphone?

***

DANIEL JAMES GALLAGHER,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last, please?

A. Daniel James Gallagher, G-a-l-l-a-g-h-e-r.

Q. How are you employed, sir?

A. I'm forest officer at the Oregon Department of Forestry.

Q. How long have you been employed in that capacity?

A. I've been with the State Forestry 30 years.

Q. 30 years. So, you were working for State Forestry in September of 2001?

A. Yes.

Q. And what kind of a -- do you drive a rig and travel around?

A. I operate a fire engine.

Q. A fire engine?

A. Mm hm.

Q. Okay. And were you doing that in September of 2001?

A. Yes.

Q. Okay. Did you have anybody with you

that day?

A. A crew person.

Q. And what was his name?

A. I'm not really sure.

Q. If I helped you --

A. I can't remember. Yeah, go ahead.

Q. Would you remember if I helped you?

A. Yes.

Q. Joshua Dehoot sound right?

A. That's him, yes.

Q. And do you know where Joshua Dehoot is now?

A. I believe he was in an accident and he's deceased.

Q. Okay. Did you have occasion to be out in the area of Picket Creek and Hussey Lane that day?

A. That's my patrol area and, yes, I was.

Q. Okay. So, in September it's still fairly high fire danger time?

A. Yes.

Q. Okay.

A. Very much so.

Q. So, let me take you to that day. You

-- you had occasion to come on the scene of this homicide; is that correct?

A. That's right.

Q. And what -- I guess I'd like you to tell us how you traveled in to that and how you became aware of it.

A. I was going out to my patrol area, which is Riverbanks/Picket Creek area, and turned off Robertson Bridge Road on to Picket Creek and was traveling down Picket Creek and a van with a lady pulled me over and ask me -- said that there'd been a shooting and could I contact 9-1-1 and did I have a blanket or something to cover the body with. She was concerned that school children on the bus would see the dead body.

Q. Okay. This lady -- this was a blue van, the lady that flagged you down?

A. Yes.

Q. Did you get her -- at least her first name?

A. No.

Q. Would you recognize the name Mary or Mary Bartles? No?

A. Not really.

Q. Okay.

A. No.

Q. Did you see any other vehicles at the scene at that point?

A. When I arrived at the scene there was a small pickup, belonged to some other people that were on scene there at the time.

Q. Was -- can you -- do you remember any more of the color or what it looked like?

A. It seemed like it was a small brown type Ford Courier type little pickup.

Q. Camouflage seem familiar to you at all? A kind of a camouflaged color?

A. It could have been.

Q. Did you see a white -- a white vehicle with two people in it?

A. There were four people at the scene when I arrived, so there may have been another one there.

Q. Did at least two of them leave rather quickly?

A. I don't know.

Q. Okay. You're not sure. So, describe what you saw there.

A. There was two vehicles, a pickup truck out ahead of a -- I believe it was a Jeep or

a Skat or some type of 4-wheel drive vehicle behind it. The pickup there was a guy hanging out the side, the --

Q. Okay.

A. -- door was open, blood running down the road.

Q. Did you see any of those individuals at the scene there touch anything or tamper with anything?

A. I didn't see -- no, not really. No.

Q. Did you hear the front pickup's engine still running?

A. Yes.

Q. And how about the back vehicle?

A. No.

Q. It wasn't running?

A. I -- I couldn't tell you --

Q. Don't know?

A. -- for sure.

Q. Okay. Did -- did you touch anything other than putting a blanket on the --

A. No.

Q. -- the victim?

A. No. Hm mm.

Q. What -- where did you get the

blanket?

A. Out of our first aid kit, it was a space blanket.

Q. Okay. And how did you get it to stay on the body, did you fasten it with any --

A. I just laid it on -- shook it out and laid it on the body, not hard or anything, just covered it.

Q. Okay.

A. And didn't -- you know, try to fix it or anything like that, I just put over the guy's face.

Q. And the fellow, Mr. Dehoot, did either you or -- did you -- did you call 9-1-1?

A. No.

Q. Did you direct anybody with you to call 9-1-1?

A. I believe the crew person did try to call.

Q. Mr. Dehoot?

A. Mm hm.

Q. Okay.

A. We called the dispatch and told them what was going on, but other than that, no.

Q. And were you able to see that the

victim was a -- had been shot?

A. Well, it was pretty apparent, yeah.

Q. Okay. Did you see at any point -- well, before -- did the police arrive on the scene and take over the scene while you were still there?

A. Uh huh.

Q. Yeah?

A. Yes.

Q. Okay.

A. Mm hm.

Q. And was it -- how quickly after you arrived did that occur?

A. I don't think it was too much longer after, maybe a half hour.

Q. Okay. So you -- and you stayed and made sure nothing happened on the scene for that half hour?

A. We just -- yeah, we just stood around.

Q. Just sat there? Okay. And --

A. We didn't really do anything, we didn't tell anybody anything or -- you know, we weren't in charge of the crime scene or anything, so --

Q. Was there -- did you ever see an older gentleman come out of the driveway just up ahead of the pickup, 770 Picket Creek Road or was he out at the front of the driveway?

A. I believe he was.

Q. Okay. And did he do anything on the scene at all?

A. Not that I remember.

Q. Okay. I mean, you would have noted if he interrupted the scene or did anything with the scene; right?

A. After I got there, yeah.

Q. Yeah.

A. I don't know what happened before.

Q. Did you touch either one of the vehicles?

A. No.

Q. And you were in a -- why don't you describe your fire truck for us.

A. It's a 250 gallon quick attack pickup truck type forestry engine, 4-wheel drive type.

Q. So, would it be a one-ton or --

A. Yeah. Mm hm.

Q. With kind of a set up for -- with a fire tank?

A. It's got a fire water tank on the back and it had a hose reel and tools and stuff like that for firefighting.

Q. So, the -- it'd be your testimony that the body was in the exact position that you first saw it when the police arrived?

A. Yes.

Q. Did you -- do you know the defendant seated at counsel table?

A. No, I don't.

Q. Or have met him before?

A. No.

Q. Did you know the victim, Mr. Whitcraft?

A. No, I didn't.

Q. Okay. Thank you.

MR. CAMPBELL: That's all I have, Your Honor.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good afternoon, Mr. Gallagher.

A. How you doing?

A. Mr. Gallagher, you were on patrol on September 27th, 2001?

A. Right. Mm hm.

Q. And the fire danger is still pretty high at that time; is that correct?

A. That's right. Mm hm.

Q. Still pretty dry?

A. Oh, yeah.

Q. And do you remember if it was -- was the fire danger still high on that particular day?

A. All through the month of September we're in high fire danger.

Q. I see. And you testified that there was -- and I'm not trying to get in to graphic details, but there was a lot of blood running -- there was blood running down the road?

A. Mm hm.

Q. Was it a lot of blood, a little blood, can you --

A. It was a lot of blood.

Q. Okay. And approximately how far did that -- did that blood --

A. About half way across the road.

Q. About half way across the road. Okay. And Mr. Callahan, Harvey Callahan the

elderly gentleman that you saw at the scene, you didn't watch him the entire time that you were there waiting for the law enforcement personnel, did you?

A. No.

Q. Okay.

A. No.

MR. SCALES: Nothing further. Thank you.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Yeah, I have one more.

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Gallagher, do you remember -- do you remember talking to Detective Rylander after this event?

A. I did talk to a detective that came to the scene, but I couldn't -- I don't recognize you. Sorry.

Q. And do you recall -- this may refresh you recollection, do you recall telling him that the vehicles moved a little bit and Mr. Callahan had put a rock behind the tire?

A. Right.

Q. Yeah. Okay. So, that's the only --

only thing you saw on the scene other than what you did personally with regard to covering the body?

A. And -- right. And that rock may have been placed under the tire before I arrived, I don't -- I don't remember seeing the guy actually take a rock and put it there.

Q. In fact, it might have been put under there after the police arrived?

A. It could have been.

Q. Okay. All right. Thank you, sir.

THE COURT: Mr. Scales?

MR. SCALES: Nothing further.

THE COURT: All right.

Are you asking that he be excused?

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: All right.

Sir, you are excused.

THE WITNESS: Thank you.

THE COURT: Thank you for coming in.

And you may call your next witness.

MR. CAMPBELL: The State will call Tyrone Montgomery, Your Honor.

THE COURT: Please step in to the courtroom, sir, raise your right hand and my clerk's going to swear you in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you'd walk around the table, up the steps and have a seat behind the microphone, please?

***

TYRONE MONTGOMERY,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last, please.

A. Tyrone Montgomery, M-o-n-t-g-o-m-e-r-y.

Q. Okay. And how are you employed, sir?

A. I'm currently retired.

Q. You're retired now. Were you working in 2001?

A. Yes.

Q. And what was your job then?

A. Veteran's service officer.

Q. Okay. And did you have an office that you worked out of?

A. Yes.

Q. And where was that located?

A. Over by the Boys and Girls School, right behind it, Veteran's Service Center.

Q. Okay. So, right here in Grants Pass?

A. Yes.

Q. Did you have an office in Merlin also or a place that you worked out of?

A. We were going to start building one there, but it fell through.

Q. Okay. So -- and so you were working 8:00 to 5:00 then at this office over here?

A. Yes.

Q. Okay. And what did you do at that job?

A. Filed claims for veterans.

Q. Okay. And on September 27th, 2001, it

was a Thursday and, frankly, you wouldn't have any reason to remember it except the police came and talked to you after that day. Did you work your normal day that day?

A. I don't recall.

Q. You don't know. Okay. Were you aware of the shooting that occurred out there on Picket Creek and Hussey Lane?

A. Yes.

Q. Okay. And one of the reasons you were aware -- well, how did you become aware of that?

A. I was remodeling a Jeep and I was going to take it down to the bridge and back just for a test run and I came around the corner and that's where I --

Q. And what did you see?

A. I saw a bunch of police cars and a couple of trucks.

Q. Okay. And do you live -- at the time did you live out there?

A. Yes.

Q. Okay. And let me get to the chase, did this defendant have -- had he called you or made any arrangements with you to come see you

there that day?

A. No, not that day.

Q. In fact, had you even given him your home address or your home phone number?

A. Not that I recall. However, we did meet down at the Griffin Park, I used to run my dogs down there. And I talked to him on a couple of occasions.

Q. How much before that?

A. Probably less than a month.

Q. Okay. What did you talk about?

A. Possibilities of filing a claim for him through the VA.

Q. Okay. Did you tell him where the office was and where to go to do that?

A. I don't recall.

Q. Okay. But, on September 27th, 2001, he had no contact, no appointment, you had no business with him that date; is that right?

A. That's correct.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

MR. SCALES: Thank you.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good afternoon, Mr. Montgomery. Mr. Montgomery, you -- have you had any specialized training dealing with veterans?

A. We attend -- I used to attend seminars twice a year.

MR. CAMPBELL: I'm going to object based on relevance, Judge.

MR. SCALES: Well, I'll get to that in just a second. Maybe I can ask the first question and we'll come back to this one.

THE COURT: All right. Go ahead conditionally then.

BY MR. SCALES:

Q. You -- is it fair to say that you have a lot of contact -- or, at the time when you were doing this you had a lot of contact with veterans?

A. Yes.

Q. Combat veterans?

A. Yes.

Q. Vietnam veterans?

A. Yes.

Q. And you get to know the ways that they do things, the ways -- the things they like -- the ways they like things to happen, are you fairly familiar with that? Let me rephrase that.

A. Okay.

Q. Are -- is it -- is it common for some of the combat veterans to be a little bit skiddish or a little bit reluctant --

A. Yes.

Q. -- to come in to an office setting?

A. Yes.

MR. CAMPBELL: I'm going to object to what's common, only what happened in this case is relevant.

MR. SCALES: May I respond, Your Honor?

THE COURT: Yes.

MR. SCALES: I think it goes to the heart of the matter. Obviously he has experience with these people so he's testifying based on his -- his experience with these persons and it is relevant as to whether or not Mr. Sandoval was going to see him at his office or at him home in a non-office setting.

MR. CAMPBELL: And my point is what other people do is totally irrelevant, only what this

defendant -- what any particularized knowledge he'd have about this defendant would be relevant.

MR. SCALES: The question, Your Honor, is is it common for combat veterans to be skiddish or reluctant to be in an office setting based on his experience. I think he can certainly testify as to what his experience is as it leads to my next question.

THE COURT: All right. Go ahead, Mr. Scales.

BY MR. SCALES:

Q. And you can answer the question, sir. Is it common for veterans --

A. To be skiddish?

Q. Yeah.

A. And prefer some other type of surroundings besides a formal office? Yes.

Q. Yes.

A. Yes.

Q. Okay. And you met with Mr. Sandoval -- or, you ran in to Mr. Sandoval, rather, was at the Robertson Bridge area?

A. Yes.

Q. Okay. And that was less than a month

prior to the shooting?

A. As much as I can remember, yes.

Q. Okay.

MR. SCALES: I'm going to object, he misstated his testimony, it was Griffin Park.

THE COURT: Sustained. It was a different park.

MR. SCALES: Thank you.

THE WITNESS: Griffin Park is right near Robertson Bridge, right down the road a little ways.

BY MR. SCALES:

Q. It was in the vicinity of where you live; correct?

A. Yes.

Q. Okay. And that was less than a month prior to the shooting; is that correct?

A. As much as I can recall, yes.

Q. Okay. Fair enough. At that time you talked with him about filing for some more benefits, adjusting his benefit level and things like that?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. And during that conversation that you had with Mr. Sandoval at the Griffin Park, Robertson Bridge area did you give him your home address?

A. I don't remember.

Q. Okay. Is that -- would that be --

A. However, the people that --

Q. Sorry.

A. -- we were hanging around with down there is like a little subculture, most of them did know where I lived.

Q. Okay.

A. None of them had my phone number, but most of them knew where I lived.

Q. Would that be uncommon for you to give somebody your home address?

A. Was it uncommon? No.

Q. A veteran.

A. No.

Q. Okay. And just -- maybe you can help us out here, I'm going to give you this little pointer. I'm showing you what's previously been marked as State's -- I'm going to come over here, hopefully the jury can see this, State's 102, if

you can try to orient yourself with this. Do you recognize this particular area? Do you see Picket Creek on the left there, Hussey Lane right here?

A. Yeah.

Q. Where did you live at that time?

A. I think I lived over here.

Q. What was -- what was your address, Mr. Montgomery?

A. 1676 --

Q. 1676?

A. Picket Creek Road.

Q. Picket Creek Road?

A. Mm hm.

Q. So, were you farther up Picket Creek Road, were you -- were you -- was your address located beyond Hussey Lane?

A. Yes.

Q. Okay. So, in order to get to your house from Hussey Lane if somebody was driving down Hussey Lane they would have to turn right; is that correct?

A. That is correct.

Q. Okay. Thank you, sir.

MR. SCALES: I think that's all the questions I have for Mr. Montgomery. Thank you.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further, Your Honor.

THE COURT: All right. Are you asking him be excused?

MR. CAMPBELL: I'd ask that he be excused, Judge.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: Thank you, sir. You are excused.

THE WITNESS: Okay.

THE COURT: You may call your next witness.

MR. SCALES: Thank you.

MR. CAMPBELL: The State would call Vern Timmons, Your Honor.

THE COURT: Please step in to the courtroom, sir, home right up here, stand in front of my clerk, raise your right hand and be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. If you'd walk around the table, up the steps and have a seat behind the microphone, please?

***

VERNON ERVIN TIMMONS,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, would you state your full name and spell your last, please?

A. Vernon Ervin Timmons, T-i-m-m-o-n-s.

Q. Where do you live, sir?

A. 6416 Southeast 90th Avenue, Portland, Oregon.

Q. So, you've -- where did you live in 2001?

A. 1248 Picket Creek Road.

Q. 1248? So, were you acquainted with Harvey Callahan?

A. Yes.

Q. And how did you know him?

A. One of my neighbors, man of the community.

Q. Did you ever have work done down at Harvey's place?

A. Yes.

Q. Okay. And were you acquainted with Jack Whitcraft?

A. Yes.

Q. How did you meet Mr. Whitcraft?

A. Through a mutual friend.

Q. Okay. Was that Mr. Callahan or someone else?

A. That was someone else.

Q. Okay. And on the 27th -- September 27th, 2001, did you have some business pending through -- with Mr. Whitcraft?

A. Yes.

Q. And was he doing some work for you?

A. Yes, he was.

Q. And will you tell the jury what -- what was going on?

A. I'd hired him to do some mechanic work for me.

Q. Okay. And what -- what kind of job

was it?

A. It was building a motor.

Q. Okay.

A. Restoring a truck.

Q. Was there fuel tank work involved in it?

A. Yeah, that was another job he was doing, I let him use my place to put the tank there and it was easy access for him.

Q. Okay. And how many days had he been working up at your place?

A. Oh, several days off and on.

Q. Okay. And on Thursday, September 27th, maybe the way you remember is the day he was shot, were you expecting him up there for work?

A. Yes, I was.

Q. Okay. Had you had phone contact with him that day?

A. Yes, he was going to be out at my house after he picked up some acetylene.

Q. Okay. So, he go -- he was getting some acetylene, did he indicate that he was going to make any other stops before he arrived at your house?

A. I think he had mentioned something

about stopping at Harvey's to pick up a tool or something along that nature.

Q. Okay. Was -- Harvey lived at 770 Picket Creek, Harvey Callahan?

A. I think so.

Q. Yeah? Had you been --

A. I don't remember the address.

Q. Yeah. Had you been down at his place on occasions?

A. Oh, many times.

Q. Many times. Do you -- how long had you known Mr. Whitcraft?

A. Oh, over a couple of years.

Q. Okay. Did you -- did you form an opinion about his character for peacefulness or violence?

A. He seemed to be a pretty even keel guy to me.

Q. Okay. And do you remember what tool he was picking up at Callahan's?

A. I don't know. It could have been a grinder maybe.

Q. Yeah. That --

A. It was something to do with the welding and cutting of this tank.

Q. Okay. On October 4th do you remember talking to Detective Mason from the Sheriff's Office and saying "He was going to stop at Callahan's to pick up a half inch metal grinder."?

A. That -- I don't remember.

Q. But, that's consistent with what you just said; right?

A. That -- yes.

Q. Okay. Had you been in a vehicle with Mr. Whitcraft in the weeks -- few weeks before his death?

A. Yes.

Q. And during that time did you have occasion to observe the defendant in a vehicle?

A. On one occasion, definitely.

Q. And -- okay. Describe that incident.

A. We were driving up Picket Creek and Jack had said, "He's behind me again." and I turned and looked and yeah, that was him, I guess.

Q. Did you know the defendant, Leo Sandoval?

A. No.

Q. But -- and he was right behind?

A. Yes.

Q. And did -- did you have further

conversation with Mr. Whitcraft about his concerns for his safety regarding the defendant?

A. Yes, on several occasions.

Q. And would you say that in those last -- when were those? When were those conversations?

A. Oh, probably about the last maybe two or three weeks before he died.

Q. Okay. Did he talk to you about an incident that happened exactly two weeks before he died involving the defendant?

A. Yes, he was fairly upset about it.

Q. Okay. And where were you when he spoke to you about that?

A. At my house.

Q. Okay. So, he came up to your house. And what did he describe had happened, as you recall it?

A. Pointing a rifle at him or something along that line and threatening to shoot him.

Q. Okay. Thank you.

MR. CAMPBELL: That's all I have, Your Honor.

THE COURT: Mr. Scales?

MR. SCALES: Thank you.

CROSS EXAMINATION

BY MR. SCALES:

Q. Mr. Timmons, this conversation that you had with Mr. Whitcraft regarding the gun pointing incident, where did Mr. Whitcraft tell you that this happened at?

A. I don't remember the exact location, some place between Merlin and my house.

Q. Okay. And did he say where Mr. Sandoval was, I mean, did he describe the encounter? Did he give you any more detail than what you've told us today?

A. Yes, he talked about it and said that he'd called the Sheriff and told them about it and supposedly they were going to go talk to him and say, "You can't do that."

Q. Right. Did he say where Mr. Sandoval was and where he himself was when this gun pointing incident happened?

A. I really don't remember, it's been a while.

Q. Okay. You don't remember if he told you or you don't remember what he told you?

A. I don't remember where he was at when he told me this.

Q. Okay. Fair enough. And you were good friends, close friends with Mr. Whitcraft?

A. Yes, I think so.

Q. Thank you, sir.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell, anything else?

MR. CAMPBELL: No, Your Honor. I'd ask that he be excused.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: You are excused, sir. Thank you for coming in.

THE WITNESS: Thank you.

THE COURT: Mr. Campbell, you may call your next witness.

MR. SCALES: Thank you, sir.

MR. CAMPBELL: Your Honor, at this time I have a certificate of death regarding Mr. Callahan and I would represent as a foundational part that I have that for the Court, if you need to see it. And I would offer Mr. Callahan's prior testimony under oath under Rule 804.

THE COURT: All right.

And, Mr. Scales?

MR. SCALES: Your Honor, I have no

objection to either the death certificate or Mr. Callahan's prior testimony.

THE COURT: And you're offering that as an exhibit?

MR. CAMPBELL: No, I don't think it really should go to the jury, it's just a foundation for the Court.

THE COURT: All right. Then why don't you just --

MR. SCALES: Oh, okay.

THE COURT: -- it to the Court.

MR. CAMPBELL: Okay. It establishes his unavailability, Your Honor.

THE COURT: And you saw this?

MR. SCALES: I have received a copy of it, Your Honor, yes.

THE COURT: All right. Then the Court does determine that this witness is unavailable. And, Mr. Campbell, you are offering the transcript at this time?

MR. CAMPBELL: No, I was going to play the testimony, actually.

THE COURT: Oh, you're going to play it. Okay. Let me hand this back to you then so that you can keep that.

MR. CAMPBELL: Okay. And I don't know that this needs -- it's a 104 that it needs to be part of the record, but I can mark it as a new --

THE COURT: Well, maybe we should have that as a part of the record.

MR. SCALES: I have no problem either way, I think the Court can simply take judicial --

THE COURT: It would be --

MR. SCALES: -- notice that Mr. Callahan is deceased.

THE COURT: -- something for the Court's information only, but it would be marked as a Court Exhibit then. Yes.

MR. CAMPBELL: So, I'm offering 80 and 81, which are certified cassette tapes from the prior trial. And the testimony starts on 80 and it will complete on 81.

THE COURT: And, jurors, you'll need to let us know if anyone has trouble hearing.

(From 2:26 p.m. to 3:04 p.m. State's Exhibit 80 & 81 were played for the jury - not transcribed.)

MR. CAMPBELL: Your Honor, I would like

to offer at this time in this trial State's Exhibit 104.

MR. SCALES: No objection.

THE COURT: You said 104?

MR. CAMPBELL: 104.

THE COURT: Okay. 104 is received.

MR. CAMPBELL: And I would also like, and I'll mark it at the break, mark a transcript of this testimony and offer it too. And I'll get a number for that.

THE COURT: Okay.

And did you have any objection to that?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. And that will be received as soon as we establish the number.

All right. Ladies and gentlemen, we'll take our afternoon break now. Please leave your notebooks on your chairs, go with the bailiff in to the jury room.

(At 3:05 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the

jury.)

THE COURT: All right. We're in recess for 15 minutes.

(At 3:05 p.m. an afternoon recess was taken.)

GRANTS PASS, OREGON

FRIDAY, FEBRUARY 20, 2009; 3:28 P.M.

12 PERSON JURY TRIAL - DAY 3

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. Anything from Counsel before the jury returns?

MR. SCALES: Nothing, Your Honor.

MR. CAMPBELL: Judge, I'm going to call Mr. Wright next and I believe John Amish is in route, not in the hall yet. I -- if he arrives I will call him after that.

THE COURT: Okay.

MR. CAMPBELL: If he's not here I guess I could fill in a little bit with Detective Rylander or we could take a break and --

THE COURT: Well, let's see where we end up. I don't know how long you expect with Mr. Wright.

MR. CAMPBELL: It will not be very long.

THE COURT: Okay. I don't mind ending a little bit earlier today since it's Friday afternoon and the jurors have had quite a week. But, I don't want to --

MR. CAMPBELL: Yeah, I -- I --

THE COURT: -- stop too early.

MR. CAMPBELL: -- know, I'm tempted too, but we've got to get this trial done.

THE COURT: Yeah, I don't -- I don't mind a little bit, but not --

MR. CAMPBELL: Okay.

THE COURT: -- not too much.

MR. SCALES: And I certainly have no objection to ending early, Your Honor, I just want to make sure you knew that.

THE COURT: Noted for the record.

MR. SCALES: Thank you.

THE COURT: All right. Then --

THE BAILIFF: Bring them in?

THE COURT: You can bring the jury in now, yes.

(At 3:30 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Mr. Campbell, you may call your next witness.

MR. CAMPBELL: Your Honor, at this time I would -- I have marked as State's Exhibit 82 the transcript of Mr. Callahan's testimony that would go along with what the Court -- or, the jury has just heard and offer it at this time.

THE COURT: All right. Fine.

MR. SCALES: No objection.

THE COURT: 82 is received.

MR. CAMPBELL: And the State would call James Wright.

Mr. Wright, if you'll step right up here and raise your right hand.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. If you'd walk around the table, up the steps and have a seat behind the microphone, please?

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JAMES WRIGHT,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. And, sir, if you would please state your full name and spell your last.

A. James Wright, W-r-i-g-h-t.

Q. And what do you do, sir, for a living?

A. Well, right now I'm disabled, I have a torn ACL, so sometimes I do some river guiding.

Q. Okay. Some river guiding?

A. Yeah.

Q. Okay. What do you normally do or what have you worked as?

A. I used to be a tree climber and worked in the forestry.

Q. In the forestry? Okay. Did you have occasion on September 27th of 2001 to be out in the Picket Creek/Hussey Lane area?

A. Yes.

Q. And can you tell the jury what activity brought you out in to that area?

A. I was going Salmon fishing.

Q. Going Salmon fishing?

A. Yes.

Q. And where did you go to go Salmon fishing?

A. Dory Eddie.

Q. Dory Eddie?

A. Yes, off of Hussey.

Q. And how -- okay. I'm not familiar with that, how do you arrive at that place or reach that part of the river?

A. It's off Picket Creek and it's a place called Hussey Lane.

Q. Okay.

A. It got it's name from a dory, you know, Eddie, a dory is a boat and Eddie's where they used to catch the Salmon years ago.

Q. Okay. So --

A. Back in the '20's.

Q. When did you go out to go fishing?

A. About 7:00 in the morning.

Q. About 7:00? And what kind of a vehicle were you driving?

A. An '81 Toyota 4-by.

Q. '81 Toyota 4-Runner?

A. No, 4-wheel drive.

Q. Was it a pickup?

A. Yes.

Q. Okay. And maybe you'll solve the mystery, how was it painted?

A. Camouflage.

Q. Camouflage paint? Okay. So, that was you. And where did you park that to go fishing?

A. At the gate, right by the big Oak tree down there.

Q. At the gate by the big Oak tree down at the end of Hussey?

A. Yeah.

Q. Okay. As close --

A. By the white house.

Q. As close as you could get to the river?

A. Yes.

Q. And is there a trail that goes on down from there?

A. Yes, there is.

Q. And that -- for my future reference,

that's a public access trial?

A. Yes.

Q. Okay. So, you went down there fishing and how long were you down there?

A. About two hours, I came back about 9:15.

Q. And you walked back up to your truck that was parked there and did you notice anything?

A. Oh, yeah, I heard a shot when I got to the gate.

Q. You got -- you heard a shot when you were out on your way up to the truck?

A. Yeah.

Q. And when you at -- so, pretty near to your truck where the gate is there?

A. Yeah, there's actually two gates, but one's way down there and the other one's a little bit closer. But, where I heard the shot was near the first gate.

Q. Okay. And what did you do next? Were you --

A. I didn't think much about it, I just walked back to my truck and threw my fish in the back and --

Q. Can you -- were you -- are you

familiar with hunting --

A. Yeah.

Q. -- rifles and firearms?

A. Yes.

Q. Based on the shot you heard did you have an idea of what --

A. Out of the ordinary.

Q. Out of the ordinary. How close did it seem --

A. For September 27th it was way out of the ordinary.

Q. Because it wasn't hunting season; right?

A. Right.

Q. Could you tell caliber by the sound or anything?

A. (No audible response)

Q. Okay. What did you --

THE COURT: Could you answer out loud, sir?

THE WITNESS: No, I couldn't tell the caliber from the sound.

BY MR. CAMPBELL:

Q. And what did you do next?

A. I drove out and then I seen in the road and I seen a truck parked and a camouflaged -- it was a Ford or a -- an order truck and then a -- there was a green car and then -- then there was a guy laying out of the truck with his feet up --

Q. Okay.

A. -- and laying out and --

Q. So, you came up Hussey, there's stop sign at the end of Hussey right before the --

A. Yeah, it stopped --

Q. -- pickup; right?

A. -- right there at the stop sign.

Q. Did you park your rig right there or --

A. Mm hm.

Q. -- did you pull it across the road?

A. No, I just parked right there.

Q. Okay.

A. And got out.

Q. You did get out? How close to the scene did you get?

A. About maybe 30 feet.

Q. So, you stayed back?

A. Yeah, because somebody else had

pulled up and they suggested we should go back to the Hussey Farm because whoever that had done this was still on the loose or --

Q. Was that -- was there a woman --

A. Yes, there was.

Q. -- there?

A. Somebody in a green car, I forget what kind of car it was, but it was like a Oldsmobile or something similar to that, a long green car is all I can say.

Q. Did -- did you get her name?

A. I never did.

Q. Did you see a white car with a couple people in it?

A. No.

Q. While you were there did you see a fire truck?

A. No.

Q. A one-ton fire truck there? So --

A. Maybe on the way out there might have been something like that.

Q. On the way out after you'd gone down to Windy River Farms?

A. Yeah.

Q. So, you went down with -- how many of

you from that scene went down to Windy River Farm?

A. Me.

Q. You?

A. That was it. The other lady said she was going to, but I think she took a detour because there's a road off to the left, so she didn't show up.

Q. Did you know the people at Windy River or --

A. No.

Q. She just told you --

A. I had a --

Q. -- to go down there?

A. Huh?

Q. She just told you to go down there?

A. Yeah -- well, actually, no there was another -- it was a -- like a Jeep Cherokee that actually said, "I suggest you go down there because whoever it is is on the loose." And they took off the other way.

Q. Okay. Did you see anybody bother the scene, tamper with the scene or change the scene in any way?

A. No, not at all.

Q. You just -- you see defendant sitting

here at defendant, did you see him?

A. No.

Q. Not that you know of? Okay. And you didn't know Mr. Sandoval, this defendant, or the fellow that was killed there?

A. No.

Q. Okay. Thank you, sir.

MR. CAMPBELL: That's all I have.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Mr. Wright, you said you heard the shot right when you got back to the gate; is --

A. Mm hm.

Q. -- that correct?

A. That's correct.

Q. Okay. And you said you didn't think much about it at the time, but did you also testify that it was way out of season for that type of a shot or did I misunderstand you?

A. Yeah, for September, I don't think there's any deer season in September.

Q. I'm sorry?

A. There's no deer season in September, so I assume that it was out of context.

Q. And are you saying that you were able to tell what kind of a rifle it was --

A. Well --

Q. -- from the sound of the shot?

A. Yeah, I know the sound of a shotgun, I know the sound of a deer rifle.

Q. And you left fairly shortly, you went back down to Windy River Farms shortly after seeing the scene, the vehicles and whatnot; is that correct?

A. Yeah.

Q. About how long were you there?

A. Oh, about 40 minutes until I could get somebody to give me a pencil to write down my name and number.

Q. I'm sorry, I didn't -- I didn't phrase that correctly. How long were you at the scene where the homicide took place before you went down to Windy River Farms?

A. Oh, 10 minutes.

Q. Okay. Thank you, sir.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. And you indicated you wrote down your name for -- so the police could call you and talk to you later; is that right?

A. Yeah, my address too, yeah.

Q. Name, address and phone number?

A. Right.

Q. Okay. Thank you.

MR. CAMPBELL: That's all I have.

THE COURT: Anything else, Mr. Scales?

MR. SCALES: Nothing, Your Honor. Thank you.

THE COURT: Asking that he be excused?

MR. CAMPBELL: I'd ask the he be excused.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: You are excused, sir. Thank you for coming in.

THE WITNESS: All right.

THE COURT: Could I speak to Counsel just shortly?

MR. SCALES: Sure.

(Sidebar - Not Transcribed)

MR. CAMPBELL: Your Honor, State would call Gerald Rylander.

THE COURT: Please step forward and raise your right hand to be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, ma'am, I do.

THE CLERK: Thank you.

***

GERALD RYLANDER,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last?

A. My name is Gerald Carl Rylander, R-y-l-a-n-d-e-r.

Q. And how were you employed in December -- September of 2001?

A. I was a detective with the Josephine County Sheriff's Office working in the major crimes division.

Q. Okay. And can you tell us what was your police experience at that point?

A. Well, I was hired in July of 1981 and during my first year I had gone through the police academy, Department of Safety Standards and Training. And since then moving forward when I became a detective in November of 1996 I had attended major crimes and homicide investigation training seminars, which included state, regional and OPOA, Oregon Police Officers Association, sponsored classes. I had attended seminars regarding death investigation, crime scene investigation, processing, blood spatter examination, finger printing, camera and photography training and interviewing techniques.

I had also attended in-house training classes and had over 2,000 to 2500 hours of training at that time.

Q. So, how many years of law enforcement -- not just detective, but law enforcement work were -- did you have under your belt in '01?

A. Approximately 21 years.

Q. And you're currently retired; is that right?

A. I am, I retired April 30th of 2005.

Q. So -- okay. And so you had, what, 26 years at that point?

A. No, if you include nine months of reserve time I'd have about 25 years.

Q. Okay. And you've -- you've heard us talk about the location of this incident and let me get this out of the way right now, is that a location -- a location between Hussey Lane and 770 Picket Creek Road on Picket Creek a location in Josephine County, Oregon?

A. Yes, sir.

Q. Okay.

A. Josephine County and the state of Oregon.

Q. Why don't we talk about this just briefly, how did you arrive at the scene that day? What were you doing and how -- when were you dispatched and --

A. Well, I was not dispatched to this call, I had been in my vehicle and was traveling toward Cave Junction on State Highway 199 when I overheard radio traffic regarding the shooting

incident. That was about 9:57 a.m. on Thursday, the 27th of September.

Q. Okay. And did you change route then and go to the scene?

A. I did, I voluntarily headed toward the scene and then I drove to Riverbanks at the beginning of Picket Creek and waited for uniformed officers to respond and arrive ahead of me so that I wasn't going in to a scene cold.

Q. Okay. So, a number of the officers went in and did you -- was the scene secured as soon as you -- the police came on to it?

A. Yes, and in fact I immediately followed in with them.

Q. Okay. And when we -- we secure a crime scene we tape it off and from then on keep people out of it?

A. That's correct.

Q. And that was done?

A. Yes.

Q. Okay. And you had assistance in doing that because -- were you involved in making --

A. I was not physically involved in the taping off, in fact part of my initial duties

becoming the lead officer for this case was to ask other officers to handle duties. I had contacted Lieutenant Anderson who was on scene and asked him to be the crime scene coordinator. I asked him to call for Oregon State Police Crime Lab, an Oregon State Police accident reconstructionist and additional detectives and uniformed officers to respond.

Q. Okay. Were there -- what -- how many -- can you name some of the other officers that were with you as you came on to the scene?

A. The sheriff himself and --

Q. At that time was?

A. Mr. Dave Daniels.

Q. That was Dave Daniels?

A. Yes.

Q. Okay.

A. And Lieutenant Anderson and First Sergeant Lee Harmon and Lieutenant Williams were the first persons on scene and then other officers followed, Sergeant Randy Lucas and --

Q. Okay.

A. -- Deputy Hines.

Q. Let me talk about a few things that you noticed when you came on scene and just cover

those now. I want to spend most of my time having you start identifying exhibits today. But, the two vehicles were on the roadway in contact when you came on?

A. Yes.

Q. And let's talk about the front pickup first.

A. The northbound -- north most pickup truck had -- the driver's door was wide open, there was a body partially connected to the vehicle. The feet were wrapped up in wiring with the remainder of the body was on the road. It was in direct contact with a two-tone brown Bronco that was immediately behind it. The engine was running in the pickup truck. The engine was not running in the Bronco.

Q. Was -- was that changed at some point in your presence, was it turned off?

A. Yes, in fact in my presence, Harvey Callahan turned off the ignition for the pickup truck.

Q. And did you see the placing of the rock behind the Bronco? Were you there by -- when that was placed?

A. Yes, and Harvey Callahan was the one

who placed the rock behind the left rear tire --

Q. Okay.

A. -- of the Ford Bronco.

Q. The -- talking about the pickup again, you said it was running, I -- maybe this is obvious, what -- where was the transmission?

A. The transmission was in neutral gear.

Q. Okay. And did you -- did you determine what gear the rear vehicle, the Bronco, was in?

A. Yes, it was discovered that it was in 3rd Gear.

Q. And let's talk about the windows. The driver's side window on the front pickup was in what position?

A. It was cracked open approximately about a half inch.

Q. And how about the window on the Bronco?

A. I believe it was completely open.

Q. Okay. And all of the -- part of the procedure would be to -- before anything was touched or -- or moved or changed is to try to get photographs of everything before you begin working the scene at all; right?

A. Yes, there was a little bit of a delay with that, within a half an hour additional detectives arrived, that would Detective Wayne Dykes and Detective Mario Torres and I'd had contact with them at the scene. And I'd asked Mr. Torres to interview persons on the scene, though I'd had some brief contact with the persons that were there. And I asked Mr. Dykes if he would take care of the scene photography.

Q. Okay. Let me start by -- at this point by showing you State's Exhibit 1. And I'm going to put these already entered ones back in this stack. Right now I'll show you what's been marked as State's Exhibits 1 through State's Exhibit 43 and ask you by way of foundation, have you previously looked through all of those exhibits and reexamined those exhibits before this trial?.

A. Yes, sir.

Q. And do those fairly and accurately depict the scene and another location where the shooting cans were that you observed during the investigation?

A. Give me a moment.

Q. Okay. And refresh.

A. Yes, sir, these accurately depict both the scene as I saw it and also of shooting scene, shooting location.

MR. CAMPBELL: So, at this time, Judge, we would offer State's 1 through 43. Some of those have already been received, but --

THE COURT: Mr. Scales?

MR. SCALES: No objection.

THE COURT: Exhibits 1 through 43 are received, with the Court noting that I believe it's Exhibits 9, 24, 41, 42 and 43 were previously admitted.

BY MR. CAMPBELL:

Q. I'm going to show you at this time what's been marked for identification in this case as State's Exhibit 51 and ask you if you recognize that?

A. Yes, sir, it has my writing and my mark on it.

Q. Okay. And what is -- this is a videotape of?

A. Of the area of --

Q. Okay.

A. -- Hussey and Picket Creek and the

surrounding area.

Q. And basically driving, turning on to Hussey Creek down and basically showing the area driving the defendant's?

A. That's correct.

Q. And then driving back out to Robertson Bridge Road?

A. To Robertson Bridge.

MR. CAMPBELL: We'd offer 51.

THE COURT: Mr. Scales?

MR. SCALES: No objection to 51, Your Honor.

THE COURT: 51 is received.

BY MR. CAMPBELL:

Q. And State's Exhibit 61a and b, and we'll be talking about these later, but I wanted to get them in to evidence. Are these -- is this evidence that you seized during the case?

A. Yes, these are evidence that I seized.

Q. And let's go with 61a first, what is it?

A. That's a plastic canister that contained a bullet fragment that came from Mr.

Whitcraft's right eye.

Q. Okay. And how did you get that?

A. That was obtained during the course of the autopsy.

Q. And as part of your duties as a detective on the case you go to the autopsy when it's performed?

A. Yes, sir.

Q. And you collect evidence there?

A. That's one of my jobs there, yes.

Q. Yeah. Okay. And 61b is?

A. This is a film canister that has bullet fragments that came from below and behind Mr. Whitcraft's right eye. These were also obtained at the time of autopsy.

Q. Okay. From the -- the pickup itself did you collect --

MR. CAMPBELL: We'd offer 61a and b.

MR. SCALES: No objection.

THE COURT: 61a and 61b are received.

BY MR. CAMPBELL:

Q. Did you seize bullet fragments that had exited the victim and struck the front window?

A. I didn't personally seize the items,

in fact that was -- became a task that was given to Detective Torres. I ultimately received all evidence that was collected at the crime scene, save those pieces that went directly to the Oregon State Police Crime Lab.

Q. Okay.

A. So, yes, I'm responsible for having --

Q. And you --

A. -- custody of that.

Q. And did you, in fact, book that in to evidence?

A. I booked all the evidence that we --

Q. And did you observe it on the scene?

A. Yes.

Q. And -- okay. I'm going to show you what's been marked as State's Exhibit 73 and ask you if you recognize that?

A. Yes, that is a lead bullet fragment that came from the dash of the pickup, which was license XXF 649, the Whitcraft vehicle.

MR. CAMPBELL: We would offer 73.

THE COURT: Mr. Scales?

MR. SCALES: No objection, Your Honor.

THE COURT: 73 is received.

BY MR. CAMPBELL:

Q. And I have here State's 70 and is this a piece of evidence that was seized during the investigation?

A. Yes.

Q. Where did you locate this or see this?

A. That was located in the two-tone Ford Bronco that was registered to Mr. Sandoval.

Q. And that was photographed in place before it was moved or seized; is that correct?

A. Yes.

Q. And I'm showing you -- it looks like we have at least three photographs, 35, 36 and 37, which show where that was in the vehicle.

A. Yes, I recognize those.

Q. And is that exactly where it was when --

A. That --

Q. -- you seized --

A. -- accurately depicts where I observed the rifle to be in the Ford Bronco.

Q. Okay. At some point you subsequently searched the Ford Bronco, went through it and collected quite a bit of evidence out of it; is

that right?

A. I did.

Q. And I'll -- I'm going to go through some of those things you collected, and some of it is already in evidence. So, maybe right now I will talk about State's Exhibit 74 that's already been identified by witness Rose, Janice Rose. Did you seize this during the search -- a search of that Bronco, that .22?

A. Yes, I did.

Q. Where did you find that?

A. The front seats of the Bronco are bucket seats and they have a separation which is normally where you'd find the tunnel for the transmission. And on that division was a plastic container that was being used like a console. And between the seat, the driver's seat, and that plastic container was where that pistol was found.

Q. Was it loaded?

A. It was loaded, it had a magazine that had 11 live rounds in it, but there was no live round in the chamber.

Q. And I'll show you -- I know I have that. Show you State's Exhibit 76, is that the magazine that you just spoke of?

A. Yes, it is.

MR. CAMPBELL: We would offer 76.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: 76 is received.

BY MR. CAMPBELL:

Q. State's Exhibit 77, was it related to 76, the magazine?

A. Yes, those would be the rounds that I removed from the magazine.

Q. And when you examined that weapon did it appear to be operable to you as a police officer that's handled weapons?

A. It did, the outer surface had some rust on it and one has to recognize that that was sitting in a vehicle that was not weather protected completely for nearly a year before that was removed.

Q. Okay. And semi-auto, this is a semi-auto weapon?

A. Yeah, one would in order to activate it would slide the -- pull the slide back and let go of it and that would automatically chamber a round and from that point it would be essentially

a double action pistol. As long as there's ammunition and you pulled the trigger individually per shot it would continue to fire.

Q. So, you can shoot that quickly?

A. Definitely.

Q. You have to move other ammunition in with that kind of a weapon?

A. One does not have to manually place a round in to the chamber to get it loaded. The only time you would have a problem would be when you ran out of ammunition or some kind of a mechanical failure.

Q. And was this in -- in arms reach of the driver?

A. It was.

Q. Basically you're telling us right down here?

A. Within hand reach on the side of the driver's seat.

Q. Side of the driver's seat. And State's Exhibit 75, is it related to State's 74 also?

A. Yes, I recognize this. This is a small leather holster that does not have a safety strap on it that that particular pistol was in and

both those items were between the seat and the console.

Q. So, the pistol was in -- 74 was in 75, loaded with the magazine and ammo that we have here?

A. Yes, sir, that's correct.

Q. And you sent that to the State Police Crime Lab for testing also; correct?

A. I believe I did.

Q. Okay. And we'll have them testify about that.

MR. CAMPBELL: Did I offer 75?

THE COURT: You did not.

MR. CAMPBELL: I offer 75.

THE COURT: Is that 77?

MR. CAMPBELL: I offer 75, 77, 76.

THE COURT: 76 is in already.

Mr. Scales, any objection to 75 or 77?

MR. SCALES: No, Your Honor.

THE COURT: Both are received.

BY MR. CAMPBELL:

Q. I'm going to show you now State's Exhibit 71 and ask you if you can identify that for the jury?

A. Yes, I can.

Q. What is that?

A. This is a 7mm casing that -- an empty shell, a fired shell casing, that was found under the two-tone brown Ford Bronco.

Q. Okay. And that's also pictured in the photographs that the jury will see?

A. Yes.

Q. And where was that found under the vehicle?

A. It was under the rear section of the vehicle somewhat near the center, I believe.

Q. If I show you State's Exhibit 4 is that where it was -- there's -- those yellow markers you use, maybe tell the jury about those.

A. We use plastic yellow markers that are kind of teepee shaped triangular that we can set near objects that we wish to photograph or identify as pieces of evidence. Some of them have numbers on them, 1 through 100, others have alphabet letters on them, A through Z, then it goes AA through ZZ and on.

In this particular case was is depicted in this photograph is the number 1, you can -- I don't know if you folks can see it from there, but

it is essentially in the center near -- in the area of where the trailer hitch would be and it was -- that cone was placed there deliberately to depict where that shell casing was.

Q. Okay. And did you send that shell casing along with State's Exhibit 70 for comparison to the crime lab?

A. I have to refer to my report notes to verify that I did or did not. Had I -- it's not with this particular report, I'd have to go through my three reports.

Q. All right. You'll have a chance to look at that. I want to show you State's Exhibit 72 and ask you what that is?

A. Yes, I recognize these. This is three 7mm 7 x 57 R-P cartridges. One was from the chamber and two were from the magazine of the rifle.

Q. Okay. So, when you seized the rifle it had three live rounds in it?

A. Three live rounds.

Q. And tell us where they were in the gun so we make sure we get this in.

A. One live round was in the chamber ready to be fired and two were still in the

magazine of that rifle.

Q. And State's Exhibit 78?

A. This is a manufacturers plastic ammunition container or carrier that goes in the manufacturers box and that would be inside and have all live rounds in it when you purchase it. This particular carrier had five spent rounds and six live rounds in it. And they were found underneath, directly underneath that plastic center console in the Ford Bronco.

Q. Okay. I think we better take a look at that plastic center console if we have a picture of it. I'm going to show you 35, 36 and 37 again and maybe you can use whichever one helps you best to show the jury what you're talking about, the center console.

A. Well, I could probably talk about it with each of these. The rifle where the scope is is actually -- would be next to or nearly on top of that center console. And you can not actually see the center console from that picture.

A better picture --

Q. And you're referring to 35?

A. I'm sorry.

Q. Yeah. Okay.

A. In Exhibit No. 36 is a picture taken from the left side of the vehicle looking through the driver's door at the two bucket seats. And in the center you can see the plastic console and part of that is liquid cup holder area and the butt of the rifle near that.

Q. So, the -- this -- this section right here is what you're calling the console?

A. That whole area, that whole devise there, you pick up that whole thing.

Q. And it -- but it appears to say "Igloo" on there, is that -- was that --

A. Well, yeah, in fact, I didn't pay much attention to that then until you brought it to my attention, I guess. Igloo is a famous brand for coolers. And that's probably what it originally was in life.

Q. Okay. And it -- but it was in there in that --

A. Being used in a capacity of a center console for holding items.

Q. And the -- this ammo that you just indicated is down in front of that?

A. It's underneath it.

Q. Underneath it?

A. Underneath it.
Q. Okay.
A. This is another picture that also clearly shows between the bucket seats the Igloo container and that lid comes off.
Q. Okay.
MR. CAMPBELL: And at this time I would offer 71, 72 and 78.
THE COURT: Any objection, Mr. Scales?
MR. SCALES: 71, 72 and what was the other one?
MR. CAMPBELL: 78.
MR. SCALES: No objection, Your Honor.
THE COURT: 71, 72, 78 are received.

BY MR. CAMPBELL:
Q. Now I'm going to show you what's been marked as State's Exhibit 45, 46, 47, and we've already marked 48 and entered it, it's a -- I'm going to put it back in to this series, and 49 and 50. And let me show them to you first and ask you if those -- if you recognize them and whether they fairly and accurately depict those -- those things that you observed and photographed? You may not have taken the photograph, but do they show what

you did observe?
A. Yes, sir, I recognize the photographs and, no, sir, I did not take all of them.
Q. But, some of these are the search of the vehicle, things that you were finding during the search; is that correct?
A. Yes.
Q. So, you were doing the search weren't you?
A. I did the search of the vehicle.
Q. And did other people take photographs while you were doing it or did you do those photographs?
A. The search of the vehicle took place at the Sheriff's Office Impound Yard and other photographs were taken in the area of the scene and the area of Mr. Sandoval's property.
Q. Okay. And that you're referring to State's 48 and 49, they're -- that's a picture of his house as it looked at that time and some tire tracks matching -- apparently matching his tires and --
A. Yes, sir.
Q. -- his own driveway?
A. That's correct.

