

MARIO TORRES ReX 1060

1 this witness.

2 MR. SCALES: Okay.

3 THE COURT: Sustained.

4 MR. SCALES: All right.

5

6 BY MR. SCALES:

7 Q. You don't know why she was angry

8 though, do you?

9 A. Not specifically, no.

10 Q. Is it possible that it could have

11 been any number of reasons?

12 A. It could have been, but the

13 information I had provided that's what she reacted

14 to.

15 Q. Mm hm.

16 MR. SCALES: Nothing further.

17

18 RE-CROSS EXAMINATION

19 BY MR. CAMPBELL:

20 Q. Well, she said he didn't need to

21 shoot Mr. Whitcraft didn't she?

22 A. Yes, she did.

23 Q. Okay.

24 MR. CAMPBELL: That's all I have, Judge.

25 THE COURT: Anything else, Mr. Scales?

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MARIO TORRES ReD 1061

1 REDIRECT EXAMINATION

2 BY MR. SCALES:

3 Q. She said he had no reason to shoot

4 Mr. Whitcraft, is that --

5 A. Yes.

6 Q. Is it in your report that he didn't

7 -- that you said -- where is it in your report

8 that she said he didn't need --

9 A. Well, it said it -- the first

10 paragraph on Page 8, second sentence.

11 Q. Mm hm. And what does that say, does

12 it say "need" or "no reason"?

13 A. It said -- I'll just -- I'll read it

14 in it's entirety. The sentence states, "She

15 stated there was no reason why he would have to

16 kill Whitcraft."

17 Q. And in fact she -- did she say that

18 once or more than once?

19 A. I -- I would think in her emotional

20 state she probably repeated it, but I'm not sure.

21 Q. Could you read the next sentence

22 after that?

23 A. Okay.

24 Q. Paragraph.

25 A. Yeah. And then the next sentence

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MARIO TORRES ReD 1062

1 says, "She repeated this several times."

2 Q. Thank you, Detective Torres.

3 MR. SCALES: I have nothing further?

4 THE COURT: Mr. Campbell?

5 MR. CAMPBELL: Nothing further, Judge.

6 THE COURT: are you asking this witness

7 be excused?

8 MR. SCALES: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. CAMPBELL: No, Judge.

11 THE COURT: You are excused. Thank you

12 for coming in.

13 THE WITNESS: Thank you.

14 MR. SCALES: Your Honor, we'd call George

15 Ingle.

16 THE COURT: All right. Please step in to

17 the courtroom, sir, come right up here before my

18 clerk, raise your right hand and then she'll swear

19 you in.

20 THE WITNESS: Right here.

21 THE COURT: That's fine.

22 THE CLERK: Under penalty of perjury do

23 you solemnly swear that the testimony you're about

24 to give shall be the truth, the whole truth, and

25 nothing but the truth, so help you God?

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GEORGE INGLE D 1063

1 THE WITNESS: Yes.

2 THE CLERK: Thank you, sir. Have a seat

3 in the witness chair.

4

5 ***

6 GEORGE INGLE,

7 called as a witness on behalf

8 of the Defense, was sworn and

9 testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. SCALES:

13 Q. Good morning.

14 A. Good morning.

15 Q. Would you please state your full name

16 and spell your last name?

17 A. My -- my name is George Ingle, and my

18 spelling is I-n-g-l-e.

19 Q. Thank you, Mr. Ingle. Mr. Ingle, do

20 you know Leonard Sandoval?

21 A. Yes.

22 Q. And how long have you known Mr.

23 Sandoval?

24 A. Probably -- gee, probably 12 years.

25 Q. And you were acquainted with Mr.

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GEORGE INGLE D 1064

1 Sandoval in -- around September of 2001?

2 A. Yeah.

3 Q. Mr. Ingle, had you and Mr. Sandoval

4 -- well, let me back up a step. Can you describe

5 the extent of your relationship, were you just

6 casual friends, were you good friends, did you

7 socialize, could you explain that for us?

8 A. Yeah, we socialized. We'd go up to 7

9 Feathers and we'd go to some of the taverns and

10 have a beer or something.

11 Q. Okay.

12 A. And I'd go to his house and he'd come

13 to my house.

14 Q. Okay. And were you aware that Mr.

15 Sandoval possessed -- owned and possessed

16 firearms?

17 A. Yes.

18 Q. Okay. And were you -- did you know

19 Mr. Whitcraft in September of 2001?

20 A. No.

21 Q. Okay. Did you know Mary Carlson in

22 September of 2001?

23 A. Yes.

24 Q. Okay. Mr. Ingle, in September of

25 2001 did you and Mr. Sandoval have any plans to --

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GEORGE INGLE X 1065

1 to engage in any particular activity?

2 A. We were going to go deer hunting.

3 Q. And had you discussed that?

4 A. Yes.

5 Q. Had you made preparations for deer

6 hunting?

7 A. Yes.

8 Q. What kind of preparations had you

9 made?

10 A. He was coming over to my house and

11 meet at my house and go from my house, go out deer

12 hunting.

13 Q. Were you planning on going to -- on

14 any hunting trips that year?

15 A. Yeah.

16 Q. Okay. Do you know if at the time of

17 the -- well, I'll back up. I'll hold that

18 question. That's all I have at this time, Mr.

19 Ingle.

20 THE COURT: Mr. Campbell?

CROSS EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Do you know when hunting season was,

25 Mr. Ingle?

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GEORGE INGLE X 1066

1 A. I can't hear you.

2 Q. Do you know when the hunting season

3 started that year?

4 A. It starts the same time every year,

5 every season.

6 Q. What date?

7 A. It's the last of September until

8 October something.

9 Q. And when -- what day were you

10 planning on the defendant coming to go hunting

11 with you?

12 A. I have no idea.

13 Q. Do you --

14 A. That's been a long time ago.

15 Q. I know, we're talking eight years

16 ago.

17 A. Yeah.

18 Q. Do you remember the day that he shot

19 Jack Whitcraft?

20 A. No, I don't.

21 Q. You don't?

22 A. No.

23 Q. You don't know -- you didn't hear

24 about that?

25 A. I heard about it, but I -- like I say

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GEORGE INGLE X 1067

1 my memory's pretty bad.

2 MR. CAMPBELL: That's all I have, Judge.

3 THE COURT: Mr. Scales?

4 MR. SCALES: Nothing further, Your Honor.

5 THE COURT: Are you asking that he be

6 excused?

7 MR. SCALES: Yes, I am.

8 THE COURT: Any objection?

9 MR. CAMPBELL: No, Judge.

10 THE COURT: Thank you, sir. You are

11 excused.

12 THE WITNESS: Okay.

13 MR. SCALES: Your Honor, I have another

14 very brief witness. We would call Floyd Martens.

15 Thank you, Mr. Ingle.

16 THE COURT: All right. Please step in to

17 the courtroom, sir. Right up here. Up this way,

18 sir.

19 THE CLERK: Sir?

20 THE COURT: All right. Is this Mr.

21 Martens?

22 MR. SCALES: Yeah, I think he's --

23 THE COURT: Okay.

24 MR. SCALES: -- thinking that we were

25 calling him out.

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FLOYD MARTENS D 1068

1 THE COURT: Mr. Martens? Come right up
2 here.

3 And, actually, Mr. Inglo was excused so
4 if he wanted to stay in the courtroom he's allowed
5 to.

6 So, raise your right hand and be sworn
7 in, sir.

8 THE CLERK: Under penalty of perjury do
9 you solemnly swear that the testimony you're about
10 to give shall be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Have a seat over
14 there in the witness chair, please.

15 ***

16 FLOYD MARTENS,

17 called as a witness on behalf
18 of the Defense, was sworn and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SCALES:

22 Q. Could you state your full name, sir?
23 Can you hear me okay?

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FLOYD MARTENS D 1069

1 A. Yes.

2 Q. Could you state your full name and
3 spell your last name for the record?

4 A. Floyd is the first name, Martens,
5 M-a-r-t-e-n-s, is the surname.

6 Q. Mr. Martens, I'm going to hand you a
7 pointer and show you an exhibit just briefly here
8 that's previously been -- previously been marked
9 as State's Exhibit 102. Taking a look at that, do
10 you recognize what this map depicts?

11 A. Yeah, well, this is where the
12 shooting took place and that's where I live also.

13 Q. Okay.

14 A. That's marked in here.

15 Q. Is this a representation of your
16 neighborhood?

17 A. Yes.

18 Q. And can you point out for the jury
19 where your house was? Where you were living on
20 September 27th, 2001.

21 A. My house is about this one here, this
22 one here, that's our lawn. The house is about 300
23 feet back, sits about here.

24 Q. Okay. Thank you. And, Mr. Martens,
25 would you tell the jury where -- what your address

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FLOYD MARTENS D 1070

1 was on September 27th, 2001?

2 A. Well, the -- I'm going to sit down
3 first. I've known Mr. Sandoval --

4 Q. I'm sorry, sir. What is your -- what
5 was your address on September?

6 A. Same thing, Hussey Lane, 230 Hussey
7 Lane.

8 Q. 230 Hussey Lane?

9 A. Yes.

10 Q. Thank you, Mr. Martens. Mr. Martens,
11 do you know Mr. Sandoval?

12 A. Yes, I do.

13 Q. And how long have you known him?

14 A. Prior to the shooting incident at
15 least three or four years.

16 Q. And during that three or four years
17 how would you characterize the relationship, was
18 it causal, were you friends?

19 A. Well --

20 Q. Describe that please.

21 A. Casual friends and -- I wouldn't say
22 "friends", but I've seen him about every three to
23 four weeks and he came by and stopped for a cup of
24 coffee and that's how I know him.

25 Q. So, he's been in your home before?

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FLOYD MARTENS D 1071

1 A. Oh, yes.

2 Q. Okay. And, Mr. Martens, I'm going to
3 ask you to think back to September 27th, 2001.

4 A. Yeah.

5 Q. Do you remember that day, sir?

6 A. Oh, yes, I do.

7 Q. Okay. And what happened that day, if
8 you could just briefly tell the jury what your
9 involvement was?

10 A. Well, let me see, how to start here.
11 On September 27th, I remember the day very well.

12 And I heard a shot somewhere, but that's not
13 unusual in the area where I live, you see? And --

14 Q. What were you doing at the time of
15 the shot, Mr. Martens?

16 A. I was in the house and my wife too,
17 there's two of us living in -- in -- at this
18 address --

19 Q. Okay.

20 A. -- you see? And then about -- I'd
21 say about four or five minutes later Mr. Sandoval

22 came to our door and of course he was very
23 excited. He was -- he was not at his normal

24 behavior, let's put it this way. And he --

25 Q. Let me -- let me interrupt up for

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FLOYD MARTENS D 1072

1 just a moment.

2 A. Yes.

3 Q. When you say "he was not at his

4 normal behavior" can you explain that for the

5 jury?

6 A. Oh, well, it was -- I seen him about

7 four minutes later after that shot was fired. I

8 had -- someone came to the door and it was

9 unlocked, the door was closed and that was Mr.

10 Sandoval. Of course he was not the same person I

11 used to know, you know, he was very excited at

12 that time. And he just opened the door, he didn't

13 even knock at the door, he opened it and went

14 right for the phone. He says he had to make a

15 phone call, you see? He knew where the phone was

16 and he made the call.

17 And in the meantime I went to open the

18 gate, but I live about 300 feet -- the house is

19 about 300 feet from the gate, I opened that and

20 then I went over, which is about 300 -- which is

21 about 400 feet this is Picket Creek Road, this

22 where the shooting took place, you see?

23 Q. Mr. Martens, if I could -- can I ask

24 you, when Mr. Sandoval came in to the house, came

25 in did he -- was he in a hurry, was he --

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FLOYD MARTENS D 1073

1 A. Absolutely.

2 Q. You said he was excited?

3 A. Yes.

4 Q. And did he say anything to you when

5 he came in to the house?

6 A. I don't recall exactly what he says,

7 but he was indicating that there was a shooting

8 and, you know?

9 Q. Did he tell you that he had just shot

10 someone in self defense?

11 A. Yes, he did.

12 Q. And that that person was dead?

13 A. Yeah.

14 Q. Did he -- did he tell you that he

15 needed to use your telephone?

16 A. Well, he just used the phone and

17 probably called 9-1-1, I don't know.

18 Q. Okay. Mr. Marten, would you

19 characterize his demeanor as excited or

20 distraught?

21 A. No, extremely excited because I have

22 known Mr. Sandoval for about four years, at least,

23 prior to the shooting accident and I have seen him

24 every three to four weeks, he came by our house to

25 have a cup of coffee, you see? And he's always

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FLOYD MARTENS D 1074

1 been, you know, behaving normally, very happy.

2 I've never seen him depressed or angry in all that

3 time.

4 MR. CAMPBELL: Objection, it's not --

5 THE WITNESS: And it -- accept --

6 MR. CAMPBELL: -- responsive. Objection.

7 THE COURT: Hold on just a second, sir.

8 THE WITNESS: Oh, I'm sorry.

9 THE COURT: Go ahead.

10 MR. CAMPBELL: It's non-responsive.

11 THE COURT: Sustained.

12 THE WITNESS: Oh, I'm sorry.

13 MR. SCALES: That's okay, Mr. Martens.

14 THE COURT: That's all right.

15

16 BY MR. SCALES:

17 Q. Had you ever seen Mr. Sandoval -- in

18 the state that you saw him on September 27th, 2001,

19 had you ever seen him like that before?

20 A. Never.

21 Q. Okay. And did he appear agitated?

22 MR. CAMPBELL: Again, he's leading,

23 objection.

24 THE COURT: Sustained.

25

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FLOYD MARTENS X 1075

1 BY MR. SCALES:

2 Q. How did he appear to you?

3 A. Well, I knew there was something

4 wrong and he stated --

5 MR. CAMPBELL: I'm going to object as

6 asked and answered.

7 THE WITNESS: -- that there was as

8 shooting --

9 THE COURT: Sustained.

10 MR. CAMPBELL: He's done that about three

11 times.

12 THE COURT: Sustained.

13 MR. SCALES: Mr. Martens, I don't have

14 any further questions for you. Thank you very

15 much, sir.

16 THE WITNESS: Okay.

17 THE COURT: Hold on just a second, sir.

18 Mr. Campbell, did you have any

19 questions?

20 MR. CAMPBELL: I do.

21 THE COURT: All right.

22 THE WITNESS: Okay.

23

CROSS EXAMINATION

BY MR. CAMPBELL:

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FLOYD MARTENS X 1076

1 Q. Mr. Martens, is it the defendant came
2 to the door and he came in; correct?

3 A. Yes.

4 Q. And wasn't the first thing he
5 announced to you, "I shot a man in self defense."?

6 A. He was -- I believe he was saying
7 that. I don't recall the exact words he was
8 using.

9 Q. Do you remember --

10 A. He's familiar, he knows our house and
11 he was heading right for the phone to make the
12 phone call.

13 Q. Do you remember testifying in October
14 of 2002 -- excuse me, he said, "I just shot
15 someone in self defense." when he came in?

16 A. Probably similar to that. I don't
17 recall the exact wording he was using.

18 Q. And were you and your wife
19 interviewed shortly after the shooting?

20 A. Yes.

21 Q. You told the police he had announced
22 that he'd shot someone in self defense, didn't
23 you?

24 A. I probably did, that's seven years
25 ago and --

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FLOYD MARTENS X 1077

1 Q. Do you recall the defendant asking to
2 use the bathroom and using it very quickly, maybe
3 not long enough to a pee that he talked about?

4 A. I can't say, the moment he came in I
5 went to open the door, which was -- the gate, I
6 should say, which is 300 feet away. And then I
7 went over to where the shooting was, that's
8 another 400 feet. But, I stayed there only maybe
9 15 seconds, a half a minute and then I -- and the
10 police came and this is when I went back to the
11 house.

12 Q. Okay.

13 A. As soon as I was at the house the
14 police came and they called -- Mr. Sandoval was
15 standing at the -- at the entrance and the police
16 asked him to raise the hands and so on and come
17 out and the usual procedure.

18 Q. Okay.

19 A. He was laying on the ground and what
20 not.

21 Q. You're not answer my question, sir.

22 A. Okay.

23 Q. I want you to listen to the question
24 and just answer it and not go on, okay? Is your
25 wife still living?

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FLOYD MARTENS X 1078

1 A. Yes.

2 Q. Okay. And her name?

3 A. Hermina, H-e-r-m-i-n-a.

4 Q. And were you present when she said
5 that he used the -- the defendant used the
6 bathroom to the police very quickly, she was
7 surprised how quickly he had gone to the bathroom?

8 MR. SCALES: I'm going to object, Your
9 Honor, it's hearsay.

10 THE WITNESS: Well --

11 MR. SCALES: You don't --

12 THE WITNESS: -- I wasn't --

13 MR. SCALES: -- have to answer that, Mr.
14 Martens.

15 THE COURT: Hold on just -- hold on just
16 a second.

17 THE WITNESS: I wasn't in because I
18 immediately went to open the gate.

19 THE COURT: Sir, he's -- he's going to
20 ask a different question.

21 BY MR. CAMPBELL:

22 Q. I think I'm understanding what you're
23 saying you were outside at that time.

24 A. Yeah, I went out the moment he came
25

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FLOYD MARTENS ReD 1079

1 in.

2 Q. Okay. Thank you, sir.

3 A. And made a phone call.

4 MR. CAMPBELL: That's all I have, Judge.

5 THE COURT: All right.

6 Mr. Scales, do you have other questions?

7 MR. SCALES: A couple questions, Your
8 Honor.

10 REDIRECT EXAMINATION

11 BY MR. SCALES:

12 Q. Mr. Martens, you were in the house
13 when Mr. Sandoval came in; correct?

14 A. Yes.

15 Q. And did you see any blood on Mr.
16 Sandoval?

17 A. No, I never did.

18 MR. SCALES: Nothing further.

19 THE WITNESS: Not on the telephone or --

20 THE COURT: Mr. Campbell, anything else?

21 THE WITNESS: -- or that he touch.

22 MR. CAMPBELL: No, Judge.

23 THE COURT: All right.

24 Are you asking that this witness be
25 excused?

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COLLOQUY

1080

1 MR. SCALES: I am, Your Honor.
 2 THE COURT: And, Mr. Campbell, any
 3 objection?
 4 MR. CAMPBELL: No, Your Honor.
 5 THE COURT: All right.
 6 Thank you, Mr. Martens, you are excused.
 7 THE WITNESS: Thank you.
 8 MR. SCALES: Thank you.
 9 THE COURT: And with that, Mr. Scales, we
 10 are at the noon hour.
 11 MR. SCALES: Thank you.
 12 THE COURT: And, Mr. Campbell, we will go
 13 ahead and take our lunch break now.
 14 Ladies and gentlemen, please leave your
 15 notebooks on your chairs and report back today at
 16 1:15 in to the jury room. Have a nice lunch.
 17
 18 *(At 12:00 p.m. the jury exits the*
 19 *courtroom.)*
 20
 21 *(The following proceedings were held in*
 22 *open court out of the presence of the*
 23 *jury.)*
 24
 25 THE COURT: All right. We are in recess

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COLLOQUY

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1 until 1:30.
 2 MR. SCALES: Thank you.
 3
 4 *(At 12:00 p.m. a lunch recess was taken,*
 5 *to reconvene at the same day.)*
 6
 7
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 25

*** END OF VOLUME 5 ***

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1082

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
COUNTY OF JOSEPHINE

--oOo--

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

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MASTER INDEX

MASTER INDEX

CHRONOLOGICAL INDEX OF WITNESSES

PLAINTIFF'S

WITNESSES: DIRECT CROSS REDIRECT RECROSS VOL.

FEBRUARY 19, 2009

MARY SIZEMORE	231	270	286	288	2
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JANICE ROSE	312	--	--	--	2

FEBRUARY 20, 2009

JANICE ROSE	338	374	402	405	2
			410	410	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
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COLLOQUY 1101

GRANT'S PASS, OREGON

WEDNESDAY, FEBRUARY 25, 2009; 1:38 P.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. Does either side have anything before the jury comes back in?

MR. CAMPBELL: I don't believe so, Judge.

THE COURT: Mr. Scales?

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

THE COURT: All right. Please ask the jurors in.

(At 1:39 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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JOHN CRISSUP D 1102

THE COURT: All right. Ladies and gentlemen, we are continuing our trial, State vs. Sandoval.

And, Mr. Scales, you may call your next witness.

MR. SCALES: Thank you, Your Honor. The Defense would call John Crissup.

THE COURT: Okay.

Please step forward in to the courtroom, sir, right up here and 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, please?

JOHN CRISSUP,

called as a witness on behalf of the Defense, was sworn and testified as follows:

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JOHN CRISSUP D 1103

DIRECT EXAMINATION

BY MR. SCALES:

Q. I'm going to move this microphone up just a tad bit. Maybe not. Could you state your full name and spell your last name for the record?

A. It's John -- John Crissup and the last is C-r-i-s-s-u-p.

Q. Mr. Crissup, how are you employed?

A. Self employed.

Q. And what do you do for a living?

A. Construction work and guiding on the river.

Q. Okay. And were you doing construction work and guiding on the river back in 2001?

A. I was doing construction work at that time.

Q. Okay. Mr. Crissup, are you familiar with Leo Sandoval?

A. Yes.

Q. Do you know him?

A. Yes.

Q. And turning your attention back to 2001, how long had you known Mr. Sandoval at that time?

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JOHN CRISSUP D 1104

A. Oh, I guess around four more years.

I can't remember exactly.

Q. Okay. And --

A. A fair amount of time.

Q. -- how was it that you came to know Mr. Sandoval, what -- what's the nature of your contact with Mr. Sandoval?

A. My former wife was friends with him because she had been neighbors with him previous to when I met her. So, through her we had met. And previous to even that I think I ran in to him a few times and talked to him at the Applegate Tavern over --

Q. Okay.

A. -- beer.

Q. Did you know Jack Whitcraft?

A. Not personally, not -- you know, I wasn't friends with him, I knew who he was.

Q. Did you have opportunities to talk with Jack Whitcraft?

A. On occasion.

Q. Okay. And where would that be at, in what kind of a situation would have occasion to talk with Mr. Whitcraft?

A. A few times he stopped at the house

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JOHN CRISSUP D 1105

to talk to my -- by my house to talk to the next door neighbor when we were all outside and casual conversation. You know, since I wasn't friends with him, I knew --

Q. Did you ever see -- I'm sorry.

A. -- him, talked to him at Longboard.

Q. I'm sorry, I interrupted you.

A. I talked to him at the lumberyard that he worked at also.

Q. And what lumberyard was that?

A. Longboard lumber.

Q. Okay. And you knew him when he worked at Longboard Lumber?

A. Yes.

Q. Okay. Did you know him to always work at Longboard Lumber or was there a time when he wasn't working there?

A. I couldn't say either way that he always worked there, but he was there quite frequently.

Q. Okay. Mr. Crissup, I just want to get one thing out of the way here, you have been convicted of a felony; is that correct?

A. Correct.

Q. And that is a charge of Rape in the

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JOHN CRISSUP D 1106

Third Degree?

A. Yes.

Q. Okay. Thank you. Mr. Crissup, in your conversations with Mr. Whitcraft, without getting in to the substance of what he said, did he ever communicate to you any threats with respect to Mr. Sandoval?

A. Yes, he did.

Q. Did you make those threats known to Mr. Sandoval?

A. I remember mentioning it to him at one time, I just can't remember where and exactly when it was.

Q. Okay. And can you tell us what those threats were that Mr. Whitcraft had said to you, what he said about Mr. Sandoval?

A. The main context of the conversation was that Jack had said he'd like to kill the Mexican.

Q. Pardon me?

A. Kill the Mexican.

Q. Now, when you say he wanted to kill the Mexican was he -- are you certain that he was referring to Mr. Sandoval or could it have been somebody else?

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JOHN CRISSUP D 1107

1 A. Well, Leo's name had been mentioned
2 in the conversation leading up to that point where
3 he said he was going to kill the Mexican or --

4 Q. Did you -- and you communicated that
5 to Mr. Sandoval?

6 A. Oh, yes. Yes.

7 Q. Was Mr. Sandoval clear that the
8 threat was directed at him and not to some other
9 person?

10 A. Oh, yes. Yes.

11 Q. Okay. Now, when you -- back in 2001
12 when you were working in construction did you ever
13 work in the area of Picket Creek and Hussey Lane?

14 A. Yes, I did, we built two different
15 homes down there.

16 Q. Pardon me?

17 A. We built two different homes down
18 there off of Hussey Lane.

19 Q. Okay. And how -- how long of a
20 project was that?

21 A. The first one was about four and a
22 half months and the second one was about six
23 months.

24 Q. Okay. And give us kind of a time
25 frame when you were out in this area building

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JOHN CRISSUP D 1108

1 those homes?

2 A. We were doing the first house I
3 believe it was previous to, you know, what
4 happened later with the shooting and everything.

5 Q. Are you saying that you worked on
6 homes both before and after the shooting?

7 A. Yes.

8 Q. Okay. And while you were working on
9 homes -- and I'm speaking specifically of before
10 this shooting.

11 A. Okay.

12 Q. Did you ever see Mr. Whitcraft in the
13 neighborhood of Mr. Sandoval in Mr. Sandoval's
14 neighborhood?

15 A. Yes.

16 Q. Okay. And where would that be --
17 well, let me back up a step. Do you know Harvey
18 Callahan?

19 A. Yes.

20 Q. And were you aware of where Harvey
21 Callahan lived and where his shop was?

22 A. I -- I recall it was down past Hussey
23 Lane on Picket Creek Road.

24 Q. Okay. Did you ever see Mr. Whitcraft
25 on Hussey Lane?

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JOHN CRISSUP D 1109

1 A. Yes.

2 Q. Did you ever see him go towards
3 Cliffside Drive?

4 A. Yes, if that's the name of the road
5 that goes off of Hussey towards Leo's.

6 Q. Maybe I need to show you this
7 diagram. Does this refresh your memory a little
8 bit?

9 A. Yeah.

10 Q. Okay. Now, would Mr. Sandoval --
11 excuse me, would Mr. Whitcraft go to Cliffside
12 Drive or what did you observe?

13 A. What he would do is he'd turn right
14 off of Picket Creek Road and go down Hussey Lane.
15 I can point out where were building out houses out
16 -- at, if I'm reading this map right. We were
17 building a couple homes down in this area.

18 Q. Mm hm.

19 A. And Leo -- or, not Leo, Jack would
20 turn left here and go that way, which was --
21 because I remember it was towards Leo's house
22 which was down in there.

23 Q. Okay. And what did you observe him
24 to do down there when he was driving down
25 Cliffside Drive?

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JOHN CRISSUP D 1110

1 A. Well, if you'll bring the map back
2 one more time? When I would see Jack turn down
3 that way, once he would turn left down this road,
4 and I pulled down in here the rest of the way, I
5 was pretty much blinded from the blackberries to
6 look over and see where he went from there.

7 Q. Okay. To your knowledge was Mr.
8 Whitcraft working down there or can you answer
9 that question?

10 A. Not that I know of.

11 Q. Okay. Did you see him -- did he go
12 down there and did you see him come back out or
13 what do you recall?

14 A. I don't know that he'd come back out
15 or anything because once I go down in to my job
16 site that was it, I couldn't see him any further.

17 Q. Now, these threats that Mr. Whitcraft
18 made regarding Mr. Sandoval did you hear those on
19 more than one occasion?

20 A. I only recall the one occasion at
21 Longboard Lumber, we were all gathered around the
22 back of my pickup after I loaded some material.

23 Q. Okay. How often did you see Mr.
24 Whitcraft travel down past Mr. Sandoval's
25 residence?

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JOHN CRISSUP D 1111

1 A. I would guess to say more than a half
2 dozen times or more.

3 Q. Okay.

4 A. One particular one stands out in
5 mind, but I know there was more than that.

6 Q. Okay. Are you able to tell us in the
7 weeks prior -- in the short period of time prior
8 to the shooting do you recall seeing Jack
9 Whitcraft going down Hussey Lane and turning left
10 on to Cliffside?

11 A. I do, yes.

12 Q. And did he turn on to Cliffside?

13 A. Yes.

14 Q. Was it once or more than once, can
15 you give us approximately an idea how long -- how
16 many times he did that?

17 A. I'd say in the week to 10 days
18 previous I would see him at least two separate
19 times that particular 10 day period.

20 Q. Okay.

21 MR. SCALES: Nothing further at this
22 time.

23 THE COURT: Mr. Campbell?

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JOHN CRISSUP X 1112

CROSS EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Mr. Crissup, you were convicted of
3 Rape in the -- Rape in this circuit court in
4 Josephine County, prosecuted by my office in 1992;
5 is that correct?