Q. Okay.
MR. CAMPBELL: We'd offer 45 through 50.
MR. SCALES: Your Honor, no objection to 48 through 50. I do have a question in aid of objection to 45, 46 and 47.
THE COURT: All right. Then 49 and 50 are received, 48 already having been received.
MR. SCALES: Oh, thank you.
Detective Rylander, the items that were found during the search of the vehicle in 45, 46 and 47, just so we're clear, that is after you have found them and you have displayed them for the purposes of taking the photograph; is that correct?
THE WITNESS: Oh, absolutely correct.
MR. SCALES: Okay.
THE WITNESS: Yes.
MR. SCALES: Thank you.
I have no objection, Your Honor.
THE COURT: All right. Then 45, 46, 47 are received.

BY MR. CAMPBELL:
Q. And I think, Detective, we'll take a moment and have you go ahead and describe these

for the jury and we'll publish those to the jury. If you'll take a look at them and state their number and tell the jury what is photographed there or depicted there?
A. Exhibit 45 is what could be described as an Indian style or throwing style of tomahawk, it has a metal head on a wood -- wooden handle and is rather lengthy, I couldn't tell you exactly the measurements off hand.
Q. Found in the defendant's vehicle?
A. Yes, sir.
Q. And that defendant's vehicle was seized at the scene and kept in Sheriff evidence?
A. The vehicle was seized, the vehicle was taken to the Sheriff's Impound Lot, which is a fenced compound. The vehicle was -- windows were rolled up, it was locked, the keys were separated from the vehicle and kept in a separate location and had been secure from the time it was seized until the day that it was searched again by me.
MR. CAMPBELL: Can I hand this to the jury?
THE COURT: Yes.

BY MR. CAMPBELL:

Q. And 46 is the next one?

A. 46 shows a machete that has a metal blade and a black plastic handle that was behind the driver's seat of the two-toned Four Bronco.

Q. And 47?

A. 47 is a picture of the center console and being able to see the interior portion of the drinking cup holders. And displayed on top of the Igloo lid is a number of live revolver ammunition rounds.

Q. Okay.

A. Those were found in the two-tone brown Ford Bronco.

Q. So, it had other -- did you find a weapon that matched this ammunition?

A. Not in that vehicle.

Q. Not in the vehicle. Okay. But, this is up on top of -- down underneath is this ammo that you've already identified?

A. Yes.

Q. And right -- this is the area that the rifle was in?

A. Yes.

Q. And on 47 is -- does it show the area

where the .22 semi-auto was?

A. Well, it does if you were to have placed your hand between the center console and the seat straight down is where that pistol and holster was located.

Q. Okay. Between the driver's seat or --

A. The drive -- the driver's seat.

Q. And the -- this -- this what you call a center console?

A. Yes, that's what I'm calling it.

Q. Okay. Yeah, and I guess it's a make-shift center console really; right?

A. Yeah, it's not factory.

Q. It's not a factory design. And 48?

A. 48 depicts a picture looking down the dirt driveway toward the Sandoval property. And the property, the residence, is a yellow and white mobile home and there's a number of vehicles parked around that and there's a fence along the side of the road. That's 180 Cliffside.

Q. And 49?

A. 49, and I can't tell you based on this picture exact location with where it was taken, it's a picture of tire tread marks in muddy

dirt ground and it has a three and a half inch computer floppy disk placed on to the tread markings to indicate -- I assume that indicates the size dimension of that particular tire.

Q. Just to give some dimension?

A. Yes.

Q. And --

A. And Number 50 shows the relationship of the Ford Bronco front end with the rear tailgate of the Ford pickup truck at the shooting scene.

Q. Okay. And I'm sure Criminalist Amish is going to describe that, but describe the offset, what did it appear to you?

A. Well, it appeared that the lead truck was partially to the left of the left edge of the Ford Bronco. It's difficult to describe, easier to show. Two items in a row both facing the same direction, the offset is the vehicle in front is further toward the fog line than vehicle in the back -- or do I have that backwards? I could have that backwards. If I could see the picture again and verify my own statement.

Q. Looking at State's 9, the vehicle in the back is offset to the right and is it a full

half a vehicle over?

A. Pretty close, pretty darned close. And that was correct in that the Ford pickup truck is further toward the fog line than the Bronco is.

Q. Not the fog line; right?

A. To the center --

Q. Center.

A. -- divider line.

Q. Okay.

A. I'll get one of them right.

MR. CAMPBELL: May I publish this now?

THE COURT: You may.

MR. CAMPBELL: Did I offer those? I did, didn't I?

THE COURT: Yes.

MR. CAMPBELL: Yes.

THE COURT: They're all received.

BY MR. CAMPBELL:

Q. Now I'm going to show you what's been marked as State's 113 through 123 and we'll go through the same drill, have you look at those and tell me whether or not you recognize what is depicted in those.

A. Yes, I recognize every one of these

exhibits. In fact, they don't have -- yeah, they do on the back. I recognize all these pictures.

Q. Do they fairly and accurately show what you observed in terms of evidence?

A. Yes, they're actually photographs that I personally took. They're taken from two different locates. The first one, if I may describe what I'm seeing?

Q. Well, not until they're in evidence. Let me offer them at this point.

MR. CAMPBELL: 113 through 123, we'd offer those.

MR. SCALES: That's 113 through 123? No objection, Your Honor.

THE COURT: 113 through 123 are received.

BY MR. CAMPBELL:

Q. And we will go ahead and have you go through these exhibits and tell the jury what's depicted.

A. Exhibit 113 is a picture that I took of Leonard Sandoval on 9-27-01 and that picture would have been taken at the Martin's residence.

Q. Okay.

A. Exhibit 114 is a picture of a blue

plastic milk type carrier that has items that has a small red toolbox, a chain and a jack inside of it. This is something that was located in the back of the Ford Bronco at the time that I did the search.

In this picture, Exhibit 115, is additional -- in fact, many of these will be additional pictures of items that I located in the back of the Ford Bronco at the time that I did the search. This particular picture has a hatchet, a single bladed axe and a pick axe. Prominently displayed in the background is also a canteen.

Q. Okay. And and I guess the same question Counsel asked you, were these moved to photograph or is this where you saw them first?

A. No, they're not where -- in their original positions in these particular picture, they're moved for the ability to clarify each item for photography.

Q. And these were worthy of note to you because?

A. Well, I found knives and axes and throwing axes and pistols and rifles in there and I wanted those all documented.

Q. You were documenting weapons or

potential weapons in the vehicle?

A. Yes. This is a picture of a gold mining pan, a canteen, the blue box that had a hatchet, a small hatchet in it and other items, some like shorts and clothing and fishing gear, fishing tackle boxes that were found in the back of the Ford Bronco at the time of the search

Q. For the record that was State's 116. And 117?

A. 117 is one of those tackle boxes that's open showing the contents in there, it's predominantly fishing gear.

Q. And this is again in the defendant's Bronco?

A. In the Bronco at the time that I did the search. 118 is -- would be the right side looking through the back of the Ford Bronco at the time that I did the search. And it shows a fishing pole, a hat, I assume for keeping sun out of your eyes, and an empty Coke can and a corner of a fishing tackle box and a rag.

Q. Okay.

A. That was found in the Ford Bronco at the time of the search.

Q. And 119?

A. 119 is I'm holding open a -- looks like a wooden box that shows a variety of miscellaneous hand tools that was in the Ford Bronco at the time that I did the search.

Q. And 120?

A. 120 is removing a folded up tool -- plastic tool pouch that was inside the wooden box to show what was in that, that was in the Ford Bronco at the time that I did the search.

Q. Was there any gun rack or any place that was designed to hold this hunting rifle in that Ford Bronco, '86 Ford Bronco?

A. None that I saw anywhere in the vehicle.

Q. Okay. And the next one is State's 1 --

A. 121, Exhibit 121 shows another tackle box that's open and that has fishing tackle, clearly fishing tackle in it. This was in the Ford -- back of the Ford Bronco at the time that I did the search.

Q. And 122?

A. 122 is a picture showing the back end from a slightly stepped back position with the contents not moved at the time that I did the

search.

Q. Okay. So this is a perspective look in to the way the rig was at the scene and the way the back end appeared without anything moved?

A. Essentially that's exactly what that is.

Q. Showing 122. And, finally, 123?

A. 123 is a picture of Weed and Feed that appears to be unopened, full, that was on the floorboard of the passenger side of the two-toned brown Ford Bronco that I found during the time of the search.

Q. Okay. So, that's -- Weed and Feed is that a fertilizer?

A. Weed and Feed is used if you wish to feed some nutrients to an already established lawn and kill any kind of weeds that might be on it, or a certain variety of weeds that are in it.

MR. CAMPBELL: Judge, may I check the hall just a second?

Perhaps Counsel and I can approach the bench, Judge, talk about what we're going to do the rest of the day?

(Sidebar - Not Transcribed)

MR. CAMPBELL: So, Your Honor, at this time I think it would be helpful for the jury to have some time to look through this stack of the large photographs that I have marked and entered. and I have another witness outside that's going to take them, if they take their time, 15 minutes, maybe. And perhaps we can start with that witness or -- or -- on Monday.

THE COURT: All right. I think that that would be an appropriate procedure. So, what we will do is allow the time for the jury to go through the photographs that recently have been admitted, the Court has admitted quite a few exhibits in the last half an hour, 45 minutes. So, we'll give some time for the jurors just to sit in their chairs and go through those exhibits. And then we will probably just go ahead and stop one the jury has had a chance to do that and reconvene on Monday.

MR. CAMPBELL: Okay. And just to let the Court know I think the jury -- it will be helpful for them to be familiar with these, but I do intend to have witnesses give specific testimony about these so they'll know what we're looking at then.

THE COURT: Certainly. So, you are handing them the full stack of photographs?

MR. CAMPBELL: Well, they had a couple --

THE COURT: -- of the exhibits already received.

MR. CAMPBELL: -- we can put it back in there.

THE COURT: Will you be asking any more questions of this witness during this process?

MR. CAMPBELL: I will not, Judge. And I am, for the record, handing them the stack, State's Exhibit 1 through 43.

THE COURT: All right. Then we'll go ahead and ask the witness to step down and just allow the jury a moment to go through those.

MR. CAMPBELL: I did offer 61a and b, did I not?

THE COURT: Which one?

MR. CAMPBELL: 61a and b.

THE COURT: Yes, they are received.

(From 4:34 p.m. to 4:50 p.m. pause while the jury reviews the exhibits.)

THE COURT: All right. Has everyone had

an opportunity to review the exhibits? And, by the way, as you recall you will have those in the deliberation room at the end of the trial, you will receive all of the exhibits at that time as well.

All right. Then at this moment we are going to break for the weekend. Ladies and gentlemen, again, I must remind you do not speak to anyone about this trial, do not read or listen to any media reports about this trial or about anyone involved in this trial.

And we will have you return back to the jury room next Monday at 9:15, we will expect to start here in the courtroom at 9:30. But, if you would check in at 9:15 that will give you a little bit of time to get assembled in there.

So, please leave your notebooks on your chairs and everyone have a pleasant weekend.

(At 4:51 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are in recess until 9:30 Monday morning.

MR. SCALES: Thank you, Your Honor.

(On February 20, 2009, at 4:52 p.m. the above entitled matter was concluded for the day, to reconvene on February 23, 2009, at 9:30 a.m.)

GRANTS PASS, OREGON

MONDAY, FEBRUARY 23, 2009; 9:36 A.M.

12 PERSON JURY TRIAL - DAY 4

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. Good morning. This is the time set for State vs. Sandoval. Counsel have anything before we ask the jury in?

MR. SCALES: Nothing from the Defense, Your Honor, other than I spoke with Mr. Campbell just briefly regarding scheduling.

THE COURT: Okay.

MR. SCALES: And perhaps Mr. Campbell can advise the Court approximately where he is. I was hoping to perhaps have my witnesses ready tomorrow afternoon, but maybe we can address that?

THE COURT: Mr. Campbell, where are we at?

MR. CAMPBELL: I'm not quite sure. I

told Mr. Scales I believe I might be done tomorrow and he might have time for witnesses tomorrow --

THE COURT: Okay.

MR. CAMPBELL: -- afternoon.

MR. SCALES: I guess we'll just play it by ear. I just wanted to try to give the witnesses 24 hour notice before I had them come in.

THE COURT: I think that that would be the best plan. We don't always know how long any witness -- any particular witness will take, of course. But, I do want to be careful about not having any blank time where we don't take advantage of really every minute we have.

MR. SCALES: In that case I'll make sure that my witnesses are here at 1:30 and we can always have them come back the next day.

THE COURT: Well, that might be a little too optimistic. I don't know. Mr. Campbell?

MR. CAMPBELL: Well, I bet you we'll have a lot better idea at the end of today.

THE COURT: Okay. Maybe that would be the best thing just to --

MR. CAMPBELL: I know -- I can tell you Richard Kuehmichael, the accident

reconstructionist, is flying in today and will be testifying tomorrow.

MR. SCALES: Okay.

MR. CAMPBELL: Also Dr. Olson will testify tomorrow.

MR. SCALES: Okay.

MR. CAMPBELL: Now, Dr. Olson will not be very long, Kuehmichel will be longer. And then I will finish with any other civilian witnesses that I haven't gotten to today.

THE COURT: Okay.

MR. SCALES: Then that might be a little bit optimistic --

THE COURT: All right.

MR. SCALES: -- for 1:30 tomorrow.

THE COURT: So, we'll --

MR. SCALES: Okay.

THE COURT: -- just see how we -- how we stand by the end of the day today.

MR. SCALES: Very well.

THE COURT: Now, Mr. Campbell, starting out this morning were you going to go ahead and call your next witness and then come back to the detective?

MR. CAMPBELL: That was my plan was to go

to Mr. Amish at this time, Judge. Mr. Scales has indicated he may want to cross briefly on what I've covered so far with Jerry Rylander.

THE COURT: Before you would go to your next witness, is that what you are indicating?

MR. CAMPBELL: And that -- you know, obviously, that's up to --

MR. SCALES: I understand that Detective Rylander is going to be called again. But, rather than doing my cross all in one part I would like it just to be, you know, related to his first direct examination. So, it'll be very brief, Your Honor.

THE COURT: All right. So --

MR. SCALES: I'd like to get that out of the way though.

THE COURT: -- just to clarify, Mr. Campbell, you're not finished with Detective Rylander?

MR. CAMPBELL: I am not.

THE COURT: But, you would just -- so, what would happen is Mr. Scales would just do his cross examination on the information that the detective has testified to thus far?

MR. SCALES: That's correct.

THE COURT: And then we would break and you can go to your next witness and then we'll -- we would come back to the detective?

MR. CAMPBELL: It's totally up to the Court whether you want to allow him to do that. But, yeah, I intend to put him back up today to finish his testimony.

THE COURT: And, Mr. Scales, you're asking for that?

MR. SCALES: I am, Your Honor, since --

THE COURT: Okay.

MR. SCALES: -- he's -- since it's --

THE COURT: I think that's --

MR. SCALES: -- still fairly fresh in the jury's mind I'd like to.

THE COURT: I think that that is reasonable particularly in view of the fact that we've had a weekend break and then potentially a different witness coming in. So, I think that that would be fine to do it that way.

So, let's bring the jury in.

And then, Detective, we'll have you retake the stand, we'll swear you in first and then Mr. Scales can do his cross.

And then we'll go to your next witness.

Thank you very much, Mr. Campbell, I appreciate that.

You can bring the jury in.

(At 9:40 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Good morning, ladies and gentlemen, we are continuing our trial State vs. Sandoval.

I wanted to explain our procedure this morning because it is going to be slightly different. Friday afternoon you heard the testimony of Detective Rylander and he is in the middle of his testimony and then the State also has another witness that they wish to call. So, we were going to interrupt the testimony of Detective Rylander to allow this other witness to come in to testify. Before we do that, however, Mr. Scales will be given an opportunity to do his cross examination thus for on Detective Rylander.

So, if everyone is following that we

will have Detective Rylander step back up and be sworn in for a new day. And then Mr. Scales can do his cross examine and then we'll take a break from that testimony and the State's new witness will come in for testimony.

Go ahead.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. Have a seat.

THE COURT: So, Mr. Scales, you may do your cross on the testimony so far.

MR. SCALES: Thank you, Your Honor.

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GERALD RYLANDER,

resumed the stand as a witness on behalf of the State, was sworn and testified as follows:

CROSS EXAMINATION

BY MR. SCALES:

Q. Good morning, Detective Rylander.

A. Good morning.

Q. Detective, I just have a few question and we'll take care of the rest when you come back on the witness stand. Approximately when did you search the Bronco the second time?

A. I believe that was on 8-10-02.

Q. Okay. And how many months after the incident was that?

A. That was about 11.

Q. Okay. And it was at that time that you found what's previously been marked as State's Exhibit 45?

A. Yes.

Q. And 46?

A. Yes, sir.

Q. And 47; correct?

A. Yes.

Q. Okay. Those were not found during the initial search were they?

A. Those were not found during the initial search.

Q. Okay. And the console, State's -- excuse me, State's Exhibit 47, just to refresh the jury's memory, is that the -- was it under the console that you found the .22?

A. No, it was actually between the seat and the console.

Q. Okay. And looking at this picture is the console is it fairly snug up against the seat?

A. Yes, it is.

Q. Okay. And the .22 was, I don't want to use the wrong word, wedge or between the seat and the Igloo container/console; correct?

A. Yes.

Q. Okay. Was it -- was it between the seat? Was it near the floor? Was it up off the floor? Was it --

A. No, it would be near the floor.

Q. Near the floor? Okay. Thank you. And, Detective Rylander, you were designated as the case agent; is that correct?

A. That's correct.

Q. Okay. And as the case agent you're responsible for all of the investigation that's done by detectives and deputies, is that an accurate statement?

A. That's pretty reasonable.

Q. Okay. And are you -- and you're familiar with what goes in the investigative reports, I'm assuming you've had an opportunity to

review all of those; is that correct?

A. I've looked at them.

Q. Okay. Thank you. You testified that the gun appeared operable, did you personally test fire the .22 that was found in the Bronco?

A. I did not, I sent that to the Oregon State Police Crime Lab for their analysis.

Q. Okay. And when you arrived on -- turning back to September 27th, 2001, when you arrived on the scene did you see Mr. Markl or Debbie Carter at the scene or had they already left?

A. They had already left, neither one was still on the scene.

Q. Okay. The items that I just showed you, items 45, 46 and 47, the tomahawk, the machete and then the console -- specifically 45 and 46, the tomahawk and the machete, you characterized those as "weapons". Would it be fair to say that those could also be used for other purposes?

A. Absolutely, yes.

Q. Camping? Clearing brush?

A. Sure.

Q. Thank you. Just a couple more

questions, Detective. Did you find any camping gear in the vehicle?

A. I can't remember if I did or not, I think I found maybe a blanket or towels, but I don't recall specific camping gear.

Q. Did you find a canteen?

A. I did.

Q. Okay. That's all the questions I have at this time, Detective. Thank you.

THE COURT: All right. Mr. Campbell, anything --

MR. CAMPBELL: Nothing further, Judge.

THE COURT: -- at this moment?

MR. CAMPBELL: No.

THE COURT: All right. Thank you, you may step down.

And, Mr. Campbell, then you can take a break with this witness and call your next witness.

MR. CAMPBELL: The State would call John Amish, Your Honor.

THE COURT: Please step forward and raise your right hand to be sworn in, sir.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will

be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

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JOHN AMISH,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Good morning.

A. Good morning.

Q. Would you state your full name and spell your last for us, please?

A. Sure. My name is John Anthony Amish and the spelling is A-m-i-s-h.

Q. How are you employed, sir?

A. I'm employed by the Oregon State Police Forensic Lab in Central Point. I've been with the department for 25 years.

Q. And what is a forensic scientist?

A. Actually I'm a criminalist with the

Oregon State Police. When I came on in 1983 we had to be sworn officers, I'm still a sworn officer and still perform training duties involved in that aspect. But, once we were assigned -- or, once we graduated from the academy we were assigned to one of the seven labs throughout the state and I was assigned to the laboratory in Medford at that time. Since then we've had a new facility built in Central Point and that's where we've been for several years.

Basically, a forensic scientist is a person that analysis evidence submitted by the various agencies to process for latent prints or for drugs, clan labs, rape evidence, trace evidence, all kinds of things. We also -- a major function is to process crime scenes for major assault and death investigations.

Q. Okay. And as part of your training and experience have you had training on scene investigation?

A. Yes, I have.

Q. And have you continued to take course work in that area?

A. Yes, I do.

Q. Okay.

A. Yes, in the past few years I've attended both the International Association of Bloodstain Pattern Analyst Conventions one in San Antonio and in Bolder, Colorado and also the Association for Crime Scene Reconstruction that was in Tulsa, Oklahoma last year and this year was I just got back from Denver a week ago.

Q. Okay. And is it common for you to go out to homicide scenes and serious felony scenes to try to recreate the -- what had occurred on the scene?

A. That's correct, yes.

Q. Okay. And did you do that in this case on September 27th, 2001, did you go out to the scene on Picket Creek Road?

A. Yes, I did.

Q. Okay. And you found the vehicles in the place where they were stopped between Hussey and 770 Picket Creek Road?

A. That's correct, yes.

Q. Okay. And why don't you just tell the jury how you begin your work, what do you -- what do you start by doing?

A. Sure. Well, basically when we responded to the scene there were three of us from

the laboratory that arrived, Melissa Felton, at the time and now Melissa Simons, was a forensic scientist that assisted me and also latent print examiner, Alonzo Raddia (phonetic) was there. And then we have the crime scene reconstruction people from my department as well that were there.

So, we arrive at the scene, coordinate our efforts, get some kind of information from the investigative officers who were at the scene as to what the possible scenario was and then we'd contact the accident scene reconstructionist and we kind of assign ourselves to various duties. We began by, number one, going and doing a walk around of the scene, looking at the evidence that's there and getting a general layout of the area and we start taking photographs to document things before things get moved around. And then once we start to document things then we can actually, you know, pick up the evidence and secure it and make sure that it gets placed in to property.

Q. Okay. Part of what the forensic lab can do is compare shells or casings to firearms and determine if they were associated with each other?

A. That's correct, yes.

Q. Okay. And how -- just briefly describe the process.

A. Sure. There's two processes, one we can examine the bullets that are found at a scene and do test fires with the questioned weapon to see if the general rifling characteristics that are imparted on the bullet as it goes down the barrel match the test fired bullets from the weapon.

And then we can also compare the fired cartridge cases that are recovered at a scene or that are in a revolver to anything that's left at the scene. And what we're looking for there are firing pin impressions and breach face marks which are the back end of the barrel when the cartridge is discharged it slams back into the back end of the breach of the barrel and can pick up marks in addition to the firing pin impressions.

So, you're looking at microscopic lines and deformation in the cartridge head and the firing head to see if those marks match each other.

Q. Are those unique to each weapon?

A. Yes, they are.

Q. Okay. I think at this point then, Criminalist Amish, we'll go through some of these photos. And the jury has seen them, but I'd like you to kind of identify some of them and what you were looking at as we went through those. I'm showing you State's Exhibit 1, that's a look at the scene from below Hussey Lane?

A. That's correct, yes.

Q. Okay. And State's Exhibit 2, try and keep these in order, looks down Hussey Lane?

A. That's correct, yes.

Q. And was that a pretty significant slope down that?

A. Yes, I was.

Q. Okay. And I think 3 is obvious. Showing you State's Exhibit 4, what did -- what did you notice about that?

A. State's No. 4 just shows the rear view of the Bronco from Mr. Sandoval and with Mr. Whitcraft's truck placed in front of it. And you can see that the Bronco is somewhat offset to about the center of the rear end of the truck. And then there's a rock that had been placed under the left rear tire of the Bronco to keep it, apparently, from rolling.

Q. And directing your attention to this placard under the back end what did you find there?

A. Yeah, Placard Number 1 was the location of the spent Remington -- or -- yeah, Remington Peters 7mm Mauser cartridge case that was located and it was about two feet in from the side of the vehicle.

Q. And why don't we just cover that right now.

A. Sure.

Q. Did you receive that cartridge case at the Oregon State Police Crime Laboratory?

A. Yes, I did. That was received -- let's see here, on October 23rd of 2001 by Kerri Babson (phonetic) of the Josephine County Sheriff's Office.

Q. And that corresponds to State's Exhibit 71 in evidence at this time?

A. That's correct, yes.

Q. And did you have occasion or did your laboratory have occasion to compare the tool marks that you've described to State's Exhibit 70 in this matter?

A. Yes, we did.

Q. And what was the finding?

A. Basically, the way the system is set up now is that things have changed in the laboratory system pretty significantly over the years. When I started back in '83 each individual laboratory did a lot of things. We pretty much were generalists and did firearms and toxicology and serology and trace and chemistry and everything. As the things have evolved we've become more specialized. And so DNA is done in the Portland laboratory, toxicology is done in the Portland laboratory, arson analysis is done on Portland and then firearms comparison where they actually do the side-by-side microscopic work is done in Portland and in Springfield and we used to do that as well. And so a lot of things have kind of moved around in specialty to different labs.

At this time I did an examination of the comparison, looked at it, figured out that they were close enough to warrant further investigation or further analysis. We're kind of -- at this point kind of like firearm screeners, we look at the evidence and say, "Yes, this firing pin impression is consistent with what we're seeing from the test fires, therefore, we're going to

move it on." If they're just similar we can eliminate them.

The same thing goes for bullets. If we have a bullet that's recovered from a victim that's six lans and grooves with a right twist and yet the weapon has four lans and grooves with left twist then we can immediately eliminate that and prevent people from wasting a lot of time. So, if they're very close, similar enough microscopically we go ahead and forward it on.

And that -- in this case it was confirmed by the Coos Bay lab and at that time the direct, Jim Pax, did that analysis.

Q. And he -- what did he confirm?

A. And he confirmed that the cartridge underneath the vehicle -- cartridge case under the vehicle had been filed in deed by the 7mm Mauser.

Q. Okay. To the exclusion of all other weapons?

A. Yes.

Q. Okay. I'll show you what's been marked as State's Exhibit 5 and tell us what that shows.

A. Okay. Number 5 is Mr. Whitcraft's Ford truck positioned where we found it in front

of the Bronco and you can again see how offset it is. The left front fender area here and quarter panel of the Bronco is resting against the rear bumper. And we also found the rear -- or, excuse me, the left front amber reflector that goes over the turn signal had been broken off and was actually in the license plate cove area of the pickup. So, once they made contact they didn't go very far at that point.

Both doors of the vehicles were open. There was a bullet hole in the rear window of the pickup. And then the body that is located here just outside the driver's door was covered at the time that we arrived at the scene.

Q. You may not remember, did you see a fellow named Gallagher from the Forest Service, he had a fire truck there when you arrived or if you don't --

A. No, I don't remember, there could have been. There was a lot of people there, so --

Q. You were -- you were -- you arrived later than Detective Rylander; is that correct?

A. That's correct, yes.

Q. And I think State's Exhibit 6 is basically the same view; is that right?

A. Yes, it is.

Q. Okay. Let's see, and 7 is back behind the Bronco?

A. That's correct. Yeah, again, here it's showing relative positions to the fog line over here and where they were parked and then this gives a really good clear pictures of where the cartridge case was located underneath the rear end of the Bronco.

Q. And I guess while I'm on that point, I -- did you test this gun for ejection pattern?

A. Yes, I did.

Q. Okay. And how does it eject?

A. It basically ejects to the right and slightly forward and the amount of the ejection is kind of dependent, number one, on how you hold the gun, whether it's cocked one way upward or just a little bit downward or level and then also how much force that you apply to the bolt when you eject it. So, if you lift up the bolt and pull it back real slow the cartridge may eject just a little bit. But, if you forcibly go back real quickly it can spring that cartridge out quite a few feet.

Q. Okay. And State's Exhibit 8,

anything different that you noticed in that?

A. No, I think this was a photograph here showing the passenger side of the vehicle, showing the orientation there as well. And at that time they were also looking at some skid marks. So, the accident scene reconstruction people were actually putting some placards and looking at some evidence there as well.

Q. Okay. And State's Exhibit 9?

A. Okay. State's Exhibit 9 is showing from the right front area and looking back. And you can really see how much of the vehicle is offset there, just about half the width of the vehicle. So -- and it shows the orientation and you can now see the fracturing and the hole present in the rear window of the pickup.

Q. Okay. And I do want to talk about that a little more --

A. Sure.

Q. -- as we get to better photographs. State's Exhibit 10?

A. Okay. State's Exhibit 10 shows the final resting position of the victim. His feet are still tangled up kind of in some wire and still are in the door depressed area right here

where the door would shut. There's actually a little gap in there where if you shut the door there's a little space in there that obviously things can drop down in. But, basically his feet are tangled in there and slightly twisted, his legs are bent to the rear of his hips.

And we did notice during our investigation that the vehicles had moved back some distance approximately 15 inches after the victim had fallen out. And now you can see that there's two main areas of blood staining located on the pavement, one here closer to the vehicle and then another one over here.

Q. Okay. And State's Exhibit 11?

A. Okay. Number 11 basically showing a position from the side showing the victim's left arm with a significant amount of blood on his wrist and his forearm. And you can also see the butt of the Italian revolver that's located underneath the head. You can see the brass back strap of the bottom of the grip there. And then you can see the additional blood flow from his severe wound from the lower left portion of his head.

Q. And State's Exhibit 12?

A. Okay. State's Exhibit 12 is just -- let me get orientated here. There we go. Just showing how his feet are wrapped up inside the vehicle here. So, here's the hinge of the door, here's the floor mat here and you can see part of the speaker wire cord still wrapped around his foot and his legs are crossed. So, they were probably hung up in there when he fell out and they just remained in there.

Q. And looking at State's Exhibit 13 now.

A. Okay. State's Exhibit 13 is an Italian made Army target revolver, .44 Magnum that's imported from a company in Costa Mesa, California by Mitchell Arms. And so they will by a lot of these foreign made things and then resell them in the United States. This was the weapon. It's a single action weapon, which means in order to fire this weapon you have to pull the hammer back each time. It's not a double action where you would continually pull the trigger and have it rotate the cylinder each time. Those are two different types of weapons.

So, in this one you would fire it, you would have to pull the hammer back again for the

second shot.

Q. So, the second -- the -- it's not like a semi-auto single action that kicks the hammer back?

A. Correct.

Q. This one you have to pull it back every time?

A. Manually. Yes, that's correct.

Q. Okay.

A. Yes. And it was found, again, underneath the victim's head heavily blood stained. Again, the only portion that was showing was the rear bottom butt portion of the grip. You can still see a lot of brain and blood dried tissue material on the weapon and the hammer was back in the ready to be fired position.

Q. Is there any way that you could have printed that in the condition you found it?

A. No.

Q. Got fingerprints?

A. No.

Q. And why not?

A. Just because it was very, very much contaminated with blood and tissue.

Q. Okay. And State's Exhibit 14?

A. Okay. State's Exhibit 14 shows a pretty irregular massive wound to the lower portion of the left area of the victim's head. This is pretty much the rear bottom area of the temporal lobe right here behind the ear. And this boney process down here is really thick bone, but when -- what happens here is you can see it's not a nice round bullet hole that was -- that would be consistent with a clean entry wound. But, when this bullet impacts the rear windshield it now deforms.

The bullets in this case are a pointed soft point hunting tip bullet so that they're meant to expand. Remington brand of this weapon is called a core lock, which means that the outer copper jacket is kind of bonded to the internal lead portion of the bullet at a position so that it allows maximum expansion to be twice the diameter of the bullet.

So, in this case the bullet's seven millimeters and so when it hits a target the front of the bullet mushrooms back and expands to a distance of twice that diameter, so 14 millimeters. So, they're trying to allow for maximum expansion and still have part of the

bullet remain intact for pushing power to go through the wound.

So, when it hits the -- when it hits the glass it's already starting to deform and mushroom back, it starts to spread and you also have glass particles now actually becoming second projectiles. So, the bullet's traveling at this distance it's not very far away, the muzzle velocity of this weapon's approximately 2600 feet per second. At a hundred yards it can drop down to maybe 24 hundred feet per second.

But, since this is within a 20 foot or 24 foot maximum distance it's traveling extremely fast. And so when it hits the glass particles those become projectiles just like the bullet itself. And this wound is a fairly, very large wound, it's approximately three and three quarters inches vertically by two inches horizontally. And that information was obtained from Dr. Olson's medical examination report. So, you can see that it's a pretty large irregular wound --

Q. Okay.

A. -- that could cause a lot of damage.

Q. So, you've talked about the bullet mushrooming causing a larger wound. Does the

glass that becomes part of the secondary projectile, is what you called it, also increase the size of the wound?

A. Yes, it does.

Q. Okay. . And State's Exhibit 15?

A. State's Exhibit 15 shows the right upper eyelid area of the victim. His eye is pretty much closed here. The wound did collapse the eyeball. When the bullet did go through the head it went from, again, the lower portion of the left side of the head and ended up with a projectile coming out the left portion of the right side of his eyebrow and that there were fragments all the way through the brain area and the oral cavity and sinus cavity of the victim. But, this just shows there was a small exit wound right here.

And we did have blood and brain material that were deposited on to the front interior portion of the windshield on to the rearview mirror and also to the right side of the mirror as well.

Q. Does that help you determine angle of shot when -- where the material goes out?

A. Yes, it does.

Q. Okay. And did you have associated damage with part of the bullet coming out of that front eyebrow area?

A. Yes, there was a small fragment, a small apparent lead bullet fragment found just adjacent the base of the window where it contacts the dashboard. And there were -- there was a radial fracture pattern at that point where the bullet fragment hit the glass, but did not have enough power to penetrate it or go outside the exterior of the vehicle and it was found laying on the dash right there. And it did cause radial fractures, it did not cause concentric fractures, it just didn't have enough power to cause the glass to bend and actually create those patterns.

Q. Okay. But, it is consistent with a high power gun shot -- rifle shot at that range for it to actually go out and still have energy to break a windshield?

A. That's correct, yes.

Q. Okay. State's Exhibit 16?

A. State's Exhibit 16 is the -- showing the left upper portion of the victim's forehead. It shows some bruising areas here and some skin abrasions, small round skin abrasions here and a

little bit on the upper portion of his -- of his cheek. Excuse me, this would be the left side of his head, not the right. And so this was probably the area where when he went down he impacted the pavement as he exited the vehicle.

Q. Okay. And where -- can you show on that -- that's Number 16?

A. 16.

Q. Show the jury generally the area you think his head would have come out and struck the pavement?

A. Oh, this area here. You can see it's kind of reddened and then you can see these areas of slight abrasion here, here, here and here and then this area down here and his upper cheek area here as well.

Q. And now State's Exhibit 17 is a -- is a better look at the back window, the bullet hole in the back window. Okay. I do want to talk about this a little bit.

A. Sure.

Q. When you take a look at a bullet hole -- or, in glass particularly, what -- what can it tell you? What can you -- what do you look for?

A. Well, number one, you look for the

fracture pattern and the kind of the -- the orientation of the opening. If it's a nice clean perpendicular shot the opening will be very concentric or very rounded. And it can be a -- more of at an angle shot it can be more oblong because the bullet's now coming in at an angle causing it to be longer than it is higher.

This was a fairly concentric centered shot because the rings around it show equal force. What causes the concentric rings versus the radial rings is that once the glass is pushed forward from the force of the bullet it then comes back and expands -- or, comes back and then fractures in concentric rings around. So, you'll get the radial lines and then the concentric lines. And so you can see a nice even distribution of those concentric rings going around which shows an equal amount of force going through that glass.

In addition to that we had glass deposited on the inside of the vehicle on the top of the bench seat on an area here below where his head would have been. And we also had glass on the actual seat portion right behind his lower portion of his back where he would contact the seat cushion. And then we had glass in the front

portion of the dash area in the vehicle as well. And there was -- Dr. Olson found glass in the victim's clothing and in the wound site.

Q. Okay. Just to make sure I'm understanding, when you say if -- if we shot this board perfectly straight --

A. Yes.

Q. -- up and down and sideways the hole you would expect would be pretty much a perfect -- close to perfectly --

A. Fairly concentric.

Q. -- round hole?

A. Yes. Yes.

Q. Okay. If -- if we angle it, if this comes in at a slight angle what will it do to the hole?

A. If it's a slight angle it can still appear the same, it may be slightly oblong or whatever. It's really hard to control that center pattern very much. It's a little bit different in the front windshield glass, it's a different type of glass. But, in the side windows or the rear window like that you will generally get a concentric or slightly oblong hole.

And you can not also determine the

caliber of the bullet going through the glass as well because there's been cases where you look at bullet holes in glass and they're absolutely huge and yet you find out they were caused from a 9mm or 40mm caliber bullet and yet they look like they were fired from a shotgun slug. So, you have to be real careful in your interpretation of that and actually do some test fires with that particular type of window material.

Q. State's Exhibit 18 is another look at that from the front of the vehicle looking back. And it shows a little bit of an oblong on that particular bullet hole --

A. Yes, it does.

Q. Did you form an opinion -- let me get to it, did you form an opinion whether there was an angle on this bullet?

A. Yes, it appears that there's a slight left to right angle as you're looking from the back. So, the driver's side would be the left side and then there's a slight angle going from the left to the right, not very much, but a little bit. Because we do -- again, we have brain tissue and blood way over here on the windshield on this side. You can see the small fracture in the lower

portion of the windshield right down here. So, that's a little bit to the right of the hole in the back, but by only about an inch. And so there generally was a little bit of a left to right --

Q. Okay.

A. -- angle there.

Q. And I think we have more evidence of that. Was the injury you just describe to the victim consistent with a left to right angle?

A. Yes, it was.

Q. Okay. And then -- and you're telling us that the tissue that you found, blood and tissue, you look at that, was that consistent with left to right?

A. Yes, it was.

Q. Okay. And I think I'll hand you three that kind of talk about blood and tissue, 19, 20 and 21.

A. Okay.

Q. And if you'll just identify those and tell the jury what it shows?

A. Sure. Okay. Number 19 is a photograph of the driver's window, slightly rolled down. And it shows in the rear upper corner tissue deposition here and it shows a light

misting all in this area here of apparent brain and partial blood material. It's almost like a vaporized area there. And that would be consistent with the blow back or the back spatter of the entry wound. So, you're going to have forward spatter that goes out through the exit wound and back spatter from an area associated with the entrance wound.

Much like if you've ever seen the video reenactments of the Kennedy assassination you can see blood and brain material blowing out the front of his head and also the stuff exiting from the rear of his head as well. So, you have both actions taking place.

So, this area here is consistent with the rear lower wound of his head, so you've got -- because the shape of the head at that point is curved the bullet going in is going to allow that to kind of expand and exit a little bit to the right of him, rather than straight back. So, that's why -- that's why you get this pattern here.

State's Exhibit No. 20 is the one I described earlier that shows tissue and blood material on the interior portion of the

windshield. Here's the rearview mirror here and you can see the depositions taking place on the upper portion of the windshield and pretty much the central area here and then smaller pieces located around that central area.

Q. Okay. And actually a little to the right of the --

A. That's correct, yes.

Q. Okay.

A. And State's Exhibit No. 21 shows the open entry or surface of the driver's door. And if you look down here at the bottom in the lower portion this orange area here there are some small blood stains. Some of these are actually traveling upward from the ground, they're spattering in -- or, anyway, spattering and hitting the ground and then coming up in the upward direction and being deposited on the lower panel of the door. And then yet some of these up here are actually traveling downward. So, there is a little bit of evidence of spattering and stuff on the door showing that it was open at the time that that blood traveled upward.

Q. Okay. And not to beat this thing, but part of the re -- you talk about microscopic

blood or misting I think is the word you talked about. Does the fact that all of our blood is under pressure have something to do with that phenomena that you see when a gunshot wound is --

A. Well, certainly, the energy that's imparted by the bullet is tremendous. It depends, number one, on the type of bullet, the energy of the bullet, how much velocity it has, how much mass it has, the distance away from the end of the muzzle it is. You know, if you took a .357 and held it up to the side of somebody's head and touched it off versus being 50 feet back there's going to be a whole lot of difference because you're getting all that energy that's contained within the barrel imparted to the head itself as well. So, there's a lot of little variables there.

But, something like this with a high powered weapon and it's hitting a closed cavity that does have it's own pressure in there and when you're imparting a tremendous amount of pressure and force from the bullet in to that it's got to go somewhere. So, some of it's going to expand out the back and then some out the forward area.

Q. Showing you State's Exhibit 22, did

you see holster in that?

A. Yes, I did.

Q. Okay.

A. State's Exhibit 22 shows the front bench seat of the Ford pickup belong to Mr. Whitcraft. And it shows he has a sandwich and a newspaper and camouflage jacket. There was a plastic milk jug and a coffee mug over here. And the holster is sitting right here and it's right at the pretty much the leading edge of the bench seat right to the right of the midline area. So, if you were sitting here would be about right here in this location.

Q. Holster consistent with the .44?

A. That's correct, yes.

Q. State's Exhibit 23, is there anything significant there that helped your conclusions or your testimony?

A. Not really. I'm not seeing anything specific here.

Q. Okay.

A. The keys are in the ignition. Window's -- it just shows the interior portion of the door. There's not very much spatter noted anywhere in here. You just don't really see

anything here, it's fairly clean in that area there. So, he really didn't bleed very significantly inside the vehicle in the interior of the vehicle. The initial spatter is there, the back spatter, the forward spatter, but other than that he's got some blood deposition on the left shoulder area, but then most of the bleeding occurs on the exterior portion of the vehicle.

Q. Would he bleed quickly from this wound?

A. Absolutely.

Q. So, what can you conclude by not finding a lot of blood in the cab?

A. Basically when he was shot he was incapacitated immediately. It goes to the center mass of the head, tremendous damage to the interior brain area and hemorrhaging that occurred inside the cranial vault. And so he was incapacitated immediately. And so he lost all basically I would say motor control of his body and he basically falls out, the door's open -- door goes open, he basically falls out and hits the pavement.

Q. In other words, he -- there would be more blood unless he fell out just almost

immediately; right?

A. Correct, yes.

Q. Okay. State's Exhibit 24 I think shows an acetylene torch -- or, tank. I'm sorry.

A. That's correct. Yeah, this is just some of the items in the rear of the pickup, a gasoline container, spare tire, a canister, a tool box and some various items that are located in the truck area -- or the --

Q. Okay.

A. -- trunk or the bed.

Q. And State's 25 another look at the way the vehicles were --

A. Sure.

Q. -- together?

A. Yeah, 25 shows they're in immediate contact. You can see the left front quarter panel right in here is dented in and the hitch is actually lower than the front end of the Bronco. But, there is some -- certainly some denting and damage occurring in here. But, not tremendous amount. You know, certainly a low speed impact, but nothing major.

Q. Just looking at the hitch and based on your experience and training would that create

some leverage to actually maybe cause some of that damage if it was put in --

MR. SCALES: Your Honor, I'm going to object. There hasn't been foundation laid for this.

THE COURT: Did you wish to respond? The objection's overruled. You may answer if you're able to, if you're not able to then tell us.

BY MR. CAMPBELL:

Q. If it's outside of your expertise don't answer it.

A. Well, basically, I mean, there's vehicle contact there, but the actual ball portion is below the vehicle so I don't think that caused an immediate contact damage at that point. But, they do definitely, you know, contact there at the center portion of the vehicle. And, again, this -- the amber lens that covers the left turn signal that's in the lower portion just below the headlight was broken off and you can actually see it located right there in the cove area of the license plate indentation right there.

Q. Okay. Talk to me about, while you still have that --

A. Okay.

Q. -- was -- in terms of the angle, was the Bronco contacting more on that left edge than the right edge, was there a slight angle there?

A. Yes, it was more to the left edge.

Q. Okay. And that's why there's more damage --

A. Correct.

Q. -- there?

A. Yes.

Q. What is State's 26? And you probably want to talk about 26, 27 and 28 together.

A. Sure.

Q. What do those shows us?

A. Okay. What happened is that when these vehicles impacted there was some obviously shock that occurs to both vehicles. And then apparently at some point they do roll back, we have evidence of that. And the evidence of the Bronco rolling back is in the picture in State's Exhibit 26 which shows mud deposition on this portion, the rear center area of the tire in that position.

So, my understanding or my belief is that you don't really see it on the other tires,

but this is the tire that's closest to the contact point of the truck. So, if there's mud up in the wheel well area, which the mud near the defendant's home at the time. Now, whether he came up Hussey Road or not, I don't know for certain. We have evidence that shows tire imprints in the mud in that area, but whether it was that morning or an hour or three hours or whatever I can't really tell you. But, if there was soft mud up in the wheel well area the cars made contact, that mud drops down to the tire and then drives a little bit and then the tire rolls back then that's where he position would be.

We also know that the tire of the truck rotated back as well, approximately nine to 15 inches. And because what we had is when the victim fell out of the truck there was a lot of blood deposition on the pavement and we didn't have hardly any blood on the tire and yet there was a tremendous amount of blood on the pavement on the side of the tire, behind the tire and on the pavement on the inside of the tire. So, we know that that tire wasn't there at the time that blood was deposited or it would have been covered with blood as well.

So, when we moved the vehicle forward what we did is we marked with chalk on this center portion of the tire where it was actually contacting at the resting spot, then moved it forward and marked it again. It showed about a quarter revolution or a third revolution of that tire. And so then when we moved the tire forward you could see where the blood spatter pattern was a continuous pattern that had been blocked by the tire rolling back.

State's Exhibit 27 is basically just showing there was a blood spatter, a very steep angled pattern on the tire here that when we found it was in a vertical position, which was inconsistent with the pattern orientation that we had at the scene. But, when we rotated the tire forward it was now in a horizontal position which was more in line with the way the blood was spattered at that point.

Q. Okay. So, did it appear the vehicles had moved the exact same distance?

A. That's correct, yes.

Q. Do you have an opinion whether they were in contact with each other when they moved?

A. Yes, they were.

Q. Okay. And what is that opinion?

A. Well, basically the bigger tire rolled less because it's a larger tire and the smaller tire rolled just a little bit more. And it looks like both vehicles were in contact with them being on the slight slop like that they basically moved rearward. The Ford pickup truck was in neutral when we found it and the emergency brake was not on; the Ford Bronco was in 3rd gear with the brake not on.

Q. Okay. And could 3rd gear -- if you can't answer this, but, 3rd gear would allow perhaps some movement of the vehicle?

A. I'm not going to answer that.

Q. Okay. All right.

A. That's not my expertise.

Q. I've got someone else for that.

A. Okay.

Q. Let me show you, along those lines I've also marked 52 and 53 which may help the jury see exactly how you determined that.

A. Perfect.

Q. Is that -- is that what -- does that show your work to determine the movement of that pickup?

A. Absolutely it does, yes.

Q. Okay.

A. So, here was the chalk line originally here on the ground.

THE COURT: Mr. Campbell, have those -- excuse me.

THE WITNESS: That's all right.

THE COURT: Have those been admitted?

MR. CAMPBELL: No.

BY MR. CAMPBELL:

Q. Do those fairly and accurately depict your work?

A. Yes, they do.

MR. CAMPBELL: We'd offer 52 and 53.

THE COURT: Mr. Scales?

MR. SCALES: No objection.

THE COURT: 52 and 53 are received.

THE WITNESS: Okay. Basically what it's showing is the two chalk marks. Here's the original one where the tire was in the final resting position and then as we move it forward we mark it on the tire again and show it on the pavement which shows the forward rotation that we made on the wheel. And then you can see it here

more from the sides. So, there is about a good distance here of about 15 inches or so. And now you can see the blood spatter pattern continually clear going underneath that tire area or underneath the vehicle as well.

And that spatter pattern did have significant energy. We actually found blood on the opposite side of the truck about 72 inches away from the contact point on the pavement.

BY MR. CAMPBELL:

Q. And how did that spatter pattern in your opinion occur?

A. We basically have probably two -- two things happening here. There's a photograph that shows a large radial pattern where there's a large volume of blood hitting the pavement at one time and we call it like a splashing action where there's so much force with that volume of blood that causes radial lines to be projected outward, kind of like a starburst type thing. If you were to take a water balloon and throw it up in the air and watch it hit when it hits the concrete and breaks it spatters out with a lot of energy, versus if I just pour it slowly out of a beaker or

something like that on to the ground you will get drip patterns and blood in to blood and that type of thing. But, you won't have that tremendous energy dispersion of the radial lines that are present.

Q. Does State's 10 kind of show those lines that you're talking about?

A. Yes, it does.

Q. Okay.

A. It's probably hard for you to see from there, but there are lines that come back towards him, outward this way, this way, this way, this way, this way, this way equally and that is not consistent with arterial bleeding. Because with arterial bleedings you generally get kind of an arch pattern because of the pressure in the heart as the heart starts to contract it's forcing the blood out, but then as it relaxes the blood goes out, has energy and as the heart relaxes and it starts to drop off. So, you see more of a arching type of pattern taking place.

But, this all comes back to the central location of where this blood is. So, more than likely what is happening here is when this door goes open and the victim starts to fall out and

his head faces downward there's so much blood volume and damage to the interior portion of his head that that blood literally spills out and hits the pavement. And then in addition to that then he goes down and actually contacts or impacts the pavement which causes additional deposition of blood as well.

So, we have --

Q. And it causes these radial --

A. A little bit, yes. Yeah, but not quite as much as --

Q. So, the coring effect is what's causing it?

A. That's correct, yes.

Q. Okay.

A. Yes.

Q. Gotcha.

A. And then in addition here we can see that there's been movement of the body. Again you can see that hips -- his legs were probably forward because this is where the resting portion of the vehicle was. So, if you move the vehicle straight his legs would have been straighter, but now they've been rotated back slightly so he's little bit up on his right hip. And now you can

see there's blood stains over here and then a big blood pool over here. So, at some point it looks like his upper torso was rotated back over to his left slightly.

MR. CAMPBELL: And I offered 52 and 53 and you've seen those, haven't you?

MR. SCALES: Yes. No objection.

MR. CAMPBELL: May I tender those to the jury, Judge?

THE COURT: You may.

MR. CAMPBELL: I think they can look at them and make an opinion.

BY MR. CAMPBELL:

Q. There -- with regard to that blood -- or, I'm sorry, mud.

A. Mm hm.

Q. Now I'm talking about mud. Was there a lip up under that left fender that could have held mud --

A. Sure.

Q. -- for quite a while?

A. Oh, and the top of the fender too depending how much movement of the vehicle and how much shock there was and, you know, that

collision, even though it was slightly minor, could have caused that blood to drop -- or, the mud to drop down on to the top of the tire.

Q. And would it be inconsistent, for instance, with driving it to Merlin and back and still having that kind of a mud deposit on it?

A. It shouldn't be on there at that point in time, no. I would say it was inconsistent with that.

Q. Would it stay for a while? Could --

A. Possibly stay for a while. But, it looks like what --

Q. With the ledge on it?

A. Well, yeah, the mud that -- depending on how -- you know, again, how much it had to dry it had to be wet enough to at least drop down to the top of the tire and then dry again and then when the tire's rotated still be present. So, the mud that's deposited there hadn't been deposited prior, it was probably from the action of this collision that brought it down there.

Q. Yeah. But, I know that you were asked before in the last trial and you said that it could have been on there for quite a while.

A. Well, it -- you know, again, it has

to be somewhat wet or it's not going to stick to the tire when it's dropped down. So, you know, drying time of that, depending on the humidity and the environment that day and all that kind of stuff, it's hard to say. You'd have to do some studies, I guess, to determine how long it could stay wet and moist and still drop down there. So, it's --

Q. Okay.

A. -- a whole other topic.

Q. But, it's not inconsistent with this vehicle having perhaps been down the road to Robertson Bridge or even to Merlin and back and still have that mud?

A. Yeah, and again I think it's more evenly distributed in the top of the wheel well rather than just on the edge of the lip because the stains on the tire are distributed across the -- or, across the width of the tire. So, not just on the one edge, but pretty much all the way across. So, I would think that there's mud caked up in there.

And if you look at Hussey Lane down off the paved portion it's very muddy. There's a lot of water pools present and there are wet tire

impressions that are consistent with the Ford Bronco tires there, so --

Q. Let me go to State's Exhibits 33 and 34. These appear to be looking across the hood of the Bronco.

A. Sure.

Q. What did you observe there?

A. There are -- in observing the Bronco there were two small blood stain area. This is on the left front quarter panel here of the Bronco. But -- and a stain is going perpendicular to the -- to the length of the car, so coming down here on the quarter panel. And then there was another stain up here on the hood area. So, the only difference from the front end is about an inch or so. And -- but it was just interesting to note that there were blood stains way over here on the car that were way away from the scene, or at least from the initial deposition of where the victim was. And plus because the cars were offset like this it would make it pretty hard for those stains to get there from a trajectory pattern in that area.

So, for some reason we have blood on this portion of the vehicle, who deposited it

there or how it got there I do not know.

Q. Can you tell by the way it's deposited, do you have an opinion on what there -- you've done studies on blood deposits, you've talked about misting blood, pouring --

A. Sure. This --

Q. -- blood, what --

A. This could be a cast off pattern. For instance, if you have some blood on your hand and you flicked it or whatever like that you could get small droplets moving through the air and contacting the surface like that. There isn't a massive amount here, just two small stains. There's no transfer or anything like that where somebody had blood on their clothing and then brushed up against the car to cause smeared stains or anything like that. But, these are -- again, this shows that it hit a portion here and then ran -- you know, kind of came down at an angle on the side here. So, that's why you have more of an elongated stain, rather than a circular stain, which is more like this one up here.

But -- and, again, we just -- that was something that we noted and that we had tested for DNA to see who's blood it was.

Q. And who's blood was it?
A. And that came back to Jack Whitcraft.
Q. Okay. So, it could -- someone could -- if he had it on his hand and flicked it?
A. Sure.
Q. Now, can you wash blood off so you don't have evidence of blood on it?
A. Sure.
Q. Okay. Just it would be a matter of washing your hands?
A. Correct.
Q. This appear to be, State's 35 the gun, as you observed it on the scene?
A. Yes, this is the way we found the vehicle. The 7mm Mauser was located with the barrel pointed down in to the front floorboard of the passenger area. And you can see it's basically positioned between the two front seats of the vehicle there.
Q. Might be a good time to talk about that a little more. You had the -- that rifle in your laboratory and had a chance to study it and look at it; right?
A. Yes, that's correct.
Q. First of all, how many rounds did it

have in it and what was the -- what was the situation with the rounds?
A. Okay. The internal magazine of that weapon can hold five cartridges. We had one spent at the scene, so the fired cartridge case underneath the car was one. There was a live round in the chamber ready to go, so it had -- the original round that was in the chamber had been ejected, the bolt closed it shoved a new round in to the chamber, that's the way the weapon was found. And then there were two additional cartridges in the magazine that could have been loaded at that point. So, at that point it had four cartridges and there could have been a fifth.
Q. And we see that it has a scope on it. Did you look at the scope and -- as part of your investigation?
A. Yes, I did. This is a Bushnell Banner Model 2 scope, it has a 3 x 9 power, so it has an adjustable rear magnification. And it was set at a magnification of 4 when we received it, that's the way it was found at the scene. And when I looked through the scope at a distance of 24 feet it basically had a viewing distance of about two feet.

So, I hold it up, I look down the thing at a distance of 24 feet and my field of view that I see out the end of the scope encompasses about 24 inches.
Q. So, to put it another way, it's set at basically 24 feet?
A. Yes -- well, at that point. It was just -- and what I was doing I was doing it inside the laboratory and I was saying, okay, well, what kind of distance do we have here? We've got a truck that's, you know, 15 to 16m 18 feet long, or whatever, and you've got another six to eight feet behind it where the shooter apparently is shooting from. So, you know, an average of 24, 25 feet general idea. And then so what would I see at that distance? And when I held it up and looked I had a clear view of -- field of view of 24 inches at that distance.
Q. Okay. A clear view at that distance?
A. That's correct, yes.
Q. If you were hunting deer where would it -- where -- if you were set to shoot a deer, say a hundred yards, where -- would it be set at a different point?
A. Well, I mean, again, you -- it's

variable.
Q. Yeah.
A. It just depends on what kind of field of view you want. If you want to get real close up on it and see your highest magnification you can set it at 9. But, if you do that you have a very narrow field of view and you really can't see anything around that area. You're really zoomed in, it's like your telephoto lense on your camera versus a wide angle versus, you know, making it really telephonic.
So, again, it depends on what you're wanting to see and what view that you're wanting to visualize.
Q. So, it was at -- was it at the best position then to see at 24 feet?
A. When I looked at it at that distance that's just what I saw. Now, whether what I could see at a hundred yards or 50 yards, I didn't test that. I was just basically in the lab estimating what the distance was at the scene. I basically held it up at the wall, measured that distance and it was 24 feet and I saw clearly a two foot field of view with that scope.
Q. Does that have a safety on it?

A. Yes, it does.

Q. Was the safety set on it?

A. The safety was off when I found it, yes.

Q. So, for those jurors that don't know how to operate a gun, if you -- if you did not have one in the chamber what would you have to do to get the gun ready to --

A. Well, basically the bolt in its resting locked position there's a groove cut out of the stock of the gun right here. When you push it forward and you lock it down that's where that would rest. So, that would be in the either to fire or after it's fired position. You would then lifted it up, pull it back, that action calls -- causes the extractors at the end of the bolt to pull the cartridge out of the chamber and then there's an injector that kicks it out the side of the chamber area there of the receiver. And then as you shove it forward then the action shoves the next round that's spring loaded, brings that nose of the bullet up and then the bolt shoves that cartridge in to the next firing position in the chamber.

Q. And you have to do that every time

you would fire the rifle?

A. That's correct. Yes, this is not a semi-automatic, it's a manual bolt action rifle.

Q. Yeah, I -- you're -- I'm kind of getting to that point. Did you study -- or, did you look at and test fire our State's Exhibit 74 at the laboratory?

A. Yes, I did.

Q. Okay. And what kind of a weapon is that?

A. This is a -- it's a Unique, that's the actual name of the weapon. It's a .22 caliber semi-automatic pistol that was test fired and found to be operable in the laboratory. It was also printed, there were no latent prints that found that were matched to anybody. But, this was a weapon that was submitted and we test fired it.

So, in this type of action it's a semi-auto. When the round fires the -- the -- let's see, this one I can't remember the action in this one. But, generally typically in semi-automatic the -- the slide action of the bullet going forward causes the slide against the spring to move rearward. So, for every action there's an opposite and equal reaction, so the slide moves

back. And in doing so what that does is it kicks out the cartridge out of the chamber and then it hits the ejector and it ejects the round and as it moves forward automatically from the spring relaxing then the next cartridge is then loaded in to the chamber.

So, you have to manually cock it the first time by chambering a round in to the weapon and then you're ready to go. And then excessive firing only takes the pull of the trigger to get the next round on and it automatically feeds the next round after that.

Q. How fast can you fire that?

A. Extremely fast.

Q. Okay.

A. You know, you can get a few rounds out in a second, so --

Q. So -- and faster than the rifle by a substantial amount?

A. Absolutely, yes.

Q. Was that 74 in good firing shape?

A. This?

Q. Yeah.

A. Yes, it worked fine.

Q. Okay. You didn't find anything wrong

with the gun?

A. No, I did not.

Q. Okay. In fact, you did fire it?

A. Yes, I did.

Q. Okay. So, in terms of -- I'll ask it this way, in terms of defending yourself which one of those weapons could you get more shots off in order to keep an attacker away from you?

A. Certainly the .22 would have the most rapid fire capability. As far as damaging and power this would be the rifle. I guess if -- certainly a shotgun is better than a .22. So, I guess it depends on the availability of the weapon, how close it is to you, what's your accessibility to it and what you have at hand.

Q. I guess we'll take those guns away from you.

A. Okay.

Q. Did -- you talked about the rotation of Mr. Whitcraft's body, was that -- at the hips, was that consistent with the roll back that you found?

A. Yes, it was.

Q. Okay. So, just to -- and I think we looked at a number of pieces of evidence that gave

you evidence of the angle of the shot in to the cab. And I think maybe I forgot to ask you this, did you measure over on that back window where the first shot that you've talked to the jury about how far that was from the side of the cab?

A. From the side of the cab was about 19 inches.

Q. Okay.

A. And then --

Q. To the center of the hole?

A. That's correct, yes.

Q. How about the damage on the front window?

A. It was about 20 inches.

Q. So, that also is consistent with a slight left to right?

A. That's correct, yes.

Q. As well as the glass break?

A. Correct.

Q. And the tissue?

A. Right. Yeah, we didn't have -- you know, if it had been really a bleak shot coming from the side you would have expected to see glass deposited in to the passenger side of the vehicle, but you didn't. Everything was pretty much

centered with the direct path, fairly perpendicular, slightly left to right projection of the bullet coming through impacting the glass, the glass then going with the direction of the bullet impacting the victim's head, clothing and then being deposited on the top portion of the seat back and that general area.

Q. Did you notice a slope on the road there?

A. Yes.

Q. Okay. And so the back vehicle was down slope a little bit?

A. Yes. Correct.

Q. And in terms of -- we've talked left and right, in terms of the -- the levelness of the shot what did you notice?

A. I believe that the shot is somewhat level, maybe a little bit up or low to up or from back to front would be a slight rise maybe. But, I'm not convinced that that's really that critical. I think what happened is that the victim's head was actually rotated to the left because the orientation of the shot and the way that we find the tissue deposited in the vehicle is more consistent with him actually having his

head rotated slightly to the left.

Now, whether -- whether his head if he was sitting straight this way if you -- if you look at the trajectory of the shot -- I actually have a model here if you want me to show that I can depict that a little bit better, but -- or we can --

MR. CAMPBELL: Any objection to that?

MR. SCALES: No.

MR. CAMPBELL: Okay.

BY MR. CAMPBELL:

Q. Yeah, you may take that out.

A. Sure. Basically what this is is just a foam mannequin head with the trajectory of what we believe where the entrance wound was and the exit here. So, you can see it going from the rear left lower portion of the temporal area behind the ear and then exiting out the eye. And we know that that goes in that general direction because according to Dr. Olson's medical examination report it actually goes through the upper pallet area, fractures his dentures, goes through his sinuses ruptures his sinuses, goes through the orbit of his eye, collapses his right eye and then

we do have an exit would right in the eyebrow area right here. So, this is kind of a somewhat general trajectory of that path.

So, if the victim was seated in a straight on looking position like that looking out the front of the window you'd have this kind of a shot where it's left to right down to up. But, that's inconsistent with what we're seeing at the scene because that would place the shooter way, way out almost into the opposite lane way far away from his vehicle, certainly way outside the door area.

But, now if you start to rotate the head down and a little bit this way just so he's like looking down towards that door now the shot level's out, you still have a slight, you know, down to up angle, but not very much. Or he could be even rotated like that and it can be even level. So, there's some variability in here as to where it actually curves, is it here? Here? Here? Here? Here?

But, we know that the door is open, so what I'm thinking is that the victim kind of looks down to grab the door handle to open the door and in doing so glances down slightly. And that's all

it's going to take is to rotate that head just a little bit and you're going to change that trajectory pretty significantly.

So, when you look at the two images, one here which is pretty much inconsistent with what we're seeing at the scene versus even this or slightly down like this that's more in line with what we're seeing. And, again, just to slightly turn like this you still get a little bit of left to right angle in it and a slight upward motion to the head as well.

Q. Okay. I'm going through a checklist to --

A. Okay.

Q. -- make sure I've covered everything with you. We've already received it, but you collected the fragment from the -- underneath the windshield that you talked about damage on already; right?

A. That's correct, yes.

Q. And -- okay. And this is kind of a technical question, but is this firearm is this a weapon that is designed to expel a projectile by the action of either black or smokeless power?

A. Smokeless power, that's correct, yes.

Q. Okay. So it -- that's what it's design is?

A. That's correct, yes.

Q. Okay. I want to hand you some -- four more exhibits that you've actually prepared for us, State's Exhibit 64, 65, 66 and 67. I'm going to ask you some questions.

MR. CAMPBELL: And I -- have you seen these?

MR. SCALES: I've seen these.

BY MR. CAMPBELL:

Q. First of all, just let me lay a foundation. Are those -- those exhibits that you have prepared to help you in your testimony today?

A. Yes, sir.

Q. And do they -- are they fair and as accurate as you can make them?

A. That's correct, they are, yes.

Q. Okay.

MR. CAMPBELL: We would offer 64, 65, 66 and 67.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: 64, 65, 66, 67 are received.

BY MR. CAMPBELL:

Q. So, Criminalist Amish, based on your investigation and the study of the scene that you did do you have an opinion whether the defendant was inside or outside of his vehicle, the Bronco, when the fatal shot was fired?

A. He was outside the vehicle.

Q. And would you explain to the jury why you reached that conclusion?

A. Sure. Number one, during the investigation I was informed that originally the defendant may have been inside the vehicle with the weapon just stuck out the window. And that was inconsistent with the trajectory pattern that I was observing and with the fact that we found the spent cartridge case underneath the vehicle which showed at sometime at least he was outside the vehicle with the weapon because he ejected the round outside. And then also looking at the pictures that I have and looking at the orientation of those pictures it's consistent with him shooting certainly outside that vehicle either over the -- over the door itself through the open window of his door or maybe even out to the exterior portion of the open door, any of those

areas are possibilities.

So, what I did is have a photograph that was unaltered and all I did was draw in or add some colored line in to there that depict different positions of the Bronco component parts of the Bronco behind the truck and then showing the orientation of the bullet hole in to the rear window.

And then I have some diagrams that were created this weekend that actually show possible trajectories that I just explained through the mannequin, shows you more in the orientation of the vehicle so you can get a better idea of what I was trying to depict there.

Q. Okay. And why don't you go ahead then and explain whichever one makes sense to show that first.

A. Okay.

Q. Go through that.

A. In this picture here it's hard to see, but here's the front of the vehicle, you can see the rear window here, you can see where the bullet hole is in red. These three green lines show the different position of the Bronco to the rear from the view of the front end of the

windshield. This first green line here shows the A-pillar or the front leading edge of the frame of the car. And then the next green line shows the door open, it shows the leading edge of the door. And the last green line shows the back end of the door there. So, you can see that the door is open and you can see the view of it and then where the hole is here.

So, if the bullet coming through has a slight left to right or fairly straight on shot it has to place the position of the shooter somewhere over in this area. So, it's certainly not way over here by the edge of the car and the not really in between the door and the car, but maybe over here a little bit over the top or through the window or even almost to the outside of the door itself.

So, it gave me a better feel of where the possible shot orientation was.

Q. Okay. And that would line up with -- that would be consistent with the hole that you've already testified to, the way it was made, the tissue that you saw and, frankly, the jury can look back through and see about where that position would be; is that correct?

A. That's correct, yes.

MR. CAMPBELL: May I publish that?

THE COURT: Yes, could you just tell us the number for the record?

MR. CAMPBELL: This is 64 that we've just been looking at.

BY MR. CAMPBELL:

Q. And then go ahead and explain those others.

A. Okay. State's Exhibit 65 shows the orientation of the victim seated in the vehicle with the trajectory through his head if he was seated back with his head straight in a normal driving position. And then with an orientation the trajectory through his head it shows an extreme left to right angle that would place the shooter way outside here and so the -- the defendant's vehicle's way over here which would mean a pretty significant lateral movement on his part in order to get that angle of shot through the glass there that way as well. Plus, we don't have the shot going through the glass over here, it's way over here.

This next State's Exhibit No. 66 shows

more of what I showed you here with the turning of the head. This actually has a torso slightly turned as well, I don't know that that's necessary, you can certainly turn the head without turning the torso or you could have both rotation, either one. But, this shows with a slight turn, now the line trajectory shifts quite a bit differently from what you see here. And so now this shot is more closely oriented with the position of the defendant's vehicle to the rear over here with him slightly outside the driver's door and that shot still being slightly left to right and going through and then impacting the lower windshield with that bullet fragment that was found there.

Q. And we're looking at State's Exhibit 66, so --

A. Correct.

Q. -- would it be your opinion that that is a -- that is approximately or as close as you could place the victim's position when he got shot?

A. That's correct, yes.

Q. Okay. And the first one was 65, just to show what the angle would be if he was just

sitting square in the seat at that point?

A. That's correct, yes.

Q. Okay.

A. And State's Exhibit 67 is just more of a -- kind of like a 3D dimensional thing showing position of a victim or person slightly bent out away, turning towards the door, maybe trying to get out of the vehicle at that point. But, still at this point he's still well with inside the vehicle. His head is still aligned with the steering wheel. He's not exiting the vehicle, but he's still in that position where he's just starting to make a movement to reach over, grab the door. But, he really hasn't done any, you know, significant movement to actually et out of the vehicle at that point when he's struck.

MR. CAMPBELL: May I show those to the jury, Your Honor?

THE COURT: You may.

BY MR. CAMPBELL:

Q. Okay. I have one more question then, as they pass that around I think you can take this on. Mr. Amish, based on your training and experience and your study of the scene and

observation of evidence inside and outside of the pickup and Bronco did you form an opinion whether the shooter was in position before victim, Whitcraft, moved toward the door?

A. Yes, he was.

Q. Okay. And would you explain why you hold that opinion to the jury?

A. Sure. Basically Mr. Whitcraft certainly did not have a significant time to actually, you know, defend himself or get in to position to fire his weapon. Certainly he had a weapon at his disposal that was cocked. Now, whether or not he brandished that weapon or not I do not know. There may be statements that he held it up in the window like, "Look what I have. Back off I have one too." type thing or did he not even show it and just have it out of the holster and have it in his hand so the person didn't know he had a weapon. Again, those are -- there's a lot of variables, there's no way I could determine that.

So, we know that he does have a weapon, we -- it's found outside the body, it's on the ground when he was turned over. It's possible the weapon was actually a few feet away from him and

when he turned the body over he has his head over the weapon at that point. But, certainly that -- you know, he didn't have a whole lot of time to react.

And if the shooter certainly either saw the weapon or believed that there was an impending threat he was already in position and fired the weapon before the victim had much of a chance to do anything.

So -- now, whether or not, you know, the -- let's say the victim reaches over in the glove box, if that's where the weapon was, pulls it out, gets the pistol out and shows it in the window and is sitting there for a while and then the defendant says, "Well, I'm not going to wait for him to come after me, I'm going to go head and take the shot." we don't know.

So, there's a lot of variables there that I can't control and as to the exact situation we'll never be able to recreate that unless we have a videotape of the original scene. So, we just have to kind of figure out in our minds with additional evidence that may be presented that I'm not aware of as to what the purpose was to all that or not.

So -- but, it is my opinion that he was out of the vehicle, in a firing position ready to go and he fired the -- or, fired the rifle before the defendant (sic) had a chance to actually exit the vehicle.

Q. Okay. And this one final question, this -- is this gun -- and you may not have actually done measurements, but this may be common sense, but is this gun longer than the opening of the window on the Bronco?

A. Yes, it is, certainly.

Q. Okay. So, I think that's -- Thank you.

MR. CAMPBELL: That's all I have right now.

THE COURT: All right.

Mr. Scales, I think we'll go ahead and take our morning break and then come back for cross.

Ladies and gentlemen, if you would leave your notebooks on your chairs, go with the bailiff in to the jury room we'll have you back in in 15 minutes.

(At 11:00 a.m. the jury exits the

courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Recess until 11:15.

(At 11:00 a.m. a morning recess was taken.)

****** END OF VOLUME 3 ******

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF JOSEPHINE

--oOo--

STATE OF OREGON, Plaintiff-Respondent, vs. LEONARD CONTRERAS SANDOVAL, Defendant-Appellant.	JOSEPHINE COUNTY CASE NO. 01CR0641 APP. NO. A141783 VOLUME 4 OF 6

TRANSCRIPT OF AUDIO RECORD ON APPEAL
MOTION HEARING
OMNIBUS HEARING
12 PERSON JURY TRIAL - DAY 1
12 PERSON JURY TRIAL - DAY 2
12 PERSON JURY TRIAL - DAY 3
12 PERSON JURY TRIAL - DAY 4
12 PERSON JURY TRIAL - DAY 5
12 PERSON JURY TRIAL - DAY 6
12 PERSON JURY TRIAL - DAY 7
SENTENCING

Grants Pass, Oregon
August 15, 2002; 3:00 p.m.
February 9, 2009; 1:43 p.m.
February 18, 2009; 9:46 a.m.
February 19, 2009; 9:34 a.m.
February 20, 2009; 9:34 a.m.
February 23, 2009; 9:36 a.m.
February 24, 2009; 9:33 a.m.
February 25, 2009; 9:47 a.m.
February 26, 2009; 9:31 a.m.
March 6, 2009; 10:09 a.m.

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--oOo--

BEFORE:
THE HONORABLE GERALD C. NEUFELD, CIRCUIT JUDGE
(8/15/02 only)

THE HONORABLE LINDI L. BAKER, CIRCUIT JUDGE

--oOo--

APPEARANCES:

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JANICE ROSE	312	--	--	--	2
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JANICE ROSE	338	374	402 410	405 410	2 2
ROBIN SUE GARTEN	413	422	424	--	2
DEBBIE LYNN CARTER	430	440	442	443	2
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DANIEL JAMES GALLAGHER	480	489	491	--	3
TYRONE MONTGOMERY	493	497	--	--	3
VERNON ERVIN TIMMONS	504	510	--	--	3
JAMES WRIGHT	519	527	529	--	3
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GERALD CARL RYLANDER	717	745	773	775	4
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RICHARD KUEHMICHEL	820(891)	906	938	939	4,5
STEPHEN LEE CURTIS	941	--	--	--	5
TRESSIE DARLENE MOLER	948	--	--	--	5
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GRANTS PASS, OREGON

MONDAY, FEBRUARY 23, 2009; 11:23 A.M.

12 PERSON JURY TRIAL - DAY 4

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

--ooo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please ask the jury back in.

THE WITNESS: Judge, does this need to go in to evidence or can that be just be a demonstrative?

THE COURT: It has not been offered.

THE WITNESS: Did you want to keep this?

MR. CAMPBELL: The head? I didn't offer it.

THE COURT: All right.

THE WITNESS: Okay.

MR. CAMPBELL: So, I was -- he needs to take it back if he can.

THE WITNESS: Well, I mean, you can certainly use it for Dr. Olson's testimony if you --

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MR. CAMPBELL: Okay.

THE WITNESS: -- want to or whatever you want to do, so --

MR. CAMPBELL: Yeah, and then I could get you at least your thing back. Okay.

(At 11:24 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Mr. Scales, you may proceed.

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Criminalist Amish, I'm going to try to -- probably going to work backwards a little bit here.

A. Sure.

Q. One of the things you were talking about before you finished your direct examination was that there are a lot of variables; is that

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correct?

A. That's correct, yes.

Q. Okay. And you are as a criminalist you're primary -- well, you're a scientist?

A. Correct.

Q. And I assume that using the scientific method you come up with a question as to what happened, you try to gather evidence, you try to rule out things, you try to eliminate as many variables as possible; is that correct?

A. That's correct, yes.

Q. Okay. Now, you testified that you had a theory -- or, excuse me, an opinion that the shooter was in position before Mr. Whitcraft moved toward the door; is that correct?

A. That's correct, yes.

Q. Okay. And you are not aware of if Mr. Whitcraft had tried to get out of the door once, was caught in the speaker wire, had moved back and was making -- you don't know that?

A. Absolutely, that's correct.

Q. Okay. Thank you. With respect to the casing, you had that tested and I believe you testified it was -- it was confirmed to come from that rifle and that was done by Lieutenant Paxton?

A. That's correct, yes.

Q. And that was what you had expected?

A. Yes.

Q. All right. Thank you. When a bullet is shot out from a -- from the barrel of a gun it's going to continue essentially in the same direction until it hits something or is acted upon the gravity --

A. That's correct, yes.

Q. -- is that a fair statement?

A. Absolutely.

Q. Okay. So, when the bullet from this 7mm Mauser first went through the glass, the back of the pickup truck, and I believe it's previously been marked as State's Exhibit 17, the slug or the bullet it loses a lot its energy, doesn't it?

A. It does lose some energy, it --

Q. Okay.

A. -- certainly does, absolutely. But, actually how much at that short distance it has such a tremendous velocity it's going to drop off some and certainly the bullet's going to deform. But, that energy is going to be imparted to the glass and so now you have, again, a bigger larger projectile going through.

But, certainly it certainly is going to deform and lose some if it's energy, absolutely.

Q. Okay. And the larger projectile is because the bullet has fragmented in to several smaller projectiles?

A. Well, it may not have fragmented at that point, it may have certainly mushroomed at that point and then we certainly have evidence of it fragmenting within the skull --

Q. I see.

A. -- according to Dr. Olson's report. I do not find any loose fragments on the back of the seat bench or anything like that, other than the fragment that we find in the front dashboard area. But, there were broken glass fragments throughout that entire area. But, it certainly had started to break up and could have started to fragment at that point, yes.

Q. I see. And by the time it made it through the back window, through the back portion of Mr. Whitcraft's skull, through the brain matter and whatever else is in there and then through the front of his face, above the eyebrow and through the cheek area --

A. Yes.

Q. -- it did not have enough velocity to make it through the windshield; is that correct?

A. That's correct, yes.

Q. Okay. It did cause a little damage to the windshield, but not enough to penetrate it?

A. Correct, yes.

Q. Okay. Now, when bullets hit something, when a projectile hits an intermediate object not only is that going to reduce its energy, but is it also going to cause a deflection or a change in the direction of that projectile?

A. It can, it certainly can depending, again, on the curvature of the material it's going through. Certainly if it hits -- you know, it hits at an angle on a solid object it's going to come in to contact on the one portion and then cause the deflection that way of that angle. So, it can move and it can actually be deflected off the bone within the skull as well, so --

Q. I see. So, we can't say without seeing a reenactment of the -- or a videotaped recording of this incident you're not able to say how the bone had effected the direction of the bullet are you?

A. Not directly, Dr. Olson can probably

expand on that a little bit better. He knows the interior path of that bullet specifically, he did the autopsy. So, he may be able to track that better through the actual portions of the skull that it contacted and that kind of thing. But, you know, it did, you know, collapse the right eye and did fragment or come out the eyebrow area. So, that direction hasn't changed a whole lot, so it's still, you know, pretty much a line from what he sees in the rear portion and the left portion of the skull going through the sinus cavity and then going through the right side. It hasn't deflected a tremendous amount at that point. But --

Q. Okay. And --

A. -- certainly when it comes out and it hits the dash it's gone downward. Now, whether that's due to his head being forward or it somehow as it comes out through the supraorbital ridge here, which is pretty thick bone, could certainly cause it to spin and possible deflect downward -- or ricochet downwards.

Q. Now, you have some expertise in ballistics and in determining trajectories of bullets and things like that; is that --

A. Yes.

Q. -- correct? And so is it a fair statement that it is difficult to predict without seeing it or it's difficult after the fact to say exactly how a bullet had acted because a bullet is spinning and there's a lot of energy associated with it, is that -- that's kind of -- I kind of staggered through that, but would you agree with that?

A. Certainly, yeah, there's a lot of factors that can come in to play. For instance, if you -- if you shot at this floor, for instance, and there was a cement concrete mass underneath it without a lot of carpet padding and everything and you have a right spin on the bullet, when that right spin contacts that fiber it can actually bind up in that material and actually deflect to the right. So -- and it can -- over a distance it can be significant. But, a lot of times when it's just going through an object it's can -- usually stays in a fairly straight path, unless significantly acted upon.

So, usually with high powered rifle bullets they stay fairly straight. Certainly going through an angled windshield there can be

some downward ricochet taking place. Generally when we talk about ricochet it's either up or down and deflection's left or right. So, when I'm talking about ricochet if you're going through a slanted windshield and you use a .22 it can actually go down and go through the seats so that when you redo the trajectory it actually looks like it's coming in at a steeper angle than it actually was. So, it came in level, hit the windshield and deflected down.

So, you have to allow plus or minus five degrees, or whatever, to allow for that deflection or this ricochet effect to take place.

Q. And do high power rifle bullets stay in pretty much the same trajectory because of the tremendous amount of energy and velocity that they have?

A. That's correct, yes.

Q. And once that energy has dissipated, once they have a reduced amount of energy are they more likely to be acted upon -- acted upon or influenced or effected, rather, by an intermediate object?

A. Certainly.

Q. Okay. Such as bone?

A. Correct.

Q. Okay. Now, you testified just a few minutes ago that when a bullet hits a surface in a perpendicular straight on -- a perpendicular pattern -- or, direction rather -- let's talk about specifically glass, when a bullet hits straight on in to the glass perpendicularly you expect concentric circles?

A. Correct.

Q. Is that because the amount of force is spread out relatively evenly?

A. That's correct, yes.

Q. Okay. And if the bullet were to, say, come in at an angle, a left to right angle, you would expect a different pattern of circles on the glass; correct?

A. Yes.

Q. And you would also expect the hole to be somewhat oblong?

A. Correct.

Q. Okay. Now, these are fairly concentric circles?

A. Yes, they are.

Q. So, are you -- would you agree that this bullet most likely came in from a

perpendicular, from a straight on angle?

A. It's fairly perpendicular, there could be a slight angle in there. You always have to remember to allow for a little bit of variation, you can't -- because if you look at that hole it's not perfectly round, but when glass breaks like that that can cause it -- its own action of it breaking can kind of make it not perfectly circular, but a little bit more oblong or whatever. So, you can't always say for certain the way glass breaks, you have to pretty much do a study with that windshield and see what happens each time. But --

Q. And this glass doesn't appear to be safety glass does it?

A. No, it's not.

Q. This is -- and I may be wrong, I believe this is a 1964 pickup?

A. Correct.

Q. Were they using safety glass in those days or was it regular window glass?

A. I don't believe they were, but I can't say for certain.

Q. Okay.

A. Generally safety glass is for the

front windshield.

Q. Okay. So, is it safe to say that at least what you've observed in that picture that that is consistent with a perpendicular shot?

A. Fairly perpendicular, slightly left to -- left to right. But, you know, again a very -- a variation in there. And it could be within a few degrees, so --

Q. There is a possibility of a variation?

A. Sure.

Q. Okay. I'm going to talk a little bit about the I believe it's State's 65 through 67. Do you still have those up there by any chance?

A. Oh, sure.

Q. Looking at what's previously been marked as State's 65 I think you were referring to this as the extreme left to right angle?

A. Yes.

Q. Okay. Now, based on your examination of the scene this type of trajectory or this type of direction of the bullet is not consistent with what you saw; is that correct?

A. Absolutely.

Q. Okay. So, to -- I'll leave these up

here for you. So, in order to be consistent with what you saw at the scene the head has to be turned somewhat as in State's 66?

A. That's correct, yes.

Q. Okay. And correct me if I'm wrong, you testified that when the -- when the bullet went through the back glass of the cab of the pickup --

A. Mm hm.

Q. -- that it was 19 inches to the right of cab; is that correct?

A. The outer portion of the cab, correct.

Q. The outer portion of the cab?

A. Mm hm.

Q. And from the back glass of the pickup to the front windshield, the back to the front of the cab portion of the truck, do you have any idea about how far that distance is?

A. Didn't measure it. That's why I had the accident scene reconstruction people do all the diagraming for me so that we didn't have to do that. But, given what? Three feet or so, rough, approximately.

Q. Okay. So, large enough for a man to

sit there, hold a steering wheel and then the windshield would be directly in front of him?

A. Correct, yes.

Q. So -- and I'm -- and I'm not asking to speculate, but approximately three feet, would that sound about right?

A. That's about right, I guess, yeah.

Q. Okay. And I'm not relying on your expertise, just --

A. Okay.

Q. -- common sense.

A. Yeah.

Q. Okay. So, this bullet came in the back window 19 inches from the left of the cab and caused damage 20 inches from the left of the cab in the front, over that three foot distance, over a 36 inch distance it has moved approximately one inch; is that correct?

A. That's correct.

Q. Approximately a three percent --

A. Absolutely.

Q. Okay. Getting back to the actual trajectory of the bullet itself -- or, the direction, I'm sorry. Is it consistent that Mr. Whitcraft was turned towards the door and had his

head down a little bit, is that --

A. That's very possible.

Q. -- a fair assumption?

A. Yes.

Q. Okay. When somebody is shot from a high powered rifle and it destroys the brain stem I believe you testified that it completely incapacitated him and lost all motor skills; is that correct?

A. I would think so, yes.

Q. Okay. And the subsequent injury would be a massive injury; correct?

A. Yes.

Q. And it wouldn't just -- not like cutting your hand and the blood starts to come out, but it would be a gushing or a large amount of blood coming out of the wound; is that correct?

A. That's correct, yes.

Q. Okay. And is that consistent with what you saw at the scene?

A. Yes, it is.

Q. Now, let me see if I can get the right picture here. I believe you testified that there were some markings or some dark spots on Mr. Whitcraft's forehead?

A. Correct, yes.

Q. And those are consistent with the -- the impact of him falling out of the cab of the truck and landing directly on his forehead?

A. Correct, yes.

Q. Okay. And then there was -- there was a large amount of blood -- there was a pool of blood or a puddle of blood very close to his head; is that correct?

A. That's correct, yes.

Q. Okay. You didn't see any pooling of blood inside the cab other than blood spatter, you saw no pooling inside the cab?

A. That's correct, yes.

Q. So, that would tend to indicate that he immediately upon being shot fell out of the vehicle?

A. Within a very short period of time. He does have some blood on his shoulder and certainly on his left wrist area where his watch was, on his hand and some on his arm, forearm. So, some could have started to come out there. But, I don't think he was upright very long.

Q. Okay.

A. I think that would be a more specific

question to ask Dr. Olson, but I would imagine he was incapacitated fairly quickly and exited the vehicle rapidly.

Q. Okay. And could the blood on his shoulder and on his forearm could that have been blood transfer from falling out and laying in a puddle of blood?

A. That's correct, yes.

Q. Okay. Thank you. Now, I know we've all seen in the movies when somebody is shot they fly backwards usually through a panel of glass window out in to the street. It doesn't happen like that in real life does it?

A. No, it does not.

Q. Okay. And it didn't happen that way in this case did it?

A. No, it did not.

Q. Okay. So, because Mr. Whitcraft fell out of the vehicle does that suggest that he was moving towards the left and when he was shot his body continued in that direction?

A. Well, he was certainly collapsing and he could have, you know, since the door was open there certainly is that possibility that he was attempting to lean in to that direction. And

being hit on that left side he could have -- I mean, depending on how he was seated and where his, you know, weight distribution is he could have, you know, fallen either way. But, since he went to the driver side and the door was open, you know, he could have had his hand on the door an actually been starting to open the door and just continued to fall out that way.

Q. And if somebody was just sitting upright in the back of the cab looking slightly to the right -- or, to the left and --

A. Mm hm.

Q. -- slightly down and if they are shot through the back of the head wouldn't they just tend to slump over?

A. They certainly could. I mean, they could basically go any direction depending on what the -- what the body dynamics are at that point. They could go straight in to the steering wheel, they could collapse this way, they could collapse -- they're pretty much at that point like, you know, there's nothing to hold their skeletal system up at that point, their muscle control is gone and they're going to fall one way or another. So, it's kind of a crap shoot to figure out which

way they're going to go. But, --

Q. Once again you can't say unless you saw an actual recording, a video of the scene?

A. Yes.

Q. Or of the incident?

A. That's correct.

Q. Okay. If somebody -- and perhaps I'm speaking hypothetically, if someone was leaning over in the cab of the pickup to get something either off the seat or out of the glove compartment and they straighten their back up and then they are shot as they are making that movement is it fair to say that that person is going to topple right out continuing in that direction?

A. They could depending on how much momentum he actually has in that direction. If he's coming up and trying to immediately get out, if he's in a quick -- quick motion --

Q. Mm hm.

A. -- anybody that's trying to run and they stop their momentum's going to carry them a few steps forward even though they're trying to stop in one position their weight distribution is going to still maintain that velocity until they

can get their muscle control in order in order to stop their body. So, if he was reaching over and moving in a fast position to get out quite a ways, sure, it could continue to move him through --

Q. Okay.

A. -- the door area.

Q. So -- and I've already -- I may have already asked this question and again just asking it somewhat differently. But, the lack of a large amount of blood in the truck is consistent with him leaving the cab of the pickup quickly after the shot?

A. That's correct, yes.

Q. Okay. Thank you. You looked in the glove compartment of the truck; is that correct? Or you examined the interior of the truck; is that correct?

A. Yes, I did.

Q. Okay. And I'm referring to your report, do you have your reports with you, sir?

A. Yes, I do.

Q. Okay. October 30th, 2001.

A. Okay.

Q. Down at the bottom of the first page, the paragraph starting with "examination".

A. Mm hm.

Q. You examined the interior of the truck and in particular the glove box?

A. I looked at the -- I mean, I didn't actually itemize anything out of the glove box --

Q. Okay.

A. -- I just noted that it was open --

Q. Okay.

A. -- and that the holster was over, you know, between there and where he was probably seated that he could have had the weapon in the glove box, reached over, removed it, brought it on to the seat and gotten it out. It's hard to know. I mean, again --

Q. Sure.

A. -- the glove box could have come open on the impact of the car coming back and hitting the Bronco, who knows.

Q. You didn't examine the glove box to see if it had a tendency to come open easily?

A. No, I didn't.

Q. Okay. And were there items on the front seat that looked as if somebody had been rummaging around in the glove box? Did it appear to look like that?

A. I mean, he just had a bunch of stuff on the seat, I mean, he had a jacket, there was an empty milk -- gallon milk jug, there was kind of a plastic coffee cup, his sandwich was there. It was a general work rig, it had a bunch of stuff throughout the vehicle. So, I mean, I can't say anything about what he was doing in there or riffling through anything or whatever. But, I think he just was going to work and had a bunch of stuff there on the seat and --

Q. Okay. You were asked a question, I believe it's on State's 25, this is a photograph of the left front quarter panel of the Bronco and we're looking specifically at the bending of the quarter panel of the body itself.

A. Sure.

Q. Okay. You're not qualified to say how much force would cause that type of a damage --

A. No, I'm not.

Q. -- to the vehicle? Okay. I'll save that for the reconstructionist.

A. Okay.

Q. Thank you. U-Turn, from what you observed the bumper and the quarter panel were

both impacted and were both effected and they were both damaged --

A. Yes, they were.

Q. -- is that fair to say?

A. Correct.

Q. Now, you testified that there were -- there was some -- something on the in -- inside wind -- or, inside window of the truck that is blow back or spatter; is that correct?

A. Yes, correct.

Q. Okay. And you -- I think you testified that that -- when the bullet came in this way it blew out to the side?

A. I believe so, yes.

Q. Okay.

A. That's my explanation for it because the only other way to get that is to have him turn way over this way --

Q. Right.

A. -- to get it on that window. So, I'm thinking as it comes through it hits because the angle of the bone that way the way the bone ruptures and fractures and you can see the large gaping hole that that's this directionality that it took.

Q. Did you see any corresponding blow back or spatter on the other side, on the back window? This is on the door?

A. Right.

Q. The window of the door. And did you see any on the back of the cab?

A. Did not.

Q. Is that something that you would likely expect to see?

A. There may -- there may have been a little bit of blood there, but there was the glass damage and it continued through. There just wasn't that much there I think because it was, you know, at a slightly oblique angle when it hit the skull, it just everything went out to the side and --

Q. I see.

A. -- it really didn't go backwards because pretty much everything was confined to that window and very, very little to the rear window area.

Q. Now, is the blow back, the spatter that comes back from the wound, is that always effected by the direction of the entry or can it also be effected by the motion of the bullet if a

bullet is spinning rapidly would that effect the wound?

A. It's more of the energy of the bullet, not so much the spin on it, but more of the -- just the energy that's imparted to the skull and that kind of thing.

Q. Let's talk a little bit about the mud that fell from the -- the wheel well of the -- the vehicle, State's 26. I'm out of order here. Looking at your October 30th, 2001, report did you address -- or, did you form any opinion -- well, I'm getting ahead of myself. The mud that has been dislodged and come down on the tire, that came from the impact of the truck and the Bronco?

A. I believe so, yes.

Q. Okay. And in order for that mud to land on the tire and to stay on the tire it's not just moist it has to be wet for it to adhere; is that correct?

A. That's correct, yes.

Q. Okay. And do you remember what the conditions were that day?

A. That afternoon it was -- it was dry. There was -- I don't remember any precipitation taking place. However, as I stated before when we

went down Hussey Road and went to the area of the defendant's residence the road was extremely wet and muddy and I have photographs of the tire impressions in that mud area. So --

Q. Okay.

A. -- it was -- you know, if that had been an immediate path of that vehicle to come up from his residence to Hussey Road and then on to Picket that would explain it being moist enough or whatever. Now, if he had been driving around all day I don't think that that would have been moist enough to be dislodged and still adhere to that tire.

Q. So, if he was to drive to Merlin and back that's probably a distance that's far enough that the mud in the wheel well would have dried?

A. More than likely, yes.

Q. Or dried to the extent that it would not have fallen down and stuck on the tire?

A. Correct, yes.

Q. Okay. Now, at the time you prepared this report, October 30th, 2001, did you have an opinion as to where the defendant was coming from prior to the shooting?

A. At the time when we were at the scene

when we were unsure whether he came from Robertson Bridge area because there was -- they weren't sure if there as a prior impact between these two vehicles. Down at Robertson Bridge there was broken glass, there was broken amber pieces of reflectors, there's tire marks in there and everything else.

Criminalist Delsey responded to the scene as well with Director Wayne Jeppers. They looked at that area and looked at the tire impressions, they did not match the impressions of either of these vehicles. And so, you know, with that bridge there all that over a period of time there can be all kinds of mishaps occurring there. So, we really that what we saw here of the accident and the collision was specific to this one site where the vehicles were, that it wasn't associated down the road.

Now, whether or not he came up that road from his residence I'm not positive. All I can say is that when I observed that residence area there were wet moist muddy impressions in that area with large pools of water and mud that could have been, you know, put on those tires, transferred to the wheel well and then deposited

when they made impact. So, that would indicate that he could have come from that area. Now, I can't say for certain that he did.

Q. Okay. So, just to be clear, looking at your report Page 3 the bottom one and a half lines -- actually, two and a half lines, "Fresh tire tracks consistent with the tire tread of the Ford Bronco were noted in the mud."?

A. Correct.

Q. "And this would explain the mud stains on the vehicle and tires and would indicate that the defendant's vehicle was at his residence just prior to the shooting."?

A. That could be, yes, that could -- is --

Q. Okay.

A. -- certainly one of the possibilities and wherever he could have else been driving that got mud on there, I don't know.

Q. Okay.

A. So, I can't say for sure.

Q. And that opinion was based on just the evidence that you saw at the scene?

A. That's correct, yes.

Q. Not -- not based on any -- any other

evidence or theories that there might have been a prior collision, it was just based on what you observed at the scene?

A. That's correct, yes.

Q. Just using the cold scientific method?

A. Right.

Q. Thank you. A couple of measurements I wanted to ask you about. You said that there was a -- the vehicles after they collided that they continued to roll back about -- and don't -- I don't want to put words in your mouth, I think you testified was it about 15 inches?

A. That's correct, yes.

Q. Okay. And --

A. That's based on the front tire of the -- Mr. Whitcraft's Ford truck.

Q. Okay. And you had actually done some chalk markings and when you rolled it back to the right place and saw where the blood spatter was that's how you determined that?

A. That's correct, yes.

Q. Okay. So, roughly a distance of about this far?

A. Correct.

Q. And would that be approximately a quarter turn of a large sized truck tire?

A. For his vehicle it was about a third of a turn, on his --

Q. Okay.

A. -- tire, but then on the Bronco it was about a quarter of a turn because it's a smaller wheel.

Q. Okay. Because the circumference is smaller?

A. Correct.

Q. Smaller diameter?

A. Yes.

Q. And one of the other distances I wanted to ask you about, I believe you said that when Mr. Whitcraft fell out of the cab of the vehicle there was a large amount of blood that was coming out and also upon the impact there was spatter?

A. Yes.

Q. Was it in both directions or just back under the truck?

A. It went under the truck and it actually came around towards his body. If you show me that one picture again I can actually show

you where it radiates back towards his body somewhat. That one there. Sure.

Q. This is the right one?

A. Mm hm.

Q. Okay.

A. If you look right here where his right arm is you can actually see some of that radiating pattern coming back this way as well too right in here.

Q. Okay.

A. So, kind of all like in this area here.

Q. Okay. And did you say that some of the blood spatter was found 72 inches away from the impact?

A. On the complete opposite side underneath the truck, it went all the way on the pavement to the far side of the truck.

Q. So, with that distance in mind, what is the approximate width of the truck?

A. Right about 72 inches.

Q. Is that right about 72 inches?

A. Yeah.

Q. So, six feet?

A. Mm hm.

Q. Okay. And is the -- well, I'm going to go back to this picture that we just looked at. And this has previously been identified as State's 10. And you've already noted that, I believe, it was his left foot that was tangled in the speaker type wire?

A. Correct, yes.

Q. And that his -- his hips were slightly rotated -- maybe "slightly" is not a good word, they were rotated.

A. Right.

Q. And does that explained by the 15 inch roll of the truck?

A. Yes, it is.

Q. Okay. So, there was no dragging or anything, it was just simply that slow roll causing his hips to turn like that?

A. I believe that to be true, yes.

Q. Okay. I'm going to hand you what's previously been marked as State's 33 and 34. And these are photographs of the blood which you later determined to be -- photographs of the blood on the Bronco that you later determined to be Mr. Whitcraft's blood?

A. That's correct, yes.

Q. Okay. And because of the position of the Bronco and the truck, and I'm going to do this kind of unscientifically, if this is the truck and this is the Bronco it would be impossible for the blood to have come from here and flown all the way over here to magically land on the hood of the truck; is that correct?

A. That's correct, yes.

Q. Because the back of the -- well, just the direction just wouldn't allow that to happen that way?

A. That's correct, yes.

Q. Okay. So, that suggests that the blood was -- there was something else that carried that blood to that -- to that position?

A. Absolutely.

Q. And is blood spatter analysis within your area of expertise?

A. Yes, it is.

Q. Okay. And this particular is that a transfer? Is that cast off is that? Is that spatter?

A. It's a -- it's a type of -- it looks like a type of cast off, it very well could be. It could be a drip from something above. This is

hitting that steep angle that causes the droplet of blood to elongate because it is at an angle rather than perpendicular, so you're going to get that long narrow stream of blood. So, it could have been a small amount of blood that dripped off something or it could have been something that was cast off, went up in the air and came down and arched and hit the quarter panel that way.

Q. Okay. So, it's not a transfer like somebody wiping the blood off their finger?

A. No.

Q. It's not spatter that's being, you know, blown back from an entry wound?

A. No.

Q. It's something that dripped or was flown?

A. Correct.

Q. Okay. Did you have an opportunity to look at Mr. Sandoval's clothing that were seized, the clothing that he was wearing that day?

A. Yes, I did.

Q. And how did you -- did you just simply look at those or what -- what procedure did you use to examine his clothing?

A. We had magnifiers and looked at it

fairly closely. I did not see any indication of blood on his clothing whatsoever.

Q. Okay. You examined this rifle in the lab in Central Point; is that correct?

A. That's correct, yes.

Q. And with respect to the scope -- I'm going to hold it just like this because I'm not a --

A. Sure.

Q. Not proficient with firearms. The scope was set at 4 power?

A. Correct.

Q. And I believe you said that at a range of 24 feet or a distance of 24 feet looking through the scope you had a field of view that was approximately two feet?