6 A. Yes.

7 Q. And you are currently under
8 indictment for --

9 MR. SCALES: Your Honor, I'm going to
10 object, it's improper.

11 THE COURT: Under indictment?

12 MR. CAMPBELL: Goes to bias, yeah.

13 THE COURT: Counsel, if you'd approach?

14 (Sidebar - Not Transcribed)

15 THE COURT: Mr. Campbell, you may
16 continue.

17 BY MR. CAMPBELL:

18 Q. You're currently under indictment and
19 being prosecuted by this District Attorney's
20 Office for failure to register as a sex offender
21 also aren't you, sir?

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JOHN CRISSUP X 1113

1 A. Yes, I am.

2 Q. And you would do anything to mess up
3 or screw up a case that our office brought,
4 wouldn't you?

5 MR. SCALES: I'm going to object,
6 argumentative.

7 THE WITNESS: What do you mean?

8 THE COURT: Hold on a just a second.

9 Sustained. Would you rephrase, please?

10 BY MR. CAMPBELL:

11 Q. You have a bias against our office
12 and you would interrupt the work of this office if
13 you could wouldn't you, Mr. Crissup?

14 MR. SCALES: Same objection, Your Honor.

15 THE COURT: Overruled.

16 Answer if you can.

17 THE WITNESS: No, I wouldn't. You got a
18 job to do just like anybody else.

19 THE COURT: Just wait for your next
20 question, please sir.

21 BY MR. CAMPBELL:

22 Q. Mr. Crissup, would it surprise you to
23 know that the Cliffside Road that you just
24

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JOHN CRISSUP X 1114

1 indicated Mr. Whitcraft turned on isn't even an
2 open road? Are you --

3 A. I don't know that the left turn off
4 of Hussey down towards the end is called
5 Cliffside.

6 Q. You said he turned here and went
7 somewhere; is that right?

8 A. That's correct.

9 Q. Would it surprise you to know that
10 there isn't a thru road in that location?

11 MR. SCALES: I'm going to object --

12 THE WITNESS: It absolutely is.

13 MR. SCALES: -- Your Honor. Objection,
14 Your Honor. The District Attorney is testifying
15 that there is not a road out there. That fact has
16 not been established.

17 THE COURT: Overruled. He may ask that
18 question.

19 BY MR. CAMPBELL:

20 Q. Is it your testimony there's an open
21 road there right now?

22 A. To my understanding there is because
23 I've driven it several times. You drive down the
24 end of Hussey and it splits off and goes to the
25

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JOHN CRISSUP X 1115

1 left and you come out on I believe is called
2 Sollstén.

3 Q. Sollsten Road?

4 A. Sollsten, I believe.

5 Q. Okay.

6 A. And then there's one other way out
7 too. It makes a complete loop and comes back in
8 to Picket Creek down towards Green Tree Loop.

9 Q. You said you knew Mr. Whitcraft was a
10 mechanic?

11 A. I didn't say that. But, yeah, he had
12 worked at Longboard as a mechanic.

13 Q. Did --

14 A. From time to time.

15 Q. And I know Mr. Scales asked you had
16 you seen him go to Mr. Sandoval's property, but
17 your testimony was he turned at the end of that
18 road; right?

19 A. What I said was, yeah, he turned at
20 the end of the road. But, I didn't see where --

21 Q. You didn't follow him, --

22 A. -- he'd go from there.

23 Q. -- where he went?

24 A. No.

25 Q. You don't know if he went and did

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JOHN CRISSUP X 1116

1 mechanic work at the big ranch that's down on the
2 end of the road do you?

3 A. Which big ranch are you talking
4 about?

5 Q. Isn't there a big ranch at the end of
6 the road?

7 A. You know better than me. I don't
8 know if there's a big ranch down there.

9 Q. Well, you just told the jury you were
10 there a bunch of times, you don't remember what
11 was down there?

12 A. I don't know of any big ranch.

13 Q. There's a --

14 A. There's several large properties with
15 ranch-like settlements, but --

16 Q. With a large barn and equipment out
17 by it, you don't remember that?

18 MR. SCALES: Your Honor, this has been
19 asked and answered. He doesn't know of a ranch at
20 the end of Hussey Lane.

21 THE COURT: Sustained. Ready to move on.

23 BY MR. CAMPBELL:

24 Q. You gave a couple statements. You
25 gave a statement to a investigator back in 2001 or

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JOHN CRISSUP X 1117

1 2 named Robert Churma; is that right?

2 A. I don't remember the investigator's
3 name, but I did talk with one, yes.

4 Q. And then you gave a statement again
5 before this trial to Michael Howe; is that right?

6 A. Correct.

7 Q. And in both those statements did you
8 say this, for approximately six to eight weeks
9 prior to the shooting you would go to Longboard
10 Lumber to pick up materials and Jack Whitcraft
11 worked there and that's where you heard him utter
12 threats?

13 A. Yes.

14 Q. You said that, right, in two
15 different interviews that six to eight weeks
16 before the killing Jack Whitcraft was working at
17 Longboard Lumber?

18 MR. SCALES: Asked and answered, Your
19 Honor.

20 THE WITNESS: Yes, he was.

22 BY MR. CAMPBELL:

23 Q. Would it surprise you to know that
24 Jack Whitcraft didn't work there for nearly a year
25 before that?

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JOHN CRISSUP X 1118

1 A. Well, if he's there working on Mr.
2 Paul Burgess' equipment I imagine he's getting
3 paid. He worked there under the table quite
4 frequently, so --

5 Q. Did you work there?

6 A. No.

7 Q. So, how would you know that, Mr.
8 Crissup?

9 A. My former brother-in-law worked
10 there.

11 Q. So, it's all hearsay is what you're
12 trying to throw in here isn't it, something you
13 heard from somebody else from somebody else?

14 A. I guess if that's the way you want to
15 look at it. But, I know I don't go to work for
16 free and I know Jack doesn't -- or, didn't.

17 Q. In December of last year you were
18 incarcerated with the defendant at the county
19 jail, weren't you?

20 A. No, I never saw him.

21 Q. Did you communicate with him about
22 testifying for him in this matter?

23 A. I never saw him.

24 Q. Were you there?

25 A. I was in a holding cell, yeah.

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JOHN CRISSUP X 1119

1 Q. Have you exchanged mail?

2 A. Not in several years.

3 Q. Have you exchanged phone calls?

4 A. Not at all.

5 Q. Have you visited him at the jail,

6 sir? Recognizing you're under oath.

7 A. I've never visited him at the jail.

8 Q. So, the threats you told the jury

9 about were when Mr. Whitcraft was working at

10 Longboard Lumber; is that right? That's your

11 testimony?

12 A. He was there, yeah.

13 Q. Mr. Crissup, how would you

14 characterize your reputation for truth or

15 veracity?

16 A. Your Honor, I'm going to object,

17 that's -- I don't see the relevance of that.

18 THE COURT: Sustained.

19 MR. CAMPBELL: It's always relevant,

20 Judge, I mean, the case law's clear.

21 MR. SCALES: I guess then, Your Honor, we

22 should be allowed to ask every witness "Are you a

23 truthful person?" I don't think it's a fair line

24 of questioning.

25 THE COURT: The object is sustained.

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JOHN CRISSUP ReD 1120

1 He's under oath.

2 MR. CAMPBELL: Nothing further, Judge.

3 THE COURT: Mr. Scales?

4

5 **REDIRECT EXAMINATION**

6 BY MR. SCALES:

7 Q. Mr. Crissup, first with regards to

8 where Cliffside Drive came back in to Hussey Lane,

9 you're relying on your memory from seven and a

10 half, eight years ago; is that correct?

11 A. Well, I was down in that area less

12 than a year ago.

13 Q. Okay.

14 A. And it hasn't changed much.

15 Q. In 2001 when you saw Mr. Whitcraft

16 take that road to come back around Cliffside Drive

17 was that road open, do you recall it to be open?

18 A. Yes.

19 Q. Mr. Crissup, you previously testified

20 in 2002 in the earlier trial; is that correct?

21 A. Yes, I did.

22 Q. And at that time you weren't under

23 indictment from the District Attorney's Office

24 were you?

25 A. No.

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JOHN CRISSUP ReD 1121

1 Q. Okay. Since your testimony today is

2 being called in to question, you were asked a

3 question and I want you to confirm if this is what

4 your answer, "Okay. Were you ever present during

5 conversations where Mr. Whitcraft expressed a

6 dislike of Leo Sandoval?" and your testimony in

7 2002 was --

8 A. Was yes.

9 Q. Well, let -- just confirm what I'm

10 going to read to you.

11 A. Mm hm.

12 Q. "Oh, yeah, several times down at

13 Longboard Lumber. You know, we'd stop, hang out

14 for a few minutes and talk and have a cup of

15 coffee." The questioning continued, "And what did

16 Mr. Whitcraft say about Leo?" you said, "Can I say

17 the exact words? I mean --" up to this point is

18 that your recollection of what you testified to?

19 A. Yes, it is.

20 Q. You testified, "They're not real

21 pleasant." "You don't -- I don't think you need

22 to get in to the exact words, and confirm this or

23 not." "Okay. He -- well, he basically stated he

24 hated the Mexican." "Did you ever hear him to say

25 he was going to kill Mr. Sandoval?" and you

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JOHN CRISSUP ReD 1122

1 stated, "Oh, yeah, he said it several times he

2 wanted to kill him."

3 A. Mm hm.

4 Q. Is that your testimony in 2002?

5 A. Yeah, that sounds right. That's what

6 happened, so --

7 Q. And did you testify in 2002, without

8 getting in to all of the detail, that you saw Mr.

9 Whitcraft 15 times in Mr. Sandoval's neighborhood?

10 A. That's a fair -- yeah.

11 Q. And that was over a period of three

12 months?

13 A. Yeah, about. Yeah, about that long,

14 by the time we were done with that house.

15 Q. So what you've testified to today is

16 it consistent with what you testified to seven

17 years ago?

18 A. I would say so.

19 Q. Okay. You said that when you had

20 these conversations with Mr. Whitcraft he would be

21 at Longboard Lumber?

22 A. Yes.

23 Q. Is that right? And based on your

24 knowledge was it uncommon for people to work under

25 the table at Longboard Lumber?

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JOHN CRISSUP ReX 1123

1 A. Not at all.
 2 Q. Okay.
 3 MR. SCALES: Nothing further.
 4 THE COURT: Mr. Campbell?
 5
 6 RECROSS EXAMINATION
 7 BY MR. CAMPBELL:
 8 Q. Mr. Crissup, did you also state in
 9 your statement and testify in the last trial that
 10 Leo Sandoval, the defendant, told you that the
 11 next time Whitcraft pointed a gun at him he was
 12 going to blow his head off?
 13 A. I don't remember that.
 14 Q. All right.
 15 A. I really don't.
 16 Q. Let me show you your statement that
 17 you've already said you did give a statement to
 18 Mr. Churma. I'll ask you to read this bottom
 19 paragraph and see if that refreshes your
 20 recollection, sir.
 21 A. I remember this conversation with
 22 him, but I don't remember saying those exact words
 23 of "blow his head off" or --
 24 Q. Do you remember the defendant saying
 25 that?

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JOHN CRISSUP ReX 1124

1 A. What's that?
 2 Q. Did the defendant say that he would
 3 blow off Mr. Whitcraft's head, did Mr. Sandoval
 4 say that?
 5 A. I don't remember Leo saying that
 6 exactly.
 7 MR. CAMPBELL: That's all I have, Judge.
 8 THE COURT: Mr. Scales?
 9 MR. SCALES: Nothing further, Your Honor.
 10 THE COURT: Are you asking this witness
 11 be excused?
 12 MR. SCALES: Yes, I am.
 13 THE COURT: Any objection?
 14 MR. CAMPBELL: No, Your Honor.
 15 THE COURT: You are excused. Thank you
 16 for coming in.
 17 And, Mr. Scales, you may call your next
 18 witness.
 19 MR. SCALES: Thank you, Your Honor. Your
 20 Honor, the Defense would call Teresa Hill.
 21 THE COURT: Please step in to the
 22 courtroom, ma'am. Right up here. You need to
 23 stand right there and raise your right hand my
 24 clerk will swear you in.
 25 THE CLERK: Do you swear the testimony

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TERESA HILL D 1125

1 you're about to give in the case now pending will
 2 be the truth, the whole truth, and nothing but the
 3 truth, so help you God?
 4 THE WITNESS: Yes.
 5 THE CLERK: Thank you. If you could walk
 6 around the table, up the steps and have a seat
 7 behind the microphone?
 8
 9 ***

10 TERESA HILL,
 11 called as a witness on behalf
 12 of the Defense, was sworn and
 13 testified as follows:

DIRECT EXAMINATION

15 BY MR. SCALES:
 16 Q. Can you state your full name and
 17 spell your last name, please?
 18 A. My full name is Teresa L. Hill and
 19 it's spelled T-e-r-e-s-a, L, Hill, H-i-l-l.
 20 Q. Thank you. Ms. Hill, do you know
 21 Leonard Sandoval seated next to me?
 22 A. I know him.
 23 Q. And how long have you known Mr.
 24 Sandoval?
 25

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TERESA HILL D 1126

1 A. Since I was a little bitty kid.
 2 Q. And can you tell us what you mean by
 3 "little bitty kid"?
 4 A. I grew up on Picket Creek, up there
 5 since I was about 9 years old.
 6 Q. Okay. So, how long then have you
 7 known him, without -- without revealing your age
 8 how long have you known Mr. Sandoval?
 9 A. Probably about 17 years.
 10 Q. About 17 years.
 11 A. 19.
 12 Q. Okay. And without getting in to
 13 specifics would you say that you knew him fairly
 14 well? What -- how -- what was the nature of your
 15 relationship?
 16 A. Neighbors.
 17 Q. Neighbor? And would you see him
 18 fairly regularly?
 19 A. Mm hm.
 20 Q. Okay. Did you know Jack Whitcraft?
 21 A. Yeah.
 22 Q. And how did you know Jack Whitcraft?
 23 A. He lived up the road from me and my
 24 ex-husband.
 25 Q. And when you say "the road" which

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TERESA HILL D 1127

1 road were you talking about?

2 A. West Picket Creek.

3 Q. West Picket Creek. And is that in

4 the -- well, actually I'm not going to show you

5 that, I think we know where West Picket Creek is

6 by now. And how well did you know Jack Whitcraft?

7 A. I got to know him pretty good.

8 Q. You knew him pretty good? And once

9 again without getting in to details how did you

10 get to know Jack Whitcraft? What type of

11 situations would that be that you came in to

12 contact with him?

13 A. He lived up the road from us and he'd

14 stop in, drink a beer now and then, just because

15 he'd go up and down the road every day and so we'd

16 see.

17 Q. Would you say that he was more

18 friends with your husband than you?

19 A. Oh, yeah.

20 Q. Okay. Did you know Jack Whitcraft to

21 carry a firearm?

22 A. Yep.

23 MR. CAMPBELL: Judge, I'm going to ask

24 for some time context for --

25 MR. SCALES: And I was --

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TERESA HILL D 1128

1 MR. CAMPBELL: -- relevance purposes.

2 THE COURT: All right. Fair enough.

3 MR. SCALES: And that was my next

4 question, Your Honor.

5 THE COURT: Go ahead.

6

7 BY MR. SCALES:

8 Q. And the question I was going to ask

9 you is how often did you know him to -- and I'll

10 get to -- I'll get to the point where Mr. Campbell

11 wants me to get. But, put that in context in

12 terms of time. If September 27th, 2001, was the

13 date that Mr. Whitcraft was killed going back from

14 that when did you see Mr. Whitcraft carry a gun?

15 A. Every time when he was around.

16 Q. Okay. Put that in to some dates for

17 us or a date range.

18 A. From '01 backwards say for five

19 years.

20 Q. And did you also see him to carry a

21 firearm --

22 A. Always.

23 Q. -- occasionally?

24 A. Always.

25 Q. Okay. And what kind of a firearm

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TERESA HILL D 1129

1 would he carry with him?

2 A. 9mm.

3 Q. 9mm?

4 A. Yeah.

5 Q. Do you remember testifying that it

6 was a .44 caliber?

7 A. I don't remember.

8 Q. Was it a big gun?

9 A. Yeah, it was a big gun.

10 Q. Okay. Did you ever see -- in

11 addition to carrying that firearm did you ever see

12 Mr. Whitcraft to prandish that weapon?

13 A. Yeah.

14 MR. CAMPBELL: I'm going to object unless

15 it's specific to the victim in this case, Judge,

16 you've ruled on this issue before.

17 MR. SCALES: Can we come up?

18 THE COURT: Yes.

19

20 (Sidebar - Not Transcribed)

21

22 THE COURT: Ladies and gentlemen, we are

23 going to have to take a moment. So, I would ask

24 rather than having you sit here waiting for us to

25 please leave your notebooks on the chairs, go back

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COLLOQUY RE: CHARACTER WITNESS 1130

1 in to the jury room. We'll call you back in just

2 as soon as we're able to.

3 And the witness can step down and then

4 we'll call you back in when it's time.

5

6 (At 2:12 p.m. the jury exits the

7 courtroom.)

8

9 (The following proceedings were held in

10 open court out of the presence of the

11 jury.)

12

13 THE COURT: And we are still on the

14 record and the issue has been raised and, Mr.

15 Scales, this was the issue that you started to

16 raise earlier on, I believe before lunch. And as

17 I was telling Counsel 1 had a very short period of

18 time during the lunch hour to look at this. But,

19 I did -- I did check Kirkpatrick's, and I'm on Page

20 225, is that the argument that you're making?

21 MR. SCALES: Let me grab that, Your

22 Honor.

23 THE COURT: With respect to specific

24 incidences?

25 MR. SCALES: I may have a different

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COLLOQUY RE: CHARACTER WITNESS 1131

1 volume, a different edition than you do.
 2 THE COURT: I'm looking at 5, the Fifth
 3 Edition.
 4 MR. SCALES: I'm on 4.
 5 THE COURT: Okay.
 6 MR. SCALES: I'm looking at Section
 7 405.04.
 8 THE COURT: Okay. One moment and I'll
 9 try and find the corresponding, 405.04?
 10 MR. SCALES: Yes.
 11 THE COURT: Okay. And "Cross Examination
 12 of a Character Witness", is that --
 13 MR. SCALES: Yes.
 14 THE COURT: -- the same heading?
 15 MR. SCALES: Yes, Your Honor.
 16 MR. CAMPBELL: Are you on Page 197,
 17 Judge?
 18 THE COURT: I'm on Page 243, so let's
 19 make sure -- you have the Fifth Edition, don't
 20 you?
 21 MR. CAMPBELL: Yes, I do.
 22 THE COURT: Okay. I'm on Page 243 and
 23 that is Section 405.04 and the title is "Cross
 24 Examination of a Character Witness", which I
 25 believe is where Mr. Scales is, although in a

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COLLOQUY RE: CHARACTER WITNESS 1132

1 different edition. So, at least we're on the same
 2 -- and there may be some changes between the
 3 different editions.
 4 But, Mr. Scales, that is not the area I
 5 was referring to. So, why don't you tell me what
 6 your argument is then.
 7 MR. SCALES: Well, Your Honor, looking at
 8 the text of that, and I'm just going to read it,
 9 "Although inquiry in to specific instances of
 10 conduct is generally prohibited during direct
 11 examination of a character witness, it is
 12 expressly allowed during cross examination. For
 13 example, if a criminal defendant offers evidence
 14 of a pertinent trait of character under Rule
 15 404.2(a) as circumstantial evidence of innocence
 16 the prosecution may cross examine the character
 17 witness called by the defendant regarding specific
 18 incidences of the defendant's prior conduct baring
 19 upon that trait."
 20 A little bit lower in that same
 21 paragraph there is a -- in quotes, "The price a
 22 defendant must pay for attempting to prove his
 23 good name is to throw open the entire subject that
 24 the law has kept closed for his benefit and to
 25 make himself vulnerable where the law otherwise

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COLLOQUY RE: CHARACTER WITNESS 1133

1 shields him."
 2 In this situation the victim's good name
 3 has been testified to many times. He's a peaceful
 4 person. He's a peaceful person. We've heard
 5 that, there's ample evidence that he's a peaceful
 6 person. On cross examination specific instances
 7 are expressly allowed for us to rebut that. The
 8 door has been thrown open as to Mr. Whitcraft's
 9 character, it has not been opened as to Mr.
 10 Sandoval's.
 11 THE COURT: Are you -- excuse me. Go
 12 ahead. I thought you were finished.
 13 MR. SCALES: I don't think there is
 14 anything -- I mean, that's -- this is something
 15 that I have dealt with many times in the past and
 16 it seems almost very clear to me that you can get
 17 up there and say he's peaceful or you can say he's
 18 truthful, but the other side is allowed to rebut
 19 that. You can do that for a defendant. If I was
 20 to get up there and have Mr. Sandoval -- have
 21 everybody testify what a peaceful guy he is the
 22 State would certainly be entitled to bring in
 23 specific instances of violent behavior or non-
 24 peaceful behavior to rebut that.
 25 THE COURT: All right. So, it's not --

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COLLOQUY RE: CHARACTER WITNESS 1134

1 MR. SCALES: As I state right here --
 2 THE COURT: -- the cross examination
 3 portion of this that you're relying on, it's the
 4 fact that you now are rebutting --
 5 MR. SCALES: I'm rebutting that.
 6 THE COURT: -- evidence that the State
 7 has presented?
 8 MR. SCALES: Yes.
 9 THE COURT: And are you taking this out
 10 of a concept of the purpose that shows -- to show
 11 reasonable fear?
 12 MR. SCALES: Well, I -- I think that's a
 13 little bit of a stretch to say it's to show
 14 reasonable fear.
 15 THE COURT: Okay.
 16 MR. SCALES: Because there are things
 17 that Mr. Sandoval did not have knowledge of, what
 18 Mr. Whitcraft had said to Mr. Crissup, Mr.
 19 Whitcraft -- or, Mr. Sandoval did know of that.
 20 But, this is used to rebut the prior testimony of
 21 character witnesses.
 22 THE COURT: All right. I'm just trying
 23 to fully understand your argument.
 24 Mr. Campbell?
 25 MR. CAMPBELL: Judge, the rule that he

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COLLOQUY RE: CHARACTER WITNESS 1135

1 just read is exactly what I've argued to the
2 Court, it says "cross examine". So, he has to
3 cross examine with the specific instances when the
4 witness is there. It does not allow extrinsic
5 evidence on those issues. That's what he's trying
6 to do now.

7 THE COURT: And that's -- Mr. Scales,
8 that's why I asked the question again with respect
9 to cross as opposed to direct, obviously you're on
10 direct here.

11 MR. SCALES: What -- what section were
12 you looking at, Your Honor, before I respond?

13 THE COURT: Which time.

14 MR. SCALES: Before I started talking.
15 You were looking at, I think you said Page 243?

16 THE COURT: 243 is the section in Edition
17 5 that refers to Section 405.04 Cross Examination
18 of a Character Witness. And you had told me that
19 yours is on a -- yours falls on a different page.
20 But, that's where it falls in the Fifth Edition,
21 which I have.

22 MR. SCALES: Well, I think, Your Honor,
23 one of the other things -- and I agree now with
24 Mr. Campbell that this is on -- that that is on
25 cross examination. But, there has been lots of

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COLLOQUY RE: CHARACTER WITNESS 1136

1 testimony by people saying that he never carried a
2 gun. I think these witnesses can certainly
3 testify as to what they saw. Getting away from
4 character evidence, they can testify as to what
5 they observed, that he carried a gun, that he
6 brandished a gun. Maybe brandishing is considered
7 character evidence, but certainly the fact that he
8 carried a gun is in direct contradiction to what
9 previous witnesses have said.

10 THE COURT: All right.

11 Mr. Campbell, is that where your
12 objection falls in to place when the question was
13 asked whether or not he brandished and then
14 perhaps thinking of what might come after that?

15 MR. CAMPBELL: That's what I was
16 objecting to.

17 MR. SCALES: Okay.

18 THE COURT: Okay.

19 MR. CAMPBELL: I did not object to him --

20 THE COURT: All right. You did not.

21 MR. CAMPBELL: -- carrying.

22 THE COURT: You did not. So, I think --
23 I think that's where we end up. I think that when
24 you asked --

25 MR. SCALES: Okay.

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COLLOQUY RE: CHARACTER WITNESS 1137

1 THE COURT: -- the question about
2 brandishing you stepped over the line --

3 MR. SCALES: Okay.

4 THE COURT: -- on direct. And so your
5 earlier questions with respect to your witness'
6 first-hand knowledge about whether or not she
7 observed the victim carrying a firearm, those were
8 acceptable. But, going further than that is not.
9 And the objection is sustained as to the question
10 with respect to brandishing.

11 MR. SCALES: Very well, Your Honor.

12 THE COURT: Okay. Anything else we need
13 to cover before we bring the jury back in?

14 MR. SCALES: I don't believe so. I don't
15 know if there's something from the State.
16 Anything else from you?

17 MR. CAMPBELL: No.

18 MR. SCALES: Okay.

19 THE COURT: All right. Counsel, please
20 just come up here a moment.

21 (Sidebar - Not Transcribed)

22 THE COURT: All right. I think we're
23 ready to have the jury back in.
24
25

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TERESA HILL D 1138

1 (At 2:21 p.m. the jury enters the
2 courtroom.)

3
4 (The following proceedings were held in
5 open court in the presence of the jury.)
6

7 THE COURT: You can go ahead and get your
8 witness back in. Do you want to call the witness?
9 Do you want to get the witness back in, please?
10 Thank you.

11 And you can just retake the stand,
12 please.

13 All right. And the Court had sustained
14 the State's objection.

15 Mr. Scales, you may proceed.

16 MR. SCALES: Thank you, Your Honor.

DIRECT EXAMINATION (CONT.)

17 BY MR. SCALES:

18 Q. Ms. Hill, just a couple more
19 questions. Based on your interaction with Mr.
20 Whitcraft do you have any opinion about him being
21 a peaceful or a violent person, without going in
22 to specifics?
23
24

25 A. More violent.

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TERESA HILL X 1139

MR. SCALES: Nothing further.

THE COURT: Mr. Campbell?

CROSS EXAMINATION

BY MR. CAMPBELL:

Q. Ms. Hill, were you married to Curtis Hill?

A. Yes.

Q. Are you still married to Curtis Hill?

A. Okay.

Q. In fact, the way you met Mr.

Whitcraft was through your ex-husband; is that right?

A. We met him together.

Q. And he was a good friend -- Mr.

Whitcraft was a good friend of Curtis Hill?

A. Just back and forth neighbor talk.

Q. And you had quite an acrimonious and unfriendly divorce with Mr. Hill; is that right?

MR. SCALES: Objection, relevance.

THE COURT: Overruled.

Answer if you may.

THE WITNESS: We're okay.

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TERESA HILL X 1140

BY MR. CAMPBELL:

Q. You don't -- okay. Let me go to something else. You lived on West Picket Creek Road and you testified that you knew Mr. Whitcraft because he lived up West Picket Creek Road on a mining claim; right?

A. Right.

Q. That's when you had any association with Mr. Whitcraft when he would travel down, stop by the house --

A. Yeah.

Q. -- visit with Curtis and go on his way? So, when you talk about him carrying a gun --

A. Mm hm.

Q. -- is when he's living up in the woods on a mining claim; is that right?

A. He had his gun on him whether it was there or he was down the road.

Q. Whether he was coming down from the mining claim?

A. Yeah.

Q. Okay. But, you are not correct, are you, in saying you had contact with him from 1996 on?

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TERESA HILL X 1141

A. In and out, yeah.

Q. Where did he live from 1996 to --

A. He lived up the road.

Q. -- 2001?

A. My parents lived on Picket Creek.

Q. It's your testimony under oath that he lived up on the mining claim between 1996 and 2001, is that your testimony, Ms. Hill?

A. As best I know of, yes.

Q. Okay.

A. That I can remember.

Q. So, you really don't remember very well whether you were having contact with him in that period or not?

A. Oh, I remember.

Q. Okay.

MR. CAMPBELL: Nothing further, Judge.

THE COURT: Mr. Scales?

MR. SCALES: Nothing further, Your Honor.

THE COURT: Are you asking that she be excused?

MR. SCALES: Yes, please.

THE COURT: Any objection?

MR. CAMPBELL: No, Judge.

THE COURT: You are excused. Thank you

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COLLOQUY RE: WITNESS CROWE'S TESTIMONY 1142

for coming in.

And you may call your next witness then, Mr. Scales.

MR. SCALES: Could I have just a moment, Your Honor?

THE COURT: Sure.

(Brief Pause)

MR. SCALES: Could we approach?

(Sidebar - Not Transcribed)

THE COURT: All right. Ladies and gentlemen, I'm going to ask that you put your notebooks down for a very short period of time. We're going to have you come right back in. But, just momentarily we'll ask that you go in to the jury room. You're getting your exercise today. Thank you for your patience.

(At 2:26 p.m. the jury exits the courtroom.)