A. That's right.

Q. 24 inches?

A. Mm hm.

Q. Okay. How long was the bed of the truck?

A. I'm estimating anywhere from eight to 10 feet.

Q. Full-size pickup would you expect it to be an eight foot bed?

A. Absolutely, yes.

Q. Okay. And then -- I'm not asking you to rely on any expertise, how -- how long was the hood? How long would you estimate the hood of the Bronco to be?

A. Approximately five feet, somewhere in that neighborhood.

Q. Okay. So, from -- from the corner post, the cab where the door opens up to the back approximately 13 to 14 feet?

A. Mm hm.

Q. Okay. Now, in the laboratory you tested this -- or maybe "test" is not the right word, you examined it at a distance of 24; is that correct?

A. Correct.

Q. Okay.

A. Right.

Q. Did you examine it at a distance of 13 to 14 feet?

A. No, I did not.

Q. Okay. And at that short of a distance, at that close of a distance would you expect a scope to even really be useful at that distance even on 4 power?

A. It's -- I mean, certainly if you're going to site it in you're going to look through the scope more than likely. I mean, you certainly could just shoot from the hip type of style. But, generally speaking when people have scopes they bring it up to shoulder and look through the scope and fire. So, I think the visibility would have been okay at that distance.

Q. At 13 to 14 feet?

A. 13 to 14 feet. And the reason I did the 24 is because, again, there's a variability of we don't know exactly when that shot was fired, you know, was it fired when the vehicle was a little bit forward and did it roll back and impact? Did the driver forcefully put that car in reverse and ram the vehicle behind? We don't know. So, there's a lot of things we're not really sure about. Could that truck have been, you know, five or six feet forward of that? Could have been. So, that's why I gave it a window of a little bit further distance of that just to see what it was.

Q. Well, let's talk about that hypothetical that you just raised. We don't know if the vehicle was a little bit in front of the

Bronco and rolled back? Okay.

A. Correct.

Q. Are you suggesting that somebody could have been shot -- that Mr. Whitcraft could have been shot and the vehicle rolled back after that?

A. Yes.

Q. Okay. Wouldn't you expect then, Criminalist Amish, if he had been shot and as we've fairly well established that he fell out of the vehicle immediately, if the vehicle had continued to roll wouldn't we expect him to not only have his hips turned, but we would expect him to be dragged by the vehicle?

A. Certainly, depending now, you know, could the vehicle had rolled back and then he fell out? I mean, could there have been a little bit a period of time there where he was bleeding on to his shoulder, we're talking a couple seconds --

Q. Mm hm.

A. -- and then he fell out? So, not knowing again specifically where this occurred and what the dynamics were it's hard to tell, you know, if -- was there a possibility that the vehicle was a couple feet forward and it rolled

back versus it being driven back forcefully in reverse to impact the other vehicle and then maybe it popped out of gear when it impacted? I don't know.

Q. Okay. So we don't know?

A. That's correct.

Q. A lot of variables.

THE COURT: Mr. Scales?

MR. SCALES: Yes?

THE COURT: Are you moving in to a different area? I'm thinking that we need to --

MR. SCALES: Yeah, why don't we --

THE COURT: All right. Let's --

MR. SCALES: Probably a good --

THE COURT: -- go ahead and take the lunch break at this time and then when you come back you can start your new area.

MR. SCALES: Thanks, Judge.

THE COURT: Ladies and gentlemen, if you would please leave your notebooks on your chairs. Report back to the jury room at 1:15.

(At 12:01 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Recess until 1:30.

(At 12:02 p.m. a lunch recess was taken, to reconvene at 1:30 p.m. the same day.)

GRANTS PASS, OREGON

MONDAY, FEBRUARY 23, 2009; 1:37 P.M.

12 PERSON JURY TRIAL - DAY 4

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: And please ask the jury back in.

(At 1:38 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, we are continuing our trial, State vs. Sandoval.

And, Mr. Scales, you may continue your cross exam.

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Criminalist Amish, I will admit that I forgot where we were. I just got so caught up in lunch. So, I'm going to try to get back to where we were. Getting back to the scope of the rifle, I'll just kind of lead you along here, it was set at 4 power; is that correct?

A. That's correct, yes.

Q. Okay. And at a distance of 24 feet the field of view was two feet; is that correct?

A. Correct.

Q. Okay.

A. Mm hm.

Q. And did you have an opportunity to take this gun out to a range, a firing range, to shoot at objects that were farther distance than 24 feet?

A. We just took it out there to do the test fires for the ejection pattern --

Q. Okay.

A. -- and that was it.

Q. And how far of a distance -- how far away could you still see -- could you still focus on something, was it 50 yards? A hundred yards?

A. Probably a hundred yards.
Q. A hundred yards?
A. Yes.
Q. So, at a hundred yards 4 power was still a clear -- a clear --
A. Yes.
Q. -- view?
A. Yes.
Q. Correct? Okay. And is it -- and help me out here, I'm making an assumption, at a hundred yards the field of view is going to be much wider than 24 inches?
A. Yes.
Q. Okay. And is it -- is it unheard of to set your rifle at 4 power or a lower power to acquire a target and then set the power to a higher power so you can actually bring the target closer?
A. Sure.
Q. Okay. The .22 that was found in th Bronco which has been marked previously entered as State's Exhibit 74, you test fired this?
A. Yes, I did.
Q. And you -- how many -- excuse me. When you shot it how many bullets did you shoot?

A. I believe it was just two.
Q. Okay. So, you didn't take it and try to go through the entire magazine of 11 bullets?
A. No, I did not.
Q. Okay. So, you don't -- you're not able to say whether or not this gun would shoot rapidly, that you could empty the entire clip in a short period of time?
A. I'm assuming you could. I mean, I put two rounds in just to -- we're just checking for operability to make sure it functions.
Q. Right.
A. But, I would imagine if you fed the magazine full up it would probably function just normally.
Q. That's an assumption though?
A. Yeah.
Q. In the absence of having actually tested it?
A. Right. Yes.
Q. Okay. Do you remember testifying in the previous trial that you -- you testified that you believed the vehicles were together when the round was fired?
A. Yes.

Q. Okay. And is that your same conclusion today or --
A. It's still -- it's still a very real possibility, that's correct.
Q. So, you're saying it a possibility?
A. Yes.
Q. Okay. Thank you. The type of bullets, the rounds that were in the Mauser those are soft point rounds, is that what those are called?
A. Soft point, yes.
Q. Are those also known as hunting rounds?
A. Yes.
Q. Okay. And correct me if I'm wrong, you testified that in the magazine -- the magazine holds five --
A. Correct.
Q. -- or is it four?
A. Five.
Q. Five in the magazine or five counting the one that's in the chamber?
A. I believe it was five in the magazine.
Q. Okay. And we don't have the magazine

here, so --
A. It's -- it's in the -- it's a -- it's in the weapon, it's actually a part, it's an intricate part of the weapon.
Q. Would you be able to look at this and see if it holds four or five?
A. Not without opening the bolt and shoving them all down there.
Q. Oh, okay. That's okay. Don't worry about it.
A. Yeah. Okay.
Q. I don't want to belabor the point.
A. Okay.
Q. To your knowledge was the -- was the weapon ever examined for any forensic evidence, such as fingerprints?
A. No, it was not.
Q. That's all the questions I have, Criminalist Amish. Thank you.
A. You're welcome.
THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:
Q. I just have a couple, Mr. Amish.

A. Okay.

Q. First going back to the -- your testimony about the mud, I want to make sure I understand this. Do you have an opinion of whether that vehicle could have picked up that mud and -- well, that -- you indicated it was consistent with the driveway that he came out of, could he have picked that up at another location as well?

A. Sure, it could have.

Q. And let's assume that he picked it up at the driveway, would it have been possible for him to come out and take a left, go down Picket Creek to somewhere in the area of Robertson Bridge Road and then operate back up and have the same evidence that you saw there?

A. Certainly, yes.

Q. So, you -- that would be consistent with your findings?

A. That's still a possibility, yes.

Q. Okay. I wanted to show you State's 10 here and I guess this was maybe a little bit of a mystery between you and I.

A. Okay.

Q. We looked at State's 10?

A. Mm hm.

Q. And there seems to be two blood pools, one right here and one right under his head, and we -- I asked you about that. Is it your opinion that when he fell out he fell at this first blood pool?

A. That's correct, yes.

Q. Okay. And have you found any other evidence going through all of the reports that gives a potential explanation why there are two blood pools there?

A. Yes, sir, I did.

Q. And what is that?

A. In reviewing Dr. Olson's medical examination report when he exams in an autopsy he finds two EKG leads attached to the victim's chest, one over the upper chest area here and one laterally to the inside of the chest so that paramedic first aid had been attempted. When we got to the scene I had no idea, there was no evidence of any paramedic or medical supplies around the body other than this blanket that had been placed over him. But, there was no indication that first aid or any kind of first responder type aid had been given to him.

But, when -- during the autopsy it revealed that he did have leads placed on his chest. So, that would explain somebody at least going over, turning the body in to a supine position, back on to his back so they could place those leads on there.

Q. Okay.

MR. CAMPBELL: that's all I have.

THE COURT: Mr. Scales?

RECROSS EXAMINATION

BY MR. SCALES:

Q. Do you know when those leads were applied, at what point in time?

A. No, I don't, somewhere before we got there. We got there -- we arrived about 1:30 in the afternoon, or 1:28, and I think it occurred somewhere at 9:30 in the morning. So, I have no idea who the first people where on site at the scene, ambulance crew or whatever.

Q. And if what you're supposing is accurate the emergency medical personnel would have to actually touch the body to put it in the supine position?

A. That's correct, yes.

Q. Could that then account possibly for the blood on Mr. Sandoval's vehicle?

A. Very possible, certainly.

Q. And as far as the hypothetical that was advanced, could he have picked up the mud from a different road, turned left on Picket Creek and picked it up from somewhere else? To your knowledge was there any investigation done on any of the other side streets or side roads to determine --

A. Not that I'm aware of. I know we did go down and look at Robertson Bridge fairly closely and the side areas of that. I didn't see, you know, any heavily mud stained pools that were in that area. But, as far as any side roads I did not travel any of those and look at those.

Q. And the -- the proposition that he turned left on Picket Creek and went to another area that at this point is just speculation, would you agree?

MR. CAMPBELL: I object to that, that's argumentative, Judge.

MR. SCALES: I don't see how that's argumentative, I'm asking him if it's some -- if it's something that he knows or if it's something

that he's speculating.

THE COURT: You can ask that question.

THE WITNESS: Again, I think it's speculation, we don't know for sure whether he turned left and he was positioned, you know, at another location past Robertson Bridge or not.

Q. Okay.

A. It's hard to say. I don't know.

Q. Thank you.

A. Okay.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further, Judge.

THE COURT: All right.

You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Are you asking that he be excused?

MR. CAMPBELL: I would like to just keep him --

THE COURT: Okay.

MR. CAMPBELL: -- on call potentially.

THE COURT: All right.

THE WITNESS: Okay. That would be great. Thank you.

THE COURT: So, you are dismissed, but not excused.

THE WITNESS: Okay.

THE COURT: And, Mr. Campbell, you may call your next witness.

MR. CAMPBELL: The State would recall Jerry Rylander, Judge.

THE COURT: All right.

Please step forward and raise your right hand to be sworn in, sir.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you.

***

GERALD RYLANDER,

resumed the stand as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Okay. Detective Rylander, when -- when you described how you went out to the scene on September 27th, and did you -- I don't know if you said it, but did you stage with the officers before you went on to the scene?

A. I arrived at the staging location before officers did. I believe that the first vehicle that was staged was actually an ambulance.

Q. Okay.

A. And then I sat at the staging location until other officers arrived and then I followed them in.

Q. Okay. And where did you stage, did you say?

A. I staged at Riverbanks and the beginning of Picket Creek.

Q. Okay. And that staging is you get together, make a plan on how to go in to the scene and then you go?

A. That would be typically the case. In this particular instance there wasn't any stopping and talking about it, it was just drive in.

Q. Okay. And I -- there was an ambulance then that went in to the scene as well; is that right?

A. Yes.

Q. With EMT's? Okay. You've already indicated you went to the scene, made sure it was secure. How long did you spend at the scene before you went to another location?

A. I wasn't at the scene terribly long. I believe I was there in the neighborhood of between two and five minutes.

Q. Okay.

A. Long enough to have contact with the lieutenant and attempt to make some assignments, take a quick peak at the scene and then headed down to Hussey.

Q. Okay. And you went there to do what?

A. I went there with uniformed officers to secure Mr. Sandoval --

Q. Okay.

A. -- at the residence he was at, the Floyd and Hermina Martin's residence.

Q. Down there at 230 Hussey?

A. 230 Hussey.

Q. Okay. And before I go in to that contact, I'd just like -- you interviewed him there for how long?

A. The interview was approximately 57

minutes long, but that was not immediate.

Q. Okay. So, you -- and then you went back up to the scene, did you not?

A. I did.

Q. And how long were you on the scene then to gather information and figure out what was going on after the interview?

A. I guess I should be relatively clear about this, when I first went down to 230 Hussey I was there for about a total of nine minutes and then returned to the shooting scene and was there from 10:25 to 10:47, a total of 22 minutes. And then I --

Q. So, you were gathering more information from the scene before you actually interviewed the defendant?

A. Yes.

Q. Okay.

A. And at the end of that time, at 10:47, I returned back to Hussey and recontacted Mr. Sandoval and it was from 11:11 to 12:08 that I actually conducted a tape-recorded interview in my assigned vehicle.

Q. Okay. And might as well get this out of the way because you've got all these times

down. So, then after you interviewed him did you go to the scene again?

A. I did.

Q. And you left him with someone else?

A. I did, Deputy Hines was there and Mr. Sandoval was in a marked patrol unit and being watched.

Q. Okay.

A. I returned to the shooting scene and was there for 50 minutes, I was there from 12:20 to 1:10 before I returned again to Hussey.

Q. Okay. And all of these times at the scene you were gathering information from the investigators and finding out what they know, making your own observations?

A. Yes, I was conferring with the Deputy District Attorney who was on scene and with the Oregon State Police Crime Lab personnel --

Q. Okay.

A. -- as well as the other officers.

Q. What I'll offer first -- I'll show you first is State's Exhibit 85 for identification and ask you did you subsequently as part of your investigation secure the -- a copy of the 9-1-1 tape that came in on this case?

A. Yes, sir, I did.

Q. Okay. And showing you State's 85 I'll ask you if you recognize that?

A. Yes, this has been sealed and marked by me.

Q. And it appears to be the copy of 9-1-1 that you received?

A. Yes, sir.

MR. CAMPBELL: And just before I play it for the jury we would offer 85.

MR. SCALES: 85? No objection, Your Honor.

THE COURT: 85 is received.

BY MR. CAMPBELL:

Q. You're familiar with the way the 9-1-1 system works?

A. Yes, there are a number of telephones that a person could call in to the 9-1-1 center and all telephones are recorded, so there's a number of channels that could possibly be recorded at any given time.

And when an officer, such as myself, asks for a copy of a specific time and date there is a need to have to examine their disks to find

the exact channels and copy just those and not the whole cumulative telephone calls that may have come in at that time frame.

Q. But, they have tracks so that if two callers call in on the same emergency they could be recording two tracks at the same time and subsequently put it on a tape and you can hear one after the other; is that right?

A. That's correct.

Q. Okay.

(From 1:56 p.m. to 2:24 p.m. State's Exhibit 85, the audio tape, was played for the jury - not transcribed.)

BY MR. CAMPBELL:

Q. Detective Rylander, while I'm letting that one rewind I'll show you what's been marked as State's Exhibit 48 and ask you if you recognize this? Did I -- 88, I'm sorry. I've already put 48 in. State's Exhibit 88.

A. Yes, I do recognize this.

Q. And basically that represents your research and whether the defendant had a hunting

license in 2001; is that correct?

A. Yes.

Q. And what did you find out?

A. When examining the documentation that was sent back to me I see that Mr. Sandoval had a hunting/angling combination license as of 10-6-98 covering the year of '98. And I also saw that he had a hunting license and had gotten a Cascade Elk tag, which was for 10-12 -- issued 10-12-2000. But, I found absolutely nothing that indicated he had a license or tags for 2001.

Q. Okay.

MR. CAMPBELL: We'd off 88, Judge.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: 88 is received.

BY MR. CAMPBELL:

Q. Were -- were you down at 230 Hussey when the defendant was asked to come out of the house?

A. Yes, I was.

Q. Okay. And you've already described your activity, you came back down there -- after going up to the scene you came back down to

interview him?

A. Yes, I did.

MR. CAMPBELL: And, Judge, this tape is about an hour, do you want me to start it perhaps?

THE COURT: Let me just check with the jury.

This is a little bit early for us to take our break, but this tape will take an hour. Does anyone in particular need to take a break right now? Okay.

MR. CAMPBELL: If -- well, if we do want to break it in the middle we probably can at some time.

THE COURT: Let's go ahead and start it and if we can make it through the entire tape that would be preferable. If anyone has a problem let me know.

BY MR. CAMPBELL:

Q. I've marked this as State's Exhibit 86, I've put the marking on the cassette itself, but it came in this evidence thing. Do you recognize this and the evidence tag on there?

A. Yes, both of them have been written on and marked by me.

Q. Okay. And is this the tape interview that you did with the defendant?

A. Yes, on the date of 9-27-01.

Q. Can you tell the jury where this took place, where were you two?

A. Well, still at 2:30 Hussey and I'd invited Mr. Sandoval from the marked police car to move from there to my vehicle. My assigned vehicle at that time was a white Ford Explorer. And Mr. Sandoval sat in the front seat, passenger seat, while I sat in the driver's seat and that's where I conducted this interview.

Q. Was he restrained in any way?

A. He was not that I remember.

Q. Had him sitting there and you talked to him with the tape in between you?

A. I believe so. It's possible he still had his handcuffs on, but I don't recall.

Q. Okay.

MR. CAMPBELL: We'd offer 86 at this time.

THE COURT: Mr. Scales?

MR. SCALES: No objection.

THE COURT: 86 is received.

(From 2:28 p.m. to 3:25 p.m. State's Exhibit 85, the audio tape, was played for the jury - not transcribed.)

THE COURT: Is that the tape then?

MR. CAMPBELL: That's the end of the tape.

THE COURT: All right.

Then we will go ahead and take our afternoon break, ladies and gentlemen. Leave your notebooks on your chairs please and go with the bailiff in to the jury room. We'll take 15 minutes.

(At 3:26 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. 15 minute recess.

(At 3:26 p.m. an afternoon recess was taken.)

GRANTS PASS, OREGON

MONDAY, FEBRUARY 23, 2009; 3:49 P.M.

12 PERSON JURY TRIAL - DAY 4

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated.

Would you ask the jury back in, please?

(At 3:50 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Mr. Campbell, you may continue.

DIRECT EXAMINATION (CONT.)

BY MR. CAMPBELL:

Q. Detective Rylander, I want to talk to

you about the tape we just heard.

MR. CAMPBELL: I would offer at this time State's Exhibit 92, Judge, which is a transcript of that tape.

THE COURT: Any objection?

MR. SCALES: I have no objection, Your Honor.

THE COURT: All right. 92 is received.

BY MR. CAMPBELL:

Q. In the tape we -- or, during that interview we hear the defendant gesturing or apparently showing you -- was he showing you certain things or -- as he explained them?

A. He was trying to describe and show me what it was the actions that Mr. Whitcraft had taken once the two vehicles had come in contact.

Q. Okay. And he says that you'll find the grass seeds -- you'll find grass seed in the vehicle, did you find grass seed in the vehicle?

A. No, I did not. What I found was a bag of Weed and Feed.

Q. Which is fertilizer?

A. Well, it can be fertilizer, but it also kills weeds.

Q. Oh. And can you use that to start a grass -- or, start a new lawn?

A. If you want to have bare dirt that probably would work.

Q. And you're being facetious, in other words, it would burn up new seed if you planted it?

A. Yes, it would, it would prevent new grass from growing.

Q. Okay. Why don't -- you have a transcript, I know the jury doesn't, but about Page 30 you're talking to the defendant and he says, "Well, he opened the door to shoot me." and he goes on in that statement describing how the defendant -- or, the victim in this matter stepped out, turned, faced him and -- and pointed his gun at him. Did he say all of those things during the interview?

A. Yeah, he said quite a bit during the interview. And some of it was difficult to decipher --

MR. SCALES: Your Honor, I'm going to object, that's non-responsive to Mr. Campbell's question.

THE COURT: Sustained. Please rephrase.

BY MR. CAMPBELL:

Q. Did he -- did he physically show you how the victim did that while he was explaining that? Was -- it sounded like he was showing you in some manner?

A. He was telling me.

Q. Okay. And he didn't actually demonstrate it with his hands or --

A. And I attempted to demonstrate what he was telling me.

Q. All right. And did he affirm your demonstration?

A. Without being terribly complicated here, yes, he affirmed some of the demonstration and he denied some of the demonstration.

Q. So, what part of the demonstration when he said he stepped out, he turned and faced the defendant and was ready to shoot him?

A. This is what was on Page 30?

Q. Well, and thereafter I think it's Page 32. He says at Page 32 at line 21, "I saw the gun in his hand, sir."?

A. Yes.

Q. And you said, "And what did you see next?" did he tell you -- did he show you how that

gun was pointed or held at that time?

A. No.

Q. Okay. On Page 33 at Line 14 you say, "Where is the gun pointed?" and he answers, "Towards me, sir, towards the back." did he gesture or did you show him how you were understanding that?

A. Not at that point, at that point it was just talking.

Q. Okay. At what point in the interview then does he actually demonstrate or -- what had occurred?

A. I do the demonstrating, he does -- pretty much tries to tell me what Mr. Whitcraft's doing. And my interpretation was three-fold, three parts. From early on he was attempting to say that Mr. Whitcraft was attempting to step out. And then he would correct that and say, confirm or affirm my statement that "Then he had stepped out?" and he would say, "Yes." I did the demonstrating.

Q. And he said multiple times it was the guns were pointed at him also; correct?

A. Yes, he did.

Q. Did -- did -- when we get to the

point where he says he reached behind his seat, it sounds definitely like he was showing you this, that action; is that right?

A. You're speaking of Mr. Sandoval's action?

Q. Mr. Sandoval said he reached behind the seat --

A. He said he reached behind his seat and got his rifle.

Q. Did he show you like that?

A. I don't recall that he actually made the gesture.

Q. Did he show you what he did with the rifle?

A. He told me what he did with the rifle.

Q. Okay. And we heard he claimed to bring it across through the cab, racked one in; correct?

A. Yes, sir.

Q. And then do what?

A. Well, he said that he had opened the door and he leaned forward and he snapped off a quick shot.

Q. Did he show you where he'd snapped it

off from?

A. Show me? No. He told me and --

Q. I'm going to show you what's been marked as State's 89 for identification. Is this a diagram that you recognize?

A. Yes.

Q. And this is a diagram that was introduced in the last trial; is that correct?

A. Yes, it is.

Q. And does that represent where he told you he held the gun?

A. Yes.

Q. Okay. And did he actually show you this or did he just describe it for you?

A. He described it.

Q. Okay.

MR. CAMPBELL: We'd off 89 at this time.

THE COURT: Any objection?

MR. SCALES: Can I take a peak at that? No objection to State's 89.

THE COURT: 89 is received.

BY MR. CAMPBELL:

Q. And while I'm on diagrams, I'm showing you what's been marked as State's Exhibit

105 for identification, can you tell me what this is?

A. Yes, Exhibit 105 is a overhead ariel diagram depicting a large portion of the territory surrounding Picket Creek and Hussey Lane.

Q. Okay. And that's something you secured to give us a view of that whole section of area of the county?

A. Yes, I did.

Q. Okay.

MR. CAMPBELL: We'd offer 105.

THE COURT: Mr. Scales?

MR. SCALES: No objection, Your Honor.

THE COURT: 105 is received.

BY MR. CAMPBELL:

Q. Now, you've already testified that after this interview you then went back up to the scene and spent somewhere in the area of 50 some odd minutes up at the scene; is that correct?

A. Yes, sir.

Q. And after that did you then go and pick up the defendant again?

A. Yeah, I returned to 230 Hussey and had further contact with Mr. Sandoval. I asked

him if he would allow me a blood sample and then I transported -- he consented to that and I transported him to Three Rivers Community Hospital for that process.

Q. All right. And did you go in the same car that you'd interviewed him in?

A. Yes, sir, I did.

Q. And so you left the scene at about what time?

A. We left from the Martin's residence at approximately 1:17 p.m. and the drive was about 30 minutes, so we got there at about 1:47.

Q. So, the defendant had had about over an hour then to reflect on his earlier statement?

A. Well, had he waited until he got to the hospital to *say something* to me then, yeah, it would be an hour. But, if you add the 50 minutes that I was up at the scene plus any of the driving time he would have had to up to as much as 80 minutes.

Q. Right. So, during that drive did he then reapproach his statement or tell us what happened during the drive.

A. He did. Mr. Sandoval volunteered that -- to add to his statement without being

asked any question and he told me that Mr. Whitcraft had not gotten out of his vehicle. He had not gotten out, but was in the process of *getting* out of his vehicle. And that Mr. Sandoval had fired one round and that -- at Mr. Whitcraft and Mr. Sandoval had not ejected the spent shell casing from his rifle after firing.

Q. Now, did -- was there any discussion -- had you discussed anything you knew from the scene at that point in time?

A. With Mr. Sandoval?

Q. Yeah.

A. No, I was not talking with Mr. Sandoval in the trip in to the hospital.

Q. Okay. So, I mean, he just -- he wants you to know for sure that he didn't eject the round?

A. Yes.

Q. And then what else did he say?

A. Well, he again repeated the not gotten out of his vehicle to shoot and that he had not fired a second shot and that Mr. Whitcraft had not had an opportunity to fire.

Q. Did you have occasion to talk to the defendant again on October 8th of 2001?

A. Yes, I did.

Q. And how did it come about that you went to talk to him on that date?

A. I received information from Janice Webber-Rose that Mr. Sandoval had wanted to have conversation with me. And so I went to the jail with another officer and talked to him.

Q. And can you tell me what Janice Webber-Rose -- what was her activity? Was she contacting you after this -- the arrest in this case on behalf of the defendant?

A. Not exactly on behalf of the defendant, there was apparently a change in situations between Janice Rose and Mr. Sandoval.

Q. Well, let me be specific. In the time that first time frame before October 8th had she contacted you a number of times?

A. Yes, she had.

Q. And what was the purpose of those contacts?

A. She wanted me to know about threats that had been made to her and she also wanted to bring --

Q. Before -- now, I'm talking about October 8th, the --

A. Oh, I'm sorry.

Q. -- second interview. She's passing on information from the defendant in that time frame, isn't she?

A. I don't recall.

Q. Did she talk -- did she call -- did you say she called you a number of times in that time frame?

A. I had several communications with Janice Webber.

Q. Okay. Did she talk, for instance, about meeting Tyrone Montgomery, she'd been told or reminded about that and she wanted you to know she remembered some meeting with him?

A. I don't recall.

Q. Okay. Let's go -- but -- but, on October 8th it's her request to you from the defendant that you go see him again; is that right?

A. I believe that's correct, yes.

Q. And where did you go to see him?

A. I went to the jail.

Q. And did you advise him of his rights that day?

A. Yes, I did. This was a tape-recorded

interview.

Q. Okay. And what was the -- going -- I'm directing your attention to Page 3 of 16 of your interview, what -- how did he start that conversation, what had seemed to be the thrust of his interest in you seeing him that day?

A. Well, I believe that he wanted again to repeat that he had not ejected a round and that Harvey Callahan was tampering with evidence.

Q. So, he wanted you to know he had not ejected and he was starting to claim that Harvey Callahan had tampered with evidence?

A. Yes.

Q. And you had a conversation about that for a while. Did he make claims bout the -- Mr. Whitcraft's engine and transmission?

A. Yes.

Q. Page 5 of 16 I think he talks about that. And what did he say about that?

A. Well, he told me that -- Mr. Sandoval told me that Mr. Whitcraft's vehicle engine was running when he left.

Q. Did he say what gear it was in?

A. He told me that he believed it was in reverse gear, it was in reverse gear and the

engine was running when Mr. Sandoval left the scene.

Q. Was that how you found it?

A. No, it was not.

Q. Okay. What was it in?

A. The stick shift was in neutral gear, but the engine was running.

Q. Okay. Did he make any statement about whether he'd bolted another cartridge in to his rifle? And I'm directing you to Page -- Line 23 and Page 5 of 16.

A. When Mr. Sandoval told me that he had not ejected the spent casing out of his rifle he also told me that he had not inserted a new round in to the magazine.

Q. Did he change his statement in any other regard that you recall? Maybe I could be more specific.

A. Please.

Q. Did he change his statement with regard to walking up to the defendant in the manner in which he walked up -- walked up to the victim, the man shot, how he did that?

A. Yes.

Q. What did he say this time?

A. This time he said that he had gone -- take his rifle with him when he went up to look at Mr. Whitcraft and then had returned to his vehicle after looking and placed his rifle back in to the Bronco.

Q. And directing your attention to Page 9 of 16 of the interview and Line 17 and thereafter in his original statement he said that after checking the defendant he ran to the nearest phone, did he change that statement at all in that regard? What did he say about that?

A. Well, Mr. Sandoval told me in the second interview that he had waited around for a while and had looked around and he believed that he was there for about a minute before running to call 9-1-1.

Q. So, now he admitted he stayed on the scene for at least a minute?

A. At least a minute.

Q. And -- but then he said he ran and called 9-1-1?

A. Yes, he took off to -- running to call 9-1-1.

Q. And on Page -- directing your attention to Page 7 of 16 on that interview, Line

17, 18, did he make another statement about what he did after in terms of going to get -- call 9-1-1?

A. I'm guessing that you're making reference to a small dog that was in the vehicle and Mr. Sandoval had said that he had looked for the little black dog, Lady, and then the two of them took off, just ran panicking for help.

Q. He says -- does he say specifically, "I says, 'Come on Lady' and we took off and I just ran and panicked for help."?

A. Yes.

Q. That's what he said?

A. Yes.

Q. Okay. Did he continue to maintain during that -- that interview that he had not stepped out to shoot the shot?

A. Yes.

Q. Did the nature of Janice Rose's cooperation with your investigation change at some point during the investigation?

A. Yes, it did.

Q. And was she more forthcoming after that time?

A. Yes, she was.

Q. And when did that occur?
A. I believe that was in -- was at May of 2002.
Q. Okay. And did as part of your investigation around that time did you receive letters from her that she was receiving from the defendant?
A. Yes.
Q. And was that -- did she indicate that's why she became more cooperative with the investigation?
A. I believe she said that there was a falling out between she and Mr. Sandoval and that's when she began to change and have further communication with us.
Q. Now, during the first interview the defendant told you that he had a gun because he was going to go deer hunting?
A. Yes, that's --
Q. Did -- did --
A. -- what he said.
Q. Was he dressed to hunt deer that day? How was he dressed?
A. He had a long sleeve light blue colored shirt on and I believe it was a dark

colored pant and a wellington type boot.
Q. Okay. So, was he dressed for deer hunting?
A. Not in my opinion.
Q. And was it even deer season at that time?
A. Not yet it was not deer season.
MR. CAMPBELL: I think that's all I have right now, Judge.
THE COURT: All right.
Mr. Scales?
MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:
Q. Detective Rylander, you said that he told you he was going to go deer hunting?
A. Those are not the exact words, it's kind of like, "I'm a go deer hunting."
Q. "I'm a go deer hunting."?
A. "I'm a go deer hunting."
Q. Okay. So, you took it to mean that he was going to go deer hunting that particular day; is that correct?
A. I took it to mean that that was his

intent was to go deer hunting.
Q. My question was it was his intent to go deer hunting that day?
A. I don't know --
Q. Okay.
A. -- that.
Q. Okay. So, not knowing what his intent was it wouldn't be out of the ordinary for him to not be dressed for hunting, is that fair to say?
A. If he was not going deer hunting I would expect him not to be dressed to go deer hunting.
Q. Okay. Do you hunt, Detective Rylander?
A. I have.
Q. Okay. Were you a hunter in 2001?
A. I was not.
Q. Okay. Do you know what day deer hunting season started?
A. In 2001 it started two days after that.
Q. Two days after that?
A. Yes.
Q. So, September 29th is when the deer

hunting season started?
A. For that year, yes.
Q. Let's talk a little bit about Janice Rose. You said -- I think you were asked a question that she had had a falling out with Mr. Sandoval?
A. Yes.
Q. At some point. And after that falling out she became more cooperative with your investigation?
A. Yes.
Q. Did she also tell you that she had -- that she had a new boyfriend?
A. No, she did not.
Q. Do you have all your reports with you, sir?
A. Yes.
Q. I want to make sure I've got the right date on this report. Can you look at your report dated I believe it is -- I have it as April 11th of 2002? Did you find that, Detective?
A. The report? Yes.
Q. Okay. And that's a 10 page report; correct?
A. Yes.

Q. Okay. So we're on the same page, or we will be on the same page in just a second. Could you please look at Page 4 of 10? Maybe I can refresh your recollection. The second paragraph from the bottom starting with "Two weeks ago".

A. Okay.

Q. Can you read that -- that first sentence for us?

A. Sure. "Two weeks ago Janice met a nice man who does not want her money."

Q. Okay. So, she did have a new boyfriend or relationship? Does that refresh your recollection, Detective?

A. Well, I understand that line, I don't know that it means she has a new boyfriend. She met somebody.

Q. She told you that at the same time that her -- her cooperation level with law enforcement started to become better?

A. Yes.

Q. Okay. And people usually have a reason for saying things, do you think that that implied that she was now no longer Mr. Sandoval's girlfriend and that led to her enhanced

cooperation?

A. I did take the inference that she was no longer Mr. Sandoval's girlfriend.

Q. Okay. Forgive me, I'm going to bounce around a little bit. On the October 8th, 2001, interview you said that Mr. Sandoval said he waited around maybe a minute, I believe it was Page 9, Line 17.

A. Which line were you referring to here?

Q. Page 9 of 16 --

A. Mm hm.

Q. Line 17, I believe. I just -- did he say that he waited around -- actually, I'm sorry, I guess it was probably after that. Page -- Page 9, Line 19.

A. Would you like me to read that line?

Q. Well, my question is did he say it was more than a minute or maybe a minute?

A. He said "maybe a minute".

Q. Okay. So, you took that to mean 60 seconds or did you take that to mean just a moment, a short period of time?

A. I couldn't tell you what I considered that to be. I took it up to a minute.

Q. Okay. When Mr. Sandoval wanted to talk to you while he was in the jail, this is referring to the October 8th interview, he specifically based his -- well, let me back up a step. He told you at the beginning of the interview that he did not eject a round from the rifle; is that correct?

A. He said that several times during the interview.

Q. Several times? Okay. Now, he had already admitted to shooting Jack Whitcraft; correct?

A. Yes.

Q. Okay. This statement that he wanted to clarify of not ejecting the round that was based on a statement that Harvey Callahan had made to an investigator, is that accurate?

A. Yes, that would be accurate.

Q. And -- and I don't know if he said this or not, was it your impression that he felt that Harvey's statement was inaccurate?

A. Yes.

Q. And did he at some point in time during that interview say he wanted to help out with your investigation?

A. He may have said that.

Q. Okay. Would you take that to mean that he wanted to set the record straight?

A. He wanted to tell me what he wanted to tell me.

MR. SCALES: I'm going to object, that's non-responsive, Your Honor.

THE COURT: Sustained.

BY MR. SCALES:

Q. Do you think he wanted to set the record straight?

A. I don't know.

Q. Okay. Fair enough. Now, several times you were asked about during the -- during the taped interview the --I guess it was a 57 minute interview that we listened to. Several times you were asked about "Did Mr. Sandoval demonstrate to you?" "Did he reach behind his seat?" and you did the demonstrating; correct?

A. I did all of the demonstrating.

Q. Okay.

A. Mr. Sandoval was not in a position to be demonstrating.

Q. Pardon me?

A. Mr. Sandoval was not in a position to be demonstrating.

Q. Okay. He was not in a position to be demonstrating so he told you and you interpreted what he -- what he said?

A. I did my best.

Q. You did your best. Okay. And then he either affirmed or did not affirm what you demonstrated; is that correct?

A. Yes.

Q. Okay. Let's talk a little bit about the interview itself. Let's back up a step. When Mr. Sandoval came out of 230 Hussey Lane there had just been a shooting and according to -- you'll have to correct me if I'm wrong, according to protocol, security reasons he was brought out of he house with his hands up in the air; correct?

A. Yes, sir.

Q. Okay. Did you witness that or you just have knowledge of it?

A. No, I witnessed it.

Q. You witnessed that? Okay. And were guns drawn when he was brought out of the house?

A. I would assume they were.

Q. Okay. And he was taken in to custody

at that point in time; right?

A. Yes, he was.

Q. Handcuffed?

A. Yes, he was.

Q. Placed in a squad car?

A. Yes, he was.

Q. Patrol car, whatever it's called. Handcuffed behind his back?

A. I don't remember now whether they ended up in front of his back, I assume that if property procedure were followed it was behind his back.

Q. Okay. And so there was a period of approximately -- and don't let me put words in your mouth, approximately one hour that he was in the squad car while you were doing all of these activities back down at the -- or, up at the scene; correct?

A. Yes.

Q. Okay. During that time do you have any knowledge of whether or not he was taken out of handcuffs or was he in that handcuffed behind his back position for the entire hour?

A. I do not know.

Q. Okay. And it was during that time

that you were investigating and talking to people and coordinating the scene; right?

A. Yes.

Q. Okay. And you can't remember if Mr. Sandoval was handcuffed when you interviewed him can you?

A. No, I'm not sure.

Q. You testified that it was possible that he was in handcuffs; correct?

A. Yes.

Q. Okay. And I assume since you just said he was not in a position to be doing the demonstrating it's -- maybe I'm making a leap here, but it's a safe assumption that he was still handcuffed at the time he was being interviewed in your patrol vehicle?

A. It's certainly possible that he was.

Q. Okay. So, by that time -- and help -- you might have to help me out here, the interview ended at 12:08 and he had been by that time in custody handcuffed for nearly two hours?

A. Yes.

Q. Okay. And I'm assuming, since you haven't said it before, that he remained in custody, remained handcuffed for an additional

period of time before you drove him to the hospital?

A. Yes.

Q. Okay. And that was approximately I think you testified it was -- the arrive at the hospital was approximately an hour after the interview?

A. The interview ended at 12:08 and I believe we arrived at the hospital at 12:47.

Q. 12:47?

A. I believe so.

Q. Okay. Was he immediately handcuffed at the hospital or did he sit for a while while you made the -- the preparations and made the arrangements for him to be -- have a blood draw?

A. No, he would have remained in handcuffs throughout.

Q. Okay. Was he sitting in the front passenger seat of your vehicle or was he sitting in the back or?

A. He was sitting in the front. There is no cage or special equipment in that particular vehicle, so he was sitting next to me.

Q. So, is it fair to say that by the time he was actually -- well, let me ask you, was

he handcuffed for the blood draw or were the handcuffs taken off of him?

A. I don't know.

Q. Okay. So, by this time is it safe to assume that he had been in handcuffs for nearly three hours?

A. Yes.

Q. Okay. Behind his back?

A. No, had he -- at the time of the interview had he been in handcuffs at that point they would be handcuffed in front and not --

Q. I see.

A. -- not in back.

Q. Okay. Thank you for clearing that up. I want to talk a little bit about your training and experience. You've gone through the police academy and have had subsequent training, I assume?

A. Yes, sir.

Q. And I think -- do I recall you saying that you had about 2500 hours of training over your career?

A. At that point, yes.

Q. At that point? Okay. And I assume that one of the kinds of training that you have is

interview techniques?

A. Yes.

Q. Is that a safe assumption?

A. Yes.

Q. Okay. Have you -- have you, in fact, had specific training regarding the interviewing of suspects?

A. Yes.

Q. And is it part of your training part of the goal of interviewing suspects to elicit information?

A. Yes.

Q. Okay. And in addition to eliciting information you want to be in control of the -- of the interview; is that correct?

A. As much as is possible.

Q. I noticed several times during your interview, "Let me answer the questions." "Let me answer the questions." Is that part of maintaining that control?

A. Yes.

Q. Okay. And there were several times when he would ask you some questions and you just wouldn't answer those, is that also part of maintaining the control of an interview with a

suspect?

A. Well, it's that an also there isn't a great deal of purpose for me to be answering questions about what I might do in a situation, for example.

Q. Sure. Sure. I agree with that. So, the bottom line is you don't want to lose control of these interviews, you want to maintain the upper hand; is that right?

A. If at all possible.

Q. Okay. Now, when you're interviewing witnesses, people that are not suspects, people that just might simply have information you use a different technique for interviewing them; correct?

A. Sometimes.

Q. Okay. Now, I'm not suggesting that you use the bad cop when you're interviewing suspects. But, when you're interviewing a witness who has some information that may be essential to your investigation you're going to allow them to share that information with you, you're not going to keep as tight of control on the interview as you would with, say, somebody that you suspected of a crime?

A. I would say in a general sense that's true. But, there are times when one must pull information as opposed to letting a person ramble.

Q. Absolutely. I agree with that. Now, you had opportunities to interview Janice Rose-Webber and Michelle Clayburn. And did you feel that you had to keep a tight control on those interviews or did you allow them an opportunity to say what needed to be said?

A. I did not have to maintain a tight control.

Q. So, you let them tell you what they knew about the case?

A. Yes.

Q. Because you were looking for information that might be beneficial to the investigation?

A. Certainly.

Q. Thank you. I'd like to ask you a couple more questions about your training. But, before I do.

MR. SCALES: Could we approach, please? Your Honor, may we approach?

THE COURT: Yes.

(Sidebar - Not Transcribed)

BY MR. SCALES:

Q. Let's talk about some other areas of your training and experience. Besides interview techniques what other kinds of training, if you could just briefly tell us, have you had training in the area of defensive physical tactics, things of that nature?

A. Yes, sir.

Q. Okay. And firearms training?

A. Yes, sir.

Q. And your training's pretty extensive isn't it?

A. Well, it's as extensive as it can be.

Q. Sure, you can never get enough; right?

A. That's true.

Q. Is it the philosophy of your training -- and I'll make my point in just a second here, that -- that -- that you are well trained enough to be able to handle yourself in unpredictable situations?

A. Yes.

Q. Okay. And in the course of your

career as a law enforcement officer have you -- I'm assuming that you've been in some situations that have been potentially dangerous, potentially unpredictable?

MR. CAMPBELL: Objection, irrelevant.

MR. SCALES: Well, I'm going to make that point in just a second here, Your Honor.

THE COURT: Well, I have to have some idea of where you're headed before I can determine whether or to it's relevant, Mr. Scales.

MR. SCALES: Well, Your Honor, perhaps we -- before we say this in front of the jury we could come up and have a sidebar.

THE COURT: Why don't you come have a sidebar.

(Sidebar - Not Transcribed)

BY MR. SCALES:

Q. Detective Rylander, during the interview -- and I just -- I just had one question -- actually a couple of questions about the interview and I'm talking about the interview on September 27th. I believe it's on Page 16, Lines 9 and 11 you had made a comment to Mr. Sandoval that

"Since she's been causing problems for you you've been kind of doing the same for her." And what I'm referring to is him reporting her to the police for growing marijuana. Is reporting a crime, did you consider that or mean to imply that that's causing problems?

A. Yes, in essence I was asking him whether or not that he wasn't helping to create problems.

Q. Pardon me?

A. Asking whether or not he was helping to create problems.

Q. Fair enough. Now, going -- I'm going to try to go fairly brief -- or, quickly through the interview process here. Looking at Page 19, I believe it is -- actually, let's go to Page 21. There was some difficulty in your questioning or at least Mr. Sandoval's answers about when he last saw Jack Whitcraft, would you -- would you agree with that?

A. Yes.

Q. Okay. And at one point in time you had to tell him, "Let's start over." and you asked him, "Where were you coming from?" and what was his answer to that? I believe it's on Page 21,

but --

A. Line 21 indicated that he told me that he was coming from his house.

Q. Okay. And did he complain that he was confused about your questions?

A. He did.

Q. Okay. Did he during the questioning several times complain that he was nervous?

A. He did.

Q. Now, in your experience of interviewing people is it common to be nervous when you're being interviewed for a potential homicide?

MR. CAMPBELL: I'm going to object, other people's reaction is not relevant.

MR. SCALES: Well, Your Honor, I think he's interviewed a lot -- a lot of people during the course of his career. I think he can certainly testify as to whether people in that situation are nervous or not. I mean, he's not talking specifically about Mr. Sandoval, but based on his experience what he has observed.

THE COURT: Overruled. The witness may answer, if you're able to.

THE WITNESS: I would say that from the

vast number of people that I've interviewed that some are nervous, some are visibly shaking and some are incapable of answering questions, others are relatively calm and are capable of imparting information.

BY MR. SCALES:

Q. So, you can seel all over the -- all over the spectrum, some are calm and cool, some are not?

A. Some are so calm that they actually fall asleep.

Q. Okay. All right. That doesn't happen very often does it?

A. Not terribly.

Q. Okay. Detective Rylander, at some point in time during this interview Mr. Sandoval told you that he was going to see Bill Kirkland, his friend in Williams?

A. Yes, he did

Q. And you later confirmed that was correct, that was accurate?

A. That he was going to go see --

MR. CAMPBELL: I'm going to object because it calls for hearsay, Judge.

THE COURT: Sustained.

MR. SCALES: Well -- okay.

MR. CAMPBELL: Well --

MR. SCALES: That's fine.

MR. CAMPBELL: No, we can go there, if you want.

MR. SCALES: I'll withdraw the question.

MR. CAMPBELL: You want to do it hearsay, but --

MR. SCALES: I'll withdraw the question.

MR. CAMPBELL: Okay.

THE COURT: All right.

BY MR. SCALES:

Q. And also he told you that he was going to see Tyrone Montgomery the veteran benefits person?

A. Yes, he did

Q. Okay. He gave you a phone number for Mr. Montgomery?

A. He did.

Q. Did you have an opportunity to verify that that was Mr. Montgomery's phone number?

A. I could have and should have, but at his point I have not. All I have to do is go back

and look at my report for Mr. Montgomery and I would probably see it.

Q. Okay.

A. I never did.

Q. Let's talk a little bit about Mr. Sandoval's description of the events leading direct -- right up to the incident. Did Mr. Sandoval at any time tell you that he himself in the Bronco slammed on his brakes?

A. No, he did not.

Q. Okay. But, he did tell you that he saw the gun in Mr. Whitcraft's hand?

A. He did.

Q. Okay. And based on his descriptions you demonstrated what Mr. Whitcraft's actions were?

A. Yes.

Q. Okay. Detective, have you in your experience is it -- is it uncommon for people to amend or add to their statement?

MR. SCALES: Same objection, Judge, what other people do isn't at issue in this case.

MR. SCALES: Well, Your Honor, we've already brought out that Mr. Sandoval made some additions to his statement while they were going

from the scene to the hospital and I think it's a fair question, Your Honor. Detective Rylander's interviewed a lot of people. I mean, the implication is that Mr. Sandoval is doing something --

THE COURT: Okay. I'm ready to rule.

MR. SCALES: Okay.

THE COURT: The objection is overruled. You may answer if you're --

MR. SCALES: Thank you.

THE COURT: -- able to.

THE WITNESS: Please repeat the question.

BY MR. SCALES:

Q. If I can remember. In your experience from interviewing people is it uncommon for people to amend or add to their statement?

A. In a yes or no, it's not uncommon at all.

Q. Okay. Now, Detective Rylander, at the time that Mr. Sandoval was charged with murder the -- to your knowledge was any of the forensic testing by Criminalist Amish completed at that time?

A. No, it was not.

Q. Was the accident reconstruction completed at that time?

A. No, it was not.

Q. During the course of your investigation you interviewed, as well as some of the other detectives, many people that had information about the case; correct?

A. I did.

Q. Were those interviews done subsequent to Mr. Sandoval's arrest?

A. Yes, they were.

Q. Okay. I'm handing you what has previously been marked as State's Exhibit 88, this is the letter from the licensing Department of Fish and Wildlife.

A. Yes.

Q. And is it your testimony that Mr. Sandoval did not have a license in 2001?

A. As best I was able to interpret the documentation that you've just handed me I could not see that he had anything, any license or tag beyond what was issued on 10-12-2000.

Q. What kind of a license was he issued, was it just a generic regular hunters license or was there something distinctive about the license

that he was issued?

A. Well, the license that was issued for the 10-12 was a resident disabled veterans/pioneer no charge license. Meaning that there was no money exchanged to obtain that license.

Q. Now, do you know if the disabled veteran what -- I'm sorry, what did you refer to that as, Pioneer?

A. Yeah, resident disabled veterans/pioneer no charge license.

Q. Okay. So, you don't know if that is a -- if that is an annual license or a lifetime license?

A. It doesn't state on there that it is a lifetime license.

Q. So, your testimony is based on what's on this document?

A. Yes.

Q. Detective I'm going to show you -- did you have an opportunity in preparation for your testimony today to review the transcript from the prior trial?

A. I have seen it, yes.

Q. Pardon me?

A. I've seen it, yes.

Q. Okay. And do you have your portion of the transcript with you?

A. I do.

Q. Would you -- I'd like to turn your attention to Page 616 of the transcript. And there was a question asked of you starting on Line 20 through Line 23. Would you read the question first and then read the answer?

A. The question starting on Line 15: "Officer, as part of this investigation of this case did you run records with Oregon Department of Fish and Wildlife to see if Leo Sandoval possessed a hunting license?" And my answer was, "Yes, I did." And you want me to read the next question?

Q. Please, the next four lines.

A. "And did he possess a hunting license for the year 2001?" And I responded, "He possessed both a fishing and hunting license."

Q. Okay. Can you help me out, can you resolve that discrepancy? Did he have a license in 2001 or not?

A. Well, based on my re-observation of that document I perceive that he did not have a license.

Q. And when did this re-observation of

that document take place, Detective?

A. During the review for this trial.

Q. Did you talk at anybody at the Department of Fish and Wildlife?

A. A second time since that trial? No, I have not.

Q. In preparation for the first trial.

A. I sent a letter, which is not attached to that.

Q. But, in 2001 you were -- in 2002 you were satisfied that in 2001 he had a valid license?

A. It appears so, yes.

Q. Okay. And this -- this change is part of your -- the reevaluation during the preparation period for this trial?

A. That's correct.

Q. Detective, getting back to the September 27th interview, I'm looking at Page 37, starting with Line 19. You asked Mr. Sandoval on both Lines 19 and 21, "Did Mr. Whitcraft take any steps towards your car?" And how did you answer, sir?

A. Please repeat the page number.

Q. Page 37 and I believe his answer you

can find it somewhere after 22, 23.

A. You wish me to read my question and then the answer?

Q. Well, yes, please read Lines 21 and 22 and 23.

A. My question was, "When he opened his door and he stepped out with the gun did he take any steps towards your car?" No -- the answer he gave was, "No, he just kind of swung to shoot me from the -- he did. Boy, well, he had always -- already assaulted me once in the parking lot. These things -- they fear -- put they fear in me, sir."

Q. Okay. So, he didn't tell you that Mr. Whitcraft had gotten out, but rather he swung to turn; is that correct?

MR. CAMPBELL: I'm going to object to that, he's taken one statement out of context to --

MR. SCALES: Well, he --

MR. CAMPBELL: -- fairly examine you have to take all of the context.

MR. SCALES: Well, Detective Rylander's the one who demonstrated these things so I think he can testify as to what -- what Mr. Sandoval

described and -- and Mr. Sandoval obviously either affirmed or didn't affirm what he had done.

THE COURT: Well, Mr. Scales, you certainly will have the opportunity to continue your questioning. But, the jury will have the full transcript and will have the opportunity to read all the various responses.

MR. SCALES: Okay. I'll -- I'll move on, Your Honor. I just have a couple more questions for Detective Rylander.

(Brief Pause)

MR. SCALES: Your Honor, I'm not going to have any further questions at this point in time. But, we anticipating -- anticipate calling Detective Rylander on our -- in our case and chief.

THE COURT: All right. Thank you, Mr. Scales.

MR. SCALES: Thank you, Detective.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Detective Rylander, you were asked whether it's common for a person to amend or add

to their statement and so let me ask you this, is it common or uncommon for a person to amend or change their statements in the detail and manner as this defendant did?

MR. SCALES: I think I'm going to object to the form of the question, Your Honor, he's -- we're talking about the specifics of his statement in the detail and the manner that he did. My question was very generic, is it common or uncommon for people to change or amend their statement. There was no comment on the -- the nature or the substance of the statement.

THE COURT: Overruled. The question is appropriate. Answer if you're able to, sir.

THE WITNESS: Please repeat the question.

BY MR. CAMPBELL:

Q. Did he change his statement substantially, for instance, from "The guy stepped out, turned around pointed the gun at me." to something different than that?

A. Yes, sir, he did.

Q. And is it common for someone to amend or change their statement in those kind of detail salient points?

A. In my experience and training it only becomes common that a person would do that if they're trying to correct something that they were clearly wrong in stating in the first place.

Q. Or they were lying?

A. Yes.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales?

RECROSS EXAMINATION

BY MR. SCALES:

Q. Detective, when you interviewed Mr. Sandoval it was approximately how long after the shooting had taken place?

A. About two and a half hours.

Q. About two and a half hours? And is common for people when making a statement, an initial statement, to be under the shock or stress of a traumatic event?

A. They can be.

Q. And once they've had an opportunity to think about it, to get things clear, more in focus is it common for them to amend certain points of their statement?

A. Sometimes.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

MR. CAMPBELL: I think we've made the point. Nothing further, Judge.

MR. SCALES: Yeah.

THE COURT: All right.

You may step down, then.

All right. We are going to stop for the day now.

MR. CAMPBELL: Judge, I have a witness that has a job up the coast. I don't think it'll be very long, I'd like --

THE COURT: Is it a very fast witness?

MR. CAMPBELL: -- I'd like to call him today, please? Yeah.

THE COURT: All right.

Then, ladies and gentlemen, I appreciate your patience. But, let's try and take this last witness and then that witness hopefully can be excused.

So, please call the next person.

MR. CAMPBELL: The State will call Gary Sell.

Come right in here and raise your right hand, right in between the tables.

THE COURT: Please raise your right hand and to be sworn in by my clerk.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you could walk around the table, up the steps and have a seat behind the microphone?

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GARY SCOTT SELL,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, would you tell us your full name, please?

A. Gary Scott Sell.

Q. Okay. And do you spell your last name -- how do you spell your last name?

A. S-e-l-l.

Q. Okay. I don't want you going back and forth so I'll move that back towards you, okay? And do you live in the Grants Pass area?

A. Yes, I do.

Q. Okay. And you work up on the coast?

A. Yes.

Q. And did you know Jack Whitcraft?

A. Yes, I did.

Q. How did you know him?

A. Well, he worked for my dad's business and then we eventually became good friends.

Q. Okay. And what -- what business did your dad have?

A. Fatty's Pizza.

Q. Okay. When did he work for your father?

A. It was probably a good 15 years ago.

Q. Okay. And so you were familiar with Mr. Whitcraft at the time of his dead?

A. Yes, I was.

Q. And did you -- did you know Mary Carlson?

A. Yes, I did.

Q. Okay. And did you have occasion to visit with them on Peach Street?

A. Yes, I did.

Q. And did you ever observe -- did you know the defendant, Leo Sandoval?

A. I didn't personally know him, but I had seen him.

Q. All right. Did you ever observe him engage in conduct toward Mr. Whitcraft or Mary Carlson while you were around?

A. Not while I was around.

Q. Okay. Let me take you -- well, let me talk about Mr. Whitcraft a little more with you. Was he a convict? Had he been convicted of anything?

A. I don't know if he was.

Q. Was he -- and was he a drug dealer?

A. No, he wasn't.

Q. And did you form an opinion about whether he was a peaceful or violent person?

A. He was a peaceful guy. He wasn't out to hurt nobody.

Q. All right. Did you ever have conversations with him regarding his concern for his safety as it related to the defendant?

A. Oh, yeah, many a times.

Q. Did he speak to you about an event

that occurred about two weeks before his death?

A. Yeah, he did. He told me he got in a fight with Leo there at the Lil Pantry by his house.

Q. Okay. That was around July, wasn't it, that that occurred?

A. I think it was in the summer.

Q. Okay. Did -- did he ever talk to you about a gun pointing incident about two weeks before his death?

A. Oh, there was many times he told me that he'd be driving to work and Mr. Sandoval here would come up on the side of him and give him like he was going to shoot him gesture.

Q. Okay. Did you ever meet the -- or, were you ever in a conversation with the defendant?

A. No, I met him one time.

Q. Okay. That's what I want to talk about. Where were you when you -- when you had this meeting?

A. I was out at Shannon Creek Market.

Q. Shannon Creek Market? Okay. Off -- is that on Riverbanks Road?

A. Yes, it is.

Q. And what were you doing?

A. I was sitting at the picnic table with a couple other guys, supposed -- they -- they knew him. They introduced me as "Gary, Jack's friend" and the first thing that comes out of his mouth is he's going to shoot Jack and fill him full of lead. And he -- you know, it was kind of weird because he don't even know me.

Q. And how would you describe his demeanor when he's telling you this?

A. He just straight come out and told me that, you know, like -- I didn't know what to think about it.

Q. Was it joking? Was it serious?

A. No. No, it wasn't joking. Yeah, it was serious.

Q. Can you tell us about when this was in relation to Mr. Whitcraft's death that you heard those threats?

A. It was like in 2000, it might have been '99, 2000.

Q. Okay.

A. It was in the summer.

Q. I think you testified last time it was about a year before his death?

A. Yeah.

Q. In 2000?

A. Yes.

Q. Thank you, sir.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Thank you.

THE COURT: Hang on a just second.

CROSS EXAMINATION

BY MR. SCALES:

Q. Mr. Sell, have you been convicted of a felony?

A. Yes, I have.

Q. Can you tell us what those are?

A. Drinking and driving. DUI.

Q. DUII? Okay. And is there another one from 1984?

A. Another what?

Q. In California?

MR. CAMPBELL: Objection, Judge, Counsel knows much better than that. That's improper.

MR. SCALES: May we approach, Your Honor?

THE COURT: Yes.

(Sidebar - Not Transcribed)

BY MR. SCALES:

Q. Now, you were a friend of Mr. Whitcraft's; correct?

A. Yes, I was.

Q. Okay. And do you remember talking with Detective Mason?

A. I don't really remember.

Q. Did you ever tell him about the many times Mr. Sandoval may have given the gesture of shooting?

A. To -- to who?

Q. To Detective Mason.

A. I don't really remember a Detective Mason.

Q. Okay.

MR. SCALES: I have no further questions for Mr. Sell.

Thank you, sir.

THE COURT: Mr. Campbell, anything else?

MR. CAMPBELL: That's all we have, Judge.

THE COURT: All right. Are you asking that he be excused?

MR. CAMPBELL: I do ask that, Judge.

MR. SCALES: Yes.

THE COURT: And you agree? All right.

Thank you, sir. You are excused. Thank you for coming in.

And with that we will break for the day. Ladies and gentlemen, please leave your notebooks on your chairs and you will go with the bailiff in to the jury room. Please do remember my instructions, you're not to discuss this with anyone, including amongst yourselves.

And if you would please check in tomorrow morning to the jury room at 9:15. So, have a good evening.

(At 4:58 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are in recess until 9:30 tomorrow morning.

And can I just speak with Counsel, shortly?

MR. SCALES: Sure.

(On February 23, 2009, at 4:59 p.m. the above entitled matter was concluded for the day, to reconvene on February 24, 2009, at 9:30 a.m.)

GRANTS PASS, OREGON

TUESDAY, FEBRUARY 24, 2009; 9:33 A.M.

12 PERSON JURY TRIAL - DAY 5

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. Does either side have anything before the jury comes in?

MR. SCALES: None from the Defense, Your Honor.

THE COURT: Mr. Campbell?

MR. CAMPBELL: No, Your Honor.

THE COURT: All right. Please ask them in.

(At 9:34 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen, we are continuing our trial, State vs. Sandoval.

And, Mr. Campbell, I believe you're ready to call your next witness.

MR. CAMPBELL: Yes, the State will call Dr. Olson, Judge.

THE COURT: All right. Thank you.

Please step forward and raise your right hand to be sworn in, sir.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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DR. JAMES N. OLSON,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Will you state your full name and

spell your last please?

A. Dr. James Norman Olson, O-l-s-o-n.

Q. And how are you employed, sir?

A. I essentially hold two jobs. I'm with an 11 person pathology group, it covers four hospitals in Josephine and Jackson Counties, Rogue Valley to Three Rivers, Providence in Ashland. And then I spend about a third to half of my time each week doing forensic pathology with the appointment of Deputy State Medical Examiner and I have an office at the State Police Headquarters in Central Point.

Q. And you are the medical examination in charge of the Southern Oregon district; is that right?

A. That's correct, the district is Josephine, Jackson, Douglas, Coos, Curry, Klamath and Lake Counties.

Q. How long have you been doing pathology medical examiner work?

A. I came here in the last century in 1976 and started my practice. I feel pretty old some days, especially when I look at that mural on the wall at the courthouse. The -- I started my practice here and then I did a limited number of

autopsies for the first 10 years and then was asked to take over Jackson County in '86 and then Douglas County in '91. And we gradually formed a district. Initially those three counties, Josephine, Jackson, Douglas and it gradually expanded and I received the appointment of Deputy State Medical Examiner. And went on to add forensic pathology board examinations, passed the boards in 1997 and challenged them on the basis of experience. So, I'm board certified in anatomical, clinical and forensic pathology.

Q. All right. Give the jury an idea of how many autopsies you do a year?

A. Well, currently quite a few more than I did in 2001, looking at the number on this case. But, I did 352 last year, which would include full autopsies and extern examinations with or without obtaining toxicology samples.

Q. Okay. And in terms of the number you've done over your career?

A. Oh, probably in the range of 5,000 now. I think in the last few years I've been averaging anywhere from 300 to as high as 400 one year. So, probably easily in the 5,000 range. I haven't sat down and enumerated all my total

autopsies, but --

Q. Okay. The -- just briefly, your education, you are a medical doctor?

A. I am. I went to the University of Washington after high school, four years there, graduate in bachelor of science in zoology, then went to medical school also at the University of Washington in Seattle, another four years for a medical doctor degree. Interned there and then I went to Tacoma General Hospital in Tacoma, a town south of Seattle, and did a pathology residency.

Q. Okay. Did you perform an autopsy on Jack Whitcraft, the victim in this matter?

A. I did.

Q. And what day did you do that on?

A. That was done on October 1st of 2001 at 2:30 in the afternoon is when it started.

Q. Okay. And what is the purpose of an autopsy, what do you -- why do you do them?

A. Both in a hospital and in a forensic sense it's to determine the cause of death and the manner of death. And medical legal issues, such as we're involved in today, it's to determine patterns of injury and to obtain trace evidence as well, as opposed to, say, a hospital autopsy.

Anything that would contributory to the case and useful in its ultimate adjudication, I guess.

Q. Okay. And, in fact, evidence was seized during the autopsy such as fragments from a bullet from the body?

A. Two bullet fragments were recovered in the right eye and below it and the clothing was save, along with personal effects and --

Q. Did you determine what caused the death of Jack Whitcraft during your autopsy?

A. I did. It was a high power rifle wound that hit the back of the neck about two, two and a quarter inches to the left of center, went through the head, the skull and the brain, doing substantial damage to it. Which would expect from a rifle wound, especially a hunting rifle which is designed to do that. And two fragments of jacket were found, one was actually found in the right eye itself and other was found in its vicinity. And then there was also an exit of a small fragment of the bullet that came through the lateral part of the right eyebrow.

Q. Okay. Can you tell the travel of the gunshot wound from you autopsy? Were you able to generally give us directionality of that?

A. Yes, the general course was from the back to the front. So, it went from the left side of the next with one exit fragment as well as two fragments retained deposited around the right eye. So, you have a back to front and a left to right directionality. And also there was a difference of about two inches from the center of the entrance to the highest fragment in exit. Which actually the exit would be in the right eyebrow.

So, essentially the course was from back to front and from left to right across the head and brain and then slightly upwards as well.

Q. Okay. Now, is there any question in your mind that the back is the entry point?

A. Well, it has to be. There's bullet -- the bullet struck and obviously went through glass and I can only assume that you've seen pictures of that as well as testimony to that effect. In so doing, especially a bullet that's designed as a hunting rifle round, it's going to destabilize immediately on impact with any intermediate object. In other words, an object placed in between the muzzle of the weapon and the ultimate target. And it's going to -- the bullet will start to expand and fragment, as well as

destabilize and characteristically it will produce a much more -- much larger abnormal or atypical looking wound than you would see if the bullet simply struck the target head on without any interference with another object.

In this case it was a bullet wound that was quite sizeable, it was three and a quarter inches running sort of vertically from the back of the neck up towards behind the left year and it had a width of up to two inches. Quite a bit of abrasion, which is where the skin is abraded as the bullet fragments perforate the skin it will actually abrade the edges of the wound, a phenomenon we call "marginal abrasion". There were also smaller satellite wounds probably associated with the glass, as well as fragmentation of the bullet that were around the wound and dispersed for up to eight inches vertically, from the back of the head to the neck and upper shoulder.

So, there's no way that this could be anything other than the entrance wound, which would be, again, in the back of the head, back of the neck on the left side.

Q. Okay. Based on this wound that you

saw and the injury was there -- what were the internal injuries as a result of the gunshot?

A. Well, they were devastating. Whether this had hit a window or not being struck with a rifle, high powered rifle which as opposed to, say, handgun has three -- anywhere from 2,000 for the lower range of rifles, hunting rifles, to up to over 4,000 foot pounds of energy. And a typical 9mm or a .38 might hit you with three to four hundred pounds. And some of the higher caliber ones, like a commonly used .357 might be in the 650 pound foot pound range.

So, not only is the bullet going a lot faster, but it also delivers a tremendous amount of energy to the target. And it's designed, a hunting rifle round or bullet is designed to break up once it gets in to a body, once it's hit the target. And so you have fragments of the bullet being cast off as it goes through, of course, even if it hasn't gone through an intermediate object like this one did. And you have a tremendous amount of energy that produces a temporary cavity.

And one of the aspects that makes a head wound so devastating is normally the brain is contained in a firm -- in the skull and so there's

not a lot of room for expansion. The phenomenon, if you've ever done it or seen it on TV would be if you took a milk carton and fired a rifle or any bullet through it empty it just goes through it and doesn't produce any explosive energy. When you fill it with water or some fluid and then hit it you have a much more dramatic damage, you'll actually explode the carton because of all of the energy that can then be imparted to it, not just perforating the plastic, but actually the water and the energy that this bullet is dispersing to the target, which is a tremendous amount of energy.

So, characteristically whether this -- he'd been hit either without hitting the glass or just primarily he would have had an explosive head wound and a highly devastating one. Was he immediately incapacitated? Yes, because there's incredible damage to the brain, as well as severance of the brain stem from the cervical cord so there'd virtually be no neuromuscular activity of any purposeful intent following this injury. And so you would -- he would basically be -- his life would be over. He may have an agonal heartbeat for a while, but in terms of recovery

possibilities they're nil and in terms of any purposeful action after infliction of the wound it's virtually impossible.

Q. So, if you -- I was going to ask this question, I think you just answered it. But, --

A. Yeah.

Q. -- would he have any muscle control after striking him?

A. No, he wouldn't.

Q. Now, you're aware the body was found outside of the truck?

A. Yes. Mm hm.

Q. And in your opinion would that be a result of muscle control or just more gravity?

A. Well, it would appear that the door had to be in the process of being opened at that point and he simply fell out after he was shot and it looks like his feet became entangled in some sort of electric wire that you may or may not have seen already. So, his feet were actually above the body entangled and resting against the lower doorsill of the vehicle.

Q. Okay. And so if he had slight momentum toward the door would that be a potential explanation why he went on out?

A. That or the door's open and he just falls out.

Q. Just the gravity takes him out?

A. Yes.

Q. Okay. Did you find any indication in your autopsy of where he might have struck on his body when he went out the door?

A. Probably the --

Q. And I'll show you two -- three photos that are in evidence and see if any of those help you.

A. Well, State's Exhibit 14 is from the back of the head -- back and it shows the wound to the back of the neck and head. 15 is an exhibit of the right eyebrow and eyelid showing the exit of at least part of the bullet in the lateral right eyebrow. 16 is a picture of the left side of the face and forehead, which shows four to five small indentations which are just small perimortem around the time of death abrasions that probably are from the pavement, most consistent with that.

Q. Okay.

A. There's really not much of an explanation for them other than falling out of the vehicle and striking there. I think his

eyeglasses were broken on that same side.

Q. So this -- this part of the forehead on State's Exhibit 16 would be consistent with that?

A. Yes. Mm hm.

Q. Does -- and would he, for lack of a better way of explaining, just kind of fall out like a sack of potatoes?

A. He should, he should have -- should have no muscle tone and if he's already in motion towards getting out of the vehicle and just fall out or just fall out because the door's open or no longer secured so it could be pushed open.

Q. Did -- now, you've indicated this bullet fragmented and do -- does the major portion of the bullet continue straight and then things just fragment off?

A. Well, the bullet by its design in a classic hunting round it's designed to actually start breaking up inside the target. The whole purpose of that is that the more energy you impart from the bullet to the target, which in most cases should hopefully always be a game animal of intermediate to large size, is that that energy will produce a high amount of destruction to

wherever the body is struck and disable the target, living target.

The -- so, typically even if this had not gone through window glass or any other form of an intermediate object you would get what's often times called the lead snowstorm, which is fragments of the lead breaking off the bullet as it passes through the target or even lodges in the target. Now, if the bullet is retained in its entirety or most of it's -- most of it's retained in the body then it's actually done the job it's designed to do, which is to damage as much tissue as possible. And it isn't just the tissue that the bullet actually penetrates and perforates, only that small temporary cavity, which in a bullet of this size, a 7mm, is about .280 inches that's, you know, just slightly over a quarter.

So, you don't just get a quarter of an inch size perforation and track through the body, what you really did was far worse and what we saw here is a lot of energy is disbursed radially producing a temporary cavity and expansion of, in this case the brain and the head, the skull. The entire skull was fragmented, more so at the bottom half of the skull where the brain is resting on

it, literally fragmented just dozens and dozens of pieces of bone and there were multiple linear fractures over the top or vault of the skull.

And this is fairly characteristic of any high power rifle wound to the head whether it's inflicted in close range, say in a suicidal event, something I just had yesterday in another county, or whether it's inflicted at long range either, you know, close where you might have some powder particles or soot on the target or even farther out. Characteristically a head wound with a high power rifle is extremely destructive and produces, for lack of a better term, explosive type injuries to the brain and to the cranial structures.

And he fractured all the way down through his pallet. He even had enough energy to fracture his dentures, his upper denture was literally split in half, part of it was still in the mouth and I think the other part was recovered outside the body. And even with that some fragments, bone fragments, still had enough energy to go out and be recovered in the vehicle. Would you expect a tremendous change in directionality? You might have some fanning out after it struck the intermediate object, but mostly you'd -- and

you do have some fanning out that's why you have these secondary missile injuries around the primary wound. But, the main fragments pretty much run a true course without I would suspect significant deviation, maybe of a few degrees at best, running again in a fashion from the entrance to at least a partial exit of part of the bullet.

Q. Okay. The -- yesterday the criminalist brought this head with this dowel in it, is this -- is that the angle that you would put on that or was it --

A. Well --

Q. -- a little different?

A. -- this isn't going to be, you know, exactly like -- it's close, it's more probably further down towards the base because it actually is part of the neck and then it comes up through and it comes up through the undersurface of the skull. You know, the skull sort of -- you have the front part that the tips of the frontal lobes rest on and then you have a middle cranial fossa which is where the tips of the temporal lobes rest and then you have the posterior cranial fossa. So, it's sort of a -- like three levels at the base of the skull where the cerebellum and brain

stem rest. And it came up through the -- through one of the large fairly robust sections of the skull called the petrous portion of the temporal bone on the left side and shattered it and then came out.

Q. Okay.

A. It's a reasonable approximation, but --

Q. But a little further --

A. Probably a little bit --

Q. -- down?

A. -- further down, yeah.

Q. Okay. Back a little further?

A. It's -- well, if you could get this to scale it was two and a quarter inches to the inside edge of the large primary wound and it was -- there was a difference of two inches from about the center of that wound to the exit perforation in the eyebrow.

Q. Okay. When you say "two inches" where do you measure from, the midline of the back of the head?

A. Yeah, typically if I'm saying "to the left of center" it would be just drawing a line down the center of your neck and then go over

two inches --

Q. Okay.

A. -- and a quarter to the inside edge of the wound.

Q. Did -- typically do you do an autopsy -- or, an autopsy, an x-ray? Do you have an x-ray done as part of your preliminary examination before you get in to the actual autopsy?

A. It would be customary especially in a case like this, any homicide to be able to recover as many -- a bullet in its entirety, if possible, or as many parts of a bullet as you could recover if it broke up.

Q. And this is an x-ray marked and put in to evidence as State's Exhibit 60, you've looked at this before?

A. I've seen it and I have it described in my autopsy as well.

MR. CAMPBELL: We would offer 60.

MR. SCALES: No objection.

THE COURT: Did you say 60?

MR. CAMPBELL: 60.

THE COURT: 60 is received.

BY MR. CAMPBELL:

Q. And I will then turn this on. And we don't need to take a lot of time with this, Doctor, but if you would explain what this shows and how it illustrates your testimony?

A. Well, this is an x-ray of -- actually, I find this right here -- do you see this all right? And you see multiple bright white densities. Bare in mind the wound is way down here on the opposite side of the head and you're getting fragments all along. Now, are all these parts are all of these lead? Some of them are probably lead and others are fragments of bone that become brighter because you've got bone on bone, in other words. And you have substantial fragmentation of bone and I recovered bone fragments throughout the brain and all along the wound track.

So, you're getting -- and this is sort of the phenomenon I described, the lead snowstorm, which is what the bullet's designed to do, it does break up. This one is already partially fragmented, fragmenting after going through the glass.' It strikes and you get, of course, all the way from the front, or back to the front depending

on the directionality, of these lead fragment and you see them even way down in the neck structure.

Q. Okay.

A. And this probably is demonstrating the fragments I found of jacket, primarily copper jacket that were found inside the right eye and below it.

Q. Does glass -- you talk about other secondary missiles of glass, does it show up on the x-ray like that?

A. I don't know if glass really would, I elude to it in my report. I'd have to actually see it if you put glass fragments on an object if it -- you know, and I suppose it's a function of what the glass is made of if they would show up at all. But, even if it weren't I don't think a lot of glass fragments went through. There were a lot of -- there were secondary missile injuries and glass fragments on his clothing in the back and on the back of the neck that abraded the skin, just lightly injured it. But, whether they're a substantial component of this is unlikely, it's mostly bone and small fragments of lead disintegrating as the bullet disintegrates.

Q. Okay. Thank you.

A. Mm hm.

Q. Showing you what's been marked as State's Exhibit 62 for identification do you recognize that?

A. Yes, this is the death certificate that you're obliged to issue on any death, regardless of the type of death. And it was issued -- let's see, I signed it probably on or around the time of the autopsy.

Q. Okay.

A. But, it lists the time of death and it lists the cause and manner of death.

Q. Okay.

MR. CAMPBELL: The State would offer 62, Judge.

THE COURT: Any objection, Mr. Scales?

MR. SCALES: No objection, Your Honor.

THE COURT: 62 is received.

BY MR. CAMPBELL:

Q. Did you find any alcohol or illegal drugs in Mr. Whitcraft's system?

A. No.

Q. Okay.

A. There was a presumptive test for

benzodiazepines that was positive, but not quantitated. All elicit drugs were non-detective in the urine screen. And his blood alcohol was negative.

Q. Okay. Based on your expertise and your study of the wound in this case and the other information you had can you tell the jury your best opinion on how the victim was oboriented when he was shot?

A. Probably not substantially different from just average driving position, he was probably fairly close to the back of the glass because it's done damage to the skin. You already have probably seen, I suspect, the bullet hole's about 19 inches from the outside edge of the truck or frame and about I think five inches above a tool box that would have reduced the overall size of the window profile that would have been seen from the outside and pretty much about where a person would be seated in a normal, behind the steering wheel driving position whether you're opening a door or not.

There can't be a tremendous amount of movement of the head. I mean, we'll never know with absolute precision unless you saw the event

and knew the precise position of the person shooting the weapon and the decedent, but you can come up with at least some rough guidelines. It goes from here to here, so you can't have him turned too much like this because you'd never get that profile, the wound wouldn't have the same profile or pattern, you'd blow out the back of the head and it'd come out this way. You can't have him facing, in other words, literally turned completely around because this is exit, this is entrance, you'd have to reverse everything and you'd have a total different pattern of injuries, you'd probably have a highly destructive facial injury and you'd have secondary missile injuries and glass fragments on the face instead of the back of the head.

So, it gives you a limited range that he's -- that, you know, depending on where he's actually shot from, either directly behind which was one scenario versus perhaps getting out of the car and shooting at someone from this position to off here angle. At any rate, I don't think there's a tremendous amount of -- you know, the head can be in a somewhat neutral position or tilted this way, maybe this way, but not radically

at 90 degree either way. And probably erect to maybe slightly leaning forward to explain some of the change in height from entrance to exit. But, definitely not, you know, over this direction or over this direction or completely turned around, if that would even be possible if your back's to the -- up against the back of the seat bench.

Q. Thank you.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Thank you.

CROSS EXAMINATION

BY MR. SCALES:

Q. Dr. Olson, so what you're saying is based on -- you didn't examine the vehicle, did you?

A. No, I've just gone through dozens of photos, I've seen those, but --

Q. And had some of the measurements available to you?

A. Yes.

Q. So, if he's sitting in the cab, and I think you said essentially behind the steering wheel, if the bullet came in 19 inches from the

left side and -- and hit the windshield 20 inches from the left side it would be pretty much a straight on shot, would you agree?

A. I don't know how much -- I mean, if you're either shooting -- I mean, one scenario is he's shot with the driver of the -- the defendant still in the vehicle somehow and shooting which would -- given the offset of the vehicles it would almost be a directly behind him shot.

Q. Mm hm.

A. Another scenario which, you know, whether it's proven or not is that the defendant is out of the vehicle and fires perhaps over the top of his door, his driver's door, which gives it somewhat of an angle. But, either scenario I don't think you're dealing with a huge angle either way, either straight on or -- and then again if -- even if you shot straight from the back if the decedent's head is tilted one way and he's leaning forward you could still get the same trajectory, so --

Q. Well, I think you said that the -- the main fragments pretty much run a true course?

A. I think they would.

Q. Okay.

A. They have sufficient size and that they're not going to deviate substantially.

Q. So, assuming that those main fragments were running that true course, they entered the vehicle 19 inches from the left, the exited the head and caused damage to the interior of the windshield --

A. Yes.

Q. -- 20 inches from the left, is that pretty much consistent with the bullet coming in perpendicular to the back of the glass?

A. Perpendicular or a slight angle.

Q. Slight angle? Okay.

A. I don't think -- you know, you can't be dealing with a huge angle in any of this.

Q. We can't say can we?

A. No. No. No.

Q. Okay.

A. No.

Q. But, we can say what direction the bullet went through the head?

A. Yes.

Q. Okay. So, assuming that the bullet came through the back of the glass, roughly perpendicular or a slight angle would his head

have to be somewhat down and turned to the left?

A. It could be.

Q. It could be or?

A. No, I mean, if -- if this is -- if I'm this fellow, the -- the -- Mr. Whitcraft and this is my pickup truck --

Q. Mm hm.

A. -- and I'm sitting somewhat like this I could be potentially somewhat like this, I suppose, depending on the angle. If it comes straight through and hits me I might actually have to be turned this way and maybe tilted. Which would be logical if you're opening the door, that you might be facing that direction as you're facing your exit point.

Q. Okay. I'm a little bit confused because --

A. Okay.

Q. -- you looked off to the right, Doctor.

A. Okay. So, this is my side door --

Q. Right.

A. -- this is my pickup, front, steering wheel probably about here. If I'm opening it and the shot is directly from back --

Q. Mm hm.

A. -- so you're saying just straight perpendicular impact, not an angle --

Q. Mm hm.

A. -- then I would probably have to be about like this.

Q. Okay. And with a slight angle your head might be turned back a little bit this way?

A. Correct, I mean, the head --

Q. But, nonetheless turned towards the left towards the door?

A. The head can be tilted a bit to the left, I mean, not to this extent by any means --

Q. Right.

A. -- but certainly -- and it would be some illogical if he's opening the door and moving in that direction and presumably, you know, holding a gun or brandishing a weapon with one hand, you know, he could be like this.

Q. Okay. Now, I think you said -- and I think Mr. Campbell used the term -- and we don't mean any disrespect, a sack of potatoes, once -- once he was shot he was essentially immobilized is that --

A. That's correct.

Q. -- is that accurate? And if he had no momentum one way or the other would he simply slump or would he continue going out the door? Help me explain that.

A. I have to assume the door is already open, I mean, at least unlatched so the door could be pushed open by his weight or it's already open. Given his position, I mean, the door's probably in the process of being unlatched and opened and he's struck and he simply falls and falls out of the vehicle.

Q. Is it also possible -- is it also consistent that some -- that he could have been leaning over in the seat and straightening his back up and that momentum carried him out the door after he was -- as he was straightening back up he was shot and that momentum carried him out the door?

A. Leaning -- excuse me. Do that again, I don't think I followed it.

Q. If he's in the driver's seat and if he is leaning to his right or --

A. Mm hm.

Q. -- starts from a position right of being directly upright, moves back towards the

upright position towards the door as he's shot would that momentum then carry him out of the vehicle on to the pavement?

A. The momentum, first off if there's any -- you know, from Hollywood movies being hit with that rifle is not going to mobilize his body or drive him several feet, you know, in the direction that he's struck. That simply doesn't happen, you --

Q. Right.

A. -- have too much mass of the human versus the bullet. His falling is not going to be an act of the weapon giving the body energy and pushing it out the bullet wound. It's going to be simply -- in his case it would appear to be a passive event, either he has some momentum or he just simply loses all body tone and just crumples out of that vehicle.

Q. I think you might have misunderstood my question. If the momentum was Mr. Whitcraft -- it came from Mr. Whitcraft being over, say, the driver's side to the passenger side, the glove compartment area, if he is sitting up on his own the bullet, like you said, in Hollywood movies we see how the bullet blows people three feet back

and --

A. Mm hm.

Q. -- things like that, that doesn't happen that way in real life?

A. No, doesn't happen.

Q. Okay. So, his momentum if he's moving from right to left would not be effected by the bullet, it would continue in that direction, is that fair to say?

A. In other words, he's moving from his right side to his left like this?

Q. Yes.

A. Turning?

Q. Mm hm.

A. I don't know how much momentum you have. Basically you're opening a door --

Q. Mm hm.

A. -- and probably, possibly brandishing a weapon in the other hand and you're struck and you have to be fairly close to the back of the window, within inches of it, which would be your normal head position anyway in --

Q. Mm hm.

A. -- a pickup like that, standard full-size pickup. If he's turned a little bit like

this and depending on the direction of the bullet or direction of fire that's possible that he's hit and he's opening the door and he just out of the vehicle, his feet get trapped in that wire and he just appears to fall out of the vehicle.

Q. So, we really can't say can we?

A. No, I don't think it takes a lot of momentum, I think the very fact that if he loses all body tone, just goes, to whatever term you want to use, no purposeful movement, no body tone and simply passively collapses out of the vehicle because the door's open and he may have just fallen this direction and gone out --

Q. Well, if he -- I'm sorry, go ahead.

A. -- then the body seems to twist and he obviously impacts at this point. There seems to be some dispute as to whether he's actually face down when initially found or truly turned on his back and twisted. It may be possible that EMT's had moved him, but at least moved him over. There were a couple of EKG pads on the left side of the chest. The just simply crumpling out of the vehicle, which is I think what he's going to do, he's going to fall against the door. It has to be unlatched otherwise he'd still be in the

vehicle if he hadn't opened it and unlatched it, perhaps partially opened it, I don't know if it was fully pushed out or what. But, he does fall out of the vehicle, his feet are entrapped in this wire and appears to have impacted over the left forehead. So, he's more or less falling, rotating and falling on his -- on the left side of his head, forehead.

Q. Aside from the blood spatter that you would assume that you would expect to see from both the entry wound and also the -- when the -- the exit wound, would you expect there to be a lot of blood from a wound like this?

A. Oh, absolutely.

Q. Okay. And would it take a second for that blood -- for that bleeding to start or would it just immediately start coming out?

A. Well, some of it's immediate because you've exploded the head, you've exploded the entire cranial, the head and facial skeleton is literally fragmented and all of the normal barriers are disrupted, like the pallet's split open --

Q. Mm hm.

A. -- some of that blood's going to come

out of the mouth and nose as part of this explosive injury. And I think there are some spatters on the vehicle interior and then as he falls out and strikes the object I think a large amount of blood and brain tissue starts to exit the -- the wound.

Q. So, you would expect to see a lot of blood --

A. Normally so.

Q. -- very quickly?

A. Yes. Mm hm.

Q. I think that's all the question I have.

A. Okay.

Q. Thank you, Dr. Olson.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further, Judge. I'd ask that this witness be excused.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: You are excused. Thank you for coming in.

You may call your next witness.

MR. CAMPBELL: The State would call Richard Kuehmichel, Your Honor.

THE COURT: All right. Thank you.

Please step forward and raise your right hand to be sworn in.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat, please.

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RICHARD KUEHMICHEL,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name, please?

A. My name is Richard Mark Kuehmichel, and that's spelled K-u-e-h-m-i-c-h-e-l.

Q. And how were you employed in 2001, September 27th of 2001?

A. At that time, sir, I was an Oregon State Police officer. I'd been an Oregon State Police officer about 25 years at the time in 2001.

Q. And did you have specific and special training in a particular area of investigation at that time?

A. Yes, sir, I did.

Q. And what was that?

A. I was trained specifically in what has come to be known as accident reconstruction or collision reconstruction.

Q. Okay. And would you give the jury an overview of your training and your experience at that point in time?

A. Yes, sir. I actually had been interested in math and sciences as early as college. I took two years of civil engineering and had a lot of math background. And then I changed my career focus and became a police officer. And after I had been a police officer for a few years the Oregon State Police started looking in to collision reconstruction as a science and field for their officer investigations. And because I had this math and science background then they chose me as one of

the first few to be involved in this program. And I started taking some training and classes and through that time period over several years I've had over a thousand hours of training where other people have taught me collision reconstruction. And I've been certified through a number of different schools with the -- I'm certified through the Idaho State Police and then through what's called "IPTM" the Institute of Police Technology and Management out of Jacksonville, Florida. And then out of Northwestern University out of Evanston, Illinois. And I've taken some class from the California Highway Patrol and all of this training that I could be involved in, any training that I could be involved in.

And as I started becoming more proficient in learning about the training and my job then I started instructing. And I instructed for many years. I was the primary instructor for the Oregon State Police in all forms of crash investigation for about 11 years, through '85 through '96 and was their primary instructor and taught many, many classes. And I taught many not only at the Oregon State Police, but other organizations as well.

And as I became involved in this then I recognized that I wanted the program to last longer than myself so I started having other people be involved in the training. And around '96 I started phasing myself out and let other people do it. But, I kept up through the training up until the time I retired. I was still teaching at our recruit schools and stuff as late as 2004 when I did finally retire from the Oregon State Police.

During that time I had been to over 550 fatal motor vehicle crashes. I've testified in 10 of the 36 counties as an expert witness in the state of Oregon and in Federal Court as an expert witness in the reconstruction field. So, I've testified many, many times as a reconstructionist in all of these courts, including often times in Josephine Circuit Court.

Excuse me. And then I also -- I began -- the department started recognizing that this was a very important field and so they started to wanting to have a reconstruction unit. At the time that I first started it was just a couple of individuals here and there across the state. And so when they first decided to make a unit out of

it they came and approached me and said, "Would you start a reconstruction unit?" So, in 1992 -- I'm a little fuzzy on year, I'm sorry. I began a reconstruction unit in the Oregon State Police. I was its first coordinator when it first started and I was responsible for teaching and training 30 reconstructionist in the Oregon State Police across the state.

And in that process we wanted to become one of the best in the nation and we ultimately did. And the -- one of the responsibilities I thought that would help us make a better program was if all the reports were reviewed. So, for many, many years about 10 years with the Oregon State Police I reviewed every fatal motor vehicle crash that any state police officer did in the state.

So, I also had not only on-hands personal training, but I have also reviewed many, many, many others as part of that. And in that process of reviewing it I've been asked to look at crashes from other agencies. Many of the city agencies and the -- as well as like I've reviewed some crashes from the Washington State Patrol that they wanted an independent review off of and Idaho

State Police and some other agencies, as the time grew on.

I also started being involved in other reconstructionist organizations. There's reconstruction organizations that are put together and one of them was CARS, the California Accident Reconstruction and the Idaho State Police had an organization for a while. And I've been to many of the meetings with the Washington State Patrol and their reconstruction ones. And I was instrumental in forming one in Oregon. The one in Oregon I was very much involved in setting up and involved in.

And in that process too we started looking at for certification. Reconstruction being a relatively new field there wasn't a lot of organizations that -- you couldn't go and get a doctorate in there, but we started looking in to is there any organization around the nation that would certified reconstructionists? And we came across a organization called "ACTAR" Accreditation Commission for Technical Accident Reconstructionists. And our agency became a member and many people tested with ACTAR, including myself. I was ACTAR certified for many,

many years before I retired. And in that process we wanted to be more involved in it so I became a board member of ACTAR. And I was a board member of the Accreditation Commission for Accident Reconstructionists for about seven years, again before I retired. And I certified and tested officers from all over the United States and actually ACTAR did it internationally, although I didn't ever do any of the international stuff. But, all over the United States I did testing of reconstructionists.

So, I've been involved in those organizations as well.

Q. Okay. I -- I bet you could go on, but I think we've heard enough. When -- did you have occasion to go to the scene at the request of the Sheriff's Office at -- between Hussey Lane and on Picket Creek Road and 770 Picket and view and reconstruct the scene out there on September 27th, 2001?

A. Yes, sir, I did.

Q. And did you go -- did you have another reconstructionist with you? Did you work with another person?

A. Yes, sir, I did.

Q. And were you -- were you working together? Did you both do the same thing then?

A. That's correct, sir.

Q. Okay. And you were training that person?

A. Yes, sir, that's --

Q. Okay.

A. -- that exactly the idea is they were drawing on my expertise to learn how to do this.

Q. And that was Holly Bridges?

A. Yes, sir.

Q. Okay. And actually she filed the report, you didn't -- you didn't write the report, but did you review all the findings of the report and sign off on that report?

A. Yes, sir, that's correct.

Q. Okay. You were doing the same thing you've just described at that time, reviewing all the reports from around the state, that was still your duty at that time?

A. Yes, sir.

Q. Okay. So, when you go on to a scene like this what -- what is the first thing that you do?

A. Normally what we do is we take a look

and walk through the entire scene from one end to the other and start identifying pieces of evidence that we need to preserve. Some scenes are very short and will be confined in just a few feet, others of them are several hundred feet long. And so you want to walk through and just kind of get an idea. And that was the first thing that we did was walk through.

Then the second thing that we did was start to preserve this. And there's two primary ways of preserving a crash scene. And one of them is photographs, which we did, we took some photographs as well of the crime scene. We took as many photographs as we could of the things that we were observing.

And the other one was to take very accurate measurements. And we took very accurate measurements with a laser measuring device. Probably most of you at one time or another have seen the Department of Transportation out there with their little orange thing and they're kind of looking through and that's surveying equipment. Well, we actually got -- purchased from ODOT surveying equipment and we were using their survey equipment at this scene to measure this stuff.

It's -- we've been through classes, I've been through many classes with ODOT and through other people teaching me how to use this survey equipment and that's where we put together the measurements for the diagram on this was with ODOT surveying equipment.

Q. Is that called a "total station"?

A. That's correct, sir.

Q. Okay. And so you were at -- the measurements that you make, and you made some diagrams, are -- how accurate are those?

A. We -- we strive to be accurate to within a quarter inch of as much as possible.

Q. Okay. And did you do that with the assistance of Trooper Bridges at the scene?

A. Yes, sir, I did.

Q. Was the Oregon State Police Crime Lab also there?

A. Yes, sir, they were.

Q. And as part of your scene investigation do you consult with them?

A. That's correct, sir, we work together very much with the crime lab.

Q. Okay. And, for instance, we've heard testimony that these vehicles moved back 12 to 15

inches at some point. Were you involved in making observations that that was recorded and looked in to?

A. Yes, sir, I was.

Q. Okay. What first drew your attention to the fact that the vehicles had moved a little bit?

A. When -- when vehicles slide to stop they leave evidence in a number of different places, one of them is on the roadway. But, they'll also leave some evidence on the tires themselves.

And so when I was walking through and doing my examination of the scene I looked at the tires to the Bronco and when I looked at the tires there was evidence on the tires themselves that they had started to slide to stop as well. And I shouldn't have been able to see that evidence, it should have been if they would have just slide to stop where they were it should have been on -- underneath where the tire meets the pavement and it was not, it was up on the top of the tire where I could see it and observe it.

So, I knew that the vehicle had been moved from the sliding position over to that and I

pointed it out to the crime lab and said, "We need to take a look at this because the vehicles have been moved from when they came to a stop."

Q. Okay. And so that's an illustration of how people work together out there. What -- what I'd like to do is to have you set the scene and some of the measurements that you've just talked about before I get in to some of your other testimony. I have here marked State's Exhibit 100, is this a diagram that you recognize?

A. Yes, sir, it is.

Q. And this is basically a map that you can produce after you use this total station or this surveying equipment; is that right?

A. Yes, sir, that's correct.

MR. CAMPBELL: We'd offer 60 at this time.

THE COURT: Any objection, Mr. Scales?

MR. SCALES: 60 or 100?

MR. CAMPBELL: I'm sorry, 100. It's 100.

THE COURT: All right.

MR. SCALES: No objection, Your Honor.

THE COURT: 100 is received.

MR. CAMPBELL: Thank you.

BY MR. CAMPBELL:

Q. So, should I call you Senior Trooper Kuemichel or?

A. I'll answer to anything but late for dinner.

Q. Okay. Mister -- retired Mr. Kuemichel.

A. Yes, sir.

Q. Basically, if you'll take -- I don't how it would be easiest for you to work with this. But, what -- what you've done is illustrate where these two vehicles were sitting; is that right?

A. That's correct, sir.

Q. Okay.

A. There's the Ford pickup and there's the Bronco.

Q. Okay. And was -- do you recall if there was a center line painted on the road?

A. Yes, sir, there was, it was a double yellow center line and that's represented by these two lines right through here.

Q. And this line right here would be the fog line?

A. Yes, sir, that's correct, it's a white line, a fog line on both sides of the

roadway.

Q. And this line back here would represent what?

A. This line here represents the edge of the pavement where the pavement stops and the gravel begins.

Q. Okay. Did you measure from the from of the pickup to how far 770 Picket Creek Road was?

A. Yes, sir, we did.

Q. And is that measurement that's on this diagram 60 feet accurate?

A. Yes, sir, it is.

Q. Okay. And did you measure from -- what -- back to where the stop sign or the stop line on Hussey -- Hussey was?

A. Yes, sir, we did.

Q. And how far was that?

A. That was 155 feet.

Q. Okay. Now, let's talk about the roadway. Is observing the roadway and the contours of it important in a reconstruction?

A. Yes, sir, it is.

Q. Okay. Did you find the roadway sloped?

A. Yes, sir, in both direction, both in the way that the roadway traveled and across the roadway.

Q. So, would you tell the jury about that?

A. Right. From your perspective on the left, my right, that's the high point of this roadway and that's the low point. In other words, it's uphill in this direction and it's uphill at five percent. Which five percent means that over a hundred feet this point will be five feet higher than it is over there. So, that's a five percent increase in slope up this direction.

The roadway is also sloped in this direction, okay? And the -- typically roadways are banked around curves and this is a slight curve and so this is the downhill side of the roadway and this is the uphill side of the roadway. And this slope here is three and a half percent. What that means is if this were a hundred feet long it would drop three and a half feet in a hundred feet. So, that's a three and a half percent downhill slope across there.

Q. Okay. And we'll put this down, but if you need it again to illustrate we can just

hand it up to you. Did you locate skid marks during your investigation?

A. Yes, sir, we did.

Q. And tell us about those.

A. A lot of people don't recognize that there are tire marks and different kinds out there. And these were actual true skid marks in the actual sense of the term. And that's when a vehicle locks its tires up and the tires cease to roll and it slides on the pavement. And so that's what we found here was actual skid marks. They were going from underneath the pickup to in front of the pickup and there were 12 feet, 12.4 feet, just a little bit more than -- a little bit less than 12 and a half feet long.

Q. Okay. And do you -- how do you know it was the pickup that made it?

A. When we look at crash scenes we want to make sure that the tire marks weren't put there by another vehicle at another time or by a second vehicle that's somewhere there. So, what we do is we take several measurements and make sure that they belong to the vehicle that's at the scene. So, we take measurements of the width of the skid mark that's on the roadway and then measure the

width of the tire on both sides. And then we also measure the width of the entire what we call "track width", the width from the outside of one to the outside of the other skid mark and then we turn around and measure that track width on the vehicle to make sure that it fits. In other words, it wasn't made by a narrower vehicle and so we can say that wasn't made and these measurements all match, the skid marks do belong to the Ford pickup.

Q. Does the skid mark, the 12.4 feet that you just testified to, does it represent the whole distance that the vehicle skidded?

A. When you take a -- it does and it doesn't. When you take a look at the vehicle they will often start the skid marks with one set of tires and end with another. So, this is what's called "center of mass travel". The 12.4 feet is how far the vehicle actually left skid marks. But, skid marks can be a little deceiving when you're talking about braking because they are not instantaneous. It's not an explosion that just happens, you warm things up, it heats up over time. Much like the old stove elements where you turn them on and you know there's heat being

generated, but it's not red yet. And then eventually it gets warmer and warmer and the element gets redder and redder, gets hotter and hotter. Skid marks are the same way, they don't start and they're instantly hot, they become hot over time. So, there is some braking effort that's taking place before you can actually see the tire mark on the roadway. That mark is called a "skid shadow", it's a shadow of a skid. And sometimes you can see it and sometimes you can't, but you know that there's braking effort before that.

So, to answer your question, it represents the tire visible -- tire mark that's there, but not the entire braking effort.

Q. In other words, there could be -- the shadow it could be sliding as it's heating up and not leaving a mark you can see?

A. Yes, sir, that's correct.

Q. Okay. What -- what is the -- what actually causes the mark that you can observe on a roadway?

A. Many people are -- are of the opinion that it's from the tires and that is not true. The tire -- the mark that you see on the roadway

is not made from the tires at all, that is made from heating up of the surface of the pavement and the oils in the surface come to the top and they make the black mark. If you take a pencil eraser, and I just happened to bring one, and you rub it on a piece of paper the paper doesn't change color, what's left behind is a bunch of little shavings. And that's what comes off of the tire is rubber shavings. But, what makes the mark on the roadway is not rubber shavings which you can blow away like that, but actually the oils of the surface rising up.