(The following proceedings were held in

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COLLOQUY RE: WITNESS CROWE'S TESTIMONY 1143

1 open court out of the presence of the
2 jury.)

3
4 THE COURT: Mr. Scales, are you --

5 MR. SCALES: Let me just have just a
6 moment, Your Honor. We may kind of radically
7 shift gears here for a second. Apparently.

8 THE COURT: All right. So, don't call
9 yet.

10
11 (Brief Pause)

12
13 MR. SCALES: Your Honor, in light of the
14 Court's ruling I am not going to be calling Mr.
15 Crowe. So, we'll go directly to Detective
16 Rylander.

17 THE COURT: All right. So, you are
18 absolutely certain of that? The reason I ask is
19 that we will contact the deputy to let them --

20 MR. SCALES: Absolutely.

21 THE COURT: -- know to go ahead and make
22 other arrangements.

23 MR. SCALES: Absolutely, Your Honor.

24 THE COURT: I don't want to do that if
25 there's any question.

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COLLOQUY RE: WITNESS CROWE'S TESTIMONY 1144

1 MR. SCALES: Oh, I understand that.

2 THE COURT: So, this is a definite?

3 MR. SCALES: Well, I think, and Counsel
4 is well aware, that the testimony that I would
5 have been bringing in it doesn't directly relate
6 to Mr. Sandoval's state of mind as to his
7 reasonable fear for his safety, it's with regard
8 to an incident that Mr. Crowe had specifically
9 with Mr. Whitcraft. And it's very clear from the
10 Court's ruling that that's not going to come in.

11 THE COURT: I see.

12 MR. SCALES: So, I think the value of
13 bringing Mr. Crowe is just -- it's just not there
14 anymore, so --

15 THE COURT: All right. Then with that
16 information I'll just ask my clerk to go ahead and
17 notify the Sheriff's Office so that they're not
18 waiting around with that other witness.

19 Otherwise then are you ready to proceed?

20 MR. SCALES: We are, Your Honor.

21 THE COURT: And then just time wise how
22 much longer do you see us in the courtroom this
23 afternoon with your witnesses?

24 MR. SCALES: Not very long.

25 THE COURT: Okay.

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COLLOQUY RE: WITNESS CROWE'S TESTIMONY 1145

1 MR. SCALES: Just a couple of -- tying up
2 a couple of loose ends with Detective Rylander.

3 THE COURT: We've just sent the jury out
4 so many times I'm trying to consolidate these
5 breaks a little bit.

6 MR. SCALES: I was going to say that
7 based on past experience I think we've done pretty
8 good this time.

9 THE COURT: Not bad.

10 MR. SCALES: So far.

11 THE COURT: Not bad.

12 MR. SCALES: Until today.

13 THE COURT: Right. Not bad, except I
14 think they're getting a little worn today. So,
15 not long for you let, Mr. Scales.

16 And then, Mr. Campbell, do you have an
17 idea yet on your timing?

18 MR. CAMPBELL: I have one potential
19 rebuttal witness that actually I will release now.
20 He related to Mr. Crowe. So, I don't think I'll
21 be crossing -- the cross, obviously, I don't know
22 until I hear what he --

23 THE COURT: Right.

24 MR. CAMPBELL: -- directs. But --

25 MR. SCALES: Sure --

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COLLOQUY RE: WITNESS CROWE'S TESTIMONY 1146

1 MR. CAMPBELL: -- it won't -- shouldn't
2 be very long.

3 THE COURT: Okay. So, it looks like the
4 remaining time in the courtroom can be done in
5 this next period --

6 MR. SCALES: Yes.

7 MR. CAMPBELL: Yeah.

8 THE COURT: -- without a break?

9 MR. CAMPBELL: If you want to give them
10 10 minutes or something before we go again --

11 THE COURT: Well, that's what I'm just
12 thinking, maybe we'll just all take a bit of a
13 break now and then this -- we'll call this our
14 afternoon break and then when you come back we
15 will finish with all of the information to put on
16 the record today and then that would rap that up.
17 And then I could meet with Counsel to go over jury
18 instructions. Okay.

19 So, let's take a 10 minute break.

21 (At 2:30 p.m. an afternoon recess was
22 taken.)

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COLLOQUY 1147

GRANTS PASS, OREGON
WEDNESDAY, FEBRUARY 25, 2009; 2:46 P.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.
Gentlemen, ready for the jury to come in?

MR. SCALES: Yes, Your Honor.

MR. CAMPBELL: Yes, Your Honor.

THE COURT: Thank you.
Please bring them in.

*(At 2:48 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 I am

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GERALD RYLANDER D 1148

hopeful that that is our last time that I'll have
to ask you to step out for this afternoon. We're
certainly trying to make that our last recess.

Mr. Scales, you may call your next
witness.

MR. SCALES: Thank you, Your Honor. Our
last witness Detective Gerald Rylander.

THE COURT: Okay.

Please step forward and raise your hand
-- 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. Please be seated?

GERALD RYLANDER,
called as a witness on behalf
of the Defense, was sworn and
testified as follows:

DIRECT EXAMINATION

BY MR. SCALES:

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GERALD RYLANDER D 1149

Q. Detective, you've already done this
before, but could you state your name and spell
your last?

A. My name is Gerald Carl Rylander,
R-y-l-a-n-d-e-r.

Q. Thank you. Detective Rylander, you
have been in the courtroom during the course of
this trial, correct?

A. Yes, sir, I have.

Q. Okay. And I'm just going to ask you
a few brief questions. You had an opportunity to
interview Janice Rose-Webber during the initial
investigation of this case?

A. Yes, I did.

Q. And, Detective, do you recall Ms.
Webber -- or, Ms. Rose, I'm sorry, as she goes by
now, did she ever make a statement to you that Mr.
Sandoval told her he was going to kill Jack
Whitcraft and/or Mary Carlson in self defense and
that he was going to get away with it?

A. I do not recall ever hearing that
come from her, no.

Q. And is that in any of your police
reports?

A. No.

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GERALD RYLANDER D 1150

Q. Okay. Did you discuss the details of
the case or -- during the course of your
investigation did you give her opportunity to
share information about the relationship between
Mr. Sandoval and Mr. Whitcraft and Ms. Carlson to
you?

A. I believe I did. I didn't actually
discuss the case in total with her. She had
opportunity to tell me whatever information she
wished me to know.

Q. Okay. Did -- did Ms. Rose ever tell
you -- do you recall her telling you that Mr.
Sandoval had not previously asked her to lie or to
conceal evidence or do anything unusual regarding
the shooting incident?

A. Yes, that statement is in one of my
reports.

Q. Okay. And did she discuss the types
and number of guns that Mr. Sandoval had in his
possession?

A. She did mention some guns and
specified some of his guns to me.

Q. I'm sorry, I didn't hear the last
part, sir.

A. She did specify some weapons to me.

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GERALD RYLANDER D 1151

1 Q. And did she tell you that he had a --
2 two Vietnam sniper rifles, an old rifle and a
3 shotgun?

4 A. Yes.

5 Q. Okay. Did she discuss weapons that
6 she herself brought to the relationship?

7 A. Yes, and again she specified some
8 weapons specifically to me.

9 Q. And based on what's in your report
10 can you tell the jury what those weapons were?

11 A. I believe two of those were revolvers
12 and possibly one .22 pistol, maybe a .22 rifle and
13 she also specified that that particular rifle was
14 hers.

15 Q. And the rifle you're pointing to, is
16 that the 7mm Mauser that was used to kill Jack
17 Whitcraft?

18 A. Yes.

19 Q. Did she at any time tell you or is it
20 in any of your reports that she purchased that
21 rifle for Mr. Sandoval while he was on -- while he
22 had a restraining order?

23 A. No, she did not.

24 Q. Detective, you also had an
25 opportunity to speak with Lacy Maust; is that

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GERALD RYLANDER D 1152

1 correct?

2 A. Yes, I did.

3 Q. And do you have that report handy,
4 sir?

5 A. I'm sure I do, if you'd give me a
6 moment?

7 Q. You bet.

8 A. I have the portion in my report about
9 that interview --

10 Q. Okay.

11 A. -- in front of me.

12 Q. If it helps, Detective, can I direct
13 your attention to Page 65 of 97?

14 A. Yes.

15 Q. And during your interview with Mr.
16 Maust did he discuss what had happened at the Lil
17 Pantry fight incident?

18 A. Yes, he did.

19 Q. Okay. And did he discuss with you
20 anything that Jack said to Mr. Sandoval during the
21 fight?

22 A. If you'll give me a moment to review?

23 Q. Okay.

24 A. I believe you're looking for a
25 specific statement, probably the fourth paragraph

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GERALD RYLANDER D 1153

1 up from the bottom?

2 Q. Yes, Detective. Can you tell us what
3 you put in your report?

4 A. Would you like me to read that
5 paragraph?

6 Q. Please.

7 A. "Jack fell on to his back. Jack got
8 up and stated he was going to beat him until he
9 dies. Lacy told Jack to leave before the police
10 came and Jack went to jail."

11 Q. Okay. Thank you. Getting back to
12 Janice Rose, and I'm -- don't mean to jump around,
13 in your report or prior to court today did Ms.
14 Rose ever tell you that Leo acted like a different
15 person in the two weeks prior to the shooting?

16 A. I'm sorry, I have some familiarity
17 with my reports. I'll have to go through the
18 individual reports to answer correctly on that. I
19 don't wish to suppose.

20 Q. Okay. Did she ever tell you that he
21 seemed very nervous or agitated?

22 A. Not that I recall.

23 Q. Okay. I think that's all that I have
24 at this time, Detective. Thank you.

25 THE COURT: Mr. Campbell?

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GERALD RYLANDER X 1154

CROSS EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Just a couple, Detective Rylander.

3 With regard to threats that Ms. Rose communicated
4 with you, did you -- do you recall if you ever sat
5 down and just work with her-- worked through with
6 her what -- helping her remember any, the threats
7 that were uttered throughout the relationship with
8 -- did you -- did you go through that -- that kind
9 of a an interview or a process with her?

10 A. No, I never did go through that kind
11 of an interview process with her.

12 Q. Okay. We've already heard that it
13 was Detective Mario Torres that first interviewed
14 her and that she had this strong response when
15 told about the killing. Did -- did you play that
16 back to her at any time and then have a chance to
17 discuss that reaction with her?

18 A. I did not.

19 Q. Okay.

20 A. I did not address that at all with
21 her.

22 Q. Okay. And sometimes you sit in with
23 the District Attorney when he prepares witnesses
24 and actually goes through and gets a lot more
25

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GERALD RYLANDER ReD 1155

1 details out of witnesses before they -- as they
2 prepare to come to the courtroom, is that fair?

3 A. Yes, that's true.

4 Q. Okay. And different people ask
5 things differently, have you -- and in your career
6 sometimes just approaching a question differently
7 will bring out different information?

8 A. True. Certainly.

9 Q. Okay. Let's go to Mr. Maust, you
10 testified about one paragraph out of that report.
11 And I'll take you back to Page 65 that you were
12 on. On the third paragraph down did Mr. Maust
13 tell you that Jack was yelling toward Leonard,
14 Jack had been close to Leonard's driver door and
15 he was yelling for Leonard to leave or he would
16 beat him?

17 A. Yes.

18 Q. Okay.

19 MR. CAMPBELL: Nothing further, Judge.

20 THE COURT: Mr. Scales?

21 REDIRECT EXAMINATION

22 BY MR. SCALES:

23 Q. How many conversations did you have
24 with Ms. Rose?
25

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GERALD RYLANDER ReX 1156

1 A. Five.

2 Q. Five? And at no time during those
3 conversations with Ms. Rose did you talk to her
4 about the relationship between Jack Whitcraft and
5 Leonard Sandoval?

6 A. I believe she did offer some
7 information regarding their relationship, but I
8 did not specifically talk to her on those points.

9 Q. And in retrospect would you have done
10 that differently, would you have talked with her
11 about those specific points in preparation for a
12 trial, say?

13 A. I guess vision is a great deal
14 different afterwards and I would have to admit
15 that there may have been a number of persons I
16 would have talked to in much more detail even
17 though they had been talked to by other officers
18 so that it was my information and my knowledge.
19 And in this instance I did not do that.

20 Q. Thank you, Detective.

21 MR. SCALES: Nothing further.

22 THE COURT: Mr. Campbell, anything else?
23

24 RECROSS EXAMINATION

25 BY MR. CAMPBELL:

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GERALD RYLANDER ReX 1157

1 Q. We're kind of close to beating a
2 dead horse. But, a number of these conversations,
3 and when you say there were five, were initiated
4 by her at the request of the defendant, so they
5 had a specific purpose not just you gather
6 information, is that fair?

7 A. That's partially so. At least one
8 was directed toward me because of Mr. Sandoval
9 asking her to contact me and others were her
10 contacting me so that she could impart information
11 she wanted me to know and yet others was me
12 calling and talking to her. So, it was a
13 combination of the three.

14 Q. And, in fact, you were -- she called
15 you and informed you that the relationship had
16 broken off and discussed that with you without
17 going in to detail: right?

18 A. Yes, she did.

19 Q. And soon after delivered one of the
20 exhibits, the letter that has went in to evidence
21 in this case?

22 A. Yes, she did.

23 MR. CAMPBELL: Nothing further.

24 THE COURT: Mr. Scales?

25 MR. SCALES: Nothing further, Your Honor.

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DEFENSE & STATE RESTS 1158

1 THE COURT: All right.

2 You may step down.

3 And, Mr. Scales?

4 MR. SCALES: Your Honor, at this time the
5 Defense rests.

6 THE COURT: All right.

7 Mr. Campbell?

8 MR. CAMPBELL: Judge, we will not have a
9 rebuttal case. That's all we have.

10 THE COURT: All right.

11 Ladies and gentlemen, you have now heard
12 all of the evidence that you are going to hear in
13 this case. Let's -- let me just go over a little
14 bit of the procedure of how we will proceed from
15 this point on. Again, you've heard all of the
16 evidence.

17 At this point I'm going to release you,
18 the jurors, for the remainder of the day. And
19 then I will have you come back in tomorrow morning
20 at our regular time. So, I'd ask that you check
21 in at 9:15, 9:30 we will plan to start up in the
22 courtroom. And then at that time you will hear
23 the closing arguments of the lawyers. After they
24 deliver their closing arguments to you then I'm
25 going to instruct you as to the law and as to the

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COURT COMMENTS TO THE JURY 1159

1 procedure that you will follow during your
2 deliberation process.

3 So, at this point we will break for the
4 day. And you will be released to go home, again
5 with the admonition that you are not to start to
6 deliberate yet, the case has not yet been given to
7 you for deliberation. Just to make that very
8 clear. Even though you've heard all the evidence
9 you are not free to discuss it amongst yourselves,
10 you are not free, of course, to discuss it with
11 anyone else, as has been the case throughout the
12 trial.

13 So, please leave your notebooks on the
14 chairs and report back tomorrow morning at 9:15 to
15 the jury room. Have a restful evening.

16
17 *(At 3:01 p.m. the jury exits the courtroom*
18 *for the evening.)*

19
20 *(The following proceedings were held in*
21 *open court out of the presence of the*
22 *jury.)*

23
24 THE COURT: All right. We are in recess
25 until tomorrow morning, 9:30.

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COURT COMMENTS TO THE JURY 1160

1 And, Counsel do you want to take any
2 *(Recording stops mid-sentence)*

3
4
5
6 *(On February 25, 2009, at 3:01 p.m. the*
7 *above entitled matter was concluded for*
8 *the day, to reconvene on February 26,*
9 *2009, at 9:30 a.m.)*

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COLLOQUY RE DEFENDANT'S RIGHT TO TESTIFY 1161

1 GRANTS PASS, OREGON

2 THURSDAY, FEBRUARY 26, 2009; 9:33 A.M.

3 12 PERSON JURY TRIAL - DAY 7

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

5 --oOo--

6
7 *(The following proceedings were held in*
8 *open court out of the presence of the*
9 *jury.)*

10
11 THE COURT: All right. Counsel,
12 anything before the jury comes in?

13 MR. CAMPBELL: We --

14 MR. SCALES: Yes, Your Honor.

15 THE COURT: All right.

16 MR. SCALES: I'm sorry. We had discussed
17 yesterday the Court needed to inquire of Mr.
18 Sandoval --

19 THE COURT: Yes.

20 MR. SCALES: -- if he wanted to waive his
21 right to testify.

22 THE COURT: All right. We'll take care
23 of that first then.

24 Mr. Sandoval, if you would please stand?
25 Can you hear me okay now?

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COLLOQUY RE DEFENDANT'S RIGHT TO TESTIFY 1162

1 THE DEFENDANT: Yes.

2 THE COURT: Yes? All right. I did want
3 to discuss with you your right to testify in this
4 trial. We have proceeded through the trial and
5 your attorney has indicated that you did not wish
6 to testify; is that correct?

7 THE DEFENDANT: That's correct.

8 THE COURT: All right. And did you have
9 enough time to meet with Mr. Scales and talk to
10 him about the pros and cons of testifying yourself
11 in your trial?

12 THE DEFENDANT: Yes, we did.

13 THE COURT: All right. And you feel
14 comfortable with that decision?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: All right. And that decision
17 was made on your own after consulting with your
18 legal advisor?

19 THE DEFENDANT: That's correct.

20 THE COURT: No one's pressured you or
21 threatened you in any way in order to get you to
22 make -- to come to that decision?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. So, do you in
25 fact waive your right to testify in your trial?

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DEFENDANT WAIVES RIGHT TO TESTIFY 1163

1 You know you have a constitutional right --
 2 THE DEFENDANT: Yes.
 3 THE COURT: -- to testify, so do you
 4 waive that right?
 5 THE DEFENDANT: I wavier that right,
 6 ma'am. I don't need to testify. I didn't in my
 7 last trial.
 8 THE COURT: You did testify?
 9 THE DEFENDANT: I didn't.
 10 THE COURT: Did not. Okay. And so
 11 you're following the same procedure in this trial?
 12 And that's what you've --
 13 THE DEFENDANT: Yes, ma'am.
 14 THE COURT: -- decided? All right. Then
 15 the Court's satisfied with that.
 16 Thank you, Mr. Scales.
 17 MR. SCALES: Thank you, Your Honor.
 18 THE COURT: All right. And Mr. Campbell,
 19 did you have anything further before the jury
 20 comes in?
 21 MR. CAMPBELL: Not that I can think of,
 22 Your Honor.
 23 THE COURT: All right. If you would
 24 please ask the jury in?
 25

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CLOSING ARGUMENT / MR. CAMPBELL 1164

1 (At 9:36 a.m. the jury enters the
 2 courtroom.)
 3
 4 (The following proceedings were held in
 5 open court in the presence of the jury.)
 6
 7 THE COURT: Good morning, ladies and
 8 gentlemen. We are continuing our trial, State vs.
 9 Sandoval. And as I informed you yesterday you
 10 have heard all of the evidence you are going to
 11 hear in this case. What will happen next is the
 12 two attorneys will deliver their closing arguments
 13 to you, after that has been completed I will
 14 instruct you as to the law and as to the procedure
 15 you will follow in your deliberations.
 16 So, at this time, Mr. Campbell, you may
 17 proceed with the State's closing.
 18 MR. CAMPBELL: May it please the Court.
 19 Counsel.
 20 Ladies and gentlemen of the jury, I want
 21 to thank you for your attention through this
 22 matter. I know that you have been paying careful
 23 attention to the -- to the evidence. And maybe I
 24 should start my argument by just saying that
 25 there's 12 minds up there that are just as bright

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CLOSING ARGUMENT / MR. CAMPBELL 1165

1 as mine and you will come up with arguments out of
 2 this evidence, you will be able to interpret this
 3 evidence as well as I do. And really it's you
 4 collectively working through this evidence which
 5 will decide this case. I've been doing this a few
 6 years and maybe I can help you. And that's the
 7 purpose of this argument. But, I want to
 8 recognize and I know that you will come up with
 9 points that I do not make today and those -- you
 10 should consider each other's points when you
 11 consider this case.
 12 We started this case with the law. You
 13 needed to know what the law of Oregon is in order
 14 to apply the facts to the law. Because you've
 15 been told you decide the fact, but you apply the
 16 law to those facts as the judge will give you.
 17 So, we need to discuss that briefly before I go in
 18 to the facts and talk to you about the facts.
 19 The charge is Murder and this -- these
 20 are the elements down here that I had listed at
 21 the beginning of the case. Oregon law provides
 22 that a person commits the crime of Murder if the
 23 person intentionally causes the death of another
 24 human being. In this case to establish the crime
 25 of Murder the State must prove beyond a reasonable

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CLOSING ARGUMENT / MR. CAMPBELL 1166

1 doubt the following three elements: That the act
 2 occurred in Josephine County, Oregon. Clearly
 3 Picket Creek Road where this happened is in
 4 Josephine County, Oregon.
 5 That the act occurred on or about
 6 September 27th, 2001. There's no evidence that
 7 contradicts, all of the evidence that that's the
 8 day in question, a Thursday.
 9 And that the defendant intentionally
 10 caused the death of Jack Whitcraft, another human
 11 being.
 12 And you'll even get a definition of what
 13 a human being is, someone who is born and alive at
 14 the time that the act occurs. That's why I asked
 15 Mary Carlson where was Jack Whitcraft born. It
 16 seemed like a superfluous question, but I was
 17 establishing that element. He was born in
 18 Detroit, Michigan and you'll remember on -- on
 19 Valentine's Day, 2-14-1954.
 20 So, the defendant has admitted that he
 21 intentionally killed Mr. Whitcraft and he has
 22 raised a defense of self defense. And the Court
 23 will tell you that the State has the burden to
 24 disprove that beyond a reasonable doubt.
 25 So, let's look at the law on that that

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CLOSING ARGUMENT / MR. CAMPBELL 1167

1 we would ask you to concentrate on as you -- as
2 you look at the evidence and interpret what went
3 on on September 27th, 2001. A defendant can not
4 claim self defense in Oregon, he can not say this
5 homicide was justified by self defense if he is
6 the provoker of the incident.

7 And this is exactly the language the
8 judge will give you. The defendant is not
9 justified in using physical force on another
10 person if he provoked the use of unlawful physical
11 force by that other person with the intent to
12 cause physical injury or death to the other
13 person. If he provoked this incident he is not
14 entitled to self defense under Oregon law.

15 And then you will get another
16 instruction very, very closely akin to this
17 instruction. Which talks about the initial
18 aggressor. And you're going to get a full
19 statement of law here. And I will go through it
20 with your right now. But, I want you to see that
21 part of this is really irrelevant to this
22 particular case. So, let's read through it and
23 then I'll try to explain that. Now, this is like
24 provoking, but now we're talking about who was the
25 initial aggressor.

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CLOSING ARGUMENT / MR. CAMPBELL 1168

1 Ordinarily a person is not justified in
2 using physical force on another person if he was
3 the initial aggressor. So, that's -- there's the
4 general rule right there. A person is not
5 justified in using physical force on another
6 person if he was the initial aggressor. That's
7 the rule.

8 Now, there's an exception to that rule,
9 but it doesn't apply in this case. So, we'll read
10 the rest of this just so you guys understand this.
11 Ordinarily a person is not justified in using
12 physical force on another person if he was the
13 initial aggressor. However, the defendant's use
14 of physical force may be justified even though he
15 was the aggressor if you find that he withdrew
16 from the encounter and effectively communicated
17 that. There's no evidence of that; right?
18 There's no evidence he withdrew from the encounter
19 and communicated he was withdrawing and then Mr.
20 Whitcraft came back at him and then he killed Mr.
21 Whitcraft.

22 So, that part of the instruction,
23 although the judge is going to give the complete
24 statement of the law, what you should look at in
25 this is this part of the law, the general rule. A

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CLOSING ARGUMENT / MR. CAMPBELL 1169

1 person is not justified in using physical force on
2 another person if he was the initial aggressor.
3 So, if you provoke it, if you're the initial
4 aggressor you can't claim self defense.

5 So, why even have an investigation when
6 it's self defense? Why even have an investigation
7 when it's self defense? The defendant asked that
8 question. And I guess I would like for you to
9 start right there and think about how -- how
10 insidious it is if a person plans to kill someone
11 and set up a self defense. If you think about it,
12 if you set up a scene right, if you attack another
13 person, you're the initial aggressor, you provoke
14 the event and you set it up in a place where there
15 are no other witnesses, no one else can see what
16 goes on and you kill the only other witness there
17 then there's only one person to tell the story;
18 right? There's only one person that tells you
19 what happened. There is the spoil of who gets to
20 tell the story goes to the victor. It is the
21 survivor that wins the prize of self defense in
22 that situation.

23 I'll give you an analogy, arson. An
24 arson, a good arsonist burns up all the evidence
25 that he started a fire. This is the same kind of

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CLOSING ARGUMENT / MR. CAMPBELL 1170

1 principle. You set up the self defense thing,
2 you get a man to touch a gun and you shoot him and
3 then you tell the story about how it was self
4 defense and the man that's shot never gets to tell
5 what really happened.

6 So, how do -- how do we as a society and
7 a community how do we go about doing justice in a
8 situation where a defendant has that in mind?
9 Well, the only way to do it is with a very careful
10 scene investigation. And the only way to do it is
11 to have a complete investigation.

12 And in this case we were very fortunate
13 to have one of the best criminalist in Oregon,
14 John Amish, go to the scene. We were very
15 fortunate to have Richard Kuehmichel the lead
16 accident reconstructionist in the state at that
17 time go to this scene. And it's by looking at the
18 scene that we're able to call the lie or tell the
19 lie or show the lie of the defendant. It's the
20 scene that will speak for Jack Whitcraft and it's
21 the scene that will help you decide this case
22 appropriately.

23 The defendant claims self defense. He
24 said, "I did this in self defense." Well, why
25 don't we start here. He shot the man in the back.

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CLOSING ARGUMENT / MR. CAMPBELL 1171

1 He shot this man in the back of the head sitting
2 in his pickup truck. Does that sound like self
3 defense to you? He shot the man in the back.

4 Even the defendant knew that didn't
5 sound like self defense. That wasn't self
6 defense. So, what did he do? He actually in his
7 first story to Jerry Rylander said he didn't shot
8 this guy in the back, this guy stepped out of his
9 pickup, turned with the gun toward him, pointed it
10 at him and he shot him that way. He didn't shoot
11 him in the back. He knew that shooting someone in
12 the back isn't self defense and it's not justified
13 under Oregon law, so he changed the story of what
14 happened. And you'll recall the evidence on that.

15 He -- he had about an hour plus to
16 reflect about that and he had an hour plus to
17 think about dadgummit, the scene, when I left that
18 scene his feet were up in the pickup hooked up in
19 wires. That's not going to fly. And in the trip
20 in with the officer in his car he said, "Jerry, I
21 need to change my statement, he didn't get out of
22 the vehicle. He didn't have a chance to, he was
23 going to shoot me and I shot him in self defense."

24 So, from the get go he knew it wasn't
25 self defense, he wanted to change his story,

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CLOSING ARGUMENT / MR. CAMPBELL 1172

1 realized he couldn't go with that story because
2 the scene was going to catch him on that one and
3 changed his story. And there were a number of
4 other places where you see him changing his story.
5 You're going to have the complete transcript, you
6 heard the tape, but you can review it again. And
7 I'm going to direct you to a place in here in my
8 argument in a few minutes.

9 But, he shot him in the back. You don't
10 shoot someone in the back and claim self defense.
11 That would be a very, very rare situation where
12 that would be legitimate. And the defendant knew
13 it wasn't by his own action.

14 We'd ask you to look at evidence of a
15 plan. Defendant told Janice Rose, "I will kill
16 him in self defense and I will get away with it."
17 "I will kill him in self defense and I will get
18 away with it." Now, that is a suggestion of a
19 plan, isn't it? Now, I -- I -- I know that the
20 Defense will come up and argue that that is recent
21 fabrication. That's a term we use. That --
22 because he tried to develop that he hadn't -- she
23 hadn't said those exact words earlier that anyone
24 put in a report.

25 But, you heard -- you heard kind of how

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CLOSING ARGUMENT / MR. CAMPBELL 1173

1 that came out. She was being prepared as a
2 witness, she went through a tape where she had
3 this strong reaction against the defendant. A
4 very strange reaction when she was told he killed
5 Jack Whitcraft. She was angry at him because what
6 she had heard from this man all came bubbling back
7 to her. And preparing for her testimony she was
8 asked, "What were those feelings? Why did you
9 have this reaction, this response?" And she came
10 up with this is what the defendant had said and
11 she testified under oath to you that this was what
12 the defendant had said. And you might doubt that
13 because it wasn't said before, eight years ago, or
14 you might think it through and say, yeah, human
15 beings are like that if you trigger memories
16 different ways sometimes they can remember
17 different details.

18 But, think of this, think of this, is
19 there other evidence in this case that shows he
20 had a plan? Because if there is than that's
21 consistent with him having said that. "I will
22 kill him in self defense and I will get away with
23 it."