So, a skid mark will very much depend on how fresh the roadway has been oiled and made. So, if you have a roadway that's made the day before yesterday it will put a dark mark out very easily. If you have a roadway that hasn't been oiled or resurfaced in 20 years it'll not show much mark at all because the oils have been weathered and baked on and it will have a very short skid mark, even though its braking effort is much longer. So, it has a lot to do with the roadway surface how much you actually see. But, the mark is made by the oils being raised up from the roadway, not from the tire marks themselves.

Q. Okay. Did you -- and you've already referenced it a little bit, but did you find evidence that the Bronco had skidded?

A. Yes, sir, I did.

Q. Did you find any skid mark from the Bronco?

A. No, sir, I did not.

Q. And I'll show you what's been marked as State's 31 and 32 and ask you if those help you illustrate your testimony on that?

A. Yes, sir, they do very much.

Q. Okay. Tell us how you know that there was some skid of the Bronco?

A. Just like when you take an eraser to a pencil and it's brand new and then you rub it it has some color change to it where some of it is the old eraser color and some of it's new and fresher, the same thing occurs with tires. When you look at tires there will general be -- and they have been slid to a stop there will be a patch that's black that's darker than the rest of the tire and that's visible in these photographs.

As well as when they slide to stop there will be some white speckling that's on the tire. And this stuff -- this evidence rolls away very

quickly. If you take your car and slide to a stop and then just drive it 10, 15, 20 feet that stuff will disappear, it won't take very long for it to go away.

But, if you just roll the tire so that it's visible you'll be able to see that and photograph it, which is what we did here. We observed that the Bronco tires did in deed show evidence of locked tire braking, even though the roadway didn't show any tire marks the tires themselves did.

Q. Okay. So, there are no skid marks, but you can see there was a bit of slide?

A. Yes, sir. And if I can use the photographs to explain that to them so that they can see?

Q. Yes. And then we'll let them see it a little better.

A. Okay.

Q. You're -- show them exactly what you're looking at.

A. The two pictures, State's Exhibit 31, first one shows a broader view of the tire, a little further away picture. And you can see that there's a black area that's darker than the rest

of the tire right there. You can see that there's a color change from that and in the middle of that you can kind of see some white streaks or scraping or some speckling.

And then State's Exhibit 32 is a little closer picture to show you those white scrapes and this would be a very positive indication that the Bronco had actually locked its tires and slid, it just had not heated the roadway up enough to make tire marks yet.

Q. Okay. Based on those observations do you have an opinion of which of the vehicles had a more controlled stop?

A. Well, based on the scene as a whole it appeared that the Bronco had a much more controlled stop.

Q. And when you -- when you're able to measure a skid mark are you also able to calculate speed?

A. Yes, sir.

Q. So, were you able to -- because we have 12.4 from the pickup able to calculate at least some minimum speed for that vehicle?

A. Yes, sir.

Q. And would you explain to the jury how

you do that and what you found or what your findings or?

A. When we look at skid marks we take a look at the movement of the center of mass of the vehicle. And by looking at that there was 12.4 feet and I put it in to a long determined formula that's been around since -- literally since Sir Isaac Newton, it was his math that determined a lot of this. The speed for just the 12.4 was 16.1 miles an hour.

Q. Okay. So -- and is that a minimum speed?

A. That's a very minimum speed, the vehicle can be going faster than that, but that's -- it will require 16.1 miles per hour for sure to make those tire marks.

Q. Okay. And that's just using what marks are actually on the road; is that right?

A. That's correct, sir.

Q. So, if there was shadow, it was sliding before that that would mean it was going a little faster?

A. That's correct, sir.

Q. And if the vehicle was slowed a bit before the brakes were jammed on to make it slide

it was going even faster than that?

A. Yes, sir.

Q. Okay.

A. That's correct.

Q. When the skid mark ends does it necessarily mean that the vehicle stopped at the end of the skid mark?

A. No, sir, it doesn't.

Q. What else -- what else could have occurred?

A. Well, in general sometimes we see that people will change their mind, they will see the deer, they will lock up their brakes and they'll say, "Well, if I take my foot off the brake then I can avoid the deer." and then sometimes they'll put the break on a second time. So, just because we see tire marks and they stop doesn't mean that the vehicle necessarily came to a stop there, it could have continued on further, it could have just been a change in mind of the operator to decide that I'm no longer going to put the brakes on.

But, the evidence that we see is the tire marks and they end at that location.

Q. So, it's -- if I'm understanding you

right, it's possible that the vehicle that -- the pickup was skidding and maybe because of something else going on he pulled his foot off the brake and it rolled a little farther?

A. That's possible, sir.

Q. Okay. Did you observe debris from the vehicles -- when you were there these vehicles were in contact as we've seen in the pictures; is that right?

A. That's correct, they were --

Q. Okay.

A. -- in contact with one another.

Q. Did you see any debris left from the vehicles collision?

A. Yes, sir.

Q. Okay. And were you able to make any conclusions about where that collision occurred based on the debris?

A. Yes, sir. Yes, sir, for the same kind of thing that we were talking about the tires that -- that you can tell that the vehicles had been moved, the debris also show that the vehicles had been moved, that they had a contact and then they had been moved after the contact.

Q. Were you able to determine which of

the vehicles was stationary and which was moving from your observations at the scene?

A. Yes, sir.

Q. Okay. And would you explain that for the jury?

A. They -- what we round at the scene as far as debris was a little bit of mud and we also found some lense glass, it's not really glass it's plastic, from the turn signal that it had broken and that debris had been on the ground. When -- just in general, talking about vehicles in general, if a vehicle is moving then everything in that vehicle is moving as well. So, if you pick an arbitrary speed, 20 miles per hour, whatever, not only is the tires going forward at 20 miles per hour, but so is the bumper and so is the turn signal and so is the windows and everything in that car is moving forward at 20 miles per hour.

If the car is then damaged, if there's some impact with the car the parts still continue at 20 miles per hour. The car stops, but the parts that are broken continue to move 20 miles per hour until gravity has them fall down, okay? And so you can tell if the parts are off of a moving vehicle because you can see where the

vehicle is and where the damaged parts are is in a different location.

However, if a vehicle is stopped and the same thing occurs, it's crashed and damaged, then all the debris falls straight down because the vehicle is not moving.

The Ford did not have any debris, the debris all came off of the Bronco. And by adjusting for that movement to put the -- this skid shadow, the tire, the spackling back where it was it was then that debris was directly underneath where the turn signal lense was.

Q. Okay. So, it's your opinion that the Bronco was stationary when it was struck by the pickup?

A. That's correct, sir.

Q. Okay. And did you observe the damage to the Bronco?

A. Yes, sir, we did.

Q. Was there very much damage?

A. Very little damage to the Bronco.

Q. Okay. Let's see if I can get a good picture of that. When you find a collision such as you did, you testified the pickup must have come back in to the Bronco, are you able to

calculate speed when you -- when you have the kind of damage that you're able to observe?

A. There's an approximate area of speed estimate from there. When -- when -- to answer your question, when they -- when the speeds start getting a little higher then damage is a little easier to qualify how fast they were going because you can -- you can know that at 10 miles per hour you should start to be seeing this kind of damage; at 20 miles per hour you can start to see this kind of damage, and you can qualify a fairly close estimate based on damage. But, when you start talking about slow speeds then it's a little more difficult to determine.

But, you can understand that where I'm coming from is that I have deliberately crashed a lot of vehicles over the years for testing. When I teach these schools we deliberately set up crashes to where I have a vehicle at a known speed and had vehicles stopped. And so then we run two vehicles to one another, with one stopped and one -- and so that -- after observing years and years of this and many, many of these crashes you can start to say, "This is approximately a 1 mile per hour crash." "This is approximately a 5 mile per

hour crash." "This is approximately a 20 mile per hour crash." based on the fact that I've seen it and done it and I knew before hand what the speeds were going in to this.

And to finish answering your question, yes, sir, I can through experience tell you an approximate range of speed for this damage.

Q. I'm going to show you State's 25 which may assist you, and the jury has seen it, there's a wrinkle in the -- it would be the front left quarter panel in this picture; right?

A. Yes, sir.

Q. And so I hand that to you. But, before I ask to have you explain that, was -- was the Bronco angled at all on this bumper? Was it directly on it or was it angled a bit?

A. It was slightly angled, just a little bit this part of the -- the left front quarter of the Bronco, because I know everybody can't see the picture. Left front corner of the Bronco was actually a little more damaged and at an angle compared to the right front corner of the Bronco. So, it was at a slight angle between the two vehicles.

Q. And while -- I'll jump ahead a little

bit, you did some skid testing with that vehicle, was that consistent with the way it would skid, would it -- would it turn a bit when it skidded?

A. Because of the slope on the roadway, we were talking about that issue --

Q. Yeah.

A. -- that it would be very normal for the vehicle to start to change attitude in a skid because of the slope of the roadway. In other words, gravity has an effect on the movement of the vehicles when you start putting them in to skids. Yes, sir, I would expect to see that and it did in deed do that while I was testing it.

Q. Okay. With the -- I -- have we talked about enough data for you to tell us at this point what your calculations of the speed the pickup would have to be at to cause this damage? Or was there any other --

A. Yes, sir, that's -- that would be fine.

Q. Okay.

A. Based on as much testing as we have we're talking faster than a 1 mile per hour crash, but not as fast as a 10 mile per hour crash, more in the range of 4, 5, 6 miles per hour, that's

what I would expect to see this kind of damage off of a vehicle.

Q. Okay. So, with that in mind, if -- if the pickup did stop at the end of the skid marks and we have that slope that you've already testified too could it have just simply rolled and made that damage?

A. It would have not been able to make that kind of damage from the end of the skid marks rolling back and hitting the Bronco. There would not have been enough distance from the -- from the -- if the pickup had stopped at the end of the skid marks and then just rolled back in to the Bronco the speed from the calculations that I did would have only been about 1 mile per hour and it would have not been able to do this kind of damage.

Q. So, if that were the scenario -- now, recognizing -- were you -- you aware that the vehicle was found neutral still running?

A. Yes, sir.

Q. Okay. If that were the scenario would it have had to have power coming back?

A. Yes, sir, it would have had to have been accelerated backwards to case that amount of

damage.

Q. And that's -- the assumption there is that the farthest point it went was to the end of the skid marks?

A. Yes, sir, that's correct.

Q. If it had rolled on after the skid mark how -- how much further would it have needed to go to catch -- to then have the momentum rolling back to cause that damage?

A. Based on the slope of the roadway it would have had to have gone about almost 10 feet, 9. -- I calculated it out someplace, 9.4, 9.2, something like that, it would have been almost 10 miles per -- 10 feet further from the end of the skid mark in order to be able to roll down with that slope of gravity and cause the same amount of damage.

Q. So, approximately the distance from here to the end of that table?

A. Yes, sir.

Q. About 10 feet?

A. About 10 feet.

Q. And then simply gravity would have taken it back and caused that amount of damage?

A. Yes, sir, not just the 10 feet, but

the 10 feet plus the 12 and a half, the 25 feet would have been enough force with the gravity to be able to combine that distance.

Q. And I guess we might as well address this now, the report that was filed by Trooper Bridges that you did approve said -- said in it that it was the opinion, or at least it made the assumption that the vehicle stopped at the end of the skid mark and was -- was powered back; is that correct?

A. That's correct, sir.

Q. Okay. Was there -- was there any physical evidence, scientific evidence that would cause you to reach that assumption that it was powered back, as opposed to that it went 10 feet further and rolled back?

A. No, sir.

Q. Okay. So, it's just based on other things that were told to you at the scene?

A. That's correct, sir.

Q. Okay. Did you find in terms of the vehicle, the pickup coming back, did you find any evidence of acceleration?

A. No, sir, and I specifically looked for that. Again, when we take a walk through the

scene that's what I'm looking for is not just what's right in front of you, but what else could have happened here? I'm looking for acceleration marks or any other thing that I might be able to find on the roadway, scrapes or any other evidence that I could find and not just right here, but there, but I did not find any acceleration marks, any evidence of acceleration.

Q. So, if someone had throw their -- the pickup in to reverse and accelerated back would you expect to get an acceleration mark?

A. I would not necessarily expect to see an acceleration mark. Generally you have to have a fairly large horsepower to weight ration to create an acceleration mark or to do some unusual thing with your car to deliberately make an acceleration mark other than just stop and step on the gas. Not a lot of cars can just sit there at a dead stop and then spin the tires, you generally have to have a pretty good horsepower to weight ratio to do that.

Q. But, pickups are generally lighter in the back, aren't they?

A. Yes, sir.

Q. Would they be more likely to leave an

acceleration mark?

A. They'd be more likely too, but it still would require some pretty good horsepower to do it.

Q. Okay. And, in any event, if -- even if it was powered back that -- I guess it was -- the skid mark was 12.4 feet, if it was powered back that would have been no faster than 4 to 5 miles per hour?

A. That's correct, sir.

Q. Okay. You've talked about a minimum speed of the pickup just based on the skid marks that you physically can measure at the scene. If -- can you calculate -- and I think you've already talked about 16.1 miles per hour as a minimum speed for that vehicle; right?

A. Yes, sir.

Q. Okay. Can you tell the jury that vehicle traveling at 16.1 miles per hour how long it would take it to reach the 770 Picket Creek Road driveway, which we have a measurement of 60 feet?

A. Oh, based on if it would have continued forward?

Q. If it would have continued --

A. Okay.

Q. -- forward at 16.1 how long before it was at the driveway and in the driveway, I guess, if that's where it was going?

A. Probably a little bit longer than two seconds, about two and a half seconds.

Q. Okay. How do you do that calculation?

A. You take the speed that is represented by the tire skid mark and then you -- 16.1, and then there's a conversion of feet per second to miles per hour and then miles per hour to feet per second, okay? And it's just a standard, you just would take the multiplier that it takes to make feet in to miles and the multiplier that it takes to make seconds in to hours and you just make that a strict conversion factor. So, it's not anything other than just a simple math conversion. And what that works out to be, that conversion factor, is about 1.47, 1.4673 or whatever it is, it doesn't make any difference. And to give you a rough idea, to make it real simple, if we were just going up to a crash scene and going "How can we convert miles per hour to feet per second?" it's if you take the

miles per hour and you multiple it by one and a half you'll come real close to feet per second.

To give you an example, 60 miles per hour, okay? Would be one and a half times that or 90 feet per second. And 60 miles per hour you're going 90 feet per second. Now, if you actually carry the digits out it's 88 point something, but it's close enough to be able to just do a real quick number, figure in your head to do feet per second to miles per hour one and a half or the other way around, miles per hour to feet per second.

So, to finish up the answer to your question, 16.1 times one and a half brings you up to about 24, so many, 24, 20 feet per second and then divide -- take 60 feet, divide it by 24 and you get two and a half seconds.

Q. Okay. Did you subsequently to your scene investigation that you've just described take the Bronco to the crime scene area and do some testing with it?

A. Yes, sir, I did.

Q. And was -- was the Bronco serviced before you took it out there?

A. Yes, sir, it was.

Q. Was it operating properly when you did that?

A. Yes, sir, it was. And I drove it around for a little while and make sure that the -- it was accelerating appropriately and there wasn't any backfires or missing and it was changing gears and it was braking appropriately so that when I did my tests it was normal operation and the Bronco was operating normally.

Q. And what primarily were you testing for during those tests?

A. I actually was testing for two different things on the Bronco, one of them I was testing for was its ability to brake, okay? Whether it was going to react appropriately, slide to stop and how far that distance was going to be. So, I did several tests for the braking ability of the Bronco. And then completely different is the acceleration of the Bronco, how fast it would accelerate from a stop to several known speeds and did some acceleration tests as well on the Bronco.

Q. And based upon that testing have you been able to form some opinions and conclusions about what went on at that scene on September 27th, 2001?

A. Yes, sir, I have.

Q. Okay.

A. I should add that these -- these tests were done with a piece of technology what we call a "VC-2000", Vericom 2000, and it's based on, believe it or not, old missile technology, it has a gyroscope and so forth and it's a very sensitive piece of equipment. And when you put it in a vehicle and you slide it to stop then it will give you all kinds of data. It'll give you how sticky the roadway surface is. It will give you how far you actually were braking, as opposed to how much you can see on the roadway. And it will tell you how much time that it took and the relative G factor that you were able to produce during that time. So, you get a whole bunch of data off of this.

And it will do the exact same thing for acceleration, it will determine what kind of acceleration factor, how much distance it takes you to get up to a certain speed. And it sounds really complicated, but actually it's fairly old and accepted technology, it's been around for a long time it's just finally gotten around to be converted to the science of reconstruction. It's

been in many, many other uses for years and years.

Q. Okay. I want to ask you some -- some hypothetical scenarios here in a moment. But, before I do what -- what parameters or factors are you looking at or utilizing in presenting your opinions and conclusions?

A. There's a lot of different things. First of all, the slope of the roadway that we talked about, both forward and back and side to side, that's a factor that has to take place. The stickiness of the roadway surface. Then the properties of the vehicle itself. And to make it simplified a Corvette accelerates way different than a Nissan Sentra. So, you've got to find what the characteristics of a Ford Bronco have to do with this particular incident.

So, we're looking at properties of the roadway, as well as the terrain and then properties of the vehicle when we start talking about the analysis of what occurred.

Q. Okay. There's some concepts of sliding, coasting and constant speed that you would use in reaching these opinions?

A. That's correct. When you -- when you take a look at the simple operation of moving a

vehicle as long as it's parked it's got one set of rules, but then as soon as you start moving a vehicle you generally will go through three processes in some form or another. You'll go through an acceleration process where you go up to a certain amount of speed.

And then you will go through a coasting process where it either maintains the same speed or whether you take your foot off the brake or just, you know, go through some period of time when the speed will stay the same and you're just covering distance. And then you will go through a deceleration process to bring it back down to a stop.

So, you have three phrases to consider, the acceleration and then the coasting and then the stopping phase.

Q. Okay. I want you to assume for this, basically, the scene evidence that you found, there's 12.4 feet of skid, the vehicles are together, there's an offset of the rear vehicle half way across the pickup, the -- the Bronco is in 3rd gear and the forward pickup is in neutral with the engine running when we get there. Both doors are open, that may not have much to do with

movement at that point. But, the window on the Bronco is down, window on the pickup is up. Basically all of the scene -- the physical evidence you've already testified to, assume that as part of --

A. Okay.

Q. -- this question. And I want you to assume that the defendant, Sandoval, came up Hussey and stopped at the stop line there at Picket Creek. You saw the stop sign and the stop line there; correct?

A. Yes, sir.

Q. And as he was -- that he completely stopped at that location in his Bronco and that he observed the pickup go past from left to right in front of him going at least the 16.1 miles per hour that you've already testified to. And that after Mr. Whitcraft passed the defendant Mr. Sandoval pulled out behind him in the same direction. Got all -- you're going to assume those things?

A. Yes, sir.

Q. And also assume that actually incorporate in your hypothetical the crime scene facts that the Bronco goes skidding to a stop, did

not leave any visible skid marks, as you've testified to, and it was in 3rd gear. In that scenario what is your opinion or conclusion of -- conclusion about that scenario?

A. In -- in order to explain my conclusion on that I need to walk you through a little bit of what the thought processes are on these three phases that take place. The -- we have the physical evidence that the Bronco was braking based on the tires, the fact that they have that speckling and that change in color we know that the Bronco was braking. We know that it didn't leave an actual tire mark. And so it's in that phase of what I've been referring to as "skid shadow" where it's braking and it's heating up the roadway and the tire, the tire is very visible that it's been heated up, but we have not left a tire mark yet.

So, how to determine what that distance is? So, what I did with the Bronco was when I was doing the braking tests, I told you I did several tests with braking and I did several tests with acceleration. When I did the braking test using this high technology VC-2000 in there I was able to determine that every time I braked

consistently, consistently and slid to a stop when I would go out and look at the VC-2000 and it would tell me that I was braking for, I'll throw a number out, 30 feet, it said I was braking for 30 feet and then I would go out and measure what was visible I kept coming up with an eight foot difference between what was actually braking, the distance I was braking on the car, versus what I could see on the roadway.

In other words, to simplify this explanation that skid shadow was consistently coming up to be eight foot long. There was eight feet of tire mark -- of braking that I could not see a tire mark. There's eight feet there that was -- I knew that the Bronco because I was testing it, I was going in with known parameters, I knew what it was doing and what I should be seeing on the roadway and it was not there. So, I had this eight foot shadow.

So, based on the fact that we saw no tire marks there and there was eight feet of braking taking place that we can't account for. That eight foot of braking then turns out to be when you convert that -- let me make sure I got it right, 13 and a half, 13.4 miles per hour. That

represents 13.4 miles per hour on that roadway because, again, as I was telling you different roadways have different stickiness surfaces.

So, on this specific roadway with this specific Bronco that skid shadow was 13.4 miles per hour. So, I knew that we had -- in order to lay those tire marks on there we had 13.4 miles per hour going in from the time that the brakes were applied to the time that it stops. And so that was part of that distance, in order to be able to cover that that was that eight feet.

So, then there was the part of coasting that we're talking about, if we take 13.4 miles per hour and have some coasting time in there. How do I know that there's some coasting time in there? Well, people don't instantaneously decide to brake and put their foot on the brake. It may feel instantaneous to you, but you can take a stop watch and time that time when it occurs.

There are two types of reaction time, reaction it's called perception and reaction time that take place. One of them is an expected event. In other words, I know that the light is going to turn red. I absolutely know because I can see that it's yellow and it's going to turn

red and I know that's going to happen. So, in my mind I can shorten that time up because I already know from muscle memory what I'm going to do. I'm going to take my foot off the brake and put it -- off the gas and put it on the brake. If I just do that from a known time, I know that this is going to occur, that's about three quarters of a second. It takes about three quarters of a second if you absolutely know you're going to do something.

But, if you don't know that you're going to do something, an unexpected event such as the dog running out in front of you all of a sudden, the kid between the cars, it just catches you completely off guard it takes longer time. You have to perceive and recognize in your head that, "Hey, there's a hazard here." and now I've got to do the other part of it, take my foot of the gas and put it on to the brake. So, there's this point of perceiving that there's a danger and then there's the reaction time. So, that's perception reaction.

That time we have tested over and over again through a number of different sources. It generally happens for most people, unless you're some kind of martial arts expert or something,

it's about 1.6 seconds for an average every day person. We can test everybody in this room and we would come up with an average of 1.6 seconds as an unexpected reaction event. So, when whatever this person's reacting to for 1.6 seconds while they're thinking about what occurs and they're taking their foot off the gas and then putting it on to the brake that's taking this coasting time of 1.6 seconds.

So, at 13.4 miles per hour and 1.6 seconds you're taking up some distance to travel this, okay? So, that's the second part of this phase that I was talking about. We've got the braking phase, we've got the coasting phase and now we have the acceleration phase, which is the other testing that I did. Can we get up to 13.4 miles per hour? Which if you're coasting you're staying that same speed.

So, if you're starting at the eight foot of tire mark at 13.4 during the coasting phase you're doing 13.4 because there's no change in the vehicle, even though there's lots going on with the person, the vehicle's still 13.4. So, there's 13.4 there, can the vehicle get up from the stop line to 13.4 miles in what the distance

would be left? 13.4 miles per hour. Yes, it can easily do that. It can accelerate, with the testing that I've done over and over again, it can accelerate up to 13.4 miles per hour easily in that and then coast and then brake in that 155 feet. It has enough time and enough distance to be able to accomplish that.

The problem is is that the pickup has slid to a stop with a minimum of 16.1 miles per hour, as opposed to the 13.4 miles per hour that the Bronco was going. In other words, the pickup is going faster than the Bronco is.

So, if the pickup goes by this intersection where the Bronco is supposed to be stopped at a stop sign, in your theory there, it's going 16.1 miles per hour, the Bronco will never get up to 16.1 miles per hour or faster to catch it and they should never have crashed. They should have never collided because the pickup will keep going faster and faster and faster and the Bronco was only 13.4.

If I go 10 miles per hour and somebody along side of me goes 40 I'll never catch them. And that could not have taken place, even though the time and distance was there, to be able to get

up to the 13.4 miles per hour, the collision couldn't have occurred because they would have never been able to reach one another.

Q. And Mr. Whitcraft would have basically been in the driveway?

A. Right, he would have had -- he only needs two and a half seconds to get from the place where the collision occurred in to the driveway and there would have been much more time consumed in accelerating, coasting and braking for the box cutter. As a matter of fact, I think it's -- oh, I did the calculation, but I can't -- I don't know if I can find the number. It's something like six seconds, it would take six seconds for the Bronco to accelerate, it might even be a little bit more, to accelerate, coast and then stop.

So, the Bronco is accomplishing this feat of accelerating, coasting and stopping in seven seconds, but the pickup only has two and a half seconds to get to the driveway.

Q. So, I'll ask it directly. Do you have an opinion on whether or not that hypothetical could have happened the way I just described it?

A. No, sir.

Q. It could not?

A. It could not have.

Q. Based on those factors you just --

A. Right, time, distance and the physics of vehicles accelerating would not have allowed that to occur.

Q. Okay. Let's change the hypothetical then and --

THE COURT: Mr. Campbell, excuse me for interrupting. But, I think that we need to have a break here. Is this a good time to break --

MR. CAMPBELL: Sure. Yes.

THE COURT: -- in between your scenarios?

All right. Ladies and gentlemen, please leave your notebooks on your chairs and go with the bailiff in to the jury room. We'll take about 15 minutes.

(At 11:05 a.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. 15 minute recess.

(At 11:05 a.m. a morning recess was taken.)

*** END OF VOLUME 4 ***

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

COUNTY OF JOSEPHINE

--oOo--

STATE OF OREGON, Plaintiff-Respondent, vs. LEONARD CONTRERAS SANDOVAL, Defendant-Appellant.	JOSEPHINE COUNTY CASE NO. 01CR0641 APP. NO. A141783 VOLUME 5 OF 6

TRANSCRIPT OF AUDIO RECORD ON APPEAL
MOTION HEARING
OMNIBUS HEARING
12 PERSON JURY TRIAL - DAY 1
12 PERSON JURY TRIAL - DAY 2
12 PERSON JURY TRIAL - DAY 3
12 PERSON JURY TRIAL - DAY 4
12 PERSON JURY TRIAL - DAY 5
12 PERSON JURY TRIAL - DAY 6
12 PERSON JURY TRIAL - DAY 7
SENTENCING

Grants Pass, Oregon
August 15, 2002; 3:00 p.m.
February 9, 2009; 1:43 p.m.
February 18, 2009; 9:46 a.m.
February 19, 2009; 9:34 a.m.
February 20, 2009; 9:34 a.m.
February 23, 2009; 9:36 a.m.
February 24, 2009; 9:33 a.m.
February 25, 2009; 9:47 a.m.
February 26, 2009; 9:31 a.m.
March 6, 2009; 10:09 a.m.

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--oOo--

BEFORE:
THE HONORABLE GERALD C. NEUFELD, CIRCUIT JUDGE
(8/15/02 only)

THE HONORABLE LINDI L. BAKER, CIRCUIT JUDGE

--oOo--

APPEARANCES:

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OFFICIAL COURT TRANSCRIBER

--oOo--

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JANICE ROSE	312	--	--	--	2
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ROBIN SUE GARTEN	413	422	424	--	2
DEBBIE LYNN CARTER	430	440	442	443	2
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DR. JAMES N. OLSON	787	809	--	--	4
RICHARD KUEHMICHEL	820(891)	906	938	939	4,5
STEPHEN LEE CURTIS	941	--	--	--	5
TRESSIE DARLENE MOLER	948	--	--	--	5
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GRANTS PASS, OREGON

TUESDAY, FEBRUARY 24, 2009; 11:24 A.M.

12 PERSON JURY TRIAL - DAY 5

*** THE HONORABLE LINDI L. BAKER PRESIDING ***

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. Would you ask the jury back in, please?

(At 11:25 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Mr. Campbell, you may continue.

MR. CAMPBELL: Thank you, Your Honor.

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DIRECT EXAMINATION (CONT.)

BY MR. CAMPBELL:

Q. Senior Trooper Kuehmichel, during your testing of the Bronco did you test the -- in *testing the acceleration did you take* it through the gears?

A. Yes, sir, I did.

Q. Okay. And this is a standard transmission?

A. *Yes, sir.*

Q. With how many forward gears?

A. It has four forward gears and a reverse gear.

Q. Okay. And so I want to stay on the same scenario. First of all, you -- did you determine at what point the vehicle had enough speed to transfer it in to 2nd and then 3rd gear?

A. Yes, sir, I did.

Q. Okay. And why don't you tell the jury about that?

A. This particular model of Bronco has a speedometer that has shift points on it. It has -- in other words, it'll have a little dash showing you that you ought to change from 1st to 2nd gear at this place. And then you go up to a little

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further and it will have another dash that says you ought to change from 2nd to 3rd at this place, and 3rd to 4th. They're called "shift keys".

So, when I was doing my acceleration tests on the Bronco that's exactly where I changed gears is when the speedometer got up to the place where it says you should change from 1st to 2nd gear I changed from 1st to 2nd gear. And where it says change from 2nd to 3rd gear I changed from 2nd to 3rd gear right at that place.

When I did this testing it came out -- because it also has a tachometer, which is a separate gauge showing you how fast the engine RPM's are going. It was consistently at 3,000 RPM, when it came up to 3,000 RPM then that's where you would change from 1st to 2nd gear. And then 2nd gear as you accelerate when the tachometer again got up to 3,000 RPM is where you would change from 2nd to 3rd gear. Now, it was consistently right at that. I did these acceleration tests a number of times and I did them with the intension of accelerating the Bronco as quickly as I could.

I also did these acceleration tests on that roadway so it has exactly the same slope and

characteristics as that roadway. In other words, I didn't go out to a flat track somewhere. So, I used that vehicle on that stretch of roadway going in the same direction that we found the Bronco to do these acceleration tests. So, it would be minimal.

And then I used what the manufacturer said, I didn't go outside those parameters where the manufacturer said you should be changing your gears for optimal performance. We all know that you can keep an engine in 1st gear and run it up until the rods go through the engine and you blow the engine, but I was doing optimal performance per the manufacturer when I did these acceleration tests. And I ran them several times to do that.

Q. So, did you determine when -- how fast was the vehicle going when you were supposed to shift from 1st to 2nd, if you recall?

A. I do, I'm -- I wrote these down that's why I brought this book in because I had so many numbers and figures and let me just find that page, just a second.

Q. And while you're looking for the page, a lot of us when we drive a shift like that listen to the engine. Did the engine sound like

it was the right time to shift also?

A. Yes, sir, it did, it felt real comfortable to do that shifting.

Q. Okay.

A. When it was appropriate to change from 1st to 2nd where that shift mark was was at 14 miles per hour. When it was appropriate to shift from 2nd to 3rd gear that was at 36 miles per hour. And where it was change -- appropriate to change from 3rd to 4th gear that was at 40 miles per hour. I really didn't go up that high on testing up to 40 miles per hour past that 3rd gear. So, I just tested up to 36 miles per hour, up to that point.

Q. So, did -- and did you accelerate that -- that vehicle off of the Hussey Lane, as the hypothetical we're still working with, stop at the stop sign, up Picket Creek Road?

A. Yes, sir, I did.

Q. And did you find under that scenario where you would be in terms of gears at 150 feet up the road?

A. Yes, sir, you'd be between -- between 1st and 2nd gear, you'd just be changing over to 2nd gear about the time that you'd run across the Hussey Lane intersection -- or, the driveway from

Hussey Lane, excuse me.

Q. In any of your testing could you get it to 3rd gear in that -- that short of a distance?

A. No, sir, I tested it several times and I couldn't get in to 3rd gear until about 100 feet past that driveway.

Q. That's 770 or Mr. Callahan's driveway there?

A. Yes, sir, the driveway that's on the diagram, it would take another 100 feet to get it in to 3rd gear.

Q. All right. Now, let me shift a little bit using the same scenario and talk to you about reaction time that you've talked about. And I want to at this point look at Mr. Whitcraft's, the pickup, as it goes by. It's going at least 16.1 and in your opinion probably faster than that; right?

A. Yes, sir, because of the same skid shadow effect the 16.1 is based on just the tire marks alone and if you put in to it the skid shadow effect that we know is taking place on this particular roadway surface the pickup was actually going faster than that.

Q. So, if it -- if the pickup is

operating up Picket Creek and he looks to the right and see the defendant would he have enough time to operate his vehicle or have that vehicle in the position that you found it on the roadway, based on reaction time?

A. No, sir, based on the fact that -- if you were to see somebody just as you were passing the Hussey Lane intersection with Picket Creek Road and then still go through that 1.6 seconds of perception reaction based on the speed of the vehicle, again, you'd already be in the driveway before you would have time enough to be able to react.

Q. Okay. And I guess we should talk about that. I know the jury's had jury view, but that -- there were trees and shrubbery around that kind of blocked, to some extent, blocked anything that was sitting at that road; is that right?

A. Yes, sir, I actually as looking -- you know, that's one of the things that we do in reconstruction is look for vision obstructions, whether it might be brush or trees or parked cars or whatever. So, I was very cognizant while I was doing this testing of my view of Hussey Lane as I was doing the accelerations through here and my

view as I was sitting at Hussey Lane of what I could see on Picket Creek Road. I was very aware of that vision --

Q. And --

A. -- obstructions.

Q. All right. So, what -- operating up Picket at what point could you actually see that intersection well enough to recognize a vehicle?

A. Right. Until -- if somebody was stopped on the Picket -- or, on the Hussey Lane stop line and going up -- another vehicle was going up Picket Creek they could not see a car there until about 125 feet away from the intersection. It would be relatively close. 125 feet sounds like a long distance, but that's not too much different than a lot of people's front yard. You would have to be relatively close to see it.

Q. And does that change your opinion about reaction time at all if he -- if Mr. Whitcraft picks him up 125 feet and is operating 20 miles per hour or faster?

A. They still would -- he still would have not been able to end up at the location that he was, he still would have been further down than

we found all the tire marks and the vehicles themselves.

Q. Okay. Let me shift to another hypothetical then. Assume all of the same things on the roadway that you found and the positions of the vehicle, 3rd gear, the first one in neutral, in this scenario I want you to assume that the Bronco came up Hussey Lane but didn't stop, that it carried speed through -- enough speed for it to go in to 3rd gear and be in the position it was behind Mr. Whitcraft. So, you understand that hypothetical I'm giving you?

A. Yes, sir, basically he ran the stop sign.

Q. Right.

A. Okay.

Q. And can you give us an opinion on whether or not that was possible -- that would be possible and it would result in the scene that you found and investigated on September 27th?

A. Well, one of the things that we have not talked about in the terrain of the thing here, and it's not on the map, is Hussey Lane. Because everything was concentrated on Picket Creek. Hussey Lane at this point comes up relatively

steeply and stops. And I understand you were out there to look at it. So, we have that steep stop before you come to the stop there and that's one part we have -- I did not measure the slope of that roadway, so I can't tell you. But, physically if you're out there you stand there.

So, when I started doing all my testing I did it from the stop line there and the problem is is when we started talking about this what happens if he was going faster is now we have a conflicting slope issue. If you take any vehicle and you put it in motion in one direction and then try to drastically change its direction from everybody that's driven a car you'll notice that the shocks and springs and the car will lean drastically if you want to make an abrupt turning movement.

So, if you are going to go up Hussey Lane and then run that stop sign and turn you have an issue of the fact that the car is going up that hill and now all of a sudden the slope on Picket Lane is going the opposite direction. So, you're going up and then you're changing a slope clear down over here. And it's kind of like throwing a baseball. If I throw a baseball from here I only

get one speed. But, if I throw a baseball from way over here I get a whole different aspect. So, when the car is already coming up and heading over this direction and then I try to drastically change direction going down there then we have a real problem with the Bronco leaning.

And, again, when we were talking about what do we consider? We also consider the properties of the vehicle itself. We're talking about a Bronco II which had many, many articles written about it and you may have heard about it at the time of people wanting to --

MR. SCALES: Your Honor, I'm going to object, this is hearsay.

THE COURT: Did you wish to respond?

MR. CAMPBELL: It's part of his expertise, Judge, about the vehicle in question.

THE COURT: I believe it's hearsay. Sustained.

THE WITNESS: Okay.

MR. CAMPBELL: Judge, we're talking about the movement of the vehicle that is in evidence and his expertise about --

THE COURT: He's relying on the hearsay that he's reviewed, so it's hearsay.

MR. CAMPBELL: It's -- it's the study of any expert and of -- in their field, Judge, of course they look at -- they read journals and all of that.

THE COURT: Well, maybe you could correct this then by going in to more detail about what he has reviewed to form his opinion and then that would take it out of hearsay.

BY MR. CAMPBELL:

Q. Trooper Kuehmichel, do you read journals regarding the performance of vehicles in developing your expertise?

A. Absolutely, sir, one of the thing that I review on a regular basis is the recall of certain vehicles because of defects because the next crash that I may investigate may involve a recall of a certain part on a vehicle and the vehicle's characteristics as well. And in this particular case I physically tried to do what you asked me to do, run the stop sign, in that vehicle.

MR. SCALES: Your Honor, I'll withdraw the objection. I'm satisfied.

THE COURT: All right.

You may go ahead then, Mr. Campbell.

MR. CAMPBELL: Okay.

BY MR. CAMPBELL:

Q. So, I guess you were describing this particular vehicle and what did you notice about the stability, what studies do you know about the stability of the particular vehicle, it's a 1986 Bronco; correct?

A. Right. The 1986 Bronco actually started what's known in the industry as the "roll over criteria" that a lot of the SUV's are now tested on. It began with this Bronco about the -- because of the lawsuits of the vehicles being tipped over. And the Bronco has a very narrow track width, the distance between the tires on the opposite sides are very narrow. And because it's also a high vehicle it has a high center of mass. So, a Bronco has a tendency to tip over easier than other vehicles.

To go to extremes, if you take a sports car low down to the ground you can turn the corner very, very sharply and although you'll feel it, the car has no problem at all taking it. But, if you start getting in to a SUV or a pickup or

something like that and try to do the same maneuver the vehicle will roll over because it has a higher center of mass.

That's what we were encountering with this Bronco II. And I tried to get it up to a fast enough speed to be able to go through this stop sign and end up in 3rd gear at the location there and I could not do it. The vehicle was leaning so drastically further over I felt that with any additional speed I would roll the Bronco and then the evidence would be gone and I'd be mishandling everything that took place.

So, I drove it as fast as -- and being aware that I'm a police officer and that's what I do, drive cars fast, I drove that car as fast as I could reasonably do it without rolling it over and I still could not get the car up to 3rd gear by the location of the crash.

Q. So, do you have an opinion on whether that scenario occurred on September 27th?

A. Again, it couldn't have happened because you can't take that corner fast enough with the Bronco without rolling it over, without changing to get up to 3rd gear in that -- in that distance.

Q. Okay. Senior Trooper Kuehmichel, then let me give you one more hypothetical. And in this one I want you to assume that the vehicles are in the same position that you find them and you've testified to, that the same evidence on the roadway is there, that the Bronco is in 3rd. And this time assume that the Bronco was down the road and came up from somewhere further down the road, came up behind the pickup. And in 3rd gear what would be the operational speeds in 3rd gear?

A. To go up to the top of the speed at 3rd gear where you would change from 3rd to 4th was about 36 miles per hour.

Q. So, assume the Bronco II did not come up Hussey, it was not on Hussey to enter Picket Creek, but that it came up down below somewhere from Robertson Bridge or between Picket Creek as it comes up. Does that scenario give you the physical potential for having the crime scene that we found on September 27th, 2001?

A. Yes, sir, it does.

Q. Okay. Did you do some acceleration testing from further down the road?

A. Yes, sir, in order to be able to get the vehicle, the Bronco, to be able to be in 3rd

gear at the collision scene I had to start my acceleration down to I think it's called West Picket, but I can't remember the name of the road, a road some distance down there to be able to turn around. Because of that five percent grade and the Bronco, you know, fighting the hill, fighting gravity, as well as trying to accelerate up in to 3rd gear pretty much had to be almost at West Picket Creek before I could get it up to 3rd gear at the time of the location of the crash.

Q. Okay. So, if you're at West Picket Creek or below toward the bridge you could have recreated the vehicle dynamics to get the scene that you got?

A. Yes, sir, that's correct.

Q. And this is State's 105, this shows West Picket Creek coming in to Picket Creek here, is that what you remember?

A. Yes, sir.

Q. Where -- did you notice other places coming in to Picket Creek that were below that as well?

A. Below West Picket Creek I did, sir.

Q. Yeah.

A. Yes, sir.

Q. Okay. Thank you, sir.

MR. CAMPBELL: I think that's all I have at this time.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Senior Trooper Kuehmichel, I have a few questions before we begin. You had talked about -- and I don't know what the acronym was, was it ACTAR?

A. Yes, sir.

Q. Okay. And can you just tell me again what do they accredit and who do they accredit?

A. When the field of reconstruction was beginning it was felt that there were many people that had very little training and were going around calling themselves "reconstructionists" and testifying and it was causing an issue where credibility in courtrooms and stuff where people would come up with minor training.

And so it actually started with the National Highway Transportation Safety Administration, they decided to get a group of

reconstructionists and engineers and some people from some other fields together and say, "Let's make a federal standard for reconstruction that the entire United States will accept as this is the standard to call yourself a reconstructionist."

Not too much different, although the dynamics, but not too much different than passing the BAR to be a lawyer. Now, the -- so that you couldn't say that you were a lawyer before you had passed the test.

And as they got together and put this thing together and it was funded by NHTSA then the more these people got together the more they were concerned about the only people that would be certified would be police officer because it turned out to be a government organization and gathering and that would exclude people like from engineers from being ACTAR certified and stuff.

So then NHTSA dropped out of it because they did not want that to be occurring to where it was just only police officer or government officials could be ACTAR certified. And they left this group as a core nucleus to put together these minimum requirements.

And so it ended up being a civil organization instead of a government driven organization that drives this and they called themselves ACTAR, the -- A-C-T-A-R, the Accreditation Commission for Technical Accident Reconstructionists. They developed a criteria, a minimum, that you must pass. It's a full eight hour day testing and you have to go through and you have to score, I believe it's at least 90 percent. It's been a couple years, so I -- you have to score 90 percent on these and pass both sections of this test before you can call yourself an "ACTAR certified reconstructionist".

So, it was intended to be certainly the maximum, but it was intended to be a minimum base for your accreditation that you could testify to. And once this caught on it's been accepted all over the United States and internationally people have from New Zealand to England, Japan have taken the ACTAR test and testified that they are ACTAR certified. It's become an international organization.

Q. Thank you. And you actually answered most of my questions. One of those was which, is it mostly for law enforcement officer and your

testimony is it's for accident reconstructionist, both civilian and law enforcement?

A. Yes, sir, I know --

Q. Government.

A. -- a number of engineers that have been --

Q. Okay.

A. -- ACTAR certified to be able to claim that accreditation when they testify.

Q. Thank you. You mentioned Holly Bridges' report, that was Trooper Holly Bridges, Bridges at the time. Was she a trainee at the time or was she also -- did she have sufficient training to be performing accident reconstructions?

A. For our agency she was. At the time we had two levels, we had a technical accident investigator and then a reconstructionist. And the -- in order for our agency we bought in to this national certification in order to be called a "reconstructionist" in our agency you had to be ACTAR certified. And Holly Bridges at that time, if I remember correctly, she was not ACTAR certified, she became ACTAR certified after that -- after this occurrence, which is the reason that

I was out there because I was the ACTAR certified and --

Q. I see.

A. -- she was being trained through me to accomplish these things.

Q. So, under your supervision her reports were acceptable and -- well, I guess, how do I say this? Because you were ACTAR certified you were required to be there, but she was -- had sufficient training to generate a valid report; is that correct?

A. Yes, sir, that's correct.

Q. Okay. Thank you. And Ms. Bridges put in her report that you had reviewed this case and you concurred with her findings as they are provided in the report, would you agree with that statement?

A. That's correct.

Q. Okay. Correct me if I'm wrong, the only thing that -- and I'm not saying that you disagree with it, but you perhaps qualified was how the vehicle -- how the truck came to -- come to -- go in reverse, you're saying that it could have been either rolling or it could have been acceleration; correct?

A. That's correct.

Q. Okay. Thank you. I'll move on. Now, the skid marks on the truck, 12.4 feet, did you determine approximately how -- based on the skid marks and the skid shadow approximately how long the actual skid was on the truck?

A. Yes, sir.

Q. Okay. And what was that?

A. I believe it was just a little over 20 feet, 20.6 or something. Let me get the actual number for you so -- 20.5.

Q. Okay.

A. Yes, sir.

Q. So, the total distance that it skidded was 20.5 and were you able to determine a speed that the truck -- based on the friction on the road and other measurements were you able to determine the speed at the time it went in to that?

MR. CAMPBELL: Can I ask a question in aid -- clarification?

THE COURT: You may.

MR. CAMPBELL: Are we talking about the pickup or the Bronco right now?

MR. SCALES: I'm sorry. I'm talking

about the pickup.

MR. CAMPBELL: Were you talking about the pickup?

THE WITNESS: I understood the questions to be about the pickup. If you were --

MR. CAMPBELL: Okay.

THE WITNESS: Okay. If I misunderstood then I'll go for another question.

MR. CAMPBELL: I just wanted to make sure.

THE WITNESS: Okay.

BY MR. SCALES:

Q. I'll be careful not to say "the Ford" because that's going to confuse everybody.

A. That's true.

Q. Okay. The pickup.

A. And thank you for that clarification because that's -- in my mind we were talking about the pickup, not the Bronco.

Q. You bet, sir.

A. Okay.

Q. So, the pickup, were you able to determine based on the 20.4 foot skid and skid shadow the -- I don't want to use the wrong term.

I guess it'd be like a coefficient of friction, based on those measurements that you took were you able to determine the speed of the truck at the time it hit the brakes?

A. Yes, sir, and I believe it was real close to 20 miles per hour, but again I've got numbers everywhere here so let me -- so my testimony is accurate let me find it. About 21.5 miles per hour, sir.

Q. 21.5? Okay. And you testified that the pickup from here to the Bronco it was a -- it was less of a controlled stop. Can you explain what you mean by a "controlled stop"?

A. When you drive -- in the normal course of driving and you see the yellow light change to the red light and you know that you're going to have to stop you generally will not lock up your brakes every time you come to a red light because you recognize that this is -- and it's all controlled and the coffee doesn't spill and the kids don't scream and it's a controlled -- you're under control about what you're doing.

When you come across the dog that's running in front of you or the kid between -- and you slam on your brakes you really don't have a

whole lot of control, you're just doing one thing only, slamming on the brakes and physics is taking over from there.

So, between the two vehicles the Bronco made the much more controlled stop than the pickup did.

Q. Okay. So, would the -- are you saying that a less controlled stop would be indicative of somebody slamming on the brakes?

A. Yes, sir.

Q. Okay. You did some skid testing, braking testing with the Bronco?

A. Yes, sir.

Q. And when was that done in relation to the homicide?

A. About 10 months later, I believe. Do you need an exact date, sir?

Q. If you could just give me kind of a ballpark figure that would be nice.

A. Okay. Oh, it's right here. Saturday the 17th day of August, 2002.

Q. So, approximately just shy of 11 months after the incident?

A. Approximately, yes, sir.

Q. Okay. About 10 days short of a 11

months. And you had talked about some -- and this was something that I did not know that when a -- when a tire track is on the surface of the road it's actually -- it's actually the oil that's being lifted to the surface or the -- is that correct?

A. That is correct, sir.

Q. So, it's not like if you spin your tires that's -- the black stuff that's on the -- on the road is your -- is the rubber off of your tires, it's the -- is it the oils within the asphalt?

A. If you spin your tires and then get out and look you'll find a whole bunch of little things that look --

Q. Mm hm.

A. -- just like the eraser there, that's what's coming off of the tire.

Q. I see.

A. Okay. Is those little things and those little scroungey little black things that are sitting there just happens to be that the tire's the same color as the roadway that's why it's black, but you can do it with any eraser and then you can just take a deep breath and it'll

blow. And that's what the tire is taking off is that little fuzzy stuff there. What's making the mark is the oils in the roadway surface.

Q. Now, when you went out for the skid test I noted that you told the jury in your testimony that you made sure that the testing, the braking and the skidding and what not, the acceleration testing was done on the same area of road. Was that in an effort to try to recreate or create a situation that is as close in the same condition to the actual incident?

A. Yes, sir, exactly to try an eliminate things that could be outside influences.

Q. Okay. And are there any other type of physical factors, such as the surface temperature of the roadway that might effect the results?

A. If there's an extreme surface temperature difference, in other words, if we are talking about if I would have done the testing in the middle of the winter and there was ice on the roadway or the temperature of the roadway was only 35 degrees --

Q. Mm hm.

A. -- and then the incident occurred in

the summertime when the temperature of the roadway was close to a hundred degrees then there would definitely be some differences. But, as long as you're within 10, 15, 20 degrees there really isn't substantial differences. And I know that because we have done that testing exactly --

Q. Okay.

A. -- to do that to see how much difference there would be on temperatures. And it's actually very similar for a wide range of temperatures, 20, 30 degrees. What you would normally experience in a day's temperature change, from getting up to night there isn't much difference. But, if you go seasonal, winter to summer, you're going to find the differences, yes.

Q. Okay. Fair enough. That answers my question. And prior to doing this -- this testing in August of 2002, I believe you've already testified to this, that the vehicle was tuned up; is that correct?

A. That's correct, sir.

Q. So, you're not able to say with any certainty how the vehicle was -- I'm talking about the Bronco, I'm sorry, I should be very clear about that.

A. Please. Thank you.

Q. The Bronco was turned up and so you did not test the Bronco prior to it being seized and tested 11 months later?

A. That's correct, sir.

Q. Okay. So, you're not able to say for certain how the vehicle was performing on the date in question, September 27th, 2001?

A. That's correct, sir.

Q. Okay. And was there any -- in addition to having the vehicle tuned up did you have the vehicle aligned or the brakes checked or anything like that?

A. They just did a quick inspection to make sure that there wasn't three brakes working and one not working.

Q. I see.

A. You know, that kind of thing. But, they didn't -- they didn't go through and do an all-day mechanical work up on it to make it the most perfect vehicle, they --

Q. Mm hm.

A. -- just wanted to make sure that when I did go out and testimony it, yes, all four brakes would come on and the steering wasn't going

to fall off and put me in the ditch or anything.

Q. Okay.

A. So, it was -- it was just a reasonable safety type thing.

Q. And by "they" you are referring to?

A. The Chevron garage, right --

Q. Okay.

A. -- across from the courthouse here did that.

Q. Okay. And so you're not aware if they -- if they did anything to the steering or the alignment of the wheels or anything like that?

A. I don't think at that time they even had that equipment. But, they -- we certainly weren't asking them to do that, no, sir.

Q. Didn't have what kind of equipment?

A. The special kind of equipment that it would take to align it up with the mirrors and the laser lights and all that, so I don't even --

Q. Well, and I wasn't referring to that, I was just talking about just simple wheel alignment, like --

A. As far as I know, no, sir.

Q. Okay. Now, based on -- you came up with a number of 4 to 6 miles an hour that the

truck would have to have been going 4 to 6 miles per hour in reverse or in a backwards direction to cause the damage to the Bronco, is that accurate?

A. Yes, sir.

Q. And do you base that on the -- your visual inspection of the Bronco or what exactly is that based on?

A. Again, when I was explaining earlier that we didn't -- we didn't accept many of these reconstruction theories and premises just because somebody wrote them down in a book some place, we wanted to find these out for ourselves. So, the Oregon State Police has had -- for a long time they had twice yearly and sometimes even quarterly testing where we would take a theory that was out there, say the slide to stop formula, and we would actually go out and test it. We would test it with a number of vehicle and different weights and we'd say, "Does this work or not?"

And amongst that testing we have also taken many, many cars and deliberately wrecked them so that we knew that at 5 miles per hour this is the kind of damage we can expect, at 10 miles per hour, this would be the kind of damage we could expect. And we recognize that there are

differences in manufacturers, but you can -- you know, the whole idea of insurance companies saying "5 miles per hour bumper" was that at 5 miles per hour bumper you would not be able to see any damage to the vehicle.

Well, the Bronco was not equipped with a 5 miles per hour bumper and the many cars that we tested often were not either because they were junk yard cars, they weren't the new cars. And so it was very appropriate to look at the testing that we've done with damaged cars of the years because they didn't have 5 miles per hour bumper and neither did the Bronco. The damage was real similar and it would come about to that.

When you start talking higher speeds, 10, 15, 20 miles per hour then you'd see extensively more damage than you see here. And if you talk about slower speeds, which we've also done some slow speed testing. And that was part of the ACTAR thing where we had a lot of engineers there that wanted to test slow speed wrecks. So, we did one test on slow speed wrecks. And at 1 or 2 miles per hour you basically see no damage except for paint scratches, there's hardly anything that's there.

Q. So, based on -- based on the amount of damage to the -- I believe it's the left front quarter panel of the Bronco you -- and based on -- based on your prior experience crashing vehicle you have determined it to be in the 4 to 6 miles per hour range?

A. Very consistent with that, yes, sir.

Q. Okay.

A. Very consistent.

MR. SCALES: Your Honor, I just have a couple more questions in this area and then perhaps it'd be appropriate to break for lunch.

THE COURT: All right. Go ahead with yours and then we'll see how much Mr. Campbell might have.

MR. SCALES: Well, I wouldn't be ending my cross, I would have quite a bit more.

THE COURT: Oh, I see.

MR. SCALES: Just in this particular --

THE COURT: Okay.

MR. SCALES: -- section of --

THE COURT: All right.

MR. SCALES: -- questioning.

THE COURT: Finish up your section --

MR. SCALES: Okay.

THE COURT: -- and then we'll take lunch.

BY MR. SCALES:

Q. So, in order -- well, I know there's been some different testimony -- or some testimony on two different sub-scenarios here. One is the truck accelerating in reverse and the other one is simply rolling and building up that speed.

A. Sir?

Q. Yes?

A. The Ford pickup?

Q. Yeah, the Ford pickup.

A. Okay. All right.

Q. Thank you.

A. Just so I'm not -- so I understand your question.

Q. I'm going to write that down.

A. Okay.

Q. Ford pickup, Ford Bronco.

A. Because I don't want to get confused when I answer.

Q. No, I appreciate you --

A. Yes, sir.

Q. -- correcting me on that, sir. And was it your testimony that the truck would need

approximately an additional 10 feet if it were to roll that far back to cause the damage to the Ford Bronco?

A. Yes, sir, that's --

Q. Okay.

A. That's -- you know, the slope of the roadway adds gravity to it, so we would have to have more -- it would have to be further than the skid mark by about 10 feet in order to cause that same amount of damage.

Q. I see.

A. Yes, sir.

Q. And did you do any testing along those lines to determine -- you didn't test the Ford pickup to determine how long it would take from a roll to get to 4 to 6 miles per hour, did you?

A. The actual Ford pickup? No, sir, I did not test the --

Q. Okay.

A. -- actual Ford pickup. But, again, I'm drawing on my experience of testing many other cars because we have done that exact same kind of thing, going down different slopes and how much it accelerates.

Q. Just a couple more questions in this area and then I'll -- I'll end for the time being. You testified that there was no evidence to suggest that it was powered back; is that correct? And I -- the truck.

A. Yes, sir, the -- no, sir, I didn't say that, I said there was no tire marks. The evidence that it was probably accelerated is the fact that the damage is way more than it would be if it was just rolled from the end of the tire marks. So, there's no evidence as far as tire marks to say that it accelerates. So, to say "no evidence" is not true, but --

Q. Okay.

A. Okay.

Q. And is there any evidence to suggest that it was not powered back?

A. No, sir, there's -- there isn't.

Q. Okay. And you wouldn't necessarily expect acceleration marks for something -- a truck on an incline going down that incline to build up 4 to 6 miles per hour in speed before the impact, you wouldn't necessarily expect acceleration marks, would you?

A. No, sir, I would not. I just said

that I looked for them and I didn't see them.

Q. I see

A. Yes, sir.

Q. Okay.

MR. SCALES: I think this is probably a good time to break, Your Honor.

THE COURT: All right.

Ladies and gentlemen, we will take our lunch hour now. Please leave your notebooks on your chairs. Go with the bailiff and report back at 1:15.

(At 12:04 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: We are in recess until 1:30.

(At 12:05 p.m. a lunch recess was taken, to reconvene at 1:30 p.m. the same day.)

GRANTS PASS, OREGON

TUESDAY, FEBRUARY 24, 2009; 1:33 P.M.

12 PERSON JURY TRIAL - DAY 5

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Do you have an issue, Mr. Scales?

MR. SCALES: I don't believe so.

THE COURT: No? Okay. All right. Then if we're ready to begin we'll have the witness resume the stand and ask the jury in.

(At 1:34 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. We are continuing our trial.

And, Mr. Scales, you were in the middle of your cross.

And I would just remind the witness, you're still under oath from earlier today.

THE WITNESS: Yes, ma'am.

THE COURT: Go ahead, Mr. Scales.

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION (CONT.)

BY MR. SCALES:

Q. Let me see if I can find my spot, Trooper. The tune up of the Ford Bronco was that -- who requested that?

A. I believe it was the District Attorney, but let me check my notes here real quick. Yes, it was the Assistant District Attorney Mr. Titzler.

Q. Okay. And the three scenarios that you have testified to and testified about in each of those scenarios you make a couple of assumptions; is that correct?

A. Well, right they're -- you're -- they're giving me these scenarios and based on the parameters that I've been given, then yes, sir.

Q. I'll be a little bit more specific.

A. Please.

Q. You are assuming in these scenarios, at least in I believe the first one, that the Ford pickup truck driven by Mr. Whitcraft did not -- that Mr. Whitcraft did not see Mr. Sandoval and continued driving past Hussey Lane; is that correct?

A. Well, one of the scenarios was that he did. So, whichever scenario perhaps -- and some of them did not. So, I'm --

Q. Okay. Well, I believe it was the first one you'd talked about reaction time, .75 seconds for an expected event, and 1.6 seconds for an unexpected event?

A. Yes, sir.

Q. Okay. And correct me if I'm wrong, your testimony is at the speed that Mr. Whitcraft was driving by the time he would have seen Mr. Sandoval, recognized his presence and then reacted to it he would have already been in Mister -- in 770 Picket Creek, Mr. Callahan's driveway; is that --

A. Yes, sir.

Q. -- correct?

A. Very, very close to it, yes, sir.

Q. And is that because it was such a short distance to go, 60 feet?

A. Yes, sir.

Q. Okay. With respect to the Ford Bronco, is it possible for the Ford Bronco to achieve a speed of 13.4 miles per hour in 1st gear?

A. Most likely. My testing I did not do that, I did the -- the -- where the changes show and you can run past -- you can run past the -- those change marks in almost any gear with -- at risk of doing serious damage --

Q. Sure.

A. -- to the engine, so --

Q. Did you -- did you prepare some documents, maybe I'll just show you a copy of a -- it looks like a spreadsheet of sorts. Is it possible for the Bronco to be going 14 miles per hour in 1st gear?

A. Yes, sir, as a matter of fact that is the -- pretty much the recommended change location was at 14 miles per hour.

Q. Okay. And would it be possible for the Bronco to also travel at 14 miles per hour in 2nd gear?

A. Yes, sir.

Q. But, not in 3rd gear?

A. I -- it's pretty highly unlikely because it's like many cars if you put them in a real high gear and try to make them go slow --

Q. Sure.

A. -- the engine will die when you start getting up because it's not geared properly and --

Q. Okay.

A. -- the transmission takes over the engine compression, so --

Q. And you also testified that it would be unlikely -- or impossible, rather, for the vehicle to have gotten up to 3rd gear in that 155 feet distance, is that accurate?

A. That's correct.

Q. Okay. So, since we've had three scenarios, three hypotheticals, maybe I could suggest a fourth. Are we assuming -- well, I know that the -- that the Bronco was found in 3rd gear and stalled; is that correct?

A. That's correct, sir.

Q. Okay. So, we are assuming in each of these hypotheticals that the Bronco was actually traveling in 3rd gear when the vehicle -- when the engine died, is that a correct assumption?

A. Well, that -- yes, sir, that was a correct assumption for all of those that -- that the vehicles would end up in the way that we found them.

Q. Okay.

A. Yes, sir.

Q. So, we're making that assumption, but we don't know if the vehicle the way you found it was actually the way it was traveling at the time it died; is that correct?

A. That's correct.

Q. You have no way of knowing what gear it was in at the time the engine stalled?

A. Right, that's just the way that we found it at the time.

Q. Okay. So, fourth scenario, is it possible for somebody, somebody in the Ford Bronco perhaps, to make that right turn on to Picket Creek, to accelerate 1st gear, accelerate in to 2nd gear, achieve a speed of 13.4 miles per hour and stop, have the vehicle stall in 2nd gear, put it in to a forward gear so it doesn't roll back. Is that a possible scenario?

A. It's possible based on the physical evidence that was have, we're just using the

physical evidence. But, yes, sir there are multiple ways of that ending up in that gear.

Q. So, scenario four is possible as well as scenario three?

MR. CAMPBELL: I'm going to object because it calls for speculation, Judge. There's no basis for that.

MR. SCALES: Well, I don't believe so, Your Honor, he has testified that scenario three is possible, he's testified that scenario four is possible, I just want to confirm that those two scenarios are possible. And I don't think it's speculation, Trooper Kuehmichel has testified extensively of his extensive training and extensive experience in accident reconstruction.

THE COURT: All right. The witness I believe has answered that question and so it will stand. Mr. Campbell will have an opportunity to ask further questions about that.

BY MR. SCALES:

Q. Now, you testified that one of the things you look when you go out to the scene is you look to see if there are any obstructions, you look for things like shrubbery, bushes, trees,

things like that; is that correct?

A. Parked vehicles, whatever happens to be an obstruction, yes, sir.

Q. Okay. And do you have your transcript of your testimony from the last time?

A. Yes, sir, I do.

Q. Okay. And you testified today that from -- and correct me if I'm getting this wrong, from the intersection of Hussey and Picket Creek -- let me find it, if I have it here. There we go. From the intersection of Hussey and Picket Creek at the stop line there that you can -- if you had come back on Picket Creek about how far was it that you could see the intersection?

A. Approximately about a hundred feet.

Q. A hundred feet?

A. Yes, sir.

Q. Okay. Do you recall -- well, I think you testified earlier this morning 125 feet?

A. Yeah, I think that's what it was, about that.

Q. Okay.

A. We didn't physically go back and run a tape measure and say, but I'm very used to estimating distances, between a hundred and 125

feet.

Q. So, 125 is a pretty short distance, wouldn't you agree?

A. Yes, sir.

Q. Would you look at your testimony from the prior trial, referring specifically to Page 479, starting with Line 7 and I'll read Lines 7 through 9 if you could read your answer on Lines 10 through 12. "And do you have an estimate --" Are you there, sir, first?

A. Yes, sir.

Q. Okay. And you were asked by the District Attorney, I believe, "And do you have an estimate of how far back you were able to see, actually see the stop sign at Hussey as you are coming up Picket Creek?" And can you tell us what your answer was?

A. "200, 250 feet."

Q. Okay. So, does that sound more realistic, more accurate?

A. When you take a look at the scene as you drive up there it isn't just one solid row of trees --

Q. Mm hm.

A. -- there are breaks that you can see

for a short distance and then you can't see for a while and it's -- because the shrubbery isn't solid, it's not like a brick wall that --

Q. Right.

A. -- all of a sudden there's the place that you can see it and you can measure that, like any shrubbery. And if you -- you obviously have read my testimony, I said that you could see it at a break and then you couldn't see it again and then you could see it. Okay. And so that's why there's two different measurements.

Q. So, you could actually -- somebody traveling down Picket Creek, say they were going to 770 Picket, they could see Mr. Sandoval's truck at the stop bar as far back as 250 feet?

A. Right, through one of the small openings, and then you wouldn't be able to see it again and then when you can actually see it with an unobstructed view for the rest of the way it's about a hundred, 125 feet.

Q. Okay. Fair enough. How far back did you go? Did you go beyond 250 feet to see if somebody could see it at an even further distance?

A. My testing, when I was doing the acceleration testing started clear back on I

believe it's West Picket Creek that comes in there. So, I was observing that all the way up through there. And I don't know, I don't know exactly how far away that its, two-tenths of a mile, tenth and a half, something like that, I don't know.

Q. I'm sorry, I didn't -- I didn't hear the last part, what about two-tenths of a mile, sir?

A. I can't remember how far from Hussey Lane West Picket Creek is, but it's quite some distance, it's several hundred feet, it's more like a tenth or a tenth and a half or maybe even two-tenths of a mile away. And I was driving up that the whole way and you can't see Hussey until you get within those short distances.

Q. Two hundred -- until you get to within 250 feet?

A. Right, then you can have a short window and it's only for a few feet and then you can't see it again until you get much closer.

Q. Okay. Thank you, Senior Troop Kuehmichel.

MR. SCALES: I have no further questions.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. I just have one question on the pickup, you didn't take it out and do the same slide testing as you did with Bronco; correct?

A. No, sir.

Q. Yeah. So, how did you get the skid shadow on the pickup? Is there literature out that has calculated that or?

A. Basically once you lock the tires up of one vehicle in an area then all vehicles with few exceptions are going to act the same. In other words, a motorcycle, which is a completely -- and a 18-wheeler are going to act different. But, when you take -- and this is real difficult for people to believe, but when you take a -- you can take a small car, a Honda, or you can take a big car, a Lincoln, and they will act the same over the same stretch of roadway providing you've locked up the tires. They act differently before you lock up the tires. But, once you lock up the tires of the vehicle -- we did testing, like we would put one person in a patrol car and slide it to stop and then we would put six full-size biggest troopers we could find in there and over

the same stretch of roadway they would stop in exactly the same distance. It didn't make any difference and we would use different patrol cars, as long as we were on the roadway and the tires were locked all the vehicles, no matter how much they weighed or how big or how small they are would act the same once the tires were locked up.

Before the tires are locked up you can have great differences in handling and stopping characteristics. But, once that lock up has taken place it's just a matter of tires on the roadway and that's all that's involved.

Q. So, you're testing with the Bronco actually assisted you in saying what the pickup would do as well?

A. Exactly, sir.

Q. Okay.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: All right.

Mr. Scales?

MR. SCALES: Just one follow up.

RECROSS EXAMINATION

BY MR. SCALES:

Q. Senior Trooper Kuehmichel, did you

prepare a report that documented these hypotheticals, the scenarios one, two and three?

A. No, sir.

Q. Okay.

MR. SCALES: Nothing further.

THE COURT: Anything else?

MR. CAMPBELL: No, Judge.

THE COURT: Are you asking that he be excused?

MR. CAMPBELL: He does need to fly out, Judge. I guess if -- depending on what the Defense does I would ask that I be able to call him by phone if there be any more questions for him.

MR. SCALES: I'd have no problem with that.

THE COURT: All right. And you have no objection to his being excused at this point --

MR. SCALES: Oh, absolutely not, Your Honor.

THE COURT: -- as well? All right. Thank you for coming in, you are excused.

THE WITNESS: Thank you, ma'am.

MR. CAMPBELL: The State would call Steve

Curtis, Your Honor.

THE COURT: Please step in to the courtroom, sir, right up here. Raise your right hand to be sworn in, sir.

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Thank you. If you could walk around the table, up the steps and have a seat behind the microphone?

***

STEPHEN LEE CURTIS,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last please, sir, for the record?

A. Stephen Lee Curtis, C-u-r-t-i-s.

Q. And where do you work, sir?

A. Now?

Q. Do you work the same place you worked in 2001?

A. No.

Q. Okay. So, let's go back to September of 2001 and the times -- the years before that where did you work?

A. Longboard Lumber.

Q. Okay. And where is that located?

A. Merlin.

Q. And did -- were you familiar with Jack Whitcraft?

A. Yes.

Q. And did he work there at Longboard at least part of the time that you worked there?

A. Yes.

Q. And did you know him?

A. Yes.

Q. And how would you describe your relationship with him?

A. Pretty fair.

Q. Were you friends?

A. Yes.

Q. Okay. At least at work?

A. Yeah.

Q. Did you do anything outside of work with Mr. Whitcraft?

A. Not a whole lot.

Q. Okay. Every over at his place on Peach Street?

A. Every once in a while.

Q. Okay. And what -- were you good friends, casual friends or how would you describe that?

A. Oh, casual friend.

Q. Okay. And how long did you know Mr. Whitcraft?

A. Four years, three or four years.

Q. Okay. And that was mainly you got to know him through work?

A. Yeah.

Q. Did you form an opinion on the -- Mr. Whitcraft's character for peacefulness or violence?

A. He's pretty peaceful.

Q. Peaceful guy? Did you ever observe him to -- did you know who -- did you know the defendant, Leo Sandoval?

A. Never, no.

Q. No? Did you know who he was?

A. Yeah.
Q. Based on conversations with Mr. Whitcraft?
A. Yeah.
Q. Did you ever observe the defendant harassing, following, attempting to intimidate Mr. Whitcraft?
A. No.
Q. Did you have conversation with Mr. Whitcraft where he related that that had occurred?
A. Yes.
Q. And tell us when that came up.
A. He's -- he had a -- he had a few problems, he came in to work and there -- you know, wasn't -- he wasn't very happy.
Q. What -- what -- did he tell you that Sandoval had just done something to him?
A. Yeah.
Q. Okay.
A. He was following him and stuff like that.
Q. Even on his way to work at Longboard --
A. Yeah.
Q. -- Lumber? And where is that in

Merlin in relation to the town of Merlin?
A. By Blue Star Propane.
Q. Okay. Is it -- is it right in town there then?
A. It's a little bit off to the side by Milla Redwood.
Q. Okay. So, you would drive out of Merlin up -- up --
A. Yeah.
Q. -- Merlin-Galice Road to get there? Was Jack Whitcraft a drug dealer?
A. What?
Q. Was he a drug dealer?
A. No.
Q. No. Did -- before Mr. Whitcraft's death did he have conversation with you about escalating concerns for his safety from Mr. Sandoval?
A. Not -- no.
Q. Did he ever talk to you about having to carry a gun?
A. Not me.
Q. Not to you --
A. No.
Q. -- personally? Okay. Okay. Now, I

-- it's been quite a while, you testified in this trial about seven years ago, right, in 2002?
A. Yes.
Q. And I'm going to read you a question and an answer and I want to know if this refreshes anything in your mind, okay?
A. Okay.
Q. The question to you was -- let me read two questions. A question, "Did he -- did he tell you --" and he's talking about Jack Whitcraft, "-- that he figured Leo was going to do -- what -- he figured Leo was going to do to him --" and your answer, "What Leo was going to do to him." and the next question, "That what Mr. Sandoval was going to do to him, what did he say he was fearful of Leo doing?" That was the question and here's your answer, "He was scared for his life, kind of." Do you remember saying that?
A. Yeah, kind of. It's been a while.
Q. You're not really remembering it too well?
A. Yeah.
Q. Okay. Do you remember saying that he started to carry a gun?

A. Who?
Q. Mr. Whitcraft, that he told you he was going to have to do that or something to that effect?
A. Somewhere to that effect, yeah.
Q. Okay. Thank you, sir.
MR. CAMPBELL: That's all I have, Judge.
MR. SCALES: No cross, Your Honor.
THE COURT: All right.
Are you asking that this witness be excused?
MR. CAMPBELL: I am, Judge.
THE COURT: Any objection?
MR. SCALES: No objection, Your Honor.
THE COURT: You are excused. Thank you for coming in, sir.
THE WITNESS: Thank you.
THE COURT: You may call your next witness, Mr. Campbell.
MR. CAMPBELL: The State will call Tressie Moler, Judge.
THE COURT: Please step right up here, ma'am, raise your right hand my clerk will swear you in.
THE CLERK: Do you swear the testimony

you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. If you could walk around the table, up the steps and have a seat behind the microphone?

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TRESSIE DARLENE MOLER,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last for us, please?

A. Tressie Darlene Moler, M-o-l-e-r.

Q. Okay. And where did you live in 2001, September of 2001?

A. 117 Peach Street, Merlin, Oregon.

Q. Okay. And how long did you live in that location before September 27th?

A. I believe less than a year, if memory

serves me correct.

Q. So, around a year at that point in time?

A. Yeah.

Q. Did you know Jack Whitcraft and Mary Carlson?

A. Yes, I did.

Q. And did they live near you?

A. They were my next door neighbors.

Q. Next door neighbors. And did you know the defendant, Leonard Sandoval?

A. I'd seen him up and down the road and that was about it. He was also a neighbor.

Q. Okay. So you'd seen him up and down the road. Did -- did you -- how well did you know Mr. Whitcraft?

A. I waved at him going in and out of my house and he brought me costa while I was pregnant at my backdoor. Just, you know, a hello basis here and there.

Q. So, you would visit with him around the house and were you familiar with his comings and goings?

A. Well, you know, as much as you would be any neighbor I believe, yeah.

Q. Did you know him well enough to form an opinion about his peacefulness or --

A. Oh, yeah.

Q. -- character for peacefulness?

A. Yeah, he seemed really -- really peaceful, I'd say. Just sweet, you know?

Q. Did you ever observe the defendant engage in actions, aggressive actions or intimidating actions toward Mr. Whitcraft or Mary Carlson?

A. Oh, I'd say he was a little aggressive driving up and down the road, I remember that. I mean, this was years ago, but I remember he would drive pretty fast and cuss out the window and flip everyone off. Just a really aggressive personality. I was afraid to walk by his house because of his dogs when I walked my little dog.

Q. Did -- when he would yell what did you take the purpose of his yelling to be --

A. Well --

MR. SCALES: I have a question in aid of object, Your Honor.

THE COURT: Go ahead.

MR. SCALES: The things that he yelled

were they direct at Mr. Whitcraft or directed --

THE WITNESS: Just derogatory remarks out the window.

MR. SCALES: Who were they directed to, Ms. Moler?

THE WITNESS: Well, I knew Mary pretty well --

MR. SCALES: Okay.

THE WITNESS: -- and --

MR. SCALES: I'll withdraw my objection if it's direct to Ms. Carlson.

THE COURT: All right.

Would you repeat your question then, Mr. Campbell?

BY MR. CAMPBELL:

Q. Did he direct yelling at both Ms. Carlson and Jack Whitcraft?

A. I just remember derogatory remarks, really, I mean, I knew he didn't like Mary and I knew they had history and I knew tension was growing between Jack and Leo because he had history with Mary.

Q. Did you indicate in prior testimony that you thought he was trying to start fights?

A. With the aggressive personalities, yeah. I mean, if someone's yelling derogatory remarks in your direction I would say so.

Q. Did you observe the defendant to have guns?

A. Gee, I -- if so I can't say for sure. Maybe in the back of his truck. But, really, no nothing that was flashed out at me or --

Q. And I'm going to go to an interview you had with Detective Rylander. Do you remember talking to him? And I know it's been a long time.

A. Yeah.

Q. Back in 2001? Do you remember talking to this gentleman, Mister -- Detective Rylander?

A. Not so much, no.

Q. No? Okay. Did he ever -- do you recall the defendant making some kind of faces that were negative in nature or threatening in nature to Mary Carlson or Jack Whitcraft or their -- their residence?

A. I remember him driving by in his truck. I wish I could tell you more than that. I don't remember seeing a physical confrontation -- confrontation between all three of them, but I --

like I said I was friends with Mary and so from what I had known and I knew about the physical confrontation that happened at Lil Pantry.

Q. Mm hm.

A. That was about it. That was it. And I was just -- I didn't like living where I lived because it was a really tense situation, you could just feel it, I mean, between all parties.

Q. Okay. Thank you.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales, any questions?

MR. SCALES: No cross, Your Honor.

THE COURT: All right.

Are you asking that she be excused, Mr. Campbell?

MR. CAMPBELL: Yes, I'd ask that she be excused.

THE COURT: And any objection?

MR. SCALES: No objection.

THE COURT: Thank you for coming in. You are excused.

THE WITNESS: Thank you.

THE COURT: And you may call your next witness, Mr. Campbell.

MR. CAMPBELL: The State would call Lisa

Locke, Your Honor.

Ms. Locke, if you'll step right behind -- between counsel table and raise your right hand, please?

THE CLERK: Do you swear the testimony you're about to give in the case now pending will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. If you could walk around the table, up the steps and have a seat behind the microphone?

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LISA LOCKE,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. And would you state your full name and spell your last, please?

A. It's Lisa Ann Locke, L-o-c-k-e.

Q. And how are you currently employed?

A. I work for Solastic.

Q. Okay. And were you employed in that capacity in September of 2001?

A. No, I worked for Lil Pantry Market.

Q. So, you worked at the Lil Pantry and how long did you work there?

A. Six years.

Q. Okay. So, you were working there in July of 2001 and on through September of 2001?

A. Yes.

Q. Okay. And did you have occasion in working at that location to meet Jack Whitcraft?

A. Yes.

Q. And would you have contact with him on a fairly regular basis?

A. I'd say yes, almost daily.

Q. Okay. Did you develop any kind of relationship with him?

A. Yes, I would say we had kind of an acquaintance, you know, kind of friendship. It wasn't personal nature, but it was friendly.

Q. He would visit with you when he was in there, you would have exchanges?

A. Mm hm.

Q. Okay.

A. Yes.
Q. And were you there on July -- July 18th when there was a physical fight between the defendant and Mr. Whitcraft?
A. Yes, but I was -- I was working at the register though.
Q. So, you were inside the store?
A. Mm hm.
Q. Did you see what happened outside?
A. No, sir.
Q. And was there another employee on duty with you?
A. Another employee on duty that did?
Q. Well, was there another employee on duty at the Lil Pantry?
A. Oh, yes.
Q. Yeah.
A. Yes.
Q. Was that Mr. Maust?
A. Yes.
Q. Okay. And so were you involved in seeing anything or talking to the police in that incident?
A. I don't remember. I remember there was a ruckus and I don't remember if I made the

call to the police. I can't really remember what -- I remember not going outside because I was behind the register.
Q. All right. Do you recognize the defendant, Leo Sandoval?
A. Yes, sir.
Q. And did -- did -- do you recognize him as a person who was a sometimes customer at Lil Pantry?
A. Yes.
Q. And did you have any kind of relationship with him or --
A. No, sir.
Q. -- get to know him in that -- okay. Did you form an opinion whether Mr. Whitcraft was a peaceful or violent person?
A. He seemed peaceful to me. He was kind of a funny, joking guy to me.
Q. And after that incident at the Lil Pantry did you have occasion to have any conversation with Mr. Whitcraft about concerns he expressed about the defendant, retaliation, firearms, those kinds of things?
A. Yes, sir.
Q. And tell us how that came up to you?

A. It -- Jack would usually come in the evening and I usually worked at night and I would go behind -- away from the counter and clean the coffee maker and all that stuff. And I remember him coming up to me and shaken, he was upset. And he said to me, you know, "I'm really scared. I think I have to carry a weapon." Because he said that Leo had threatened to harm him or hurt him or kill him.
Q. And did you ever know him to carry a weapon before that time?
A. No, sir.
Q. Okay. And in relation to -- you -- you know when Mr. Whitcraft was killed?
A. Do I know in relation when he was killed?
Q. Yeah, when -- that's my question, when this conversation was in relationship to when he was killed.
A. I don't -- I can't recall how much time there was between the conversation, it seems to me the conversation was after that fight.
Q. Mm hm.
A. It was the months before he was killed. I don't -- I can't remember how much time

had passed.
Q. Okay.
MR. CAMPBELL: That's all I have, Judge.
THE COURT: Mr. Scales?

CROSS EXAMINATION

BY MR. SCALES:
Q. Ms. Locke, your assessment that Mr. Whitcraft was pretty peaceful, was that based on him coming in to the convenience store?
A. Yes, I didn't know him outside of the store.
Q. Didn't know him outside of that?
A. No, Hm mm.
Q. Okay. And you said that Mr. Whitcraft said, "I'm really scared. I'm going to have to start carrying a gun." And that was because Mr. Sandoval had threatened him; is that correct?
A. That's what he said and the reason it struck me is that he was usually a pretty sarcastic, funny guy and he seemed genuinely afraid to me.
Q. He didn't say what the nature of the threat was?

A. No, he just said that he felt like he needed to carry a gun.

Q. Okay.

A. That's what he said.

Q. Thank you.

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further of this witness. I'd ask she be excused, Judge.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: Thank you. You are excused. You may call your next witness.

MR. CAMPBELL: Judge, we -- the next witness will be William Kirkland by recording. And I have State's Exhibit -- I've marked it on the edge, State's Exhibit 56 and State's Exhibit 57 is transcribed testimony. I'd offer that at this time.

THE COURT: Any objection, Mr. Scales?

MR. SCALES: No objection to either --

THE COURT: All right. 56 and 57 are received.

(From 2:10 p.m. to 2:22 p.m. State's Exhibit 56A was played for the jury - not transcribed.)

THE COURT: Mr. Campbell? I'm sorry, could you stop the tape? We need to take a break for a moment.

I would ask the jurors, please go in to the jury room with the bailiff. We'll resume in a moment. Please leave your notebooks on your chairs.

(At 2:23 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: We will be in recess. We will let everyone know when we are to reconvene.

THE CLERK: (indiscernible)

THE COURT: Oh, one moment. Everyone just remain in the courtroom for just one moment until we confirm something.

(Brief pause)

THE COURT: Since we already sent the jury out let's go ahead and take a short break. We'll be back with you as soon as we know anything.

(At 2:24 p.m. a brief recess was taken.)

GRANTS PASS, OREGON

TUESDAY, FEBRUARY 24, 2009; 2:38 P.M.

12 PERSON JURY TRIAL - DAY 5

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Be seated. And please ask the jury back in.

(At 2:38 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. We are ready to continue the trial.

Mr. Campbell, you may go ahead and turn your tape back on. If you feel like you need to set it back just a little bit feel free to do that.

MR. CAMPBELL: Okay. Judge, actually where the tape was, and the Court has State's 57, what Mr. Titzler does in the trial is play another tape which is on the tape, but you can't really hear it.

THE COURT: Mm hm.

MR. CAMPBELL: And it is not -- the words from it are not on the transcript in State's 57. So, what -- what I've done is just moved the tape ahead of that for the rest of the examination.

THE COURT: All right.

MR. CAMPBELL: Okay. So --

THE COURT: And I hope the jury was able to follow all of that.

MR. CAMPBELL: Yeah.

THE COURT: Okay.

MR. CAMPBELL: Okay. So, the transcript will have everything that they hear in the courtroom.

THE COURT: All right. Very well.

(From 2:40 p.m. to 2:47 p.m. State's Exhibit 56A continued to be played for the jury - not transcribed.)

MR. CAMPBELL: Judge, my next witness will also be by transcript and tape. And it's on the same tape, so it's going to take me a little bit to cue to where that witness is. The witness' name is Maust, Lacy Maust.

THE COURT: Lacy Maust?

MR. CAMPBELL: Maust, yes.

THE COURT: All right. And are you suggesting that we take another short break to --

MR. CAMPBELL: I --

THE COURT: -- allow you to set that up or do you --

MR. CAMPBELL: Yeah, it might take me a good five minutes to find that.

THE COURT: All right. Then let's take advantage of the five minutes.

Ladies and gentlemen, just go back in to the jury room we'll call you in in just a few moments.

(At 2:48 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the

jury.)

THE COURT: We are in recess.

(At 2:48 p.m. a brief recess was taken.)

GRANTS PASS, OREGON

TUESDAY, FEBRUARY 24, 2009; 2:55 P.M.

12 PERSON JURY TRIAL - DAY 5

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: You can go ahead and bring the jury in now.

(At 2:56 p.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, we are continuing our trial.

And, Mr. Campbell, you may call your next witness.

MR. CAMPBELL: Your Honor, at this time I am offering the testimony of Lacy Maust. And I

cued it up on the official transcript tape transcript and offered that on the same number, 56.

THE COURT: All right.

MR. CAMPBELL: It's the very first witness on Side B. And I also at this time would offer State's 58, which is the official transcribed transcript of the testimony of Lacy Maust.

THE COURT: All right.

Mr. Scales, do you have objection to either one of those exhibits?

MR. SCALES: No objection to either --

THE COURT: All right.

MR. SCALES: -- 56B or 58.

THE COURT: All right. Both are received.

(From 2:57 p.m. to 3:10 p.m. State's Exhibit 56B was played for the jury - not transcribed.)

MR. CAMPBELL: Judge, that's all I have at this time.

THE COURT: All right.

And so those are all the witnesses that we have to present today. Ladies and gentlemen, we are going to end a little short today. I'm sure you'll all appreciate the extra time off. Please leave your notebooks on your chairs and remember the instruction I've given you every day. You're not to discuss this case amongst yourselves or with anyone else.

And I would ask that you report back to the jury room tomorrow morning at 9:00. We'll plan on starting in here at 9:30, but please come at 9:15 so that we can get you assembled first. All right?

Please go with the bailiff and have a good evening.

(At 3:11 p.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: All right. We are adjourned until 9:30 tomorrow.

(On February 24, 2009, at 3:11 p.m. the above entitled matter was concluded for the day, to reconvene on February 25, 2009, at 9:30 a.m.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 25, 2009; 9:46 A.M.

12 PERSON JURY TRIAL - DAY 6

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. All right. Does either side have anything before the jury returns?

MR. SCALES: Yes, Your Honor.

THE COURT: Mr. Scales?

MR. SCALES: Your Honor, I guess when we had our omnibus hearing a couple weeks ago the Court was going to look at -- well, one of the things that we had asked the Court to exclude in our motion in limine was prior bad acts or bad acts of the defendant. And at that time the Court was going to -- informed us that you were going to look at those on a witness by witness basis.

THE COURT: Mm hm.

MR. SCALES: Since it would be impossible

within the scope of an omnibus hearing to hear all of that evidence. I believe, Your Honor -- well, I know that the State is going to be calling three witnesses this morning -- they're going to be calling four, but I'm focusing specifically on three. There is Peter Liebes, Judith Weiner and Charlotte Sperisen. And I'm asking the Court to exclude evidence that I believe will come in through both Ms. Sperisen and Ms. Weiner.

Specifically what it is is actually two different things. Both witnesses I anticipate will testify that Mr. Sandoval approximately six months prior to the incident in -- I think they -- I think the prior testimony and the reports were that it was on March 20th of 2001, that he would drive his vehicle down the road at a high rate of speed, he would get out on his property, he would fire at something, I'm assuming it was the bucket that was on the fence post, and that he would get back in his vehicle.

I don't know if that is relevant in the -- I'll let Mr. Campbell speak as to why he wants to offer that evidence. I anticipate that it's offered to show Mr. Sandoval's capability with a weapon and I believe there's been ample testimony

as to his capability and his experience with firearms. If it's shown for that purpose I would agree that it's probably relevant. However, moving past the issue of relevance I think the Court does have to make the balancing test. This is -- this is basically character evidence. It's trying to show that he was a gun nut, that he was doing something. I think the implication will be that this was -- he was essentially practicing for a vehicle type -- get out of the vehicle, take a shot, get back in type of a -- almost like a tactical maneuver.

Getting back to the balancing test, as the Court is well aware you have to determine if it is -- the probative value is substantially outweighed by the prejudicial value.

Also, Your Honor, I think there is the great potential of not just prejudice, but also confusion of the issues.

Additionally, it's fairly remote. It's six months prior. There's no testimony that this type of shooting would have happened in the weeks leading up to the incident. And I think it's overly -- unnecessarily cumulative. The State -- when considering the State's -- when considering

whether this evidence is not only relevant, but if it's necessary the Court must determine the State's need for the evidence. And as I stated before there's been ample testimony so far in this trial that Mr. Sandoval is capable, experienced, familiar with weapons. So, I would ask that that be excluded.

There is one other bit of evidence, testimony, I think it will probably come in through both Ms. Sperisen and also through Mr. Liebes' testimony. And that is of an incident where when Mr. Sandoval was doing the shooting on March 20th and early April of 2001 it had disturbed his immediate neighbor, Charlotte Sperisen's dog. At the time her dog was ill. She was concerned that the dog was going to die and the dog was afraid.from the shooting and was trying to run away.

She will testify -- or, has previously testified and discussed this with investigators that she went over to Mr. Sandoval's house and told him, asked him not to shoot the weapon so much. And I think, if I remember correctly, she testified that he did not care about her dog and pointed the gun, allegedly -- had a gun with him,

pointed the gun at her tires and threatened to shoot her tires out.

Getting back to that, I think it was very well laid out in the omnibus hearing that if this was known to Mr. Whitcraft, if he had knew about this, if he had known about a threat that was directed at him it's probably -- it's relevant and I think it's probative. However, this is something that is intended for no other purpose than to show Mr. Sandoval's bad character and that he is dangerous with a weapon.

So, I think that's completely irrelevant. Not only does it not pass the test for conditional relevance, but it is so extremely prejudicial and confusing that I think it's going to be used for an improper purpose and I would ask the Court to exclude that testimony as well.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Judge, we've had a lot of evidence of the defendant's practice with firearms, his competence with firearms, his familiarity with firearms. This is speaking to the first issue first. Him -- and specifically the testimony in the past was he would roar in in his vehicle, jump out and shoot and then go back

out and do it again. And that is relevant evidence for preparation, practice and should be allowed. I mean, it just simply is relevant.

THE COURT: Excuse me, could I just get a clarification? You said testimony in the past, are you talking about the first trial?

MR. CAMPBELL: I am, yes.

THE COURT: Okay. You're not talking -- and I think you were talking about interview information?

MR. SCALES: I'm talking about both testimony and interviews with --

THE COURT: Okay.

MR. SCALES: -- investigators.

THE COURT: All right. Thank you.

Mr. Campbell, but, you were talking about testimony first trial?

MR. CAMPBELL: Correct.

THE COURT: Okay. Go ahead.

MR. CAMPBELL: So, that did come in, we submit it is relevant and it does come in. And I guess we go back to that issue we talked about in the omnibus hearing under 404 in a criminal matter there is no weighing test and we have made that argument. Although it's often wise for the Court

to do the weighing just to meet constitutionals, any potential constitutional arguments. But, even if you do the weighing test, Judge, that's so -- that is so poignant on the point in this case where we have a vehicle, at least the State's theory, coming up quickly behind the -- the victim in this matter. Our evidence, the defendant did jump out of the vehicle and did shoot the victim in this matter. So, it's that kind of practice and preparation is very, very relevant.

With regard to the dog threat incident, I generally agree with the defendant. That did come in before, but the main thrust of that was that there was a problem between the defendant and the witness, Sperisen. And it certainly does indicate his propensity towards violence and it may come in for another purpose. But, I agree that it shouldn't come in on direct.

Now, I want to clarify that. Because if people express and opinion, which I think some other witnesses today might do, that defendant is a peaceful person then I'm entitled to cross examine them based on prior incidences that I know about that may change their opinion about that. So -- but, I wouldn't intend to get in to that

with Sperisen in the direction examination.

MR. SCALES: And my I respond, Your Honor?

THE COURT: You may.

MR. SCALES: I would agree that if I were to open the door and to ask the witnesses "Do you have an opinion as to Mr. Sandoval's character for peacefulness?" that the State can bring in specific instances of violent behavior. I don't anticipate doing that.

Now, by saying we're going to bring in these people to show that he has been violent or that he has a -- I think it's just going to be for a character purpose. So, I don't intend on opening the door and asking these persons, you know, do they have an opinion as to his character for non-violence. I think it's going to be fairly implicit from their testimony what their opinion is, but I don't intend on asking that.

With respect to the target shooting, is how I would characterize it -- well, actually, one other thing on the -- on the gun pointing matter at the tires of Ms. Sperisen. The problems that he may or may not have had with Ms. Sperisen are holy irrelevant. Jack Whitcroft -- Whitcraft knew

nothing of them, they are not relevant for this particular proceeding and it's just going to confuse the jury and it's only offered for a character purpose.

I also disagree that the balancing test is no longer necessary. If it's offered for a non-character purpose I would agree that it's probably -- well, I don't know if I would necessarily agree with that or not. I mean, it's not specifically stating that 403 is abrogated and we no longer have that rule.

But, getting back to the target shooting. The Court needs to consider the timing of this. If this was happening in the weeks up to the event then it might be relevant. If it's -- if the State is saying that it's relevant to show his ability with a weapon, well, I agree there has been ample testimony as to his ability and capability with weapons. That would make this evidence cumulative and, therefore, the Court can determine its relevance and admissibility based on that.

However, the remoteness in time, six full months before this happened was when this target shooting allegedly took place. I believe

there was one incident on March 20th and I may be a little bit fuzzy but I think the other one was a couple.weeks later, sometime in April, five and a half to six months prior.

So, I think that -- I think the risk of confusion to the jury, the prejudice that would come from them thinking that he's doing some kind of tactical maneuver in preparation for an incident like what happened on September 27th it's just --it's overly prejudicial, confusing, remote in time and the State already has that evidence in through other sources and I would ask that it be excluded.

THE COURT: All right. Well, now as the case is unfolding the Court is obviously hearing a lot of this evidence for the first time. And actually when Counsel had argued target shooting in the past the Court was thinking you were talking about the simple target shooting of the can on the fencepost. I was not -- it was not clear to the Court that you were talking about this different type of incident.

MR. SCALES: Right.

THE COURT: So, I am going to take just a brief recess. I have my materials from our

earlier omnibus hearing back in my office and I wanted to go and get those materials and come back. So, that's going to take me just a few minutes to do that.

MR. CAMPBELL: The only correction I would have is a factual one. I believe the evidence will be there were multiple instances of him operating his vehicle in and jumping out and shooting. And so it's not just a incident or two incidents of, it's multiple incidents which is preparation.

THE COURT: All right. And you would -- you would expect that that testimony would come out in the three witnesses that Defense Counsel has identified?

MR. CAMPBELL: They're close neighbors and they can testify to it.

THE COURT: All right. Okay. So, if you would just let the jury know that we have a slight delay?

THE BAILIFF: Yes.

THE COURT: And I will go back to my office and get those other materials and then we'll come back and get started just as soon as we can.

(At 9:59 a.m. a brief recess was taken.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 25, 2009; 10:19 A.M.

12 PERSON JURY TRIAL - DAY 6

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

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(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. All right. We are back on the record in State vs. Sandoval. And the Court took just a couple of minutes out so that I could go back and review some of the arguments and information that had been presented at the earlier omnibus hearing. And the general issues have been raised again during the course of this trial by the Defense. So, we'll go through the two issues as the Court understands them right now.

The first issue that Defense has raised and has asked for an order excluding such evidence and that would be evidence regarding the target shooting. And I believe, Mr. Scales, you had indicated that that evidence potentially would be

given in testimony by Mr. Weiner (sic) and Ms. Sperisen, I may be saying the wrong -- the names incorrectly.

MR. SCALES: I don't believe Ms. Sperisen would be offering that evidence, but it would come through Ms. Weiner and potentially through Mr. Liebes as well.

THE COURT: Okay. All right. Through those witnesses, in any event. And the Court has heard the argument, again, reviewed some of the information presented earlier. And based on what has been presented today the Court does find that such evidence would be appropriate under 404(3) as given for the purpose of proving preparation and/or plan. The Court does find that such evidence would be relevant given the nature of the charges in this case, as well as the information that's already been presented.

And, again, the Court is learning this evidence as we go through this trial, having not been a part of the first trial in this matter.

But, the Court does find it is relevant. Not that it would be used to show that defendant acted in accordance with his character or propensity, but for the limited purpose of proving

preparation and/or plan in this case.

The Court does find that such evidence would be independently relevant given that information for non-character purpose. And, of course, the State would, as always, be required to provide sufficient proof that the acts were committed and that defendant is the one who committed those acts. But, those would be required in the provision of any type of evidence.

But, given that that occurs then, again, with respect to the proposed evidence the Court would find that the probative value would not be substantially outweighed by any danger of unfair prejudice, confusion of the issues, nor would it be misleading to the jury.

And also the Court has considered the State's need for such evidence. And, again, as it has been described to the Court this evidence does appear to be different than the evidence that's already been presented in the trial with respect to target shooting. There is a different perspective to it, a different purpose. And so I do also find that it is necessary. The State does need this evidence.

And also the Court has considered

whether or not it would unduly delay the trial, it would not. Nor would it be cumulative for the same reasons that the Court has already stated in that it is a different type of evidence than that evidence already presented. And it actually is significantly different from the evidence previously presented.

So, that's the Court's ruling on the first issue of what I'm just terming "the target practice issue".

The second issue dealing with the neighbor who has the dog. And, again, I think that, Mr. Campbell, you had indicated you would not be -- be offering that on your direct, and I think that's correct. And I think that that probably takes care of most of that because obviously if it's -- if there's evidence just to show bad character of the defendant that's not going to be admissible. But, if it is opened up in other areas then the Court would be considering it at that time.

So, have I covered everything that is at issue right now? I want to make sure that both sides are satisfied.

MR. CAMPBELL: You have, Judge. It was

allowed last time because the gun was involved in all of that and all three of these neighbors had some significant interaction with the defendant over his shooting with regard to the dog and threats. But -- so, I understand your ruling. I will tell the witnesses that they are not to go there if I have -- can have a moment?

THE COURT: Okay.

MR. CAMPBELL: So, this is evidence that was received before that will not be received I --

THE COURT: All right.

MR. CAMPBELL: -- guess this time. Unless I can impeach with it.

THE COURT: And I think Mr. Scales understands that.

MR. SCALES: I do understand that, Your Honor.

THE COURT: All right.

MR. SCALES: And with respect to the Court's ruling on the target shooting, that's how I'll characterize it.

THE COURT: Mm hm. Okay.

MR. SCALES: We respectfully take exception to that ruling and --

THE COURT: All right.

MR. SCALES: -- would like that noted for the record.

THE COURT: And your exception is noted in the record.

MR. SCALES: Thank you, Your Honor.

THE COURT: All right. Having taken care of that, we're getting kind of a late start. Was there anything else that we needed to go over before the jury returns?

MR. SCALES: I don't believe so.

MR. CAMPBELL: There -- the defendant has a few witnesses where the same issues come up, where they -- they -- and we could probably deal with them when they come. But, it's -- he has some witnesses that talk about other incidents with Mr. Whitcraft that relate to them and not to the defendant. So, I'm sure he'll be careful in the same area.

MR. SCALES: Well, I guess the only response I would have to that is that the door has been opened several times, many times as to Mr. Whitcraft's character for peacefulness. We've probably had eight or ten witnesses that have testified that he was a peaceful person. So, I'm allowed, I believe under Rule 405, to bring in

specific incidents of conduct -- instances of conduct to rebut that.

THE COURT: Of the victim's --

MR. SCALES: Of the victim, correct.

THE COURT: -- conduct?

MR. SCALES: Yes.

THE COURT: And that's your understanding, Mr. Campbell?