24 Well, what is -- what are the other
25 evidence of planning in this case? Let's start

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CLOSING ARGUMENT / MR. CAMPBELL 1174

1 with the position of that vehicle behind Mr.
2 Whitcraft's pickup. That is an offensive
3 position. That is a planned position for that
4 vehicle. That position is such that he can step
5 out with the tailgate and his own door blocking
6 him. His window is fully down so he can shoot
7 through the window or around the door. That shows
8 planning. That shows that he thought about how he
9 was going to approach this situation.

10 The Bronco we know now made a fast but
11 controlled stop. It made a fast stop, it slid a
12 little bit, we saw that on the tires. The expert
13 told us, we wouldn't have known it without the
14 expert. But, that sparkling, it did cause
15 sparkling or spackling on the tire from it
16 sliding. It stop -- it stopped fast. It was
17 stopped first. The other vehicle backed in to it,
18 either backed in or rolled in to it. It was
19 stopped first.

20 There were no houses in view of this
21 scene. No one that could look from their front
22 window and see these -- this incident. The
23 closest house was Mister -- with Mr. Callahan.
24 Mr. Callahan whom the defendant was -- the victim
25 was going to Mr. Callahan's. So, what does he

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CLOSING ARGUMENT / MR. CAMPBELL 1175

1 know? He knows his route, he knows his basic time
2 of day to come in there and he knows he has to
3 slow down before he turns in that driveway.

4 Defendant wanted the police to think he
5 immediately called 9-1-1. He thought of that.
6 And he also thought about what he would do after
7 the shooting to build witnesses. And we'll talk
8 about that a little more in a few seconds.

9 The scene as you looked at it and as you
10 go back and carefully look at what it shows
11 reveals that this was an ambush and it was the
12 execution of a plan. And defendant's own guilty
13 mind in the interview, right at the end of the
14 interview, go there if you want to refresh your
15 recollection, the defendant's own guilty mind, he
16 was asked did he have anything else to say during
17 the interview? Not, "Did you plan this?" "Did you
18 have anything else you wanted me to know?" From
19 his own guilty mind he says, "I didn't plan this.
20 I need to let you know I didn't plan this."

21 All of those things, Janice Rose's
22 statements consistent with plan. "I will kill him
23 in self defense and get away with it." But, all
24 of those other elements of this -- of the evidence
25 here we suggest confirm that he had a plan.

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CLOSING ARGUMENT / MR. CAMPBELL 1176

1 Now, does the State have to prove he had
2 a plan to prove Murder? No. The -- to -- if you
3 kill a person intentionally the only moment in
4 time that we have to prove that you a specific
5 objective of killing is when that trigger was
6 pulled. You can regret killing him five seconds
7 later, but it's still murder. So, we don't have
8 to show a plan. But, if you find a plan, we
9 suggest the evidence shows a plan and his own
10 language shows a plan then he certainly doesn't
11 have self defense because he planned the attack,
12 he planned the provocation, he planned the
13 killing. So, if you find that it's over, he's
14 guilty. Your decision is over.

15 Let's talk about some of the things the
16 defendant said, why he said them and what the
17 truth really was. Defendant said that he made
18 some kind of acrobatic, heroic movement with his
19 gun. This guy backed in to him or grabbed his
20 gun, and we need to talk about that. But, he
21 reached behind and grabbed this rifle, brang it
22 through the cab, wrapped around in it while he was
23 coming through the cab. Was able to maneuver it
24 through out this door that he was opening at the
25 same time. Placed it right by the A-pillar of the

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CLOSING ARGUMENT / MR. CAMPBELL 1177

1 vehicle, fired because he was under such huge
2 pressure and just happened to hit Mr. Whitcraft
3 square in the back of the head, or right just a
4 little bit off midline down in the back. You
5 heard where the doctor said he was struck.

6 What is the truth? Defendant lied the
7 vehicle to the stop in an offset position. He
8 popped the door open. He had the window down. He
9 stepped out of the vehicle. He had the gun
10 already where Mr. Whitcraft was showed that gun on
11 another day. He stepped out of the vehicle and he
12 shot from where John Amish told you he shot and
13 the evidence tells you he shot and we can see it
14 in the photographs. You've already looked at
15 them, but you'll have a chance to study them more.

16 Why did he say he didn't get out of his
17 vehicle when in fact he did? Well, if you did get
18 out of your vehicle it shows you had a plan and it
19 shows you had -- you were the aggressor and it
20 shows you were provoking the event. If you look
21 at what's going on up in the pickup at that point
22 in time it is consistent with the defendant having
23 the drop on him. Mr. Whitcraft was in a panic,
24 was in a desperate state to save his life.

25 You saw his feet. You know he's a good

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CLOSING ARGUMENT / MR. CAMPBELL 1178

1 mechanic, you know he fixed that truck up well.
2 But, at some point he must kick his feet up under
3 his dash to some extent to hook them in wires. I
4 mean, he wouldn't have had those wires on the
5 floor. He was a good mechanic. He kicked those
6 feet up in an effort to grab the gun, perhaps, or
7 as his vehicle came back. But, he was desperate to
8 do something to stop what was inevitable.

9 Now, the defendant would have it both
10 ways. He claims that the victim grabbed the gun
11 and was starting to turn around and shoot him with
12 the gun. Then he claims that the victim threw it
13 in reverse. So, we have a right hand and we have
14 a shifter -- shifting gear that comes over and all
15 the way down to his leg, according to Mary Carlson
16 who'd driven the rig.

17 And how is he doing all of those things,
18 really, in that short period of time? The
19 defendant -- the point on this lie, the defendant
20 says he's in his vehicle because he has no time
21 otherwise and it's false. And we have proven it's
22 false. And let me show you two exhibits that you
23 study to see that. The one that John Amish
24 brought, 64, where he has the lines on it. He
25 shows the different parts of the Bronco through

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CLOSING ARGUMENT / MR. CAMPBELL 1179

1 the rear window that is broken up and the red --
 2 the red line shows the hole. And if you line up
 3 back he's got him out around the door, shooting
 4 around the door, using the door for cover.

5 You can do the same thing with State's
 6 Exhibit 18. You heard from the doctor that the
 7 bullet went basically -- it was going left to
 8 right. Some more evidence that corroborates what
 9 Amish said, we have left to right movement which
 10 with the Bronco half way over on the pickup the
 11 guy had to move out to get left to right angle.
 12 But -- and then you heard the that wound was left
 13 to right through the victim. And if you look at
 14 18 you can do similar things with 18 and 64. The
 15 fragments that came on through went basically
 16 straight.

17 So, if you line up the break on the
 18 front windshield with the hole in the -- in the
 19 back window you see defendant out on the -- on the
 20 door, maybe through the window. John Amish is a
 21 scientist that lined this thing up and would
 22 express that opinion unless he was confident of
 23 it. The defendant lied about that.

24 Why did he tell the lie? Because the
 25 truth convicts him. He said -- the defendant said

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CLOSING ARGUMENT / MR. CAMPBELL 1180

1 the victim stepped out of the vehicle, turned
 2 toward him, pointed the gun and he shot him.

3 And you may want to go through the
 4 transcript of that first interview with the
 5 defendant again. You'll remember during the tape
 6 you heard the officer open his door and the bell
 7 started ringing, started irritating us and he
 8 pulled the keys out so it stopped ringing. That
 9 occurs on Page 32. So, 32 of this interview, this
 10 is State's Exhibit 92.

11 And defendant gives a very clear
 12 statement and Detective Rylander actually -- you
 13 hear the bell ring because he opens the door, he
 14 steps out and ask "Is this what happened?" And
 15 the defendant walks him through that Mr. Whitcraft
 16 stepped out, that Mr. Whitcraft turned, that Mr.
 17 Whitcraft pointed the gun at him. In fact, all of
 18 that is false. And you know that's false because
 19 Mr. Whitcraft was shot sitting in his pickup and
 20 his feet are tangled in the wires still up in the
 21 pickup, all of that was false. The defendant did
 22 figure out he needed to change that and he changed
 23 it in his second statement on the way to the
 24 hospital.

25 Defendant said he stopped at Hussey

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CLOSING ARGUMENT / MR. CAMPBELL 1181

1 Lane. He stopped at the stop sign at Hussey Lane.
 2 Now, why did he say that? Well, he has to
 3 represent that he's just out on a normal day, just
 4 doing his normal thing. He can't admit to you
 5 that he intercepted Mr. Whitcraft up the road
 6 somewhere, that he dropped in behind him like he
 7 always did, he did numerous times from the
 8 evidence. If he admitted that he would admit that
 9 he was the initial aggressor. He would admit that
 10 he provoked this. So, he said he came off the
 11 stop sign at Hussey Lane. But, that's not what
 12 happened. That's not what the evidence is. In
 13 fact, it's physically not really possible.

14 Now, let's just take some basic civil
 15 witnesses on this first. Remember Debbie Carter
 16 and Brian Markl that were riding with Debbie
 17 Carter looking for real estate. They made a very
 18 quick short trip down exactly where the defendant
 19 claimed he came from. They drove down that road,
 20 turned on Steelhead and looked at property just
 21 down from Cliffside and they did not see the
 22 defendant, nor did they hear the defendant drive
 23 out. If you look at Mr. Markl's testimony when he
 24 had a memory of this back in 2002 when he
 25 testified to it look at this testimony carefully.

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CLOSING ARGUMENT / MR. CAMPBELL 1182

1 He heard the shot, he was out, he was out on the
 2 property briefly, he didn't hear any vehicle race
 3 up before that. So, we knew that -- we knew that
 4 from exact eyewitnesses.

5 But, we also have an expert in
 6 reconstruction and he tells us that that vehicle
 7 no way could make 3rd gear at the point where he's
 8 in this confrontation with the defendant. There's
 9 no way that Mr. Whitcraft could have reacted that
 10 quickly.

11 And consider this while I'm thinking
 12 about it, if the defendant really was so afraid of
 13 Mr. Whitcraft and if this story were true why
 14 wouldn't he wait two seconds and let him drive in
 15 the driveway up there? Why not? And what else
 16 shows -- well -- so, he didn't do that.

17 Kuehmicel has told you why it doesn't
 18 make sense and it is not the way it went. And the
 19 way that this vehicle could have been operated in
 20 3rd gear was only with more time to operate it
 21 forward. Which would be consistent with it
 22 sliding also to a stop.

23 The defendant said he went to the
 24 nearest phone to call 9-1-1. He said that and he
 25 said it in a couple of interviews he claimed that.

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CLOSING ARGUMENT / MR. CAMPBELL 1183

1 And why did he say that? Well, number one, you're
2 going to portray yourself as having done the right
3 thing; right? Number two, you're going to say
4 that because you're wanting the police to believe
5 you were off that scene immediately.

6 But, he wasn't really off that scene
7 immediately, was he? He did not leave that scene,
8 even by his own admission later. And I will say
9 this, we will never know whether he cocked that
10 gun, if he went up and cocked that gun and he
11 pulled that gun under Mr. Whitcraft. We will
12 never know that. It was in the blood, there's now
13 way we can check that.

14 And let me say this to you in fairness,
15 because we can't prove that beyond a reasonable
16 doubt, we can't prove he went up and tampered with
17 that gun and set the scene the way it was set you
18 should presume that Mr. Whitcraft cocked the gun,
19 because we have the burden of proof. We will
20 never know, but he certainly had ample
21 opportunity. Some of his other activity could
22 raise questions about that.

23 He said he went and called immediately
24 but now you know that he didn't. That he walked
25 down in to Harvey Callahan's property. That he

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CLOSING ARGUMENT / MR. CAMPBELL 1184

1 wasn't yelling, "Harvey! Harvey, I need to call
2 9-1-1!" He wasn't trying to raise anybody. He
3 walked down, turned around, walked out and went
4 down Hussey Lane. He had his script on that. "I
5 killed a man in self defense." He wanted to make
6 Harvey Callahan his first witness to say he shot
7 -- yeah, he shot a guy up there in self defense.

8 Did he go to the first phone down
9 Hussey? No, Mr. Kruger, Steve Kruger who you
10 heard on 9-1-1 at 190 Hussey was actually out with
11 his phone. And he yelled at him, "I killed a man
12 in self defense, call 9-1-1!" So, he's got two
13 witnesses now that he killed a man in self
14 defense. And then he goes to his friend's house,
15 Mr. Martens, and says the same thing again, "I
16 killed a man in self defense, gotta call 9-1-1."

17 He likes to control scenes. You
18 remember at the Lil Pantry he got up and said,
19 "You, you, you and you, you're my witnesses."?

20 He liked to control interviews, "Wait a
21 minute, Jerry, what are we having an interview
22 for? This is self defense." And he really
23 wouldn't answer, he was evasive and he didn't give
24 answers on a lot of what Detective Rylander did.

25 Yeah, Detective Rylander's supposed to

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CLOSING ARGUMENT / MR. CAMPBELL 1185

1 control the interview, yeah, that's how he's
2 trained. But, the defendant was trying to control
3 that interview. Instead of answer the question he
4 would say, "He was gonna shoot me. He was gonna
5 shoot me. He was gonna shoot me." instead of
6 answering the questions.

7 The defendant said he didn't eject a
8 round. He said it in the first interview. He
9 called the detective back on October 8th through
10 Janice Rose, sending information to the detective
11 through Janice Rose to reiterate he did not eject
12 a round. In fact, Harvey Callahan must have
13 tampered with the scene.

14 Well, why does he say he didn't eject a
15 round? You see, this is early, when he doesn't
16 know what all the experts are going to be able to
17 say. At this point he knows that that's evidence
18 that puts him outside of the rig. He knows that
19 puts him outside shooting. You shoot, you eject
20 and the shell goes down behind -- it ejects out to
21 the right, it may have hit the truck or it may
22 have just dropped and rolled under where it was,
23 it may have hit the truck and rolled down. We
24 know there's a slope and we know where we found
25 it. You saw it very clearly. It was the shell

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CLOSING ARGUMENT / MR. CAMPBELL 1186

1 that held the bullet that killed Jack Whitcraft.
2 And it came right out of this gun. So, he
3 persisted in that lie because it put him outside
4 of the truck.

5 He said that he was just driving to
6 Tyrone Montgomery's. And why did he tell that
7 story? Because he had to have some reason for
8 being up the road that direction. Detective
9 Rylander went to check that out right away.
10 Talked to -- talked to Montgomery and he didn't
11 even know who he was talking about. Did anyone
12 have an appointment? Did he have an appointment
13 with you? Had he called you that morning to say
14 he was coming? No. No. No.

15 What did he start telling Janice right
16 on the phone? "Hey, remember Montgomery.
17 Remember Montgomery." He needed a witness to
18 corroborate there'd been some contact. Now, we
19 didn't get -- didn't get straight where the
20 contact was. Apparently he said it was at the
21 boat ramp down by Robertson Bridge and Mr.
22 Montgomery said he'd met him at Griffin Park some
23 time in the past. But, why did he say that? To
24 give himself a reason to be up the road that way.

25 Now, I want to comment on some confusion

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CLOSING ARGUMENT / MR. CAMPBELL 1187

1 that the defendant had. That there's really --
 2 I'm going to suggest it's confusion and not -- not
 3 lies, per se, because there wasn't really any good
 4 reasons to tell some of these lies.

5 You remember William Kirkland testified
 6 on tape and you have his transcript and you'll
 7 have a chance to go through it. Kirkland --
 8 Kirkland told you that at 7:30 the morning of
 9 September 27th he called the defendant at his home,
 10 got him. He, Kirkland, placed the call. That
 11 they had a conversation, defendant asked him what
 12 he was doing, that he told him he was planning --
 13 planting -- he had a new place he was building he
 14 was going to plant a lawn that day. That he
 15 needed grass seed. That the defendant told him he
 16 had a half bag of grass seed that he could have.
 17 And that he told the defendant, "Well, I'm going
 18 to need more than that. I'm going to the co-op
 19 and if I have enough gas I'll come on out. I'll
 20 come out to your place." That's what Kirkland
 21 said. You have it there.

22 What did the defendant say to Detective
 23 Rylander? Defendant said that "I have a bag of
 24 grass seed in my rig." He didn't have a bag of
 25 grass seed in there, he had fertilizer in there.

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CLOSING ARGUMENT / MR. CAMPBELL 1188

1 He said that "After I went to Montgomery's I was
 2 then going to go out Williams Highway to
 3 Kirkland's house with this half bag of grass seed
 4 because he's planting a lawn."

5 Now, remember this all happens at 7:30 to
 6 8:00 in the morning and if defendant is to be
 7 believed, I mean, it's just another day for him.
 8 It's not the day he's going to kill Jack
 9 Whitcraft, it's just another day for him. And why
 10 didn't he get that straight? Why did he put
 11 fertilizer in his Bronco instead of grass seed?
 12 Why did he know which way he was going, which way
 13 Kirkland was going? Let me suggest that shows a
 14 person who is preoccupied with something else that
 15 day. He had other things on his mind and he
 16 wasn't getting the details right.

17 If you want a true picture of the
 18 ugliness that this defendant visits on a woman
 19 that would leave him, a woman that would leave his
 20 control, a woman that would stand up for herself,
 21 like Mary Carlson did back in '96, like Janice
 22 Rose did in 2001, read State's Exhibit 95. When
 23 the defendant learned that Janice Rose was leaving
 24 him and was making new statements to the police
 25 State's Exhibit 95 is going to intimidate her from

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CLOSING ARGUMENT / MR. CAMPBELL 1189

1 talking to the police further or testifying was
 2 sent to her.

3 And you will see personally the ugliness
 4 that he visits on these people and you will have
 5 confirmed the testimony of Mary Carlson about the
 6 way it was. And it will show you the mind that
 7 engaged in this constant harassment of Mary
 8 Carlson and Jack Whitcraft after '96, with maybe a
 9 lull in there, but back when they get down on
 10 Peach Street he had access all the time. And
 11 you'll see that confirmed through that evidence.

12 Defendant told a number of people that
 13 he would kill Jack Whitcraft. He told Kim Garten
 14 that he would Rambo them out, both of them, Mary
 15 Carlson and Jack Whitcraft. And on one occasion
 16 it was even more specific when he knew on this
 17 occasion he knew exactly where they were up on
 18 this mining claim up West Picket Creek and he
 19 talked about going up there while they were there
 20 and killing all of them.

21 Gary Sell, a friend of Mr. Whitcraft who
 22 didn't even know the defendant is sitting at the
 23 Shannon Creek Market about a year before this
 24 death and the defendant learns that he know
 25 Whitcraft and he says that he's -- comes up to

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CLOSING ARGUMENT / MR. CAMPBELL 1190

1 him, this isn't a joke, and said, "I'm going to
 2 kill Jack Whitcraft and I'm going to fill him full
 3 of lead." or "full of holes" I think the word was.

4 We have other evidence. We know -- we
 5 have Janice Rose's evidence, "I'll kill him in
 6 self defense and I'll get away with it."

7 We have evidence from even John Crissup.
 8 And I guess I should say before I talk about that,
 9 careful about John Crissup. If you -- if you find
 10 a witness that you think has testified falsely in
 11 part you should -- you may distrust him in other
 12 testimony. That's going to be the instruction of
 13 the judge. So, if you decide he's not credible
 14 throw everything he said out.

15 But, he did say this with regard to
 16 defendant toward Whitcraft. He said that he had
 17 said that he would blow his head off. Which this
 18 high powered rifle did a pretty good job of doing
 19 that.

20 Defendant prepared to kill Jack
 21 Whitcraft. Let's go back to the Lil Pantry. That
 22 happened on September 18th, September 18th, '01.
 23 And it's not clear exactly how that thing went.
 24 It's clear that there was a fight, both were
 25 damaged. It's clear that Whitcraft had the better

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CLOSING ARGUMENT / MR. CAMPBELL 1191

of it by the end of the fight and Mr. Maust pulled him off, and you have Mr. Maust's testimony. And that the defendant -- that the police were called by someone on-scene. And that the defendant stood up, brushed himself off and started pointing to people and saying, "You're my witness." And the police did come and take statements from everybody. And you heard also testify -- went and found Jack Whitcraft and took his statement.

One of the interesting things that you heard in evidence that -- although he started with the police, the defendant didn't follow up with the police. And we submit that's because he had decided sometime in that time frame he was going to handle this himself. And in fact that does go along with all of that evidence I talked about in the first part, "I will kill him in self defense and get away with it." and all of those other planning elements that we talked about.

He practiced with guns, significantly in the spring of 2001 to the point of interrupting the neighborhood and drawing some intervention. He practiced driving his vehicle fast, jumping out and shooting on multiple occasions and would do it over and over again.

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CLOSING ARGUMENT / MR. CAMPBELL 1192

Some of you are hunters, I know we -- and you use your common sense, your background and experience. I don't know very many people that have ever done that and you should think about that in terms of your common sense and experience. Who would do that? Why would someone do that? We submit that he had practiced for an event like this. He had thought it through. And that's what that's about.

September 13th, 2001. The problem with if you're going to kill someone in self defense with a firearm they better have a firearm too; right? You can't if they say "Put up your dukes." you don't shoot them down, you can only use reasonable force. So, Jack Whitcraft didn't carry a gun, contrary to someone who knew him back when he went up to the mining claim and had no contact from '96 on, although she said she did. He was living on Peach Street. He didn't carry a gun. And the defendant needed him to carry a gun in order to kill him self defense and get away with it.

So, the September 13th where once again he appears behind Jack Whitcraft with this gun out an obviously open driver's window because you

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CLOSING ARGUMENT / MR. CAMPBELL 1193

heard the report, pointed at him and saying something that Whitcraft couldn't hear, but obviously Jack Whitcraft took it seriously. He believed that he might be shot, could be shot. And he did the right thing that day. I mean, he went immediately to Harvey Callahan's and called 9-1-1 and got the police out there and he made the report. And he immediately called Mary Carlson to warn her because he was afraid for her safety, just like his own.

And it was from then -- and we had another witness from Lil Pantry, Lisa Locke, that said she had a similar conversation as the one Mary had with him that he would have to carry a gun now. And he didn't -- that's not even his own gun he was carrying, that's Mary Carlson's gun. So, now the defendant has the victim in a position where he is afraid that this man will use a gun on him and he does carry a gun.

On September 27th, 2001, about 9:45, a little early, probably 9:40 to 45, defendant intercepted Jack Whitcraft somewhere on Picket Creek or maybe before Robertson Bridge again. There was no traffic around, no other cars, he observed that. Would it have happened if there

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CLOSING ARGUMENT / MR. CAMPBELL 1194

were other cars or people on the road? Probably not. He was biding his time. It was Thursday two weeks after and he had heard and knew that defendant was carrying a gun -- or, Mr. Whitcraft was carrying a gun. There were no witnesses on the road.

He roared up behind Jack Whitcraft in 3rd gear. We know speed was involved per the skid, we know that he was in 3rd, that he claimed that his vehicle was killed in 3rd. He slid to a stop, a controlled stop. He jumped out, trained his gun on Mr. Whitcraft and Mr. Whitcraft had to react. He may have put it in reverse. We'll never know.

The damage could have been done by his jamming on the brakes and then pulling his foot off to reach for the gun and if the truck had rolled 10 more feet and then rolled back in to defendant it would have made the same damage as if he put it in reverse. Using -- using really common sense Kuehmicel and Bridges' report, the other gal, the other reconstructionist who was with him said that they believed he did put it in reverse.

It makes some sense that he thought the only way I have any chance in this situation is to

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CLOSING ARGUMENT / MR. CAMPBELL 1195

1 maybe dislodge that gun, to knock it out of his
2 hand or to at least scare him enough to miss me.
3 So, he could have put it in reverse. He wouldn't
4 have had the gun in his hand at that moment, to
5 shift that thing. I suppose maybe somehow he
6 could have held both, but it certainly wouldn't be
7 a threat.

8 That -- that particular act may have
9 been outside of the defendant's plan. It may have
10 caused him to shoot earlier than he had planned
11 to. It would have shot his adrenaline with the
12 vehicle coming back in to his own. And he shot
13 him in the back. And then he claimed the prize of
14 self defense. Announced his self defense at the
15 places that he was going for 9-1-1 and he
16 announced his self defense to the 9-1-1 operator
17 and he announced his self defense -- the prize of
18 self defense to Detective Rylander.

19 Defendant wanted to kill Jack Whitcraft.
20 He said he would kill Jack Whitcraft. He, in
21 fact, did kill Jack Whitcraft. He did it without
22 justification. He provoked the confrontation. He
23 was the only aggressor. He was the only aggressor
24 here. Jack Whitcraft was reacting and he is the
25 person, the victim in this crime, was the person

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CLOSING ARGUMENT / MR. CAMPBELL 1196

1 with the right of self defense. The only person
2 with the right of self defense because of those
3 two instructions. You don't provoke it and get it
4 and you don't -- you're not the first aggressor
5 and get it.

6 The defendant stacked the cards. He is
7 a murderer under Oregon law and that should be
8 your verdict.

9 Thank you.

10 THE COURT: Mr. Scales?

11 MR. SCALES: Thank you, Your Honor.

12 May it please the Court. Counsel.

13 A JUROR: Your Honor, can we take a break?

14 THE COURT: Need a break? Juror needs a
15 break. All right.

16 Mr. Scales, if you wouldn't mind, let's
17 go ahead and take a short break.

18 If you'd leave your notebooks on the
19 chairs and we'll be back in in about 10 minutes.

21 (At 10:29 a.m. the jury exits the
22 courtroom and a brief recess was taken.)
23
24
25

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CLOSING ARGUMENT / MR. SCALES 1197

1 GRANTS PASS, OREGON
2 THURSDAY, FEBRUARY 26, 2009; 10:40 A.M.
3 12 PERSON JURY TRIAL - DAY 7

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

5 --oOo--

6
7 (The following proceedings were held in
8 open court out of the presence of the
9 jury.)

11 THE COURT: Please ask the jury back in.

13 (At 10:41 a.m. the jury enters the
14 courtroom.)

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

19 THE COURT: All right. Mr. Scales, you
20 may deliver your closing argument.

21 MR. SCALES: Thank you, Your Honor.

22 May it please the Court. Counsel.

23 Ladies and gentlemen of the jury, good
24 morning. First off just briefly I want to thank
25 you for your attention over this the last, I

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CLOSING ARGUMENT / MR. SCALES 1198

1 guess, six or seven days of testimony, jury
2 selection, closing arguments and I know it's been
3 difficult for you and we will be done fairly
4 quickly.

5 In my opening statement I asked you to
6 pay close attention to a number of things. I
7 asked you obviously to listen to the evidence, but
8 also not to just consider the evidence piece by
9 piece, but consider it as a whole. I asked you to
10 look at the biases of witnesses. Did they have a
11 motive or a reason or an objective to lie? Did
12 they have an object to point Mr. Sandoval in a
13 light that is -- that is negative?

14 And I'm going to try to briefly
15 summarize the evidence by going through the
16 witnesses as quickly as possible. We first heard
17 -- well, before I begin there's a couple of things
18 that Mr. Campbell brought up in his -- his first
19 argument that I agree with. One, he had mentioned
20 one of the jury instructions that you'll receive.
21 We gave you the entire instruction and I agree
22 that the last half of it doesn't really apply and
23 that is ordinarily a person is not justified in
24 using physical force on another person if he was
25 the initial aggressor. And I agree with that.

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CLOSING ARGUMENT / MR. SCALES 1199

1 I also agree that the second part,
2 there's been not testimony -- and I'll read it,
3 however, the defendant's use of physical force may
4 be justified even though he was the aggressor if
5 you find that he withdrew from the encounter and
6 effectively communicated to the other person an
7 intent to withdrawal from the encounter, but the
8 other person nevertheless continued to use the
9 unlawful physical force on the defendant. I don't
10 want that to be any confusion to you. That is not
11 applicable and I agree with what Mr. Campbell has
12 said.

13 And I'm going to talk a little bit about
14 initial aggressor in a moment here. But, a couple
15 of this that came out in his -- the beginning of
16 his first argument, the bombshell of the trial, in
17 my opinion, was when Janice Rose said, "I will
18 kill him in self defense and I will get away with
19 it." It was very convenient when I asked her,
20 "When did you ever say this?" it was in no report,
21 it was not in her last testimony, her last trial
22 testimony. Now, I don't take any pleasure in
23 calling people liars. But, it's important to look
24 at their bias and look at the accuracy of their
25 testimony.

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CLOSING ARGUMENT / MR. SCALES 1200

1 Now, looking at the witnesses that
2 testified, the first witness that we had was Mary
3 Carlson, the ex-wife of Mr. Sandoval. They were
4 married for 11 years. She had testified to a
5 couple of things that I wanted to bring out. She
6 testified that after the Lil Pantry incident that
7 Jack's clothing was ripped, that his glasses were
8 broken. I think we can look at Lacy Maust's
9 testimony, he clearly testified that he pulled
10 Jack off. It was not a fair fight. The
11 implication was that this was pretty much a --
12 that it was a draw. There's nothing to suggest
13 that this was a fair fight and we'll talk about
14 Lacy Maust's testimony in a second.

15 Mary testified that Jack finally got the
16 better of Leo. She testified that Jack was very
17 angry after the fight. Now, that's inconsistent
18 with what she said about Jack being very scared of
19 retaliation. He was very worried about being
20 retaliated against after the fight.

21 Mary testified in her direct examination
22 that Mr. Sandoval had purchased the .44 Magnum for
23 her. She was proficient with firearms. No
24 evidence to suggest that she didn't like using
25 firearms. But, because Mr. Sandoval had reported

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CLOSING ARGUMENT / MR. SCALES 1201

1 her marijuana growing activities on Peach Street
2 she lost that right to carry firearms. I think we
3 need to consider that that she had an axe to grind
4 with Mr. Sandoval as well.

5 She had testified that Jack had changed
6 his life around and that he grew up on the mean
7 streets in the urban jungle of Detroit. Now, I'm
8 not going to make a big deal about that. But,
9 that rather vague statement I think you can
10 consider what that means. We'll talk about that a
11 little bit later.

12 The next witness was Michelle Clayburn.
13 And I'm sure you all remember she was very hostile
14 to the Defense. She showed an obvious bias
15 towards Mr. Sandoval. And she also told some
16 inaccuracies to the jury in an effort to paint Mr.
17 Sandoval in the most negative light possible. She
18 claimed he was violent, but she also testified
19 that she'd never had any more contact with him but
20 just verbal. She didn't previous testify to a
21 threat of killing, we never heard that in her
22 prior testimony. We heard it in this courtroom
23 for the first time. That was new in this trial.

24 She did not previous testify, nor did
25 she tell the police officers that Sandoval had

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CLOSING ARGUMENT / MR. SCALES 1202

1 transported guns from the house to the vehicle in
2 front of her causing her fear. That was also new.
3 She did not previously testified that Mr. Sandoval
4 had sicked his dogs to run up against the fence
5 and scare her children.

6 I'm suggesting that her testimony got
7 better with time, her recollection. And I'm not
8 being facetious or trying to be smart. But, she
9 is remembering details for the first time on the
10 witness stand last week that she never testified
11 to before.

12 Janice Rose. I really don't know where
13 to begin with Janice Rose. You saw her when she
14 first got up here, she needed her notes. And I
15 don't blame her, those events happened a long time
16 ago. She needed notes to remember dates and
17 details. But, she made several statements
18 attributed to Mr. Sandoval that were never
19 corroborated. They were never reported to the
20 police. They were never testified of before.
21 They were said for the first time in trial last
22 week. "I just hate those people. If they pull a
23 gun on me I'm going to have to kill them."
24 "They're going to pull a gun on me and I'm going
25 to kill them in self defense and I'm going to get

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CLOSING ARGUMENT / MR. SCALES 1203

away with it." She also said, "I can't count how many guns he had." She never told either Detective Rylander or Detective Torres these things.

You heard Detective Torres' testimony yesterday that he gave her an opportunity, you know, he told her "Leo has just killed Jack." She was upset. She was angry. And I will agree with that. But, they don't say what she was upset or angry about. She told Detective Torres he had no reason to kill Jack Whitcraft. All of these things that she testified to to you, the bad driving, the "I'm going to kill him in self defense." that was her opportunity if she was truly angry at Leo Sandoval she would have taken that opportunity to share that information with Detective Torres.

Now, it's been suggested that perhaps she wasn't asked those questions or maybe in preparation for trial that some of these things may have gotten jarred loose and they came to the surface. I don't believe that for a minute and as a jury --

MR. CAMPBELL: I'm going to object to his personal beliefs, Judge.

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CLOSING ARGUMENT / MR. SCALES 1204

THE COURT: Sustained.

MR. SCALES: Don't believe that for a minute, members of the jury. These things were crystal clear to her in this testimony. And the suggestion that they've been buried in her memory, repressed in her memory for eight years it just ain't true.

You saw her in rather dramatic fashion when Mr. Campbell brought the gun over to her. He wanted her to identify this rifle. And you saw her, "Don't get that close to me." she was very distraught, I guess. She told Detective Rylander very clearly that she brought a number of guns to the relationship. Without going in to all of those guns, one of those was the 7mm Mauser that was used to shoot Jack Whitcraft. Yeah, we heard on the witness stand, "I bought that gun." she said as she choked back her emotions, "I bought that gun for him. He had me buy that gun for him because he had a restraining order and he couldn't do it." There was no ambiguity about where that gun came from 2001. She told Detective Rylander, "I brought it the relationship." and now she tells you --

MR. CAMPBELL: I'm going to object,

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CLOSING ARGUMENT / MR. SCALES 1205

Judge, and ask that you instruct the jury that they are to depend on their own recollection of the evidence.

THE COURT: Well --

MR. SCALES: Your Honor, this is argument.

THE COURT: This is argument. But, along with that, the jury is to rely on their recollection. Both attorneys have the opportunity to make their arguments.

MR. SCALES: And I'm certainly entitled to remind the jury of what her testimony was.

THE COURT: Go ahead.

MR. CAMPBELL: Accurately is the point.

THE COURT: This is argument.

Go ahead, Mr. Scales.

MR. SCALES: Thank you, Your Honor.

You can remember what she said, "I bought that gun for him because he made me do it while he had the restraining order."

She also told Detective Rylander that she knew exactly what guns he had. He had two Vietnam sniper rifles, an old shotgun and another old rifle. I would suggest to you when she got up there and said, "I don't know how many guns he

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CLOSING ARGUMENT / MR. SCALES 1206

had." that was an effort to put Mr. Sandoval in a negative light.

The .22 that was found in the Bronco nearly a year later, there's no relevance to that. But, she did testify previously that "He told me he destroyed the gun." She told you this time in her testimony in much greater details, "He took the gun apart. He buried it on the property." There are inconsistencies. You can look at that and make your own determination.

At no time did she mention Mr. Sandoval's bad driving to the police. She told Detective Torres he had no reason to kill Jack Whitcraft. She couldn't think of a reason. That was her opportunity to tell him.

The letter that is in evidence, I don't need to get it. I'm going to agree that it does show some ugliness. It is rude. It is profane. It is -- it's just bad. But, read that letter. There's no threat. There's no physical threat. He threatened her with legal action. He threatened to turn her in. She threatened to turn her daughter in. Threatened to take his washer and dryer back from her daughter. The only reason that letter is in is to show that Mr.

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CLOSING ARGUMENT / MR. SCALES 1207

1 Sandoval is a bad guy. There's no threat making
2 her -- trying to threaten her to not testify. You
3 can read the letter and you can be the judge of
4 that.

5 Additionally, in no report did she tell
6 either the investigator, nor did she testify that
7 in two weeks leading up to this that he was like a
8 different person, that he was very nervous and
9 agitated. And I use her words.

10 She told -- she testified that he didn't
11 plan to go hunting and that she was not aware of
12 Mr. Sandoval having a license.

13 Detective Rylander confirmed that Mr.
14 Sandoval did have a license. A disabled veteran
15 pioneer license. And despite his claim in this
16 trial that he did not find any evidence of it, he
17 testified in the 2002 trial that he did have a
18 valid license.

19 Ms. Rose did not tell the Sheriff's
20 Department -- the sheriff's officers that she saw
21 two patrol vehicles bouncing by. If you remember
22 she said as she was coming home she saw two cars
23 bouncing by and she just assumed that something
24 had happened up on the river. If she even saw
25 those cars, which I don't believe she did --

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CLOSING ARGUMENT / MR. SCALES 1208

1 MR. CAMPBELL: Objection to personal.

2 THE COURT: And the object is sustained.

3 Mr. Scales, please --

4 MR. SCALES: Okay.

5 THE COURT: -- refrain from introducing
6 your own beliefs or understandings.

7 MR. SCALES: Fair enough, Your Honor.

8 If she even saw those cars wouldn't

9 Officer Torres -- Detective Torres' presence at
10 her home make her concerned that maybe Mr.
11 Sandoval was involved in whatever was going on up
12 the river?

13 She also said that Mr. Sandoval expected
14 her to clean up his mess. But, she conveniently
15 forgot to tell the jury that she had power of
16 attorney for Mr. Sandoval. It was not until she
17 got in to a new relationship that she decided she
18 was no longer going to help Mr. Sandoval.

19 When she was asked if she had previously
20 told Detective Rylander, "Did you tell Detective
21 Rylander that Mr. Sandoval had never asked you
22 previously to lie about your testimony for grand
23 jury?" She couldn't remember. But, Detective
24 Rylander remembered that because it was
25 memorialized in his report.

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CLOSING ARGUMENT / MR. SCALES 1209

1 When asked if she told the police that
2 Mr. Sandoval was good to her, that he never raised
3 a hand to her, of course she couldn't remember
4 that. But, that was memorialized in Detective
5 Rylander's report.

6 Moving on to Robin Garten. She said
7 many times Mr. Sandoval had mentioned Ramboing out
8 on her. But, when asked she agreed that it had
9 only been one time and that was early, early on
10 after the divorce in 1996, five years before the
11 shooting.

12 She claimed that Mr. Sandoval used to
13 drive by Ms. Carlson's house and look, that is not
14 uncommon in a small town. You can't drive through
15 Merlin without driving past Ms. Carlson's house.

16 Debbie Carter, the real estate agent, we
17 heard Mr. Campbell say that it was a very short
18 trip. That when they went down Hussey Lane she
19 was the one who took Brian Markl down there to
20 look at some property along the river there. It
21 was a very short trip. They went up Steelhead. I
22 know you probably all have this map permanently
23 burned in to your memory. But, they went up
24 Steelhead beyond Cliffside. Now, they both
25 testified that they don't -- they did not see a

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CLOSING ARGUMENT / MR. SCALES 1210

1 vehicle passing them on Hussey Lane, which is
2 consistent. They went up Steelhead to look at
3 property, Mr. Sandoval lives here, very easily
4 could have gone past them and gone up there.

5 Now, what is interesting is when they
6 turned down Hussey Lane to go to the property they
7 didn't see a vehicle. But, after they made this
8 short trip and they came back up Hussey Lane there
9 was the truck and the Bronco.

10 Ms. Carter did not see another person
11 crouching down behind the vehicle, as Mr. Markl
12 had said in his prior testimony of which you have
13 a transcript of. She did see Mr. Markl walk up to
14 the truck, she was on the cell phone. You heard
15 her cell phone call. She did not testify that she
16 was watching Brian Markl the whole time. And
17 we'll get to that in just a second.

18 Brian Markl, we have his testimony
19 because his memory, he just couldn't remember. At
20 the beginning of his testimony though he said
21 something very unexpected. He claimed that Leo
22 Sandoval had previously scared the heck out of him
23 by pointing a gun at him. Now, this is a man
24 who's going out there looking at property.
25 Previously never identified Mr. Sandoval. But,

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CLOSING ARGUMENT / MR. SCALES 1211

1 comes in here today and says, "Yeah, he scared the
2 heck out of me by pointing a gun at me." Read the
3 prior testimony very clearly. He never testified
4 to Sandoval pointing a gun at him. I would submit
5 to you that this was an effort to help the State's
6 case. And I thought it was interesting as he
7 suddenly remember, as he suddenly realized he's
8 saying some -- he's telling you some whoppers,
9 he's telling you some things that are lies, that
10 his memory just shut down. He had either no
11 recollection of the event or he was perjuring
12 himself.

13 Mr. Gallagher, the forestry department
14 firefighter, he came upon the scene. But, he did
15 testify that he could not say whether Brian Markl
16 had disturbed the crime scene. He himself had
17 covered up the body, either him or Mr. Dehoot, the
18 other forestry person. I don't remember which one
19 it was. But, they both had gotten close enough to
20 cover up Mr. Callahan (sic).

21 Tyrone Montgomery, this is the veteran's
22 benefits assistance person that Mr. Sandoval had
23 met either at the boat landing or at Griffin Park.
24 He did give Mr. Sandoval his address and he also
25 gave Mr. Sandoval his phone number. How do we

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CLOSING ARGUMENT / MR. SCALES 1212

1 know that? Because Mr. Sandoval gave Detective
2 Rylander Tyrone Montgomery's phone number during
3 the taped interview when he was sitting in the
4 front of Detective Rylander's Suburban.

5 Tyrone Montgomery didn't remember that,
6 but that does not necessarily mean that he didn't
7 have that conversation with Mr. Sandoval. Use
8 your common sense. Mr. Montgomery deals with a
9 lot of veterans with a number of issues and it's
10 not uncommon for vets to not want to meet him in
11 an office setting.

12 Harvey Callahan. Now, Harvey who lived
13 at 770 Picket Creek, just up the road from where
14 this shooting happened, he testified -- now, we
15 have his transcript also because Mr. Callahan has
16 already passed away. He testified that Jack did
17 not have his pistol that morning that Sandoval had
18 allegedly pointed the gun at him, but he'll have
19 it next time. I think that implies -- that
20 implies that he had carried it in the past, he
21 didn't have it that morning, but he'll have it
22 next time.

23 Mr. Callahan claims that Mr. Sandoval
24 never rang the doorbell. But, in his testimony he
25 describes a number of health problems that limited

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CLOSING ARGUMENT / MR. SCALES 1213

1 his mobility. By the time he got to the front of
2 the house Mr. Sandoval had already gone down
3 towards Hussey Lane.

4 Also, Harvey Callahan and Leo Sandoval
5 were not friends. They lived in the same area,
6 but Harvey Callahan testified that he had done
7 some work for Mr. Sandoval one time quite some
8 time in the past.

9 James Wright, another very brief
10 witness. This is the gentleman who was down by
11 the river driving the camouflaged truck. Claimed
12 to have heard the shots, said it was a hunting
13 rifle. Didn't really add anything to the case. I
14 thought it was interesting though, it was
15 interesting that he testified it was early in the
16 hunting season, that it was way early for hunting
17 season. Detective Rylander testified that hunting
18 season started on September 29th, 2001, two days
19 later.

20 Detective Rylander is an experienced law
21 enforcement officer and did a good investigation,
22 a very extensive investigation, an exhaustive
23 investigation. And Detective Rylander is highly
24 trained. I believe at the time that this incident
25 took place he had had over 2500 hours of training.

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CLOSING ARGUMENT / MR. SCALES 1214

1 And he utilized that training during his interview
2 with Mr. Sandoval. He testified that it's
3 important that while doing these interviews with
4 suspects that it's essential, it's important to
5 keep control of the interview. You don't want the
6 suspect getting off on some tangent, you keep
7 control, you ask the questions.

8 Non-suspect witnesses, they're allowed
9 to speak more freely because you're trying to
10 gather information, background information about
11 the case from them. So, you don't have as tight a
12 rein on them.

13 As the case agent he was responsible for
14 all of the investigation that was performed by the
15 Sheriff's Office, the detectives, the patrol
16 officers, he was responsible for that. And I
17 believe he testified, and you'll have to rely on
18 your recollection, that he read all the reports or
19 had read most of them or at least was familiar
20 with them.

21 By the time he got there, though, Mr.
22 Markl, Ms. Carter they were gone. He can not say
23 what happened prior to them -- prior to him
24 getting there.

25 When he searched the vehicle at the

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CLOSING ARGUMENT / MR. SCALES 1215

District Attorney's request in August of 2002 he seized the tomahawk, the machete, the Igloo cooler, under which was the .22 caliber handgun. He characterize the tomahawk and machete as "weapons", but he agreed that they could also be used for camping and clearing brush.

Now, I'm showing you a couple of pictures. These have previously been identified as State's 42 and 41. These are pictures of Mr. Sandoval's property. We see brush and blackberries. In order to get to the river one would have to go through those. It's logical to use a machete to cut your way through there.

Detective Rylander also testified that he found other equipment in the back of the vehicle, including fishing gear, camping gear, a canteen.

Now, I asked him and probably beat the dead horse a little bit there. But, he got on scene about 10:14, roughly 20 to 30 minutes after this was reported. I believe probably closer to about 27 minutes after it was reported. He started the interview with Mr. Sandoval at 11:11. There was testimony that Mr. Sandoval was taken out of Mr. Martens' house and per protocol, and I

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CLOSING ARGUMENT / MR. SCALES 1216

have no problem with this, per protocol he was taken out at gunpoint, they wanted to make sure that he had no weapons on him. He was handcuffed behind his back and put in the back of a patrol car.

Approximately an hour later the interview started with Detective Rylander. At that time he was handcuffed, I'm assuming he was handcuffed in the back, you can make that assumption. You have to rely on your memory. But, nonetheless he was handcuffed during that 57 minute interview. He remained in custody prior to the interview, during the interview, after the interview, all the way up to the hospital. After he was taken to the hospital for the blood draw, after it was determined that he was not injured in any way he was arrested and taken to the jail.

Detective Rylander identified the 9-1-1 tape. And the reason I bring that up is there's no indication the order or the time for the 9-1-1 tapes. Listen to them, it says "9-1-1 what's your emergency?" There's no indication which one came first. So, what I'm saying is don't read in to it anything since there has been no evidence as to what order those 9-1-1 calls were made.

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CLOSING ARGUMENT / MR. SCALES 1217

Much was said about Mr. Sandoval's interview with Detective Rylander. And I'm going to leave it up to you to listen to the tape and read the transcript. And you will determine, the judge will instruct you that you will determine if the defendant effectively communicated, said what he meant to say, did he understand the question?

Pay particular attention to Page 21.

There's -- this is the confusing section of the interview where there is some discrepancy about where Mr. Sandoval was that morning. "I was in Merlin. Oh, you mean today? Well, I was at my house, 180 Cliffside." "Okay. Let's start over." You read that. What I say is not evidence. You look at the evidence, please.

Now, the State has advanced a theory that Mr. Sandoval was in Merlin at the time he saw Jack Whitcraft and followed him out to the Picket Creek area. What I find interesting -- what is interesting and should be interesting to you is that there area absolutely no witnesses that came forward to testify that they saw Leo Sandoval in Merlin that morning. One would think that in a small town where everybody knows everybody, particularly after a major event like a homicide,

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CLOSING ARGUMENT / MR. SCALES 1218

that would refresh somebody's memory. "Hey, I saw Leo Sandoval in town that morning. Yeah, he was in town on September 27th." Or somebody would have said, "Yeah, I saw him driving. I saw him driving behind Jack Whitcraft." But, nobody, despite their exhaustive investigation, nobody came forward to say that.

And for that matter, no one other than Mary Carlson or Jack Whitcraft or Janice Rose claims to have seen Leo Sandoval driving aggressively or erratically behind Mr. Whitcraft. In all of the time that this was supposed to be going on we never heard any testimony from anybody else who saw violent driving or aggressive driving on the part of Mr. Sandoval.

Briefly, what happened on that day, Mr. Sandoval woke up at 180 Cliffside, Bill Kirkland confirmed that he called Leo around 7:30 to 8:00 and woke him up. Leo told him that he was going to see Tyrone Montgomery and that he would come by with a half a bag of grass seed. Those conversations were confirmed. They were confirmed through the testimony of both Mr. Kirkland and Mr. Montgomery.

When Mr. Sandoval was recounting the

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CLOSING ARGUMENT / MR. SCALES 1219

1 events of the day he was very shaken. He
2 complained several times, and it's in the
3 transcript that you will look at, that he was very
4 shaken, that he was nervous and that he was
5 confused.

6 Now, Detective Rylander testified that
7 Mr. Sandoval was not in a position to do any of
8 the demonstrations of how this shooting took
9 place, and that was because he was handcuffed.
10 But, rather Detective Rylander was doing the
11 demonstrating after he interpreted what Mr.
12 Sandoval had described. He did the demonstration,
13 Mr. Sandoval was given an opportunity to confirm
14 or not confirm. The scenario was suggested by
15 Detective Rylander and Mr. Sandoval had a chance
16 to agree or disagree.

17 And we would suggest to you that that is
18 good police work. That's good investigative, good
19 interrogation technique. Don't give him the
20 opportunity to tell you what he wants to tell you,
21 you suggest the answer. Use your common sense,
22 members of the jury, you suggest the answer and
23 you get him to agree little by little. It's like
24 the old saying, "Give somebody enough rope and
25 they'll hang themselves." you give somebody a

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CLOSING ARGUMENT / MR. SCALES 1220

1 scenario, get them to agree to something, back
2 them in to a corner and then you've got them.

3 But because Mr. Sandoval did not agree
4 specifically with what Detective Rylander was
5 suggesting he was evasive. That's how they
6 characterized it, he had to be lying.

7 And I think it's important to note,
8 remember I talked about context. These things
9 don't happen in a vacuum. We can't just look at
10 one piece of evidence and say, "Ah ha, he's
11 guilty." or "Ah ha, he's not guilty." They have
12 to be looked at in the entire context. And when
13 looking at Mr. Sandoval's taped statement consider
14 the context under which it was made. An hour and
15 change, probably an hour and a half after the
16 actual shooting he was interviewed for the first
17 time. He had sat in a patrol car, handcuffed
18 behind his back for over an hour.

19 He had just taken the life of another
20 human being. It doesn't matter if you like that
21 person, don't like that person, hate that person,
22 love that person, that is a stressful -- that's a
23 -- there's a lot of strain on a person. And that
24 person had pulled a gun on him. You can use your
25 own experience from traumatic events what

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CLOSING ARGUMENT / MR. SCALES 1221

1 adrenaline is doing to you and whether or not you
2 remember every detail, whether or not you remember
3 even the most minute details.

4 Mr. Sandoval, there's testimony that he
5 was in the military and he was experienced with
6 firearms, he was experienced with weapons. I
7 would suggest to you that what happened that day
8 was reflexive, he's not going to remember every
9 detail.

10 Mr. Martens testified yesterday that Mr.
11 Sandoval was excited, that he was not like his
12 usual self, which was calm and happy. After
13 traumatic events people don't always act
14 rationally.

15 Now, Mr. Sandoval, it's true, did re-
16 approach his statement when he got to the
17 hospital. This was approximately -- and I don't
18 know, you'll have to recall from your notes. This
19 was some time after the interview with Detective
20 Rylander. He never said, "Jerry, I need to change
21 my statement." He did tell Detective Rylander
22 that Mr. Whitcraft did not get out of the vehicle.
23 But, that is consistent with what he told
24 Detective Rylander on Page 37, "He just kind of
25 swung to shoot me from the -- he did. Boy, well,

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CLOSING ARGUMENT / MR. SCALES 1222

1 he had already assaulted me once in the parking
2 lot. These things, they put the fear in me, sir.
3 He kind of swung to shoot me."

4 Now, we know from the physical evidence
5 that Jack Whitcraft's legs were tangled in the
6 wire under the dashboard. And I'm not going to
7 use this big gun, but I would submit to you that
8 that makes -- that's not just logical, I think
9 that's likely what happened. Mr. Sandoval reaches
10 down to grab that -- or, excuse me, Mr. Whitcraft,
11 my apologies, reaches down to get that gun and he
12 brings it up and as he's turning to shoot his legs
13 are caught, he can't get out.

14 Mr. Sandoval testified very clearly that
15 he could see that gun as it was coming up.
16 Detective Rylander asked him, "Could it have been
17 a screwdriver or a wrench that you saw?" Members
18 of the jury, there's no way that this can be
19 misconstrued as a screwdriver or a wrench. When
20 you see somebody bringing that up you know exactly
21 what it is.

22 The evidence showed that the arrest was
23 done in the afternoon of September 27th, 2001. The
24 evidence also showed you that that was prior to
25 any of the investigation in to the background

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CLOSING ARGUMENT / MR. SCALES 1223

1 between Mr. Sandoval and Mr. Whitcraft. That was
2 prior to any of the forensic testing, the reports
3 of the forensic testing being done by Criminalist
4 Amish. And prior to the road testing done by
5 Trooper Kuehmichel.

6 Criminalist Amish, very briefly,
7 excellent criminalist, very qualified, did a good
8 job. Most of the things he testified to, most of
9 the things that he had -- that he had either
10 tested or testified that other criminalists had
11 tested they were expected. We expected that the
12 casing that was found at the scene to have come
13 from that rifle. No surprise there.

14 He testified that bullets fragment upon
15 impact, they -- once they hit a an intermediate
16 object like glass or bone that they're going to
17 break. He testified that the fragments go in many
18 directions, also expected. He agreed that when
19 the car -- that the cars were in contact when the
20 shot was fired, not that the car was rolling when
21 the shot was fired, but the car had already hit --
22 the truck had already hit Mr. Sandoval's Bronco.
23 Excuse me.

24 Criminalist Amish also testified that
25 the massive injury that Mr. Whitcraft had

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CLOSING ARGUMENT / MR. SCALES 1224

1 sustained would have immediately incapacitated him
2 as it damaged -- it blew out his brain stem. He
3 would have lost all muscle function, all motor
4 function, Dr. Olson confirmed that. Criminalist
5 Amish testified that this massive injury would
6 have produced a large amount of blood. But, he
7 testified that there was not a large amount of
8 blood found in the truck, there was blood spatter,
9 which comes from the -- the rapid entry and exit
10 of a bullet. The spatter was on the inside of the
11 -- of the truck cab. But, there was not a pool of
12 blood to suggest that Mr. Whitcraft was in that
13 vehicle for any period of time after he had been
14 shot.

15 He also agreed that the body could have
16 slumped as it was incapacitated. But, the fact
17 that it toppled out almost immediately suggested
18 that there was some momentum in the direction
19 towards the door.

20 With regards to the scope, I'm not
21 going to make a big deal about this. That the
22 scope was accurate or, rather, had a clear field
23 of view, a two foot wide field of view at 24 feet.
24 Criminalist Amish said from the back of the cab of
25 the truck to where Mr. Sandoval had said he shot,

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CLOSING ARGUMENT / MR. SCALES 1225

1 as you'll recall he told Detective Rylander that
2 he shot between the door post of the Bronco and
3 the door in this V area. It was approximately 13
4 to 14 feet. At that short of a distance the scope
5 is irrelevant. It's not necessary. But, the
6 scope is also clear at a hundred yards, which for
7 the hunters on the jury there's nothing
8 unreasonable about -- there's nothing sinister
9 about the gun being set at 4 power.

10 I think it's very important to look at a
11 couple of photos. And those are -- actually,
12 State's 17. Criminalist Amish said that when a
13 bullet goes in perpendicular, when it goes in
14 straight that it's going to leave concentric
15 circles, circles that come out from the hole
16 evenly, almost like ripples when somebody drops a
17 rock in the water. He testified that if the
18 bullet had come in at an angle that this entry,
19 this hole would have been oblong and one would
20 expect that the circles would be more bunched up
21 on this side and farther apart on this side. That
22 is not the case here. Suggesting that the bullet
23 came in almost directly behind.

24 Additionally he testified that this
25 bullet hole, 19 inches from the back of the cab --

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CLOSING ARGUMENT / MR. SCALES 1226

1 from the side of the cab, excuse me, when it came
2 out and hit the windshield, the interior of the
3 windshield, it was 20 inches. So, from the back
4 where it entered the cab to the windshield, which
5 I think he testified was approximately three feet,
6 it had deviated one inch. That is a straight
7 shot, ladies and gentlemen.

8 Talking about the positions of the
9 vehicles, it was mentioned before, I think it was
10 suggested that Mr. Sandoval had positioned himself
11 so he would have a better shot at Mr. Whitcraft.
12 That doesn't work for one reason. Mr. Sandoval
13 was stopped when the truck hit him. How could he
14 know that Mr. Whitcraft's truck was going to be
15 over this way giving him that shot? How could he
16 have anticipated that? That's not something that
17 he did. And looking at the vehicle that's still
18 within the fog line, that's still legally parked
19 on the roadway there's nothing to suggest that he
20 positioned his vehicle giving him an open shot.
21 Nothing to suggest that.

22 Criminalist Amish testified that he
23 concluded in his report that the mud which had --
24 and I won't belabor the point by looking for the
25 picture. But, when the vehicle, the Bronco, was

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CLOSING ARGUMENT / MR. SCALES 1227

1 hit the impact caused wet mud from the inside of
2 the wheel well to fall down on the tires or that
3 impact had jarred that mud loose. And for that
4 mud to have fallen and to have adhered to the tire
5 wall it would have had to have been wet.
6 Criminalist Amish concluded in his report that Mr.
7 Sandoval had been at his home immediately prior to
8 the shooting.