MR. CAMPBELL: That's -- that's -- I don't think that's correct, I think he could --

THE COURT: You do not agree with --

MR. CAMPBELL: -- cross examine on those on people had testified to opinion or reputation, but he can't bring in extrinsic independent evidence.

MR. SCALES: Well, I guess we'll cross that bridge when we get to it, Your Honor. But, I don't believe that that is correct. There has been testimony -- well, the same thing that Mr. Campbell is proposing if I was to ask my witnesses, "Do you have an opinion as to his character for peacefulness?" that he would thus be allowed to bring in Charlotte Sperisen to testify to this one alleged event to show that he is, in fact, not a peaceful person. When bringing in

character evidence you can bring in a person's opinion without getting in to specific instances. That's why we don't simply asks witnesses, "Do you think Jack was peaceful? Why do you think he was peaceful? Tell us specifically what he did that made you think he was peaceful."

THE COURT: Mm hm.

MR. SCALES: Once that door is opened I'm allowed to rebut that with specific instances of conduct that disprove his peaceful character.

THE COURT: All right. So, Mr. Campbell, I take it that you disagree with that and you're saying that if he was going to get in to that he should have brought it up in cross, is that what your argument is?

MR. CAMPBELL: Correct. And he hadn't laid any foundation for it and it's collateral and, of course, it's an area where the Court can just say, you know, that's -- that would be a wasted time. He has a right to cross if he has an honest good faith belief that he has such -- that he has valid information.

MR. SCALES: Well --

MR. CAMPBELL: I mean, he's got to play by the same rules that we just argued, Judge.

MR. SCALES: And I am exactly playing by the same rules. He wants to bring in Ms. Sperisen -- I guess let me back up a step. It would be impossible for me to cross examine somebody who just go through saying that Mr. Whitcraft was peaceful. I guess I'm not understanding how I would cross examine them. "Well, did you know about this incident?" "Did you know about this incident?" That's improper cross. It exceeds the scope of the direct examination. It would be impossible for me to cross examine them when they just got through saying, "He's a peaceful guy." The only way that I can rebut that is through specific instances of violent or non-peaceful conduct.

THE COURT: Brought in by a different --

MR. SCALES: Brought in by another --

THE COURT: -- witnesses is what you're position is?

MR. SCALES: -- person. That is the only way that we can prove that character.

THE COURT: All right. Well, let's --

MR. SCALES: And it's limited only to violence and truthfulness.

THE COURT: Violence and truthfulness?

MR. SCALES: That's what the rule is. The only types of character that you can rebut with specific instances of conduct are character for violence, propensity for violence or peacefulness or character for truthfulness or lack of truthfulness.

THE COURT: All right. As I think someone proposed earlier, let's go ahead and get started with our trial and then if this issue actually is raised then we'll address it at that time.

MR. SCALES: Thank you, Your Honor.

THE COURT: Okay. All right. Please bring the jury in.

MR. CAMPBELL: I'll go discuss your ruling with the witnesses, Judge.

THE COURT: All right. Go ahead, Mr. Campbell. It'll take a couple of minutes for everyone to be seated.

(At 10:29 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: We'll get started in just a minute, ladies and gentlemen.

(Brief pause)

MR. CAMPBELL: Shall I call a witness, Your Honor?

THE COURT: Yes, we are ready.

MR. CAMPBELL: The State calls Charlotte Sperisen.

THE COURT: All right.

MR. CAMPBELL: If you'll walk right up between counsel table and raise your right hand, please?

THE WITNESS: Right here?

MR. CAMPBELL: Right up there.

THE COURT: Right up here, ma'am. Please raise your right hand and be sworn in by my clerk.

THE CLERK: Under penalty of perjury do you solemnly swear that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

MR. CAMPBELL: And sit right up there.

THE COURT: Right up here. Have a seat.

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CHARLOTTE SPERISEN,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last, please?

A. Charlotte Sperisen, middle name Anna, S-p-e-r-i-s-e-n.

Q. And, Ms. Sperisen, am I saying it right?

A. Mm hm.

Q. Where do you live?

A. 140 Cliffside Drive, Grants Pass.

Q. How long have you lived on Cliffside Drive?

A. I moved there end of '93, beginning of '94.

Q. And was the defendant, Leo Sandoval, a next door neighbor to you?

A. Yes.

Q. And I'm showing you what's been

marked as State's 102, does this -- this piece of property, the first one on Cliffside represent your piece of property?

A. Correct.

Q. And while you were living there and the -- was the defendant already a resident there when you moved there?

A. Yes.

Q. Okay. And did you become familiar with the defendant while you lived next door to him?

A. Yeah, he was my neighbor.

Q. Okay.

A. Mm hm.

Q. And who are Peter Liebes and Judith Weiner?

A. They are next door neighbors too, across Cliffside Drive.

Q. Okay. And they live on the Windy River Farm there?

A. Correct, yeah.

Q. Okay. And you know them as neighbors as well?

A. Yes.

Q. Okay. Did you have interaction with

the defendant?

A. We said hi to each other, you know, when we saw each other we said -- we would say hi to each other. We didn't have much contact, it was a civil contact.

Q. Okay. Were you generally aware of his coming and going from the property? You lived and --

A. Yeah.

Q. -- basically had to go right in front of your property; right?

A. Yeah, I would some times when I was working would often see him drive by, I do know leaving or coming back.

Q. All right. Were you aware of -- did you become aware of his handling of firearms over there, shooting and so forth?

A. Sure, I mean, you couldn't miss it, it was loud and there for a while it was getting more and more.

Q. Okay. And in the spring of 2001 did you notice a change in his -- his practice or his number of times that he was shooting his firearms over there?

A. Yeah, in fact, that scared me. It

was getting more often and also more shots and I definitely didn't feel like I could walk over there and go down to the river, which was a hike, you know?

Q. Right. And something you would -- you liked to do?

A. Yes, something I would like to do, yeah.

Q. Do you know the difference between the sound of a large rifle and a handgun? Was there a different -- could you tell what kind of guns he was shooting and practicing with?

A. No, I could -- I don't really know the difference. But, I know that there for a while it was kind of like what I would call, but I don't know if this is the right expression for a technician, but it sounded like very rapid, you know, shooting shots close to each other.

Q. Okay. And loud, real loud ones?

A. Yeah, loud, I mean, so that it really upset me.

Q. Did you see him handling firearms?

A. Yes.

Q. Did you -- do you recognize this firearm, did you ever see that in his possession?

A. I can't really say, yes, that's it. But, it was a long rifle, yes.

Q. Okay.

A. Mm hm.

Q. And had you ever observed him practice or shoot rifles in conjunction with operation of his motor vehicle?

A. You mean that he was in his car and would shoot out of his car, is that the question?

Q. No, the question is -- I think you testified last time that he would roar in to his property, jump out and shoot and then sometimes roll back --

MR. SCALES: Your Honor, I'm going to object, he's leading the witness.

THE COURT: Sustained as to leading.

BY MR. CAMPBELL:

Q. Do you --

A. Well, the truth is that I -- there were instance -- there was especially one instance where he would drive through Cliffside Drive really fast in front of my house to his property, go out of the truck and shoot really a lot and then jump back in to his truck and leave very

quickly. And I saw that. I saying to -- I'm working and I said, "What's going on here?" I mean, this -- it was very upsetting. It didn't feel like a normal event.

Q. Did you observe that on more than one occasion?

A. During that time where the shooting got more and more there -- I couldn't say many times, but there were times when he was just coming home, shooting and leaving again.

Q. And do you recall you said that he came in at a high rate of speed as well?

A. Yeah, uh huh.

Q. Were you aware whether he carried firearms all the time?

A. I don't know if he carried firearms all the time. But, I have seen him on the land with firearms. But, I don't know if he carried a firearm all the time, you know, I couldn't say that. But, he did -- I definitely saw him several times with a firearm.

Q. Let me ask this, can you remember a time you saw him and he didn't have a firearm?

A. Well, yeah, I mean, I -- yes, I think so. If he -- if he had a concealed firearm then I

didn't know. But, yes, I saw him without firearm, mm hm.

Q. But, you didn't know whether he might have had one on his person somewhere?

A. Sure, I didn't know --

MR. SCALES: I'm going to object, this calls for speculation.

THE COURT: Sustained.

BY MR. CAMPBELL:

Q. And did you or neighbors try to intervene in all of the shooting?

A. Yes, I did go over --

MR. SCALES: Your Honor, I'm going to object on relevance grounds, I don't see how that is relevant to the issue that we're here on the trial for.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Well, you heard the question you can rule, Judge.

THE COURT: The question will be allowed.

THE WITNESS: Could you repeat the question, please?

BY MR. CAMPBELL:

Q. I don't want you to go into detail.

A. No.

Q. I just want -- did you -- did you or other neighbors that you observed try to get the defendant to desist from this increased shooting you've testified about?

A. I did once --

MR. SCALES: I think I'm going to object --

THE COURT: Hold on just a second.

MR. SCALES: -- just to the -- I'm sorry to keep popping up like this. But, I'm going to object to the form of the question. If she knew -- if she intervened I would agree that that's an appropriate question. But, if she knew of other neighbors intervening I think that's hearsay.

THE COURT: All right. The second question did add the other neighbors.

MR. CAMPBELL: Okay.

BY MR. CAMPBELL:

Q. Did you make attempts to intervene about defendant desisting from the shooting?

A. I did, yes, I did once. I went over

in my car and asked him to please stop shooting.

Q. Okay. And did he do that?

A. Well, he -- he told me that --

MR. SCALES: Your Honor, I think we're getting in to some area that we've already discussed.

THE COURT: Are you able to just answer "yes" or "no"?

THE WITNESS: Of course I'm able to do that, but there was really a --

THE COURT: Well, I don't want you to go in to the details.

THE WITNESS: Okay. Okay. So, yes, I -- did he stop or did he -- I can't remember really.

THE COURT: Why don't you start over, Mr. Campbell.

MR. CAMPBELL: Let's just go on.

MR. SCALES: Sorry.

BY MR. CAMPBELL:

Q. Did you know Kenneth Paris?

A. Who?

Q. Kenneth Paris.

A. Kenneth Paris? Kenneth Paris? No.

Q. If you didn't -- lived on Windy River

Farms.

A. (No audible response)

Q. Okay.

THE COURT: And you're answering "no"?

THE WITNESS: I'm saying no, yes.

THE COURT: Okay. Yes. Thank you for answering out loud because we are recording this.

THE WITNESS: Yeah. Mm hm.

BY MR. CAMPBELL:

Q. Did you form an opinion whether the defendant was a peaceful or violent person?

A. Well, I did experience -- yes, I thought he was a violent person. May I ask may I add something to this or is this a "yes" or "no" question?

Q. I think that's -- you've -- you -- based on the question you've answered it.

MR. CAMPBELL: And that's all I have, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:

Q. Good morning, Ms. Sperisen.
A. Good morning.
Q. You lived on 140 Cliffside for approximately how many years at the time of the shooting?
A. Let's see, about six or seven years.
Q. Six or seven? Okay. And your contact up until that point in time with Mr. Sandoval had been fairly limited?
A. Yeah.
Q. Just seeing each other around the neighborhood?
A. Mostly, yeah. Mm hm.
Q. Okay. And would that be -- would that be extended contact, long conversation, or just coming and going?
A. It was mostly coming and going and then there were maybe a few times where we exchanged some things about the weather, you know, about the --
Q. I see.
A. -- garden, something like that.
Q. I see. And is it your testimony that the shooting that disturbed you did that -- when did that happen? I'll just ask it that way. What

time of the year was it?
A. It was in spring, early spring.
Q. Okay.
A. Of 2001, I think.
Q. Okay. Thank you. And you testified you saw him on the land with a firearm, "the land" are you referring to his property?
A. Yes.
Q. Okay. And from where your property is on 140 Cliffside is your property higher or lower than Mr. Sandoval's property?
A. It's about the same level, I would say, but there is no trees practically in between, it's --
Q. I'm sorry?
A. There are no trees in --
Q. No trees.
A. -- between practically. You --
Q. Okay.
A. -- have a really straight view of each other's houses.
Q. Was there any other brush, grass, vegetation between your house and your home?
A. There is some Ponderosa Pines, but they are not really covering his house. There

were a few trees planted, but at the time -- now they are bigger, but at the time they were not big enough to really make a barrier.
Q. I see. And you are familiar, I'm assuming, with Janice Rose-Webber?
A. I remember met -- meeting her, I think it was towards the end of Leo living there. Mm hm, I met her a few times.
Q. Okay. And can you say that the shooting that you heard, can you say that it was done by Leo or could it also have been done by Janice?
A. The shooting I heard before was definitely done by Leo because she was not there.
Q. Did you see him do the shooting?
A. Yes. Yes, definitely.
Q. And where on his property was he doing the shooting?
A. He was doing it -- here's the -- let's see how would I --
Q. I'll show you the diagram.
A. Yeah.
Q. I'm sorry. It's kind of difficult to just have you explain that without -- that might make it a little bit easier for you. Does

this seem to make some sense to you? You've seen this already --
A. Oh, yes.
Q. -- what's been marked as State's 102?
A. Mm hm. Yeah.
Q. Okay. Thank you.
A. Okay. I'm living here and about here's -- about here is my garden and he was shooting around I would say here and you can really -- you can see from that point over there.
Q. Okay.
THE COURT: Ma'am, could you do that again so that the other two gentlemen in the back could see.
THE WITNESS: Oh, okay.
THE COURT: Maybe stand on the other side so that --
THE WITNESS: Okay. Here's my garden about here and he was shooting at about here and you can really see what's going on here.

BY MR. SCALES:
Q. So, it's on the opposite side of his property from your property?
A. Yeah.

Q. Okay. Thank you.
MR. SCALES: Nothing further, Your Honor.
THE COURT: Mr. Campbell?
MR. CAMPBELL: Nothing further, Judge.
THE COURT: Are you asking that she be excused?
MR. CAMPBELL: Yes, I am.
THE COURT: Any objection?
MR. SCALES: No objection.
THE COURT: You are excused. Thank you for coming in.
THE WITNESS: Thank you.
THE COURT: And you may call your next witness.
MR. CAMPBELL: The State would call Peter Liebes.
Step right up between counsel table and raise your right hand, please.
THE COURT: Step right up here, sir. Please raise your right hand, my clerk's going to swear you in.
THE CLERK: Under penalty of perjury do you solemnly swear that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.
THE CLERK: Thank you.

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PETER LIEBES,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, would you state your full name and spell your last, please?
A. Peter Liebes, L-i-e-b-e-s.
Q. Okay. And where do you live, sir?
A. Grants Pass, 348 Hussey Lane.
Q. And is that -- is that a farm you have there?
A. Yes, it is.
Q. Does it have a name?
A. Windy River Farm.
Q. Okay. And how long have you lived there?
A. Since 1980.
Q. And who do you live there with?

A. Judith Weiner, my wife.
Q. Okay. Have you occasionally had other people live on the property in addition -- do you have more than one residence there?
A. Yes.
Q. Was Kenneth Paris a person that was associated with that property in the past?
A. Yes.
Q. And where did he live on the property?
A. He lived in our guest house, our mobile home.
Q. Okay. And do you know where he is now?
A. I have no idea.
Q. Okay. So, you lost track of him completely?
A. Completely.
Q. And he is out of Oregon, as far as you know then?
A. As far as I know.
Q. Okay. How about Mary Bartles?
A. I have --
Q. She --
A. -- no idea where she is either.

Q. Did she work at the farm in about 2001, September of 2001?
A. Yeah. I think so. I mean, she was a housekeeper.
Q. Okay. What kind of a farm is that, I mean, what do you do there?
A. We raise seeds for seed companies.
Q. Okay. What kind of seeds?
A. Vegetable, garden seeds.
Q. Okay. And basically your next door neighbors to Cliffside, the Cliffside is right behind you; is that right?
A. It borders our property.
Q. Yeah. And we have a diagram and I'll show it to you. You are Windy River Farm and this is your plot along Hussey and it basically borders Cliffside --
A. That's --
Q. -- is that a fair -- fair representation?
A. That's the map. That's correct.
Q. Okay. Did you become familiar with the defendant as you lived there in Windy River Farms and went about your business?
A. That's correct.

PETER LIEBES D 1012

Q. Okay. So, you knew who he was?
A. Yes.
Q. You had had interchanges with him?
A. Yes.
Q. And do you know how long you had known him as of September 27th of 2001? Just estimated if you know.
A. Well, I think it -- I think they moved there some where in the early '90's, but I honestly don't remember the year.
Q. Okay. And you became familiar with him, had you visited with him, I mean, at least spoke, had conversations?
A. Yeah, well, we were neighbors so --
Q. Okay.
A. -- tried to be neighborly.
Q. Did you know him to carry firearms?
A. Yes, I did.
Q. Okay. Did -- did he carry them all the time?
A. I don't know about all the time, but --
Q. Okay. Did he use firearms over on his property?
A. Yes, he did.

PETER LIEBES D 1013

Q. And did he ever -- did you ever find him on your property with firearms?
A. Well, I know he had -- he was carrying, but I didn't discover.
Q. Okay. Was -- did you notice a change -- did -- did he target practice and shoot the whole time he was there?
A. No, it was not -- not earlier on that I can remember.
Q. So, let me take you to 2001, spring/summer, did you notice a change in his use of firearm and discharge of firearms on the property over there?
A. Well -- what can I say? There was a lot of shooting that was very disruptive of our peace and quite and gardening and it went on for quite a while.
Q. And did you ever observe the defendant using firearms in conjunction with a vehicle? In other words, he would -- do you recall things like that?
A. You mean shooting from a vehicle or that type of thing?
Q. No, what I mean is -- well, I -- let's start with that, did you see him shooting

PETER LIEBES D 1014

from a vehicle?
A. No, I never did.
Q. Okay. Did you ever observe him race his vehicle on to his property and shoot?
A. I didn't actually observe him shooting, but I could hear it and I could hear the vehicle racing up and down the road.
Q. And then shooting?
A. Yes.
Q. And how often did this occur?
A. Sometimes a couple three times a day or -- and then there were days when it didn't happen at all. It was sporadic and intermittent and progressive.
Q. And was he shooting rifles?
A. I never knew. I didn't actually see him shooting, I just know it was very loud.
Q. Okay. Did you ever see him in possession of this gun that's been received in evidence?
A. No, I don't -- I don't remember it.
Q. Were these shots -- were these loud shots -- do you know the difference between a rifle discharge and a handgun discharge?
A. Well, there's so much echoing it was

PETER LIEBES X 1015

a bit deceptive. And I think a pistol has kind of short crack and a rifle has a louder retort.
Q. Yeah.
A. And I would say it might have been a rifle based on that. But, I never saw it.
Q. And, Mister -- you said your name different than I said it, but --
A. Liebes.
Q. Liebes. Mr. Liebes, did you form an opinion on defendant's character for peacefulness or violence?
A. Well, ultimately violence.
Q. Thank you, sir.
MR. CAMPBELL: That's all I have.
THE COURT: Mr. Scales?
MR. SCALES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. SCALES:
Q. Mr. Liebes, would you describe your -- well, how would you describe your interchanges with Mr. Sandoval, were you just coming and going? Did you socialize? To what degree did you come in to contact with Mr. Sandoval?
A. Well, we were neighbors and friendly,

hello on the road and hello through the fence and small talk about what's going on, it's a nice day and that kind of thing.

Q. I see.

A. And --

Q. Do you remember an incident where you had asked for Mr. Sandoval to come over to your property and shoot a muskrat?

A. Yes, I do.

Q. Okay. So, he would -- was he able to oblige?

A. I don't remember. I had a pond right next to his property and it was out of my view and in his view and I knew I had -- it was a new pond and I knew there was a muskrat in there doing damage. I think maybe he offered to help clear it out and --

Q. I see.

A. -- I probably said yes.

Q. Okay. And, Mr. Liebes, this area that you live in is somewhat rural, I assume you would agree with that?

A. Yes, it is.

Q. And are there hunters in the vicinity?

A. Yes, there are and --

Q. And --

A. -- poachers.

Q. Pardon me?

A. Poachers.

Q. Poachers? What do you mean by "poachers"?

A. People that are illegally shooting animals.

Q. Okay. And do some of those poachers shoot out of season?

A. I don't know what the season is, but --

Q. Okay. But you are aware that there are poachers in the area?

A. I'm aware of our dog finding deer, four limbs sawed off at one end.

Q. Okay. Now, this shooting that you heard, the disruptive shooting, this was pretty much isolated to the spring of 2001, is -- would you agree with that?

A. I think so.

Q. And you didn't actually see Mr. Sandoval shooting, you perceived it by hearing it?

A. Yes, that's correct.

Q. And were you aware -- were you familiar with Janice Rose-Webber?

A. Not really.

Q. Okay. But, you knew of her?

A. Yes.

Q. And you knew that she sometimes stayed at Mr. Sandoval's place --

A. Yeah.

Q. -- on 180 Cliffside?

A. I believed so.

Q. Okay. And can you say that the shooting that you perceived that it was Mr. Sandoval or could it have also have been Ms. Webber?

A. I assumed that it was just Mr. Sandoval.

Q. I see. Thank you, Mr. Liebes.

MR. SCALES: I have nothing further

THE COURT: Mr. Campbell?

MR. CAMPBELL: Nothing further. I'd ask that this witness be excused.

THE COURT: Any objection?

MR. SCALES: No objection, Your Honor.

THE COURT: You are excused, sir. Thank you for coming in.

THE WITNESS: You're welcome.

THE COURT: You may call your next witness.

MR. CAMPBELL: The State would call Judith Weiner.

If you'll walk right up between the tables there and raise your right hand?

THE COURT: A little bit closer, ma'am, if you would. Please raise your right hand, my clerk's going to swear you in.

THE CLERK: Under penalty of perjury do you solemnly swear that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: Have a seat over there, please.

THE WITNESS: Is that okay?

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JUDITH WEINER,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Would you state your full name and spell your last for us, please?

A. Mm hm. Judith Ann Weiner, W-e-i-n-e-r.

Q. And, Ms. Weiner, where do you live?

A. On Hussey Lane, 348.

Q. And that is on the Windy River Farm property?

A. Yes, that's the property.

Q. Okay. And you've lived there how long?

A. Thirty years.

Q. Okay. And lived there with Peter Liebes?

A. I'm sorry?

Q. Peter Liebes?

A. Yes.

Q. Okay. Am I saying that right?

A. Yes.

Q. Okay. Do you recall the defendant -- when the defendant moved to the property -- next door property on Cliffside?

A. I really don't recall exactly, late

-- well, like 1996, 7, 8, something like that. I just -- I just really don't remember.

Q. Okay. When he first moved there was Mary Carlson living with him?

A. Oh, yes.

Q. And did you become familiar with her?

A. Yes.

Q. Okay. And did you know Janice Webber?

A. No.

Q. Okay. Did you know the defendant to carry guns?

A. What?

Q. Did you -- did you know the defendant to carry guns, firearms?

A. Well, yes, we did. Uh huh.

Q. Okay. And did you observe him or hear him and know that it was him involve himself with shooting firearms on the property?

A. Yes.

Q. And was there a period of time that that became much more increased or incessant?

A. Yes.

Q. And when was that?

A. In -- we -- approximately March of --

I guess it was 2001.

Q. Mm hm. And were you familiar with his motor vehicle, the vehicles he owned --

A. Yes.

Q. -- at that time?

A. Uh huh.

Q. Okay. Did he have an '86 Bronco?

A. Yes, uh huh.

Q. What other vehicles did he have that you remember?

A. I don't remember. I don't know about vehicle anyway, I couldn't give you a good description.

Q. Did he have some kind of a black truck he hauled water in?

A. There -- yeah, there was that.

Q. Okay. And did you personally observe -- did you ever observe shooting in close proximity to the operation of motor vehicle?

A. Well, yes.

Q. Tell us about that.

A. Well, I have a pretty clear view of that -- you know, that area and I saw him several times shooting -- get out of his car and shoot right from there.

Q. So --

A. Does that -- does that answer your question?

Q. Yes, it does.

A. Okay.

Q. So, would -- you had seen him operate and then shoot out of the car?

A. He would drive in and then get out of his car and shoot.

Q. Okay. Did he do that quickly?

A. Hm?

Q. Did he do that quickly?

A. Oh, yes, he -- you know, he usually drove in very fast and would shoot and then very fast drive out.

Q. How many times did you see him do this?

A. Oh, I don't know. It went on for a period of months. Quite often is the only thing I can say.

Q. And let me show you -- I have two more exhibits, I believe these might be photographs you too, State's Exhibit's 90 and 91 and I'll ask you if you recognize these?

A. Mm hm. Yeah.

Q. What are those?
A. Well, they're just -- they're -- they're photographs of the bucket that he used for a target.
Q. Did you take those pictures?
A. I probably did.
Q. Okay. And --
A. Yeah.
Q. And gave them to the District Attorney's Office --
A. Right.
Q. -- back in about 2001?
A. Yeah. Uh huh. Mm hm.
Q. Looking at State's Exhibit 91 there's a -- there's a fence that --
A. Mm hm.
Q. -- photograph appears to be looking through, is that -- who's fence is that?
A. That's ours.
Q. So, that's on your property?
A. (No audible response)
Q. Okay.
MR. CAMPBELL: We'd offer State's --
THE WITNESS: Mm hm.

BY MR. CAMPBELL:
Q. Do these fairly and accurately show that property around 2001?
A. Well, yes, and --
Q. Okay.
A. -- that's -- that was Leo's property on the other side of the road.
Q. On the other side?
A. Yeah.
MR. CAMPBELL: So, we would offer 90 and 91.
THE COURT: Mr. Scales, have you seen them?
MR. SCALES: No objection, Your Honor.
THE COURT: 90 and 91 are received.

BY MR. CAMPBELL:
Q. How many acres do you have there?
A. We have a little over 24.
Q. Okay. And how many feet from your property line, I mean, we can see the fence, would you say that target was set up?
A. You know, I don't think I can answer that question. I don't know.
Q. All right. I mean, it -- we can look

at it --
A. Yeah.
Q. -- the photograph, but it --
A. Right.
Q. -- wasn't very far off?
A. No.
Q. Okay.
A. It -- huh uh.
Q. Did you form an opinion, Ms. Weiner, about the defendant's character for peacefulness or violence?
A. Well, he definitely was violent, became very violent.
Q. Okay.
MR. CAMPBELL: That's all I have, Judge.
THE COURT: Mr. Scales?

CROSS EXAMINATION

BY MR. SCALES:
Q. Ms. Weiner, do you recall speaking with an investigator, my investigator, in October of last year?
A. When? Where? I don't know. Who?
Q. At your property, a gentleman named Michael Howe came to speak with you and Mr. Liebes

on October 24th.
A. I guess. I don't think I ever knew his name.
Q. Okay. But, do you recall a defense investigator coming to speak with you?
A. Yes, and I did not even know he was an investigator.
Q. Ms. Weiner, you were asked by Mr. Howe regarding the pot that was set up on the property without the permission of the owner, do you remember telling Mr. Howe that the property was -- or, that the post was set up on the Silver's property?
A. Well, I guess, if -- if that's the information you have. I mean, that was what was going on, it was on the Silver's property --
Q. Okay.
A. -- yes.
Q. So, is it your property or Silver's property?
A. No, it was not our property, the Silver's property.
Q. So, the pot was not -- okay. I guess I'm a little bit confused --
A. Mm hm.

Q. -- you just testified that it was on your property.

A. No, I didn't.

Q. Okay.

A. It's across the road from our property.

Q. Thank you for clearing that up for me. And you were also asked if you knew whether Mr. Sandoval had permission --

A. Mm hm.

Q. -- to shoot at that pot on Mr. Silver's property --

A. Mm hm.

Q. -- or this Silver person --

A. Mm hm.

Q. -- and do you remember what you told the investigator?

A. No, I don't because I -- they knew about it and that's all I know. I'm not sure.

Q. Was it -- was it your answer to the defense investigator that you didn't know whether Mr. Sandoval had permission?

A. Probably. I really just don't know. I'm sorry, I don't remember.

Q. Okay. And that's okay.

A. Fine.

Q. Now, Ms. Weiner, this is an even earlier question. Do you remember speaking with Detective Rylander who is seated here today?

A. Yes.

Q. Okay. And do you remember telling him that the shooting tapered off after a while?

A. Yes.

Q. Okay. And did you at any time that the shooting had been going on close in time to the homicide, the shooting of Mr. Whitcraft?

A. Well, it was within that year.

Q. Within that year? Okay.

A. Uh huh.

Q. Ms. Weiner, you've lived on this property, the Windy River Farms property for how many years?

A. Thirty.

Q. And being a rural property are there -- are there dangerous animals, cougars or wild animals that are ever on that property?

A. No, not ours, no.

Q. Not on yours? Is that because it's fenced?

A. Yes.

Q. Okay. But, there are animals like that in the area?

A. Yes, down at the river.

Q. I see.

A. Mm hm.

Q. Now, you were asked how many times you saw this shooting and I believe your testimony, and correct me if I wrote this down incorrectly, that you saw it quite often, saw Mr. Sandoval shooting his weapon?

A. Yes, I did not -- may I -- I need to correct that.

Q. Okay.

A. I didn't see him actually shooting that often, I did several times. Mainly I saw him driving in and out and then hearing the guns.

Q. Okay. And you said you saw him driving out very fast?

A. Yes.

Q. How fast is "very fast"?

A. Well, I'm not really sure again, I'm not a good one for that. Maybe 40, 45 miles an hour. I'm not really sure. They're, you know, small little lanes.

Q. Mm hm.

A. Very fast.

Q. Cliffside -- Cliffside Drive that is a gravel road; is that correct?

A. Yes. Mm hm.

Q. And so driving down that road you can hear -- you can hear vehicles fairly clearly?

A. Absolutely.

Q. Are there trees along the back side of your property?

A. Yeah. Uh huh.

Q. Okay.

A. Uh huh.

Q. So, were you able to hear or see or both Mr. Sandoval's vehicle traveling down?

A. Both.

Q. Okay. You were able to clearly see his vehicle?

A. Yes.

Q. Through the trees?

A. Their trees are not that dense.

Q. Okay. Do you remember, and admittedly this is a long time ago, when you were asked in the last trial "Did you ever personally see Leo Sandoval doing any shooting from his property?" --

A. Mm hm.
Q. -- your testimony was, "Yes, two times, I saw him shoot."
A. Yeah, I believe that's right.
Q. Okay.
A. Mm hm.
Q. So, it's not quite often that you saw him shoot, just --
A. No, I just -- I had said that just a moment ago.
Q. Thank you, Ms. Weiner.
MR. SCALES: I have no further questions.
THE WITNESS: All right.
THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:
Q. I just have one more question, Ms. Weiner.
A. Mm hm.
Q. You -- Counsel asked you about the shooting tapering off. Was that a result of the neighborhood intervening with the defendant?
MR. SCALES: I'm going to object, calls for speculation.

THE COURT: Well, I'll ask the witness if you're able to answer that, have personal knowledge.
THE WITNESS: I don't think I can answer it. I think that's probably true and I think that the -- you know, he was not living there at the time, he was - had moved to Merlin. But, I can't really tell you.

BY MR. CAMPBELL:
Q. Did in fact you make efforts to -- you contacted a state trooper in the Portland area that you were related to; is that right? As one to try to get some action on it?
A. That's right. We were very concerned about him and we were trying to get some help for him, which --
Q. And did someone also contact the VA about it, Veteran's Administration?
A. I don't remember about that.
Q. Okay.
A. I'm sorry.
Q. Thank you.
MR. CAMPBELL: That's all I have, Judge.
THE COURT: Mr. Scales?

RECROSS EXAMINATION

BY MR. SCALES:
Q. So, in compliance with your wishes that he cut back on his shooting --
A. Mm hm.
Q. -- he did cut back on his shooting?
A. I don't think it was an answer to any request that we made. I don't honestly know why he stopped, you know, he didn't stop, but he slowed down.
Q. So, you can't say it's whether the state trooper talked to him, the VA, but nonetheless he still cut back on this shooting?
A. Yes. Uh huh.
Q. Thank you.
A. Uh huh.
MR. CAMPBELL: That's all I have, Judge. I'd ask that this witness be excused.
THE COURT: Any objection, Mr. Scales?
MR. SCALES: No objection, Your Honor.
THE COURT: All right. Thank you, you are excused.
THE WITNESS: Thank you.
THE COURT: Mr. Campbell, can we have just one moment before you call your next witness?

MR. CAMPBELL: Okay.
(Pause)
THE COURT: Will the bailiff come up here, please?
A MALE VOICE: Yes.
THE COURT: No, just the bailiff.
A MALE VOICE: Oh, sorry.
(Pause)
THE COURT: Counsel, could I speak to the two of you, please?

(Sidebar - Not Transcribed)

MR. CAMPBELL: Your Honor, the State would call Jason Hines.
THE COURT: All right.
MR. CAMPBELL: Just step right up --
THE COURT: Please step forward and raise your right hand to be sworn in, sir.
THE CLERK: Under penalty of perjury do you solemnly swear that the testimony you're about to give shall be the truth --
THE WITNESS: Yes.
THE CLERK: -- the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat, please.

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JASON HINES,

called as a witness on behalf of the State, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Sir, would you state your full name and spell your last, please?

A. Jason Michael Hines, H-i-n-e-s.

Q. And how are you currently employed, Mr. Hines?

A. I work for Weyerhaeuser Corporation as an apprentice millwright.

Q. Okay. And how were you employed in September of 2001?

A. As a Deputy Sheriff for Josephine County.

Q. And how long were you a Deputy Sheriff?

A. I believe it was about 17 months.

Q. Okay. Did you have prior police experience before you came on with the Sheriff's Office?

A. I was a reserve.

Q. Okay.

A. With them.

Q. And as of September '01 you were a full-time Deputy Sheriff?

A. Yes.

Q. Okay. And let me take you to September 13th of 2001. On that shift of duty do you recall what shift you were working that day?

A. I was working day shift.

Q. And September 13th was a Thursday?

A. I believe so. I'd have to check a calendar to --

Q. Okay.

A. -- be -- for sure.

Q. Did have occasion during that shift to contact a Jack Whitcraft?

A. Yes.

Q. And how were you dispatched to contact him?

A. We were sent by dispatch for a report

of Menacing.

Q. Okay. And was that as a result of a 9-1-1 call?

A. Yes.

Q. And where did you go to contact Mr. Whitcraft?

A. I believe it was a Picket Creek address, I'd have to refer to the report.

Q. Refer to the report, we want you to tell us what address that was.

A. Contacted him at 770 Picket Creek Road.

Q. And do you know who's house that was?

A. I don't recall that.

Q. Okay.

A. I believe he said it was a friend.

Q. You did -- and was Mr. Whitcraft there when you got there?

A. Yes.

Q. Can you tell the jury when the call came in? It might -- it'd probably be on your CAD report there.

A. Yes. From looking at this it looks like they received a call at 10:14 and they said that it occurred five minutes prior.

Q. Okay. And Mr. Whitcraft was at 770 when you got there?

A. Yes.

Q. And can you describe his -- his demeanor, his state of mind when you observed and talked to him there?

A. Gosh, I can't, that was so long ago, I don't recall that.

Q. Okay. Did he seem upset, can you remember upset or scared or --

A. He was kind of upset, yes.

Q. Okay. And what -- what report did he make to you, Mr. Hines?

A. He made a report that he had been driving down -- or, had been stopped and --

Q. Well, let's go through the whole thing.

A. Okay.

Q. Did he tell you he had been driving out --

A. He'd been driving on Robertson Bridge Road.

Q. Okay. And what did he describe had happened?

A. He said that Mr. Sandoval had passed

him going in the opposite direction.

Q. Did he describe the vehicle Sandoval was in?

A. Let me see here. He said it was a pickup truck.

Q. Okay. Do you have that somewhere? Is that actually in your report or your --

A. We have -- I have the -- I believe it's the DMV information on the truck.

Q. What license do you have for the vehicle he was operating?

A. Let me see here. I believe it's a GMC, a 1971 GMC pickup, KTG 257, I believe is what it is.

Q. And in -- okay. So, he was driving out Robertson Bridge Road and you say he passed --

A. He was passed --

Q. -- the defendant?

A. -- by Mr. Sandoval.

Q. And go ahead and tell -- tell you -- tell us what he related the rest of the story to be.

A. He said he turned on to Lower River Road heading towards Picket Creek and he was stopped by a red light. He said he looked --

Q. At where?

A. It would be at the Robertson Bridge itself.

Q. Okay. And what did the bridge look like in 2001? Did it have a light at it?

A. Yes, it was -- they were under -- the new bridge, I don't know if it was under construction or not, but Robertson Bridge at the time was down to one lane in each direction.

Q. So, there was a light at both ends that would stop one side or the other?

A. Yes.

Q. Okay. And he said he stopped there and then what did he say?

A. He said that Mr. Sandoval drove up behind him, stopped about 15 -- 10 to 15 feet behind his vehicle.

Q. And did what?

A. He said he looked in to his -- looked in to his mirror to see Sandoval raise a rifle in to the air inside the cab.

Q. Did he describe the rifle?

A. Says it was a rifle with a tan stock.

Q. And any other color that he described?

A. I believe he said it was a black rifle with a tan stock, excuse me.

Q. It was black and had a tan stock is what you have in your report?

A. Yes.

Q. And then what did he say happened?

A. He stated that he then leaned out the window with the rifle and pointed it at Whitcraft.

Q. The defendant did?

A. Yes.

Q. Okay. And what did Mr. Whitcraft say happened next?

A. He said that Sandoval was saying something, but he couldn't hear and then the light turned green and he proceeded to drive across Robertson Bridge.

Q. Did he describe what happened next?

A. He says he drove up -- drove across Robertson Bridge, turned on to Picket Creek Road, Sandoval was following him. He says he turned in to his friend's driveway at 770 Picket Creek Road and Sandoval drive by at a very slow rate of speed.

Q. After you took this report from Mr. Whitcraft did you attempt to locate the defendant,

Leo Sandoval?

A. Yes.

Q. And what attempts do you recall making?

A. I believe we attempted to contact him at I believe it was a Cliffside address.

Q. Was that 180 Cliffside?

A. 180 Cliffside, that's correct. And then we also --

Q. Did you find him there?

A. No, sir.

Q. Did you look for him elsewhere?

A. We drove by Peach Street in Merlin, if I recall, and looked for his vehicle in that location.

Q. And did you ever locate him for his statement?

A. No, sir.

Q. Okay. You were actually out on the scene two weeks later on September 27th, 2001; right?

A. That's correct.

Q. Had you been attempting to locate him through that period or --

A. We had looked for him, time

permitting.

Q. Okay. When you're looking for someone do you put it in briefing that you're trying to locate someone?

A. Yes.

Q. Okay. Do you recall whether you left any messages at 180 Cliffside or on Peach Street for the defendant to get a hold of you?

A. I don't recall.

Q. Okay. Thank you, sir.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales?

CROSS EXAMINATION

BY MR. SCALES:

Q. Mr. Hines, could you clarify what you mean by "upset"? You said he was kind of upset, and I'm referring to Jack Whitcraft. Could you clear that up for me?

A. If I remember right he said that, you know, this had been something that had been ongoing, an ongoing problem that he'd been having and -- and you know not really irate, but he was obviously had -- you know, it had bothered him, I guess, he was kind of excited.

Q. Angry?

A. I don't know if I'd call it angry, I mean, he was upset at the situation.

Q. And what time of day was this -- was this exchange that you had with Mr. Whitcraft?

A. Let's see, I contacted him -- I'm trying to find the exact time, but I believe it was morning time between 10:00 and 11:00 is when we contacted. I'd have to find the -- I don't have the exact time that we went out there.

Q. Well, let's see.

A. You want me --

Q. Was it -- was it shortly after the call?

A. I was dispatched at 10:51 and I arrived at 11:25.

Q. Okay. So, it was in the morning?

A. In the morning, yes.

Q. Okay. Thank you, Mr. Hines.

A. Mm hm.

Q. MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. And, Mr. Hines, just looking at the front page of your report, it's a five page report; is that right?

A. Yes.

Q. You -- and that -- and the report it says "reported date and time was 10:12 in the morning"; is that right?

A. That's correct.

Q. And that -- and you have "occurred date and time", so when the event actually occurred is about 10:00?

A. Correct.

Q. Okay. And that was your understanding?

A. Yes.

Q. Thank you.

MR. CAMPBELL: That's all I have.

THE COURT: Anything else, Mr. Scales?

MR. SCALES: Nothing, Your Honor.

THE COURT: Are you asking that this witness be excused?

MR. CAMPBELL: I am, Judge.

THE COURT: Any objection?

MR. SCALES: No objection.

THE COURT: You are excused. Thank you

for coming in.

THE WITNESS: Thank you.

THE COURT: Mr. Campbell?

MR. CAMPBELL: Judge, we would rest. Thank you.

THE COURT: All right. At that I'm wondering, Counsel, rather than starting in anew is this a good time to break or are you ready to start, Mr. Scales?

MR. SCALES: Perhaps a short break.

THE COURT: All right. Ladies and gentlemen, why don't you put your notebooks on your chairs. We're going to take a short break and we'll let you know how we're going to proceed. You'll go with the bailiff in to the jury room.

(At 11:25 a.m. the jury exits the courtroom.)

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Counsel, do you need to put something on the record now or do you wish to just

have a short break?

MR. SCALES: Let me just have a moment.

THE COURT: Okay.

(Pause)

MR. SCALES: Your Honor, I'm satisfied that there's no impropriety and I'm -- I don't think an issue should be made of it.

THE COURT: Okay. Maybe we should step back just a moment and the Court just make the record on this. The Court was given a note from the bailiff with a report back that someone had come across perhaps a witness discussing testimony out in the hallway and I passed that information on to Counsel, you now, Mr. Scales, have had a chance to speak with -- with the reporter in this matter --

MR. SCALES: Mm hm.

THE COURT: -- and you are telling me that you are satisfied that there's been nothing improper done in this matter; is that correct?

MR. SCALES: I am, Your Honor. It appears it was just discussions among Ms. Sperisen, Ms. Weiner and Mr. Liebes and they are close neighbors and have been for many years. So, I'm satisfied that there's no issue here.

THE COURT: All right.

And, Mr. Campbell, anything that you wish to add to any of that?

MR. CAMPBELL: Only, I guess, I informed the Court in camera or at bench that I had informed all those witnesses that the exclusion did require that they not disclose what went on in the courtroom. So, obviously I don't know what was said, but it may not have related to what was in the courtroom.

MR. SCALES: Sure.

MR. CAMPBELL: I believe they understood that.

THE COURT: Yes. And I appreciate both Counsel actually then going out and speaking again to the witnesses out in the hallway to reiterate that they are not to discuss matters out there and I certainly hope that everyone follows through with that. I mean, we're all here in the courtroom and we don't necessarily know what's going on out there. But, everyone has been instructed that they are not to discuss testimony or what goes on in the courtroom.

All right. Having covered that then, Mr. Scales, are you going to be ready to go ahead

and proceed with your first witness?

MR. SCALES: Yes, Your Honor. And I'm going to try to get at least two --

THE COURT: Okay.

MR. SCALES: -- witnesses, I'm going to try to be brief.

THE COURT: All right. Let's go ahead and just -- we got a late start with the jury, but if we could just take about a five minute break then we'll come right back in and get started with your first witness, Mr. Scales.

MR. SCALES: Thank you, Your Honor.

(At 11:29 a.m. a brief recess was taken.)

GRANTS PASS, OREGON

WEDNESDAY, FEBRUARY 25, 2009; 11:33 A.M.

12 PERSON JURY TRIAL - DAY 6

***** THE HONORABLE LINDI L. BAKER PRESIDING *****

--oOo--

(The following proceedings were held in open court out of the presence of the jury.)

THE COURT: Please be seated. All right. Anything further before the jury returns?

MR. SCALES: I don't think so, Your Honor.

THE COURT: All right. Please ask the jury in.

(At 11:34 a.m. the jury enters the courtroom.)

(The following proceedings were held in open court in the presence of the jury.)

THE COURT: All right. We are continuing our trial, State vs. Sandoval.

And, Mr. Scales, you present your first witness.

MR. SCALES: Your Honor, we would call Mario Torres.

THE COURT: All right.

MR. SCALES: Thank you.

THE COURT: Please step forward and raise your right hand and be sworn in, sir.

THE CLERK: Under penalty of perjury do you solemnly swear that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

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MARIO TORRES,

called as a witness on behalf of the Defense, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. SCALES:

Q. Would you please state your full name and spell your last name?

A. It's Mario Francisco Torres, T-o-r-r-e-s.

Q. Thank you, Mr. Torres. Mr. Torres, how are you presently employed?

A. I just recently retired from the Sheriff's Office. So, I've been retired for 25 days.

Q. Twenty-five days. Welcome back. And, Mr. Torres, prior to your retirement how long had you been employed with the Sheriff's Department?

A. Approximately 25 years.

Q. Twenty-five years? Okay. And taking -- turning your attention back to September of 2001, how -- were you employed with the Sheriff's Department at that time?

A. Yes, I was.

Q. And in what capacity?

A. I was a detective with the Major Crimes Unit.

Q. Okay. And, Detective Torres -- I'm still going to call you "Detective" although --

A. All right.

Q. -- you're a retired detective. Did you have an occasion on September 27th, 2001, to be

called out to the area of 770 Picket Creek Road, Hussey Lane, that area?

A. Yes, I did.

Q. And were you called out to perform an investigation?

A. Yes, I was.

Q. Okay. Detective Torres, did you generate a report as a result of that investigation?

A. Yes, I did.

Q. And did we provide you with a copy of that report prior to court?

A. Yes, you have.

Q. Thank you. Detective Torres, I'm going to move kind of quickly. As part of your investigation did you have an opportunity to speak with a Janice Rose-Webber?

A. Yes, I did.

Q. And why were you speaking with Ms. Webber, what was her relation to the case at that time?

A. I believe she was the girlfriend of -- excuse me here. She was the -- at that time she was the girlfriend of Mr. Sandoval.

Q. Okay. And during your interview with

Ms. Webber did you initially tell her what the purpose of that interview was or did you try to get some background information from her?

A. I did not tell her the purpose of my contact when I initially contacted her and, yes, I was trying to get some information.

Q. Okay. Did she at any time ask you whether your presence at her home was related to seeing police cars zooming down the road?

A. I don't recall her telling me and where she lived she didn't have a clear view of the road going by her house.

Q. At some point in time during the questioning did you reveal to her that you were investigating the shooting incident?

A. Yes, I did.

Q. And at any time did she tell you about incidents -- incidences of bad driving or hostility between Mr. Sandoval and Mr. Whitcraft?

A. You're just making reference to driving?

Q. Well, driving or yelling or anything like that.

A. She had talked about a fight that -- that Mr. Whitcraft and Mr. Sandoval had gotten

involved in at The Lil Pantry in Merlin.

Q. Okay. And, Detective Torres, did she ever mention anything to you during the course of this interview about Mr. Sandoval wanting to kill Mr. Whitcraft in self defense?

A. I don't recall that she made that comment.

Q. Is that in your report, sir? I'm focusing pretty much on Pages 7 and 8 of 11.

A. In my report in the case she stated there was no reason why Mr. Sandoval -- mine says "he" would have to kill Whitcraft.

Q. Okay. Could you repeat that? She stated what now?

A. There was no reason why he, Mr. Sandoval, would have to kill Whitcraft.

Q. Okay. Detective Torres, I think that's all the questions I have.

THE COURT: Mr. Campbell?

CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Just to -- Detective Torres, just to fill this out a little bit. You had been to the scene where Mr. Whitcraft was laying out of the

vehicle with his feet hooked in the wires in the vehicle; correct?

A. Yes, I was.

Q. And your assignment after being at the scene was to go and interview witnesses that were associated with the defendant?

A. I -- the more accurate way would to say I was assigned to interview witnesses. I don't think I was told to interview either one side or the other.

Q. Well -- okay. You were -- one of your purposes for going to Peach Street was -- were you going to try to -- try to have a contact with Mary Carlson?

A. Yes.

Q. And were you assigned to do the death notification as part of your contact?

A. Yes.

Q. And also you knew that this Janice Rose lived, from information you had, in the same area; correct?

A. Yes.

Q. Okay. You ended up while you were in the area having a very upset Ms. Clayburn contact you with related information to the case too; is

that right?

A. Yes.

Q. Okay. So, your main purpose in talking to Rose that day was to have a brief history, but to make notification that the defendant had shot and killed Mr. Whitcraft?

A. Yes.

Q. And when you told her that your report indicates that she became very angry at the defendant, doesn't it?

A. Yes.

Q. Did you view that as atypical or out of the ordinary response?

MR. SCALES: Your Honor, I'm going to object, we're talking about Mr. Sandoval's response -- or, excuse me, Ms. Carlson's response, the way other people would react under this type of traumatic stressful situation I don't think is relevant.

THE COURT: Overruled, I believe you were speaking about Ms. Rose, weren't you?

MR. CAMPBELL: Ms. Rose's response.

MR. SCALES: I'm sorry, I meant Ms. Rose.

THE COURT: Okay. Overruled.

THE WITNESS: Can you repeat the

question, please?

BY MR. CAMPBELL:

Q. Did -- basically you disclosed to Ms. Rose after talking to her for a while that the defendant had shot and killed Mr. Whitcraft out on Picket Creek Road?

A. Yes.

Q. And you've reported and you already testified to on direct that she responded in anger toward the defendant when she heard that?

A. That's -- that's true, yes.

Q. Okay. And the question was was that an atypical out of the ordinary response that you would expect in that situation?

A. Yes.

MR. CAMPBELL: That's all I have, Judge.

THE COURT: Mr. Scales, anything further?

REDIRECT EXAMINATION

BY MR. SCALES:

Q. When you say she responded in anger was she upset because -- because he had shot and killed Jack Whitcraft --

MR. CAMPBELL: Objection to leading on