9 MR. CAMPBELL: I'm going to object,
10 that's not what he concluded.

11 THE COURT: All right. Again, it's up to
12 the jury to refer to your own recollection on the
13 evidence.

14 MR. SCALES: Criminalist Amish testified
15 that the gun was found under the head of Mr.
16 Whitcraft and I will show you what's been marked
17 as State's Exhibit 11. Criminalist Amish
18 testified, and I'm sure you would agree that, that
19 is an odd position for the gun. But, nonetheless,
20 the gun you can see the bottom of the handle
21 directly under Mr. Whitcraft's head. It's
22 previously been argued that -- that we have no
23 evidence that Mr. Sandoval tampered with the
24 scene, we have no evidence that he put that gun
25 under there, but it was certainly suggested that

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CLOSING ARGUMENT / MR. SCALES 1228

1 he cocked that gun and that he put it under the
2 head of Mr. Whitcraft to make it look like he was
3 going to use that gun against Mr. Sandoval.
4 Criminalist Amish inspected Mr. Sandoval's
5 clothing visually and with a light source to
6 determine if there was any blood on it. In order
7 to lift Mr. Whitcraft's head and to put that gun
8 under there there is absolutely no way that you
9 could not -- that you could do that without having
10 some blood transfer on to your hands.

11 Yesterday Mr. Martens was questioned if
12 he remember -- this was the friend that lived at
13 230 Hussey Lane where Mr. Sandoval made the 9-1-1
14 call from. He was questioned, "Do you remember
15 Mr. Sandoval being on the telephone and telling
16 the 9-1-1 operator that 'I need to pee.' and he
17 got off for a short period of time?" Had had been
18 on the phone prior to using the bathroom. The
19 implication is that he might have had an
20 opportunity to wash his hands. Was there any
21 blood on the phone? Was there any investigation
22 done? No. And that's because he did not have
23 blood on his hands because he did not place that
24 gun under Mr. Whitcraft's head.

25 Trooper Kuehmichel I would also agree at

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CLOSING ARGUMENT / MR. SCALES 1229

1 the time was probably the preeminent accident
2 reconstructionist in the state, still is a very
3 knowledgeable, very highly trained, highly
4 educated individual.

5 He agreed with Trooper Bridges who was,
6 I guess, working in kind of a training capacity at
7 the time. He agreed with Trooper Bridges' report
8 in two areas. One was that Mr. Whitcraft slammed
9 on the brakes leaving a skid mark of 12 feet and a
10 skid shadow of eight feet. If you recall a skid
11 shadow is when the wheel is -- the tire is move
12 across, but it's not hot enough yet to bring those
13 oils up out of the surface. So, there was a skid
14 mark and skid shadow of 20 feet indicating a
15 traveling speed of just over 20 miles per hour.

16 And he also agreed with Trooper Bridges'
17 report that Mr. Whitcraft's vehicle rammed in to
18 Mr. Sandoval's vehicle at a speed of 4 to 6 miles
19 per hour. He does not necessarily say whether it
20 was powered or whether it rolled back. But, he
21 does agree that it was Mr. Whitcraft's vehicle
22 that rolled down that five percent slope in to Mr.
23 Sandoval's vehicle.

24 Now, he provided three scenarios for
25 you, testing that was done just 11 months after

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CLOSING ARGUMENT / MR. SCALES 1230

1 the fact, almost 11 months after the fact. And
2 the purpose of the scenarios was trying to show
3 where Mr. Sandoval came from, where he was that
4 morning.

5 Now, the one thing that Trooper
6 Kuehmichel had to admit on the witness stand was
7 that he's making the assumption in each of those
8 scenarios that the vehicle was, in fact, in 3rd
9 gear. Now, the vehicle was found in 3rd gear,
10 there's no dispute about that. But Trooper
11 Kuehmichel also agreed that it's possible that Mr.
12 Sandoval upon stalling the vehicle after the
13 Bronco -- the truck rammed in to his Bronco that
14 it's every bit as possible that he could have
15 pushed that gear forward in to a forward -- or,
16 pushed the gear stick forward in to a forward gear
17 to keep him from rolling. Without the vehicle
18 being in 3rd gear all of those scenarios are
19 useless.

20 He did agree, however, that Mr. Sandoval
21 could have reached the speed of 13.4 miles per
22 hour. And if you remember his testimony, I know
23 it was lengthy, but if you remember his testimony
24 the 13.4 miles per hour is what he determined Mr.
25 Sandoval's Bronco to be going at the time it hit

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CLOSING ARGUMENT / MR. SCALES 1231

1 the brakes in a controlled stop. Not long enough
 2 to create a skid mark, but long enough to create
 3 the skid shadow. And there are pictures of the
 4 tire, I think you saw where the tire was darker
 5 where it had scraped across the surface. And he
 6 agreed that Mr. Sandoval could have been going
 7 13.4 miles per hour in both 1st gear or 2nd gear
 8 and that he could have done it in the 155 feet
 9 from the stop sign on Hussey Lane to where the
 10 accident happened. Very possible. Not just
 11 possible, it's absolutely certain that he couldn't
 12 have reached those speeds in that 155 feet. In 3rd
 13 gear? No, he couldn't. He couldn't have gotten
 14 up to 3rd gear that quickly. So, once again, the
 15 assumption is that he had to be in 3rd gear.

16 Trooper Kuehmichel tested Mr. Sandoval's
 17 vehicle a number of months after the fact, nearly
 18 11 months after it had been tuned up at the
 19 request of the District Attorney's Office. There
 20 had not been any alignment done, despite damage to
 21 the left front portion of the vehicle. So, he was
 22 unable to say whether the vehicle was performing
 23 exactly the same as it was on September 27th, 2001.

24 He also testified that they didn't test
 25 the pickup, so they weren't able to actually

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CLOSING ARGUMENT / MR. SCALES 1232

1 recreate the actual conditions. He did rely on
 2 his experience of crashing many vehicle, but there
 3 was no testimony that he had crashed 1964 Ford
 4 pickups and that he could testify with any degree
 5 of certainty as to how they would react.

6 He did agree that Mr. Whitcraft's
 7 braking was not a controlled stop. And use your
 8 own common sense, slamming on the brakes, that's
 9 consistent with what? A delayed reaction? Seeing
 10 a deer jump out in the road? Or being angry and
 11 upset?

12 Despite any of the three scenarios what
 13 we do know, what is uncontroverted is that Mr.
 14 Whitcraft slammed on his brakes 60 feet from
 15 Harvey Callahan's driveway and that the vehicle
 16 rammed Mr. Sandoval's vehicle. And it's clear
 17 that he initiated the confrontation.

18 Trooper Kuehmichel, if you'll remember,
 19 also testified that it would have taken just two
 20 more seconds for Mr. Whitcraft to have gotten in
 21 to Harvey Callahan's driveway, just two more
 22 seconds. It's interesting to note that Trooper
 23 Kuehmichel, despite very -- well, this is a matter
 24 of opinion, very interesting testimony, very
 25 detailed testimony. He agrees that for any one of

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CLOSING ARGUMENT / MR. SCALES 1233

1 these scenarios to work the vehicle would have to
 2 have been in 3rd gear and we simply don't know. We
 3 would have to have a videotape of the actual
 4 event. We'll talk about reasonable doubt in a
 5 minute.

6 One other thing Mr. -- or, excuse me,
 7 Trooper Kuehmichel testified that the intersection
 8 of Hussey and Picket Creek it was clear coming
 9 from Picket -- down Picket Creek towards Hussey
 10 from about 125 feet on you could see the
 11 intersection of Hussey Lane and Picket Creek.
 12 But, he also admitted on cross examination that it
 13 could be seen intermittently through trees from
 14 approximately 250 feet. And I would suggest to
 15 you that at a distance of nearly three quarters
 16 the length of a football field Mr. Whitcraft had
 17 plenty of time to see Leo Sandoval and initiate
 18 this confrontation.

19 Lisa Locke who was the employee at the
 20 Lil Pantry. She testified that she knew Jack
 21 Whitcraft through work and that she did not see
 22 the fight start. But, she did mention that Mr.
 23 Whitcraft had told her that Sandoval had
 24 threatened to harm him. Now, she testified that
 25 she would see Jack Whitcraft come in in the

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CLOSING ARGUMENT / MR. SCALES 1234

1 evenings. The incident that allegedly took place,
 2 the September 13th gun pointing took place in the
 3 morning. Deputy Hines, I believe it was,
 4 testified that the report was taken -- and you'll
 5 have to rely on your memory, I believe it was
 6 somewhere before lunch, so it was in the morning.
 7 But, he told Lisa Locke and was upset several
 8 hours later when he told her.

9 Mr. Kirkland, you'll get a chance to
 10 read his transcript. All I'm going to say about
 11 him is that the State in the first trial attempted
 12 to show that Mr. Sandoval had exaggerated the
 13 details of the assault at the Lil Pantry to him.
 14 But, Mr. Kirkland testified that he got the
 15 details from both Mr. Sandoval and Ms. Rose. He
 16 doesn't say who exaggerated the details or who
 17 told him these things.

18 Lacy Maust, another employee at the Lil
 19 Pantry, we have his testimony. He very clearly
 20 describes this fight, that Mr. Sandoval was pulled
 21 out of the truck, that he was in a fetal position
 22 protecting his stomach and his head as Mr.
 23 Whitcraft was on top of him punching him. When
 24 Mr. Maust pulled him off he got one last kick on
 25 Mr. Sandoval's face. He had to pull Jack by the

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CLOSING ARGUMENT / MR. SCALES 1235

1 shirt to get him off. And despite that violent
2 assault he still refers to Mr. Whitcraft as a
3 peaceful guy.

4 He told Detective Rylander -- in his
5 testimony he denies Mr. Whitcraft ever using the
6 word "kill". But, he did tell Detective Rylander
7 that he said to Mr. Sandoval, "I'm going to beat
8 you until you die."

9 Judith Weiner, Peter Liebes and
10 Charlotte Sperisen. Ms. Weiner testified that she
11 saw Mr. Sandoval two times shooting on his
12 property. That he would drive down this gravel
13 road quickly, that he would get out, that he would
14 shoot at the can or the bucket that was on the
15 fence and that he would get back in. She saw him
16 do it two times, but she heard the shooting quite
17 a lot in the spring of 2001. She did agree that
18 after there was some intervention, after there was
19 some concern that the shooting tapered off.

20 It was interesting that she corrected
21 her statement that the pot on the post was not on
22 her property. She had originally testified that
23 the pot on the post was on her property quite a
24 ways over the fence line. But, on cross
25 examination she agreed that the property belonged

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CLOSING ARGUMENT / MR. SCALES 1236

1 to somebody named Silver and I don't know who that
2 is. She tried to tell you that, "Yes, it was on
3 my property." And looking at the map, once again
4 the map that we all have burned in to our memory,
5 this is Windy River Farm, this is where Mr.
6 Sandoval was shooting. She also agreed that she
7 didn't know if he had permission to do that.

8 Again, she's trying to put Mr. Sandoval
9 in the most negative light. And she testified
10 that it disrupted the peace of their farm. And
11 it's clear that she's willing to say things that
12 make Mr. Sandoval look bad.

13 Briefly, George Engle confirmed that Mr.
14 Sandoval was going hunting. He was Mr. Sandoval's
15 friend. They were in fact going hunting that
16 year.

17 Teresa Hill, this was the woman who
18 testified that Jack Whitcraft had carried a gun
19 many times. Now, she was asked, "Well, did he
20 just carry it up at the mining claim, you know,
21 just kind of a dangerous place?" "No." She saw
22 him carry it all over the place.

23 John Crissup, now you've been told you
24 can disregard his whole testimony and I can
25 understand why because his testimony paints Mr.

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CLOSING ARGUMENT / MR. SCALES 1237

1 Whitcraft in a stark contrast of what you've heard
2 in this trial. He testified yesterday and I read
3 back to him his testimony from seven years ago, no
4 change. There was no change. He testified that
5 Mr. Whitcraft, who he would see around sometimes
6 at Longboard Lumber, he would see him and "Jack
7 said he was going to kill that f'ing Mexican."
8 Mr. Crissup confirmed that he was talking about
9 Leo. He related this threat to Leo. There was no
10 -- there was no question who this Mexican was.

11 Mr. Whitcraft complained of this gun
12 pointing incident on September 13th to a number of
13 people, to anybody who would listen, clerks at the
14 convenience store, friends, acquaintances, it's
15 like he told everybody. It's interesting that he
16 told people, "I guess I'm going to have to start
17 carrying a gun." It's almost -- it's almost too
18 convenient.

19 Now, Mr. Whitcraft who was fully aware
20 that Leo Sandoval carried a gun, or allegedly that
21 he was fully aware that he carried a gun, he chose
22 to slam on the brakes on Picket Creek Road. He
23 chose to confront Leo Sandoval. And, members of
24 the jury, in fact he created a situation where he
25 could claim self defense.

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CLOSING ARGUMENT / MR. SCALES 1238

1 Now, there was some discussion in the
2 State's first argument that Mr. Sandoval had
3 planned this. Now, I want you think about that
4 for a second and consider this in your
5 deliberations. In order for this to have happened
6 the way that the State is proposing Mr. Sandoval
7 would have to do the following: he would have to
8 wake up that morning; he would have to tell his
9 friend, Bill Kirkland, that he's going to meet
10 him, that they would have to concoct some type of
11 a story, "I'm going to go to Tyrone Montgomery's
12 and then I'm going to grab a bag of Weed and Feed
13 to take to Tyrone Montgomery's" -- and about the
14 Weed and Feed, I don't know why thought Weed and
15 Feed was grass seed. It has something to do with
16 grass, it is fertilizer. Maybe he just doesn't
17 know. But, we'll never know the answer to that.

18 But, additionally, he would have to
19 drive to Merlin, not be seen by anyone. He would
20 have to follow Jack Whitcraft several miles to the
21 Picket Creek Road area. He would have to
22 anticipate that Jack was going to slam on his
23 brakes, that Mr. Whitcraft was going to ram his
24 vehicle causing it to stall. He would have to
25 anticipate that Jack Whitcraft would grab his gun

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CLOSING ARGUMENT / MR. SCALES 1239

1 and bring it back across the seat towards the
2 door. He would have to anticipate that Jack would
3 get tangled in the speaker wire instead of
4 wheeling around and shooting him. And he would
5 have to do all of this in an area that was 60 feet
6 from Harvey Callahan's house. He would have to
7 risk being seen by any of the person's that lived
8 out on Picket Creek or Hussey Lane at 9:00 in the
9 morning when everybody's going to work. And it
10 didn't happen this way. He didn't plan that.

11 If he really wanted to have killed Jack
12 Whitcraft why didn't he do it at the Picket -- at
13 the Robertson Bridge when he had the opportunity
14 when nobody was around? And I would submit to you
15 that's because that gun pointing incident never
16 happened.

17 Now, there was one thing also that I
18 forgot. It's important to remember the entire
19 context of Mr. Crissup's statement. Mr. Sandoval
20 told him and it was mentioned in the State's first
21 argument, "I will blow his head off." Once again,
22 you have to take things in context. Taking the
23 half -- a half part of a sentence, the back half
24 of a sentence changes the meaning radically.
25 Remember what Mr. Crissup said, "If he points a

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CLOSING ARGUMENT / MR. SCALES 1240

1 gun at me again I will blow his head off." That's
2 a big difference.

3 Before I sit down I just want to
4 reiterate the importance of looking carefully at
5 the evidence and looking carefully at the bias and
6 the motives of the witnesses involved. Each one
7 of these witnesses, they are entitled to your
8 careful consideration. But, you are entitled to
9 look at the character and nature and the way they
10 testified to determine their credibility.

11 The Court is going to advise you on what
12 reasonable doubt is. You're not to rely on
13 speculation or conjecture in rendering your
14 verdict.

15 As has already been stated, the burden
16 is on the State to prove that Mr. Sandoval not
17 only committed each and every one of these
18 elements of the crime of Murder with a Firearm,
19 but also that the defense of self defense didn't
20 apply. Remember the expert testimony, I think
21 speaks most loudly. Jack Whitcraft kit those
22 brakes, Jack Whitcraft slammed in to Leo. He's
23 the initial aggressor. We can't get around that.
24 The experts all testified it could have happened
25 more than one way. Senior Trooper Kuehmichel,

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1241

1 sure, it could have happened, the fourth scenarios
2 that I had proposed, it was likely too. That is
3 reasonable doubt.

4 You may not like some of the things that
5 Mr. Sandoval said in the letter. You may not like
6 some of the things that have been testified about
7 him. But, your personal feelings do not play in
8 to this. Base your verdict on the evidence. Base
9 your verdict on the evidence viewed as a whole and
10 I believe you will find that Jack Whitcraft was
11 the initial aggressor. And had it not been for
12 the speaker wire that kept him from coming out of
13 that vehicle and wheeling around and shooting Mr.
14 Sandoval he might be sitting in that chair.

15 You are not going to be able to say that
16 self defense does not apply. It does apply. Mr.
17 Whitcraft was the initial aggressor and you must
18 find Mr. Sandoval not guilty.

19 Thank you.

20 THE COURT: Mr. Campbell?

21 MR. CAMPBELL: May it please the Court.
22 Counsel.

23 Ladies and gentlemen, the judge has
24 emphasized a couple times that you must you must
25 depend on your own recollection of the evidence

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1242

1 and what it was. I am going to go through a
2 couple things that Mr. Scales said on behalf of
3 the defendant that I believe were just wrong.

4 But, let me start with this, one of the
5 instructions you'll get is you are not to allow
6 bias, sympathy or prejudice to play any part in
7 your deliberations. That's one instruction and
8 follow it closely. And you are not to engage in
9 any guesswork or speculation.

10 And let me go to that 3rd gear argument
11 you just heard. He might have moved it or --
12 there is no evidence that anybody moved the gears
13 after this. There is absolutely none. That is an
14 invitation to engage in guesswork and speculation.
15 And you will remember when I examined Kuehmichel
16 and asked hypotheticals I asked him to assume
17 those facts we found at the scene. Those facts
18 that were found at the scene, not to guess. And
19 he asked him to guess on cross and that's all it
20 is is -- well, yes, somebody could have jammed it
21 around or something. There's no evidence that
22 that was done. There is none in the record and
23 that's an invitation to engage in guesswork and
24 speculation.

25 There was argument about the anger of

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1243

1 Janice Rose and an attempt to impeach her. The
2 anger of Janice Rose, if you'll remember when she
3 was told the defendant had actually killed Jack
4 Whitcraft she was angry at the defendant because
5 you just don't go out and kill someone. There was
6 no reason to kill Jack Whitcraft. You heard both
7 of those thing from the witness.

8 And I believe she also testified, "I
9 didn't believe he would do it," indicating that
10 she knew he had discussed it in the past,
11 triggering some of those thoughts.

12 Sure, Defense counsel wants you to think
13 that State's Exhibit 74 and 22, the pistol, is
14 irrelevant. Yeah, he can tell you it's
15 irrelevant. But, is it irrelevant? We're talking
16 about a self defense situation here. Which one of
17 these guns is a better self defense gun? Which
18 one of them can you repeatedly fire quickly to
19 protect yourself? There's one that's very good at
20 killing somebody with one shot and there's one
21 that if you really were about self defense you can
22 repeatedly fire to get yourself to cover. You
23 don't have to rack one out and another one in in
24 order to fire this one again. And it's completely
25 operational.

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1244

1 If it was a -- if it was a self defense
2 event he would have grabbed that gun. This gun
3 could not have been maneuvered through the vehicle
4 the way he said, under the pressure that he claims
5 that he was under.

6 Now, I want to touch on this handcuffing
7 thing. Actually, they -- he has him handcuffed
8 behind his back now during the interview. Jerry
9 Rylander --

10 MR. SCALES: I'm going to object, Your
11 Honor, I clearly said that -- I did not say that.

12 THE COURT: Well, Mr. Campbell, you have
13 the opportunity to do your rebuttal.

14 MR. CAMPBELL: The evidence on
15 handcuffing, he says he was handcuffed behind his
16 back and put in the patrol and handcuffed during
17 the interview behind his back. The actual
18 evidence is Jerry Rylander couldn't say for sure.
19 He couldn't remember. But, he said if he was
20 cuffed he was cuffed in front during the
21 interview. If you look through the interview you
22 may get some more information that helped you
23 probably discern that he wasn't cuffed at all
24 because he talks about water. He talks about --
25 early in the interview he has some water and he

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1245

1 talks about could he get some more water at some
2 point. So, I suppose he could have been drinking
3 water cuffed. But, if you look at that he
4 probably wasn't cuffed because he was able to
5 articulate and drink water. Small point, but
6 details are important and accuracy is important.

7 The Defense counsel has just argued that
8 the State's theory and the state has argued that
9 the defendant came from Merlin that day. I didn't
10 hear myself say that. If I somehow said that not
11 realizing what I say I didn't mean that. We
12 didn't say he came from Merlin, we said he
13 intercepted him down the road.

14 Defense counsel argues and notice this,
15 I mean, he goes through each witness and picks at
16 little, little pieces of each witness. But, did
17 he ever address the real issue here? He tried to
18 weave the facts together for you. Did he ever
19 address why his client said, "Mr. Whitcraft
20 stepped out, turned around and pointed."? He
21 couldn't address it because it was a lie and there
22 was a reason for the lie. And he couldn't address
23 why he lied about getting out of the vehicle to
24 fire the shot because the lie proves his guilt.

25 But, with regard to Kirkland's testimony

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1246

1 he said that the evidence was that defendant said
2 he was going to Tyrone Montgomery's house and then
3 he was going to come over to his. That's what he
4 said in his argument. Please check that. Please
5 check it, you have Kirkland's transcript. Please
6 check to see if the defendant told Mr. Kirkland he
7 was going to Montgomery's, because he didn't.
8 That was something he made up to explain why he
9 was up the road past Hussey Lane.

10 With regard to the scope evidence.
11 There's testimony that that was an eight or 10
12 foot bed on that pickup truck; right? Well, he
13 took eight. He took eight. And you can look at
14 the pickup and some of you are familiar with
15 pickups, it looks like it might be 10. Plus the
16 footage back to the door of the Bronco, plus this
17 back. Remember that pickup truck may have gone
18 that 12.4 foot skid and then rolled about 10 four
19 -- 10 more feet while Mr. Whitcraft is trying
20 somehow to get something to defend himself. The
21 defendant shot him while that was happening and
22 then it rolled back in to his truck. Which we
23 know it did come back to where his truck was --
24 his Bronco.

25 He argues that there is nothing to

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1247

1 suggest that the positioning of the Bronco,
2 nothing in this case to suggest that the
3 positioning of the Bronco was planned or
4 purposeful. Except everything that happened. The
5 door opens and he's out on the end of the door and
6 has a position of firing and it comes in at the
7 angle, slight angle, pretty much angle that the
8 Criminalist Amish testified to.

9 Nothing at all to suggest he might have
10 been up to the body and done something with the
11 gun, he would have got blood -- he would have got
12 some blood on his hands. Well, is there any
13 evidence that somebody got some blood on their
14 hands from Mr. Whitcraft? Do you remember looking
15 across the hood of the -- and hearing that that's
16 castoff type blood, blood that if you flick your
17 hand, for instance, walking back to the Bronco,
18 which the defendant says he did. There was two
19 spots of blood of Mr. Whitcraft's blood that we
20 tested by DNA. So, there's one other piece of
21 evidence.

22 I'm not telling you we've proved that
23 beyond a reasonable doubt. We don't have to.
24 What we do -- what we did prove beyond a
25 reasonable doubt is that he provoked it and that

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REBUTTAL CLOSING ARGUMENT / MR. CAMPBELL 1248

1 he was the initial aggressor.

2 What's the big deal about hunting?
3 What's the big deal about all that hunting
4 evidence? Well, here's why it became important.
5 Jerry Rylander during the interview said, "Why do
6 you have the hunting rifle today?" or "Why do you
7 have that rifle today?" And his answer was,
8 "Well, I'm going to go hunting." Why would you be
9 carrying a loaded rifle in your bronco when it
10 isn't hunting season? Decent question by an
11 officer. And it wasn't hunting season. It wasn't
12 a time to carry the rifle whether you were going
13 when the season opened or not. That's the point
14 of that.

15 If this was really an honest self
16 defense case this defendant from the very get go
17 could have sat down with that police officer, told
18 him exactly what happened and told him exactly
19 what happened again in ever interview thereafter.
20 When you tell the truth you can -- you can go
21 through the same facts every time. You may -- you
22 may get more detail in one or the other, but you
23 tell the same story. If you tell the truth it's
24 real easy to stay on the same path. He didn't
25 tell the truth, he couldn't tell the truth, the

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COURT CAUTIONS THE JURY 1249

1 truth convicts him.

2 He said, "I will kill him in self
3 defense." "I will kill him in self defense and I
4 will get away with it." He has killed him, he has
5 claimed self defense and now this jury will decide
6 whether he gets away with it.

7 THE COURT: All right. Ladies and
8 gentlemen, what we're going to do now because of
9 the time is we will break for lunch and I will
10 have you come back, check back in at 1:15. When
11 you come back we'll talk about jury instructions
12 and then the case will be given to you for
13 deliberations.

14 Again, please let me caution to you, it
15 is not yet given to you for deliberations. So,
16 please refrain from talking about this amongst
17 yourselves or with anyone else until the case is
18 actually given to you for that purpose.

19 Please leave your notebooks on your
20 chairs and go with the bailiff in to the jury room
21 and have a nice lunch.

22
23 (At 11:54 a.m. the jury exits the
24 courtroom.)
25

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COURT CAUTIONS THE JURY 1250

1 (The following proceedings were held in
2 open court out of the presence of the
3 jury.)
4

5 THE COURT: All right. We are in recess
6 until 1:30.

7
8 (At 11:54 a.m. a lunch recess was taken,
9 to reconvene at 1:30 p.m. the same day.)
10
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JURY INSTRUCTIONS

1251

GRANTS PASS, OREGON

THURSDAY, FEBRUARY 26, 2009; 1:38 P.M.

12 PERSON JURY TRIAL - DAY 7

*** 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 in, please?

*(At 1:40 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, next I'm going to instruct you, read
the jury instructions to you. I wanted to tell
you ahead of time that we have provided written
instructions for you. So, we will be sending in
this same packet of jury instructions. Now, the

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JURY INSTRUCTIONS

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first two or three instructions I've already read
to you, so I'm not going to re-read them, but you
will have them in your written packet of
materials.

It is your sole responsibility to make
all of the decisions about the facts in this case.
You must evaluate the evidence to determine how
reliable or how believable that evidence is.

When you make your decisions about the
facts you must then apply the legal rules to those
facts and reach your verdict. Remember, however,
that your power to reach a verdict is not
arbitrary. When I tell you what the law is on a
particular subject or tell you how to evaluate
certain evidence you must follow these
instructions.

Do not allow anything I have said or
done during the course of this trial to suggest
that I have formed any opinion about this case.
Keep in mind that a judge is required by law to
give certain instructions in every criminal case.

When I have sustained objections to
evidence or ordered that evidence be stricken or
excluded from your consideration you must follow
these rulings. Do not consider such matters

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JURY INSTRUCTIONS

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during your deliberations. Base your verdict on
the evidence and these instructions.

The lawyer's statements and arguments
are not evidence. If your recollection of the
evidence is different from the lawyer's
recollection, you must rely on your own memory.

In deciding this case you are to
consider all the evidence you find worthy of
belief. It is your duty to weigh the evidence
calmly and dispassionately and to decide this case
on its merits. Do not allow bias, sympathy or
prejudice any place in your deliberations. Do not
decide this case on guesswork, conjecture or
speculation. Do not consider what sentence might
have been imposed by the Court if the defendant is
found guilty.

Generally the testimony of any witness
whom you believe is sufficient to prove any fact
in dispute. You are not simply to count the
witnesses, but you are to weigh the evidence.

Keep in mind that each party is entitled
to the considered decision of each juror.
Therefore, you should not give undue weight to
another juror's notes or memory if they conflict
with your recollection of the evidence.

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JURY INSTRUCTIONS

1254

The Court has provided written jury
instructions for your use. When you use these
instructions do not place undue emphasis on any
particular instruction, but rather view the
instructions as a whole.

The term "witness" includes every person
who has testified under oath in this case. Every
witness has taken an oath to tell the truth. In
evaluating each witness' testimony, however, you
may consider such things as: the manner in which
the witness testifies; the nature or quality of
the witness' testimony; evidence that contradicts
the testimony of the witness; evidence concerning
the bias, motives or interest of the witness;
evidence concerning the character of the witness
for truthfulness; and evidence that the witness
has been convicted of a previous crime.

In deciding this case you may draw
inferences and reach conclusions from the evidence
if your inferences and conclusions are reasonable
and are based on your common sense and experience.

The defendant is innocent unless and
until the defendant is proven guilty beyond a
reasonable doubt. The burden is on the State to
prove the guilt of the defendant beyond a

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JURY INSTRUCTIONS

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reasonable doubt.

Reasonable doubt is a doubt based on common sense and reason. Reasonable doubt means an honest uncertainty as to the guilt of the defendant. Reasonable doubt exists when after careful and impartial consideration of all the evidence in the case you are not convinced to a moral certainty that the defendant is guilty.

A defendant has an absolute constitutional right not to testify. Therefore, a defendant's decision not to testify can not be considered as an indication of guilt. It should not be commented on or in any way considered by you in your deliberations.

If you find that a witness has been convicted of a crime you may consider this conviction only for its bearing, if any, on the believability of the witness' testimony.

When a witness testifies about statements made by the defendant you should consider such testimony with caution. In reviewing such testimony you should consider, among other things, the following: Number one, did the defendant make the statement, and if so did the defendant clearly express what she intended to say? Number two, did

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JURY INSTRUCTIONS

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the witness correctly hear and understand what the defendant said? Number three, did the witness correctly remember and relate what the defendant said? Number four, did the witness intentionally or mistakenly alter some of the words used by the defendant, thereby changing the meaning of what was actually said?

If after weighing such factors you conclude that the defendant said what he intended to say and that the witness to the statement correctly understood, remembered and related to you what the defendant said, then you are authorized to consider such statements for what you deem them to be worth.

There are two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the existence or nonexistence of a certain fact. You may base your verdict on direct evidence or on circumstantial evidence or on both.

A witness who lies under oath in some part of his or her testimony is likely to lie in other parts of his or her testimony. Therefore, if you find that a witness has lied in some part

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of his or her testimony then you may distrust the rest of that witness' testimony. Sometimes witnesses who are not lying may give incorrect testimony. They may forget matters or may contradict themselves. Also, different witnesses may observe or remember an event differently. You have the sole responsibility to determine what testimony or portions of testimony you will or will not rely on in reaching your verdict.

An expert witness is a person with special skills or education in a particular field. Even though expert witnesses may testify about their opinions, you are not required to accept those opinions. To determine the value, if any, you will give to an expert's opinion you should consider such things as the expert's qualifications, the expert's opportunity and ability to form the opinion, the expert's believability and how the expert reached the opinion or conclusion.

Oregon law provides that a person commits the crime of Murder if that person intentionally causes the death of another human being.

In this case to establish the crime of

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JURY INSTRUCTIONS

1258

Murder the State must prove beyond a reasonable doubt the following three elements:

Number one, the act occurred in Josephine County, Oregon.

Number two, the act occurred on or about September 27th, 2001.

And, number three, Defendant intentionally caused the death of Jack Whitcraft, another human being.

A person acts intentionally or with intent when that person acts with a conscious objective to cause a particular result. When used in the phrase "intentionally caused the death of Jack Whitcraft" "intentionally" or "with intent" means that a person acts with a conscious objective to cause the death of another human being.

The defense of self defense has been raised. A person is justified in using physical force on another person to defend himself from what he reasonably believes to be the use or imminent use of unlawful physical force. In defending a person may only use that degree of force which he reasonably believes to be necessary. The burden of proof is on the State to

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JURY INSTRUCTIONS

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1 prove beyond a reasonable doubt that the defense
2 does not apply.

3 There are certain limitations on the use
4 of deadly physical force. The defendant is not
5 justified in using deadly physical force on
6 another person unless he reasonably believed that
7 the other person was using or about to use
8 unlawful deadly physical force against defendant
9 or another person.

10 The defendant is not justified in using
11 physical force on another person if he provoked
12 the use of unlawful physical force by that other
13 person with the intent to cause physical injury or
14 death to the other person.

15 Ordinarily a person is not justified in
16 using physical force on another person if he was
17 the initial aggressor. However, the defendant's
18 use of physical force may be justified even though
19 he was the aggressor if you find that he withdrew
20 from the encounter and effectively communicated to
21 the other person an intent to withdraw from the
22 encounter, but the other person, nevertheless,
23 continued the use of unlawful physical force on
24 the defendant.

25 The definition of "human being", a

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JURY INSTRUCTIONS

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1 person who has been born and was alive at the time
2 of the criminal act.

3 When you return to the jury room select
4 one of your members to act as presiding juror.
5 The presiding juror has no greater voting weight,
6 but is to preside over your deliberations and be
7 the spokesperson for the jury. You should then
8 deliberate and find your verdict.

9 On the charge of Murder each and every
10 juror must agree on the verdict of guilty to
11 return a verdict of guilty of Murder. Ten or more
12 jurors must agree on the verdict of not guilty to
13 return a verdict of not guilty of Murder.

14 When you have arrived at a verdict the
15 presiding juror will sign the appropriate verdict
16 form.

17 This is the verdict form that will be
18 sent in with you to the jury room. It is
19 entitled: "In the Circuit Court of the State of
20 Oregon for Josephine County, State of Oregon vs.
21 Leonard C. Sandoval" and it reads: "We the jury
22 being duly empaneled and sworn in the above
23 entitled court and cause do hereby find the
24 defendant on the charge of Murder" and then
25 there's a place to mark either "guilty" or "not

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JURY INSTRUCTIONS

1261

1 guilty".

2 It further reads: "If the jury finds the
3 defendant guilty of Murder then it must answer the
4 following additional question:" which is, "During
5 the commission of this crime did the defendant use
6 a firearm?" and then again a place to mark "yes"
7 or "no".

8 In order for the jury to return a
9 finding of "yes" on that allegation at least 10 of
10 the same jurors who voted to find the defendant
11 guilty of Murder must agree that the State has
12 proved defendant used a firearm.

13 And then there's a place for the date
14 and the signature of the presiding juror.

15 After you have reached your verdict
16 signal the bailiff. The court will be reassembled
17 to receive your verdict.

18 Okay. At this time I will swear in the
19 bailiff and then we'll talk about the alternates.

20 Do you solemnly swear that you have read
21 Rule 59C5 of the Oregon Rules of Civil Procedure
22 and will to the best of your ability obey its
23 contents, so help you God?

24 THE BAILIFF: I will.

25 THE COURT: All right.

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JURY INSTRUCTIONS

1262

1 Ladies and gentlemen, at this time the
2 case is being given to you for your deliberation.
3 I would ask that you do take your notebooks this
4 time when you go in to the jury room. And that
5 will be the 12 members of the jury.

6 The two alternates I would ask that you
7 write a contact telephone number on a blank piece
8 of paper from your notebooks, give your -- you can
9 leave your notebooks on your chairs, but give your
10 telephone contact numbers to the bailiff. And
11 then during the course of deliberations if for
12 some reason one of the jurors is not able to
13 continue through the course of the deliberations
14 my clerk will contact you and ask you to come back
15 in. So, please do remain available until you are
16 notified that the case has been resolved and you
17 are discharged. Okay?

18 So, at this time if the jurors would
19 please go with the bailiff?

20 MR. CAMPBELL: Just, may I --

21 THE COURT: Oh, excuse me.

22 Mr. Campbell?

23 MR. CAMPBELL: Could we approach just
24 before they go out? Because I think there's --

25 THE COURT: Okay. One moment.

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JURY INSTRUCTIONS 1263

Counsel?

(Sidebar - Not Transcribed)

THE COURT: One moment, ladies and gentlemen, we're going to be right with you.

(Sidebar - Not Transcribed)

THE COURT: All right. Ladies and gentlemen, one last quick definition for you that Counsel realized that we had overlooked. But, I do want to give you the definition of "firearm" because you are asked a question about that.

The definition of "firearm" is a weapon by whatever name known that is designed to expel a projectile by the action of black powder or smokeless powder and that is readily capable of use as a weapon.

So, you will be given that in your written materials as well.

All right. At this time then if the jury will go with the bailiff and the two alternates will be released on-call.

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COLLOQUY 1264

(At 1:55 p.m. the jury exits the courtroom to begin deliberations.)

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

THE COURT: All right. Gentlemen, any exceptions to the instructions?

MR. CAMPBELL: No exceptions on behalf of the State, Your Honor.

THE COURT: Mr. Scales?

MR. SCALES: And no exceptions from the Defense, Your Honor.

THE COURT: All right. Very well. Then we'll take a few minutes, we'll get the exhibits in to the jurors and then my clerk will contact you whenever we have any information.

We can go off the record now.

(At 1:57 p.m. court was in recess pending deliberations.)

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VERDICT 1265

GRANTS PASS, OREGON

THURSDAY, FEBRUARY 26, 2009; 4:47 P.M.

12 PERSON JURY TRIAL - DAY 7

*** VERDICT ***

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

--oOo--

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

THE COURT: All right. If you'd ask the jury in, please?

(At 4:48 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, who's the jury foreperson?

THE PRESIDING JUROR: That'd be me.

THE COURT: Juror No. 12. Has the jury reached a verdict, sir?

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VERDICT 1266

THE PRESIDING JUROR: Yes, they have.

THE COURT: All right. Would you please hand the verdict form to the bailiff?

Would the defendant please stand?

Before I read the verdict I want to caution everyone in the audience to please refrain from having any audible response to the reading of the verdict.

And the verdict form reads as follows: "State of Oregon vs. Leonard C. Sandoval. We the jury being duly empaneled and sworn in the above entitled court and cause do hereby find the defendant on the charge of Murder" it is marked "guilty".

And as to the second question, "During the commission of this crime did the defendant use a firearm?" it is marked "yes".

And it is dated today's date, signed by the presiding juror.

Mr. Scales, do you wish to have a poll?

MR. SCALES: Yes, Your Honor.

THE COURT: All right.

Then what I'm going to do, ladies and gentlemen, I will be asking each of you if this was your verdict. And, again, the verdict is

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POLLING OF THE JURY 1267

1 guilty with the affirmative answer, yes, to the
 2 firearms question. And I -- when I come around to
 3 you I will just ask you "Is this your verdict?" if
 4 it is your verdict please say "yes" if it is not
 5 your verdict, if this is not the way you voted
 6 please say "no". Does everyone understand the
 7 instructions? All right.
 8 Juror No. 1, is this your verdict?
 9 JUROR NO. 1: Yes.
 10 THE COURT: Number 2, is this your
 11 verdict?
 12 JUROR NO. 2: Yes.
 13 THE COURT: Number 3, is this your
 14 verdict?
 15 JUROR NO. 3: Yes.
 16 THE COURT: Number 4, is this your
 17 verdict?
 18 JUROR NO. 4: Yes.
 19 THE COURT: Number 5, is this your
 20 verdict?
 21 JUROR NO. 5: Yes.
 22 THE COURT: Number 6, is this your
 23 verdict?
 24 JUROR NO. 6: Yes.
 25 THE COURT: Number 7, is this your

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POLLING OF THE JURY 1268

1 verdict?
 2 JUROR NO. 7: Yes.
 3 THE COURT: Number 8, is this your
 4 verdict?
 5 JUROR NO. 8: Yes.
 6 THE COURT: Number 9, is this your
 7 verdict?
 8 JUROR NO. 9: Yes.
 9 THE COURT: Number 10, is this your
 10 verdict?
 11 JUROR NO. 10: Yes.
 12 THE COURT: Number 11, is this your
 13 verdict?
 14 JUROR NO. 11: Yes.
 15 THE COURT: And, number 12, is this your
 16 verdict?
 17 JUROR NO. 12: Yes.
 18 THE COURT: All right.
 19 Mr. Scales, are you satisfied with the
 20 poll?
 21 MR. SCALES: I am, Your Honor.
 22 THE COURT: All right. Thank you. You
 23 may be seated.
 24 All right. Ladies and gentlemen, this
 25 completes your responsibility on this trial.

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COLLOQUY RE: SENTENCING 1269

1 Before you leave I do want you to know how very,
 2 very deeply I appreciate the focus that you've
 3 been able to give this case. Clearly this was a
 4 very, very difficult and important trial and you
 5 have put in two long weeks of your own time to
 6 devote to this. And we really appreciate you
 7 coming in every day, listening carefully to all of
 8 the evidence and then working together with your
 9 deliberation and coming to a decision. So, we do
 10 thank you for your participation. Again, you have
 11 served a very important role in our judicial
 12 system and we appreciate that.
 13 So, the jury at this time is excused. I
 14 will ask you to go back with the bailiff, she will
 15 collect your juror badges. And thank you all very
 16 much and have a very good evening.
 17
 18
 19 (At 4:51 p.m. the jury is excused and
 20 exits the courtroom.)
 21
 22 THE COURT: And, Mr. Campbell, how did
 23 you wish to proceed at this point?
 24 MR. CAMPBELL: Judge, I guess I'm ready
 25 to sentence if the Court wants to at this time.

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COLLOQUY RE: SENTENCING 1270

1 THE COURT: All right.
 2 MR. CAMPBELL: I would ask, I guess he's
 3 been held without bail and he should continue if
 4 he's -- if we're not going to sentence today.
 5 THE COURT: That would continue. I
 6 actually had not anticipated that we would be
 7 sentencing today.
 8 MR. CAMPBELL: Okay. That's what -- I
 9 thought maybe that's what you were asking me.
 10 THE COURT: No, I was actually just
 11 inquiring about the holding of the defendant.
 12 Mr. Scales?
 13 MR. SCALES: I was talking with Mr.
 14 Sandoval, did the Court say that you do not want
 15 to do sentencing today?
 16 THE COURT: I was just saying I had not
 17 anticipated that we would be sentencing today.
 18 MR. SCALES: I don't see any reason to
 19 set it over since the sentence is already
 20 determined. I think we can go ahead if the Court
 21 would do that.
 22 THE COURT: Oh, you were not planning on
 23 presenting any information in the sentencing
 24 phase?
 25 MR. SCALES: I -- since there's -- since

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COLLOQUY RE: SENTENCING 1271

1 it's a -- you know, it's a -- the sentence is set
2 by statute and there's no discretion on the part
3 of the Court I don't think there's anything that
4 we would be adding for purposes of sentencing.

5 THE COURT: All right.

6 Well, with that in mind, Mr. Campbell,
7 back to you. Were you intending on presenting any
8 information at the sentencing stage? Many times
9 we have further statements.

10 MR. CAMPBELL: Right. I have talked to
11 the victim, Mary Carlson, about whether she wanted
12 to testify. She does not, she's no going to
13 exercise that right. I don't have all of my
14 victim background information for my main file
15 here, which -- so, I'm not sure about restitution.
16 So, I guess I'm not quite ready right now. I can
17 go get it and maybe be ready in 10 minutes if the
18 Court wanted to do it now or set it over, it's up
19 to the Court.

20 THE COURT: Well, I think we can do it
21 now if there's no -- if there are no other
22 concerns about taking a little bit more time to do
23 this. If you think that you can get your
24 materials together within that time period?

25 MR. CAMPBELL: I can -- I can -- I can

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COLLOQUY RE: SENTENCING 1272

1 probably go down and see what -- we did an
2 investigation in terms of restitution and see what
3 it says. The last judgment probably should have
4 any restitution amount on it. Does the Court have
5 that?

6 THE COURT: I'll look for that while
7 you're looking --

8 MR. CAMPBELL: Okay.

9 THE COURT: While you're doing -- we'll
10 go off record, I will see what we have in the file
11 and then we'll see if we can't proceed and then
12 finish it up today. All right.

13 MR. CAMPBELL: I think I can be back in
14 five minutes, Judge.

15 THE COURT: Okay.

17 (At 4:54 p.m. a brief recess was taken.)

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COLLOQUY RE: SENTENCING 1273

1 GRANTS PASS, OREGON
2 THURSDAY, FEBRUARY 26, 2009; 5:00 P.M.
3 12 PERSON JURY TRIAL - DAY 7

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

5 --oo--

6
7 MR. CAMPBELL: (Recording begins mid-
8 sentence) I don't know all of those. I know I had
9 witnesses out of state. I notice that in the last
10 sentence no restitution was actually ordered. And
11 I guess if the Court's so inclined maybe we just
12 go ahead then.

13 THE COURT: Well, if the issue or
14 restitution -- if you are still considering the
15 issue of restitution you would be allowed a period
16 of up to 90 days to resolve that, if you wish to
17 proceed today.

18 MR. CAMPBELL: Okay. Well, yeah, why
19 don't we do that, go ahead then.

20 THE COURT: Go ahead and proceed and then
21 leave the issue of restitution open. All right.

22 Before we get started then, Mr. Scales,
23 I did want to make sure that your client does wish
24 to proceed to sentencing today and also to confirm
25 whether or not he waives time on the sentencing

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COLLOQUY RE: SENTENCING 1274

1 issue.

2 MR. SCALES: You have the right to have
3 the sentencing set over 48 hours. Do you want to
4 go ahead and do it today?

5 THE DEFENDANT: Yeah, I'll go ahead and
6 waive.

7 MR. SCALES: Okay. Go ahead and let the
8 judge know that.

9 He does wish to waive his right to have
10 sentencing set over and would like to proceed
11 today.

12 THE COURT: All right.

13 So, Mr. Sandoval, your attorney has
14 explained to you that you have a right to have
15 your sentencing date set over for a minimum of 48
16 hours from the verdict being received. Do you
17 wish to go ahead and be sentenced today?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: You do not want to be
20 sentenced?

21 THE DEFENDANT: Today? No. 48 hours.

22 MR. SCALES: Do you want it 48 hours from
23 now or do you want to do it today.

24 THE DEFENDANT: I want to wait 48 hours,
25 what do you think?

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COLLOQUY RE: SENTENCING 1275

1 MR. SCALES: It's not going to make any
2 difference.
3 THE DEFENDANT: (indiscernible)
4 MR. SCALES: Okay. We would have to set
5 it for next week then.
6 THE DEFENDANT: Yeah, I'm going to wait
7 48 hours, Your Honor.
8 MR. SCALES: Okay.
9 THE COURT: All right. So, you do not
10 wish to be sentenced today? All right. Then in
11 that case that will conclude our proceeding today.
12 We will have our docketing clerk set the
13 sentencing date as soon as possible.
14 MR. SCALES: Okay.
15 THE COURT: And then we will do the
16 sentencing hearing at the jail. Okay.
17 MR. SCALES: Thank you, Your Honor.
18 THE COURT: All right. Either -- either
19 side have anything further that we want to cover
20 today?
21 MR. CAMPBELL: No, I think his release
22 status is he -- there's no bail, he is not going
23 to be released.
24 THE COURT: That is correct. There is no
25 bail set in this matter.

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COLLOQUY RE: SENTENCING 1276

1 MR. CAMPBELL: Thank you, Your Honor.
2 THE COURT: All right. That's
3 everything. We are adjourned.
4 MR. SCALES: Thank you, Your Honor.
5
6
7 (On February 26, 2009, at 5:02 p.m. the
8 above entitled matter was concluded.
9 Sentencing not be set.)
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COLLOQUY RE: SENTENCING 1277

1 GRANTS PASS, OREGON
2 FRIDAY, MARCH 6, 2009; 10:09 A.M.
3 SENTENCING PROCEEDING
4 *** THE HONORABLE LINDI L. BAKER PRESIDING ***
5 --oOo--
6
7 THE BAILIFF: All rise.
8 THE COURT: Please be seated. Good
9 morning. This is the time set for State vs.
10 Sandoval and that is Case 01CR0641. And this is
11 the date set for sentencing in this matter.
12 And are both sides ready to proceed?
13 MR. CAMPBELL: The State's prepared,
14 Judge.
15 MR. SCALES: The Defense is ready, Your
16 Honor.
17 THE COURT: All right. And then, Mr.
18 Campbell, we will start with the State's
19 presentation.
20 I will tell you that the Court did
21 receive the restitution summary sheet. The Court
22 has received the criminal history worksheet. And,
23 Mr. Scales, I assume that you have received those
24 as well?
25 MR. SCALES: I have, I've had an

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MR. CAMPBELL'S STATEMENT RE: SENTENCING 1278

1 opportunity --
2 THE COURT: All right.
3 MR. SCALES: -- to review both of those,
4 Your Honor.
5 THE COURT: All right. Thank you.
6 Mr. Campbell?
7 MR. CAMPBELL: Judge, I think everybody,
8 at least every lawyer here and the defendant knows
9 what the sentence will be today because it is
10 basically statutory. Certainly the defendant must
11 know that in light of the fact that he sent both
12 the Court and myself letters that were less than
13 complimentary of our efforts in this matter.
14 I guess I would say this to the
15 defendant, and this is what I have to say, he is
16 -- he is one of the rare defendant's in Oregon
17 that has had 24 different people look at the facts
18 of his case. And so two full juries of 12 have
19 carefully considered his facts and carefully
20 deliberated and in both times all 12 of them, or
21 24 of them total, have concluded that he was
22 guilty of this crime.
23 And I guess I would encourage him
24 instead of looking at others and blaming others to
25 look at himself. I think obviously he has to do

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MR. CAMPBELL'S STATEMENT RE: SENTENCING 1279

1 this time, but he can choose to do it well by
2 examining himself and seeking forgiveness or he
3 can do it hard by blaming others for having him in
4 the position he is.

5 I want to speak just briefly for the
6 victim in this matter, Mary Carlson. And
7 obviously there are many other collateral victims
8 that you heard testimony from that have been heart
9 by some of the defendant's conduct. But, Ms.
10 Carlson wanted me to put on the record for her
11 that she has forgiven the defendant. That she
12 knew that she had to do that in order to free
13 herself up in her own life. And so she wanted me
14 to say that on her behalf.

15 So, I will go on in to the nuts and
16 bolts of the sentence, Judge. The statute
17 requires a life in prison sentence. Under
18 163.115(5)(a) the statute requires 25 -- a 25 year
19 minimum and that is pursuant to Measure 11,
20 137.700. So, that should reflect -- be reflected
21 in the judgment. And really it's redundant, but
22 163.115(5)(b) also has the same language that the
23 first 25 years is done without release or
24 programing, etcetera. So, I noticed in the prior
25 judgment they had cited that statute wrong. But,

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MR. CAMPBELL'S STATEMENT RE: SENTENCING 1280

1 it is 163.115(5)(b) that has that language.

2 The -- this is a case where a firearm
3 was used. This would be a first firearm minimum
4 under 161.6(n) and I think that all we need to do
5 on this judgment order is reflect that 161.6(n)
6 applies. That five year minimum runs concurrent
7 with the 25 years. And so you don't actually need
8 to impose it.

9 Post-prison supervision according to the
10 rule is for the rest of the defendant's life. And
11 the post-prison supervision board does have the
12 authority to cut that down upon post-prison
13 supervision if they want to.

14 And the only other matter would then be
15 restitution. We have submitted a restitution
16 summary sheet and we would request those amounts.
17 The second part of those are the costs that we
18 accumulated for the second trial, that's the
19 \$3,527 figure I think Mr. Scales is going to speak
20 to that.

21 But, I believe that's all I have on behalf
22 of the State, Your Honor.

23 THE COURT: All right.

24 Mr. Scales, before I ask you to give
25 your presentation I just wanted to comment on Mr.

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MR. SCALES' STATEMENT RE: SENTENCING 1281

1 Campbell notation that both the Court and Mr.
2 Campbell had received correspondence from the
3 defendant and I did want to acknowledge that the
4 Court did receive the correspondence directed to
5 the Court and I did provide copies to both Mr.
6 Campbell and to Mr. Scales. All right. Thank
7 you.

8 Mr. Scales, you may proceed.

9 MR. SCALES: Thank you, Your Honor. With
10 respect to the sentence I'm in agreement with what
11 the District Attorney has presented to the Court.
12 The sentence is set by statute with a mandatory
13 life sentence with a mandatory minimum of 25 years
14 before any type of release or eligibility or for
15 review from the parole board.

16 With respect, Your Honor, to the
17 restitution. The first payee, the Crime Victim's
18 Compensation Program, I would agree that that is
19 appropriate restitution and that the Court can
20 order that. We're not contesting either the
21 amount or the fact that the Court can order that.
22 Nor are we contesting the costs listed under Payee
23 2. I'm not contesting the amounts, nor that the
24 Court has the authority to order that.

25 However, unlike restitution these are

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COLLOQUY RE: TRIAL COSTS 1282

1 costs of prosecution and the Court can consider
2 the defendant's ability to pay when imposing
3 those, unlike restitution when -- which does not
4 require the Court to examine the defendant's
5 ability to pay.

6 What I am saying is if the Court is
7 inclined to impose the costs of prosecution, the
8 \$3,527.75, we would be reserving our right to a
9 hearing on that matter. If the Court does no
10 impose those, of course, we would remain silent as
11 to that.

12 Other than that that concludes the
13 remarks I wanted to make and I'm sure Mr. Sandoval
14 would like to address the Court as well --

15 THE COURT: All right.

16 MR. SCALES: -- at the appropriate time.

17 THE COURT: Let me address the issue of
18 restitution first before we go to Mr. Sandoval.

19 And Mr. Campbell, I do note that the
20 State is seeking reimbursement for the prosecution
21 costs in this trial. And I'm not really sure
22 where we're headed on this. I'm not particularly
23 inclined to continue this case for a later date to
24 look at restitution issues. So, if I could just
25 inquire --

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COLLOQUY RE: TRIAL COSTS 1283

1 MR. SCALES: It would be a cost issue.
 2 It is distinct, there's four different kinds of
 3 monetary obligations and restitution versus costs.
 4 THE COURT: All right. Well, for a cost
 5 issue.
 6 MR. SCALES: Thank you.
 7 THE COURT: So, Mr. Scales, do you have
 8 any immediate information as to your client's
 9 ability to pay any restitution and/or costs?
 10 MR. SCALES: He has no ability, Your
 11 Honor.
 12 THE COURT: Are there any assets that you
 13 are aware of?
 14 MR. SCALES: The only asset that I
 15 believe he had -- the only asset of any value that
 16 he had was liquidated for the purposes of the
 17 first trial so he could hire legal counsel.
 18 Obviously being incarcerated he's not entitled to
 19 any type of disability, social security, anything
 20 of that nature. And upon his release, the
 21 earliest, he's going to be 76 years old and may
 22 qualify for a very minimal amount of social
 23 security. But, I believe that the Court can make
 24 the findings that he's not going to have any
 25 appreciable ability to pay any money. Certainly

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COLLOQUY RE: TRIAL COSTS 1284

1 down the road if the Court does also impose
 2 interest it's going to be a substantial amount of
 3 money 17, 18 years from now. I don't see any
 4 ability to pay and I would ask the Court not to
 5 impose the costs of prosecution.
 6 THE COURT: All right. And follow up
 7 question, Mr. Scales, you are, in fact, court-
 8 appointed?
 9 MR. SCALES: I am.
 10 THE COURT: And so your client did meet
 11 the eligibility standards for court-appointed
 12 counsel for --
 13 MR. SCALES: He did, Your Honor.
 14 THE COURT: -- this proceeding?
 15 MR. SCALES: Yes, he did.
 16 THE COURT: Whereas during the first
 17 trial he had a retained attorney; is that correct?
 18 MR. SCALES: He had a retained attorney,
 19 but I don't know if there had been a determination
 20 made by the indigent verifier whether he met the
 21 standards for indigency. My guess is that he
 22 probably would have because his income was limited
 23 to, I believe, a 30 percent veterans disability at
 24 the time. He did have a piece of property, which
 25 was the 180 Cliffside address that we heard so

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COLLOQUY RE: TRIAL COSTS 1285

1 much about --
 2 THE COURT: Mm hm.
 3 MR. SCALES: -- in the trial. But, other
 4 than that I don't think he had any -- any major
 5 assets which could have been used.
 6 So, in answer to your question, I'm not
 7 sure whether he was indigent for purposes of the
 8 first trial, but he certainly was for the second
 9 trial.
 10 THE COURT: All right.
 11 Mr. Campbell, do you want to be heard on
 12 the issue of your request for costs at this point?
 13 Again, it's the Court's objective to finalize --
 14 MR. CAMPBELL: Yes, I --
 15 THE COURT: -- this case today.
 16 MR. CAMPBELL: I understand that, Judge.
 17 I guess -- yeah, I think you thought about the
 18 things that we heard in evidence, he owned the
 19 property at 180 Cliffside, he owned at least two,
 20 I think there was evidence of three vehicle at the
 21 time. I'm not sure if he fully completely owned
 22 those or if he was paying those. So, I -- that's
 23 fairly substantial assets at that time. And Mr.
 24 Scales is addressing that if he -- if he has
 25 complete information on that I'm comfortable with

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COLLOQUY RE: TRIAL COSTS 1286

1 his representations. He had a number of guns that
 2 he owned, although some of those guns were owned
 3 by other people. But, there seemed to be
 4 substantial assets, at least when this crime
 5 occurred.
 6 MR. SCALES: Well, if I may, Your Honor?
 7 THE COURT: Yes.
 8 MR. SCALES: The assets have been
 9 sitting, so to speak, for seven and a half years.
 10 Whether or not the vehicles still retain the same
 11 amount of value, I don't know. I know that the
 12 Bronco that was -- that he was driving on the day
 13 of the incident is parked out at the property
 14 control area that's just behind the jail here, the
 15 Sheriff's --
 16 THE COURT: Sheriff's Office, yeah.
 17 MR. SCALES: Yeah.
 18 THE COURT: Okay.
 19 MR. SCALES: I'm having a hard time
 20 articulating, I just always prefer the property
 21 control. It's still there. As far as the truck
 22 I believe there was a black truck, I have no idea
 23 where that is. And I don't think he has anything
 24 other than just some very minor personal items.
 25 Which I see no ability for him first to liquidate

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COLLOQUY RE: TRIAL COSTS 1287

1 those assets so that he could come up with any
2 cash to pay any of these -- I don't think he has
3 enough even to cover the funeral expenses, which
4 I'm not contesting. But, as to the \$3,527 he has
5 neither the ability to liquidate the assets, nor
6 will he have sufficient assets, sufficient amount
7 of money to pay any of this.

8 So, I think we're just kidding ourselves
9 if we -- if we think that he's going to have an
10 ability to pay. And, of course, the fact that
11 when he gets out he's going to be a very old man
12 and probably not going to have much in terms of
13 monthly income at that time.

14 THE COURT: All right. So, let me, again
15 -- I may be jumping ahead of myself a little bit,
16 but I would just tell both sides that the Court is
17 not inclined to require the repayment of the
18 prosecution costs. And if this is something --
19 I'm allowing you, Mr. Campbell, the opportunity if
20 this is something you feel strongly enough about
21 then we would set that over for a full hearing on
22 that. But, again, it's the Court's concern right
23 now that this case is resolved and that all
24 parties have an opportunity to move on. So, I
25 would leave you that opportunity if you wish to

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COLLOQUY RE: TRIAL COSTS 1288

1 request that.

2 MR. CAMPBELL: I won't request that.
3 Although I would say to the Court I think that's
4 an appropriate thing for you to question the
5 defendant about, what assets he has. I don't know
6 that Mr. Scales would have really gone in to that
7 to represent him --

8 MR. SCALES: Yeah.

9 MR. CAMPBELL: -- on a murder case, so --

10 MR. SCALES: And I agree with that.

11 MR. CAMPBELL: I -- there's nothing that
12 prevents the Court from asking him if he has a
13 bank account out there for \$10,000 which he could
14 pay this out of.

15 I did talk to one person during
16 preparation that had helped him liquidate some
17 things, a Mr. Conrad. And, you know, I didn't
18 specifically ask him how much money that he had
19 turned over to him or where that money went.

20 THE COURT: Mm hm.

21 MR. CAMPBELL: But --

22 THE COURT: All right. Well, I think
23 that that would be an appropriate procedure today.
24 I simply don't want to delay this --

25 MR. CAMPBELL: I agree with that.

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DEFENDANT'S STATEMENT TO THE COURT 1289

1 THE COURT: -- to another court hearing
2 and bring everybody back. So, to the extent that
3 we can cover the potential ability for the
4 defendant to cover those costs we can have that
5 conversation. All right.

6 Mr. Sandoval, please stand.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: This is your opportunity to
9 make any statement that you may wish to make with
10 respect to your sentencing. Once you've had an
11 opportunity to make your statement, if you wish to
12 make a statement, then I will be asking you some
13 questions about your ability to pay the requested
14 costs in this case.

15 So, let's start with your statement, if
16 you wish to make a statement.

17 THE DEFENDANT: First of all, Your Honor,
18 I'd like to correct Mr. Campbell about the first
19 trial that the reason they found me guilty in the
20 first trial, he said "all 24" found me guilty of
21 Murder. Well, the reason they found me guilty of
22 Murder in the first case, Your Honor, I've got it
23 here from the Oregon Supreme Court wrong
24 instructions to the jury. Scott Titzler, the late
25 DA, asked for special instructions on self

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DEFENDANT'S STATEMENT TO THE COURT 1290

1 defense, well there's no self defense instructions
2 in the case law. And that's what caused all the
3 jury to find me guilty, Your Honor. And then
4 right here it's written in the Oregon Court
5 Supreme Court Opinion, did you read that, Your
6 Honor?

7 THE COURT: Sir, yes, I read the opinion.
8 But, again, your -- this is speculation because --

9 THE DEFENDANT: And --

10 THE COURT: -- all we know is that the
11 jury found you guilty.

12 THE DEFENDANT: And the Court -- well,
13 that's why they found me guilty because wrong
14 instructions to the jury, it wasn't in the case
15 law. And the court recorder did not record
16 instruction when my attorney said, "Your Honor,
17 that's misleading to the jury." And Judge Neufeld
18 says, "Overruled." So, what I got, Your Honor,
19 was I got railroaded in the first trial.

20 And, I'm -- you know, it's my life and
21 the Oregon Supreme Court overturned my conviction.
22 It's not because of circumstantial evidence, not
23 because of assumptions, not because of theory,
24 Your Honor, they overturned my conviction because
25 it wasn't intentional murder, Your Honor.

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DEFENDANT'S STATEMENT TO THE COURT 1291

1 THE COURT: And I'm aware of the
2 procedure in this case. So, what about this
3 trial, Mr. Sandoval, do you have a statement about
4 your sentencing in this trial?

5 THE DEFENDANT: Well, I believe that if
6 the -- they offer me the sentencing on the last
7 time was Man I for 10 years and I believe Mr.
8 Campbell had told -- I don't know what the second
9 one was, do you remember what the last plea
10 bargain was that he threw in?

11 THE COURT: Well, and I can't consider
12 plea bargains, any --

13 THE DEFENDANT: No. No.

14 THE COURT: -- statement that was made --

15 THE DEFENDANT: But, I'm just saying,
16 Your Honor --

17 THE COURT: -- in that regard.

18 THE DEFENDANT: Here I did, get
19 railroaded again. When I spoke to you in 2008,
20 when I got rid of it I told Your Honor I did not
21 want to be railroaded again, I got railroaded
22 again. And you know what? It's because this is a
23 KK county. I being justified because of my
24 nationality. When Detective Rylander asked me, he
25 didn't record it of course, he said, "What

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DEFENDANT'S STATEMENT TO THE COURT 1292

1 nationality I was?" I told him I was Spaniard. He
2 said, "Spaniard, Spaniard?" And I says, "Yeah."
3 and he found me guilty on the spot, Your Honor.
4 That's discrimination in my case, Your Honor.
5 And I fear, Your Honor, --

6 THE COURT: Well, sir, the jury found you
7 guilty in this case. So, do you have a statement
8 to make about this case?

9 THE DEFENDANT: Well, yes, Your Honor,
10 they found me guilty because I could tell the
11 racism in this county. I -- when we was going
12 through trial I could see the people giving me a
13 bad eye and they already found me guilty before
14 you even gave them any instructions for
15 deliberation, Your Honor. I didn't get a fair
16 trial. Nobody gets a fair trial here in Josephine
17 County, Your Honor.

18 And as a matter of fact, Your Honor, in
19 2003 I filed a motion to just -- Neufeld
20 instructed him on Ring vs. Arizona 1985 that the
21 judge has no authority to sentence me, the jury
22 does, Your Honor. If you can check in your book
23 and that's a --

24 THE COURT: Well --

25 THE DEFENDANT: -- correct statement of

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DEFENDANT'S STATEMENT TO THE COURT 1293

1 the law.

2 THE COURT: -- the Court will be
3 sentencing you today, Mr. Sandoval. Is there
4 anything else that you wish to say?

5 THE DEFENDANT: Well, I just think it's
6 inappropriate in the trial that I got. I'll keep
7 fighting and the Lord will find justice in my
8 case.

9 THE COURT: Well, the jury has found
10 guilty at this point and so the Court is obligated
11 under the law to sentence you in this matter, Mr.
12 Sandoval, and I will be doing that.

13 Before I start with the sentencing,
14 though -- and it is a mandatory sentence in this
15 case. So, again as Mr. Campbell has pointed out
16 the sentence will be as described.

17 However, I do want to ask you some
18 questions about your ability to pay the requested
19 costs in this matter. And the Court is going to
20 be ordering that you pay the restitution for the
21 burial expenses and so forth for the victim in
22 this matter. Those will be in the amount of
23 \$1,141. And apparently there's no objection or
24 disagreement about that.

25 But, what about the other costs? Do you

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DEFENDANT'S STATEMENT TO THE COURT 1294

1 have any assets, sir?

2 THE DEFENDANT: Well, Your Honor, at this
3 point I didn't even know the victim was buried, I
4 thought he was cremated. Was he buried?

5 THE COURT: Sir, there are funeral
6 expenses.

7 THE DEFENDANT: Uh huh. Well, Your
8 Honor, at this point if I had any, which I don't,
9 all my assets went over in to the first trial to
10 pay for attorney, which I had \$50,000 equity and I
11 just signed my property to him to cover that.

12 THE COURT: All right. So that was the
13 first trial.

14 THE DEFENDANT: Right.

15 THE COURT: And that paid for --

16 THE DEFENDANT: And now on this time --

17 THE COURT: Hold on just a second. So,
18 that paid for your retained attorney?

19 THE DEFENDANT: Right.

20 THE COURT: So, as of right now, sir, do
21 you have any assets?

22 THE DEFENDANT: Well, Your Honor, I've
23 been locked up for seven and a half years, I
24 haven't gotten out and worked, Your Honor. So, my
25 answer to you is, no, I have no assets. And if I

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DEFENDANT'S STATEMENT TO THE COURT 1295

1 did I wouldn't know about it. Maybe a rich uncle
2 of mine died. Maybe when I get out maybe. I
3 don't know. And I have -- at this point, Your
4 Honor, I have no desire and no way to pay the
5 restitution. It's just impossible --

6 THE COURT: Well --

7 THE DEFENDANT: -- what the State is
8 asking.

9 THE COURT: -- it's not based on your
10 desire to pay it. I'm simply trying to determine
11 whether or not you have any assets. So, you have
12 no real property, sir?

13 THE DEFENDANT: Not that I know of. Not
14 if somebody -- I got in somebody else's name.

15 THE COURT: All right. You have no
16 property? Did you place property in anyone else's
17 name?

18 THE DEFENDANT: Not that I know of.

19 THE COURT: Do you have any bank
20 accounts?

21 THE DEFENDANT: Well, Your Honor -- I --
22 if I have any -- Your Honor, I am flat zero on
23 income, Your Honor.

24 THE COURT: I'm not asking income, sir.
25 Do you have any bank accounts?

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DEFENDANT'S STATEMENT TO THE COURT 1296

1 THE DEFENDANT: No, I don't, Your Honor.

2 THE COURT: All right.

3 THE DEFENDANT: No credit.

4 THE COURT: Do you have --

5 THE DEFENDANT: Maybe, Your Honor, I can
6 pay it when I die, I've got a \$10,000 policy with
7 the VA.

8 Would that satisfy the State, Mr.
9 Campbell?

10 MR. SCALES: Don't do that. Address the
11 Court.

12 THE DEFENDANT: Because I am a veteran, I
13 served. I've got a \$10,000 policy that maybe I
14 could sign it over to the State when I die, would
15 that appropriate?

16 THE COURT: Are you offering to do that,
17 sir?

18 A FEMALE VOICE: No.

19 THE DEFENDANT: No, because I already got
20 that on my daughter.

21 THE COURT: All right.

22 THE DEFENDANT: \$10,000 is nothing, Your
23 Honor.

24 THE COURT: Well, again, I'm trying to
25 establish --

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DEFENDANT'S STATEMENT TO THE COURT 1297

1 THE DEFENDANT: I understand.

2 THE COURT: -- your ability to pay right
3 now.

4 THE DEFENDANT: I understand. No, Your
5 Honor, I have no ability to pay. And if I go -- I
6 was up there in prison I was disabled, I was not
7 able to work.

8 THE COURT: Okay. Again, I'm not asking
9 about income, I'm asking about your assets.

10 THE DEFENDANT: No, I have no assets at
11 all. I did have an old pickup, I don't know what
12 happened to it. Maybe that's worth \$1,500, if
13 that would help? If you can find it. If you
14 contact Carl Conrad, Your Honor, and they find
15 that pickup I'm willing to have him sign the title
16 and give it to State to pay for the \$1,000 for the
17 burial. Is that good enough?

18 THE COURT: All right.

19 THE DEFENDANT: And that's all I can do,
20 Your Honor. At this point, Your Honor, I have no
21 assets. I'm broke. I'll be homeless.

22 THE COURT: Well, you're not going to be
23 homeless for the next 25 years.

24 THE DEFENDANT: Well, thank God, the
25 economy season, you know, the economy's pretty

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DEFENDANT'S STATEMENT TO THE COURT 1298

1 bad.

2 THE COURT: Right.

3 THE DEFENDANT: In the long run I'm
4 better off here.

5 THE COURT: Anything else, Mr. Sandoval?

6 THE DEFENDANT: Pardon me?

7 THE COURT: Anything else that you want
8 to state?

9 THE DEFENDANT: Well, Your Honor, I mean,
10 does anybody get a fair trial here, Your Honor? I
11 didn't get --

12 THE COURT: Yes, sir.

13 THE DEFENDANT: -- fair trial. I should
14 ask for a change of venue because I knew I was
15 going to get railroaded in this state.

16 THE COURT: Sir, you got a fair trial.

17 THE DEFENDANT: No, I didn't, Your Honor,
18 I'm sorry. With all due respect, Your Honor, I
19 did not get a fair trial here. Not in Josephine
20 County, Your Honor, nobody gets a fair trial.
21 Since I've been here, Your Honor, I've been
22 helping people with cases, "Take this plea
23 bargain. If you don't take the 18 months, you're
24 going to get 60 months."

25 THE COURT: All right.

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DEFENDANT'S STATEMENT TO THE COURT 1299

1 THE DEFENDANT: If there's a way they'll
2 -- 98 -- wait a minute -- 96 percent --

3 THE COURT: Well, I don't want you to
4 talk about other people's cases because you're
5 divulging --

6 THE DEFENDANT: Well, Your Honor --

7 THE COURT: -- confidences.

8 THE DEFENDANT: Well, I'm speaking about
9 myself, Your Honor. I keep research. 96 percent
10 of the cases here in Oregon are plea bargains and
11 98 percent of the cases are convictions, Your
12 Honor. It's all right there. I've done a lot of
13 research.

14 THE COURT: All right. Mr. Sandoval --

15 THE DEFENDANT: Thank you.

16 THE COURT: -- that is your statement and
17 the Court disagrees with you and does know that
18 you received a fair trial. The Court worked very
19 hard to make sure you had a fair trial. You had
20 very competent counsel in this case.

21 THE DEFENDANT: Yes, I did. I --

22 THE COURT: And you agree with that?

23 THE DEFENDANT: Yes, I agree I had a good
24 counselor here, but it was far from a fair trial.

25 THE COURT: Mr. Scales did a very good

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COURT IMPOSES SENTENCE 1300

1 and very professional and very thorough job on
2 your case.

3 THE DEFENDANT: And then some of them --

4 THE COURT: And you received a fair
5 trial --

6 THE DEFENDANT: No, I did not, Your
7 Honor.

8 THE COURT: -- in this matter. You may
9 not be happy with the results, but you had a fair
10 trial. All right.

11 Then, the Court is sentencing on Case
12 01CR0641. And the sentence will be pursuant to
13 163.115(1)(a) and -- excuse me, (5)(a), (5)(b) as
14 well. And the sentence will be the life in prison
15 with the mandatory minimum of 25 years and that
16 would be under Section 137.700. Which means that
17 you would not be eligible for release on post-
18 prison supervision or any form of temporary leave
19 from custody. You would not be eligible for any
20 reduction in the minimum sentence time. And that
21 would be for any reason whatsoever.

22 With respect to the enhancement for the
23 firearm. That would be 161.610, so that does
24 apply. And this would be the first gun minimum
25 and that would be five years, but that would be

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COURT IMPOSES SENTENCE 1301

1 concurrent time with your life in prison term.

2 Post-prison supervision would be for the
3 remainder of your life and that would be under OAR
4 213-005-004.

5 With respect to the payment of
6 restitution and cost. The Court is going to order
7 that you be responsible for the funeral expenses
8 in the total amount of \$1,141 and that would be
9 payable to the Crime Victim's Compensation
10 Program.

11 With respect to the requested costs for
12 the prosecution. The Court is declining to order
13 those. The Court finding that there would not be
14 sufficient assets, with respect to allow for the
15 payment of those costs.

16 All right. We do have attorney's fees
17 in this case. And, Mr. Scales, we have the amount
18 of \$5,250, are you -- does that sound correct to
19 you?

20 MR. SCALES: The -- that -- I am not a
21 contractor with the State, I'm paid on an hourly
22 basis. I have no idea.

23 THE COURT: All right.

24 MR. SCALES: But, if that is the amount
25 that is typically paid, for example paid to the

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COURT IMPOSES SENTENCE 1302

1 Public Defender's Office, I think that probably is
2 the amount.

3 THE COURT: That's the amount that has
4 been provided to us, so that's the amount I'll go
5 by then.

6 MR. SCALES: Sure.

7 THE COURT: And that comes from the
8 person in the Court who is responsible for making
9 those arrangements.

10 MR. SCALES: I see.

11 THE COURT: So, that is the figure that
12 we will use. So, that will be a part of the
13 judgment as well.

14 All right. Anything further from either
15 side? And, by the way, I also wanted to mention
16 that Ms. Carlson is not present, I don't believe.
17 But, the Court did find in the file that there was
18 the earlier victim impact statement that was
19 presented by Ms. Carlson. And, Mr. Campbell, I
20 just need to make sure for the record that you did
21 notify her of today's hearing?

22 MR. CAMPBELL: Yes, we did and she was
23 here through the trial and was aware of the
24 hearing today.

25 THE COURT: Okay. And, again, I did

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COURT IMPOSES SENTENCE 1303

1 review the impact statement that she had filed at
 2 the first trial. And I guess I just took it for
 3 what it was worth during this trial. Mr. Campbell
 4 has supplemented that with her current statement.
 5 So, the Court has taken both of those in to
 6 consideration in the sentencing today.

7 However, because of the mandatory
 8 sentence in this matter it really -- the sentence
 9 is what it is in this case.

10 All right. Anything further from either
 11 side then in this matter?

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

14 MR. CAMPBELL: I believe we've covered
 15 everything, Your Honor.

16 THE COURT: Okay. All right. Good luck
 17 to you, Mr. Sandoval.

18 THE DEFENDANT: Pardon me?

19 THE COURT: Good luck to you.

20 THE DEFENDANT: Excuse me?

21 MR. SCALES: Good luck.

22 THE DEFENDANT: Good luck? Well, I know
 23 it because the Lord will prevail. Thank you, Your
 24 Honor.

25 THE COURT: All right. That's

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TRANSCRIBER'S CERTIFICATE 1304

1 everything. We are adjourned.

2 THE DEFENDANT: Justice will be served.

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(On March 6, 2009, at 10:35 a.m. the above
 entitled matter was concluded.)

*** END OF VOLUME 6 ***

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CALLAHAN - D

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1 HARVEY CALLAHAN,
2 called as a witness by the State, being first duly sworn
3 to tell the truth, the whole truth, and nothing but the
4 truth, testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. TITZLER:

8 Q All situated there?

9 A Yeah, sure.

10 Q Tell us your full name, sir, and spell it
11 please.

12 A It's Harvey L. Callahan.

13 Q And just spell the last name.

14 A C-a double l-a-h-a-n.

15 Q And where do you live, Mr. Callahan?

16 A 770 Pickett Creek.

17 Q Is that just past Hussey Lane?

18 A Yes.

19 Q First drive --

20 A First drive --

21 Q First driveway on the right?

22 A First driveway.

23 Q How long have you lived there?

24 A 20 years, since 1981.

25 Q Back in September of last year did you know

260

CALLAHAN - D

1 Jack Woodcraft?

2 A Yes, I did.

3 Q How long had you known him before he was
4 killed?

5 A Right at 10 years.

6 Q Okay. Did you know Mr. Sandoval -- Leonard
7 Sandoval back in that timeframe?

8 A He had a jeep one time. He come over to the
9 house, and I used to work jeeps at home, and got --
10 wanted to give me esti -- I wanted to give him an
11 estimate on fixing a gas tank.

12 Q Okay. So how --

13 A And then he --

14 Q How long had you known Mr. Sandoval?

15 A That's about it. I mean I spoke to him when
16 I saw him, that's -- other than that, that's about it.

17 Q And how many years before Jack was killed
18 did that happen, that you met Mr. Sandoval?

19 A Oh, shoot. I don't remember times too good,
20 but it's quite a while.

21 Q Okay. Years?

22 A Yeah. Quite a few years, yeah.

23 Q Did you know that Mr. Sandoval lived down on
24 Cliffside Drive?

25 A Not at the time I didn't, unless he said

CALLAHAN - D

261

1 something about it (inaudible)

2 Q At which time, when you first met him?

3 A Yes.

4 Q Okay. Closer to the time that Mr. Woodcraft
5 was shot, did you know where Mr. Sandoval lived?

6 A Yes.

7 Q Now was Jack Woodcraft just a business
8 acquaintance of yours or was he a good friend?

9 A (Inaudible) after 10 years (inaudible) he's
10 a good friend.

11 Q Did you see him very often during that 10-
12 year period?

13 A Well, I would say so, at least four times a
14 week.

15 Q How did you first meet Mr. Woodcraft?

16 A He was fixing a transmission on a jeep,
17 that's the only thing I used to work on is jeeps, and
18 come over there to buy some transmission parts from me.

19 Q And did you -- did you come to appreciate,
20 in fact utilize Mr. Woodcraft's mechanic abilities?

21 A Right, I did.

22 Q And on one -- I mean explain that a little
23 bit.

24 A Well, I started jeep in '63 and that's the
25 only thing I ever worked on up to about '80 and

262 CALLAHAN - D

1 everything else has changed so -- and he (inaudible)
2 what you call them when the engine sits sideways in
3 there, he knew about those so he did a lot for me.

4 Q So you were a mechanic then?

5 A Right.

6 Q And in the '80s when they put the -- started
7 putting the engines in crooked you didn't -- you weren't
8 --

9 A No.

10 Q -- too familiar with it?

11 A There's too many -- to much work you had to
12 -- equipment to buy to do it and I just quit.

13 Q And Mr. Woodcraft knew how to deal with
14 those engines?

15 A Right, he did.

16 Q Okay. So did you have work then that you
17 were doing at your house there on Pickett Creek?

18 A Yes. Yeah, he did a couple of odd jobs for
19 me on V-8 jeeps --

20 Q Okay.

21 A -- and he brought some stuff over, other
22 people he knew, and did the work there at my house
23 (inaudible) turn he helped me a lot when he's working on
24 my stuff, and that's when he worked.

25 Q Okay. Did he get paid for the work that he

CALLAHAN - D

263

1 was doing on other people's cars at your house?

2 A Yes, he did.

3 Q Did you ever pay him yourself for doing some
4 jobs?

5 A Yeah. Usually you get about fifty percent on
6 labor. If you get a valve job on a V-8 jeep and if it
7 calls for 4 hours and whatever labor rate was, he'd get
8 half of that labor.

9 Q Okay. And did you know that at sometime
10 before he was killed he quit working at Long Board
11 Lumber?

12 A Yeah, he worked there quite a while --

13 Q Okay, but --

14 A -- if I'm not mistaken.

15 Q But then he stopped at some point?

16 A Yes.

17 Q How long before he was killed did he stop
18 working there?

19 A Oh, boy.

20 Q Approximately.

21 A Maybe a year or less.

22 Q And did his -- did the amount of time he
23 spent over at your place after that increase?

24 A Yeah, some from when he's working. I mean at
25 Long Board.

264 CALLAHAN - D

1 Q And in the weeks or months just prior to him
2 being shot how often was he coming over to your place?

3 A It's kind of depends on what I was doing and
4 what I had to do. He come over and he'd cut berry vines
5 down like nobody else I saw cut berry vines.

6 Q Okay.

7 A I had some of these trees that sprouts from
8 the water, you know, and they go out this way and berry
9 vines all over, he'd take that big chainsaw of mine,
10 just walk right out through the middle of it. When he
11 got there everything would be flat. I don't how he doing
12 it, but --

13 Q So he'd come over and do mechanic work and
14 plus --

15 A Plus whatever I --

16 Q -- cut trees or (inaudible)

17 A Yeah, all I want him to do.

18 Q Do you recall in the weeks just prior to his
19 death how often he was coming over?

20 A Well, he was fixing something for Vernon at
21 the time --

22 Q Vern who, Timmons?

23 A Yeah, lived up the hill.

24 Q Okay.

25 A But that particular day he was going to get

CALLAHAN - D

265

1 my grinder and take it Vern's, and then he going to help
2 -- also help me with a farm tractor I was working on
3 just (inaudible) put the wheels back on it.

4 Q So in the week or so before he was killed he
5 had a project going at your place and he had a project
6 going --

7 A Right.

8 Q -- at Vern Timmons' place. And Vern Timmons'
9 place was just up -- further up Pickett Creek?

10 A Right.

11 Q Okay. Going away from the bridge?

12 A Right, uh huh.

13 Q So when -- after Woodcraft -- Mr. Woodcraft
14 had stopped working at Long Board Lumber and in -- you
15 saw him in your place, what time of day would he come
16 over?

17 A (Inaudible) he wasn't usually very late.
18 That morning he got in trouble he called me about 8:30,
19 something like that, quarter to 9:00, I don't know what
20 time he left the house, but he told me he had to go and
21 get some acetylene for the torches.

22 Q Could -- well, on a regular basis did he
23 come over at the same time or did it fluctuate?

24 A No, most time is pretty regular, but then
25 (inaudible) he come pretty close to 8 o'clock.

266 CALLAHAN - D

1 Q Did he bring a sandwich with him or lunch
2 usually?

3 A Sometimes he brought a sandwich.

4 Q Okay, did he bring --

5 A He didn't --

6 Q -- bring coffee sometime, or did you supply
7 that?

8 A Well, sometime he had coffee and what
9 usually -- bring coffee when he came, then I'd go make
10 coffee in the house.

11 Q So you remember the morning -- the morning
12 of the day that Mr. Woodcraft was shot he call you early
13 that morning?

14 A Right.

15 Q And he told you about going into town to
16 pick up an acetylene --

17 A Right.

18 Q -- gas tank?

19 A Also told me -- at the north end of town
20 there's a welder place there and one on the south side
21 of town.

22 Q And that was for what he was doing up at
23 Vern Timmons' place --

24 A Right.

25 Q -- after he came to your place?

CALLAHAN - D

267

1 A Yes.

2 Q Did you know Mary Carlson back in that
3 timeframe?

4 A Well, not before she was separated. He come
5 over -- she come over to the house with Leo and set in
6 the car when I was talking to him about the gas tank.

7 Q That was way back when Leo came over --

8 A Right. Yeah.

9 Q -- about the jeep?

10 A Yeah.

11 Q Okay. Did you know Mary Carlson during the
12 time that Jack Woodcraft was coming over to your place?

13 A Well, at the same time, yeah.

14 Q I mean they would come over together?

15 A Yeah, sometimes.

16 Q Did you know that they were an item, that
17 they -- they were living together?

18 A Yeah, I did.

19 Q That Mary --

20 A Uh huh.

21 Q That Mary and Jack were?

22 A Yeah.

23 Q Did you know then that Mary Carlson had
24 divorced Leo Sandoval back in the mid-'90s?

25 A Well, that's what Jack told me.

268 CALLAHAN - D

1 Q Okay. About a couple weeks before Jack was
2 shot, did he come to your place kind of concerned about
3 something that had happened with Mr. Sandoval?

4 A Yes, he was.

5 Q And in fact did he even call the police
6 about that situation?

7 A Yeah, he sure did, in my garage.

8 Q Did Mr. Woodcraft indicate to you that due
9 to that situation and the history he'd had with Sandoval
10 that he was fearful of his own safety --

11 A I think he was --

12 Q -- because --

13 A -- really, because I could hear him tell the
14 (inaudible) 911, and he -- he couldn't talk right like
15 Jack does. I mean it's just -- didn't sound right.

16 Q And did Jack take -- were you aware of any
17 steps that Jack Woodcraft took after that day to -- for
18 his own safety, for his own defense?

19 A Yes, he told me when Leo pointed a rifle at
20 him that he didn't have his pistol that morning, but he
21 had it next time. So he had to carry it for a while
22 until Leo (inaudible) up again is the only thing I know,
23 and he had it that morning.

24 Q Now when you say that morning you mean the
25 morning he was shot?

CALLAHAN - D

269

1 A Right.

2 Q So Jack Woodcraft had the pistol that --
3 with him the day that he was shot?

4 A Right. When I went to Jack laying on the
5 pavement the butt of his six-shooter was laying on his
6 shirt -- on his neck.

7 Q Right under the wound?

8 A Right on the wound, flat on his back.

9 Q Now let's talk about that morning. You
10 already you got a call from Jack early that morning --

11 A Right.

12 Q -- and Mr. Woodcraft was going to come over
13 to your place?

14 A Uh huh.

15 Q And before that he had to run his errand
16 into town and --

17 A Right.

18 Q -- then he was coming over? So what time
19 were you looking for him?

20 A Well, 9:30, 10:00.

21 Q The usual time?

22 A Right.

23 Q And he would come across Robertson Bridge to
24 get to your place?

25 A Right. Um hum.

270

CALLAHAN - D

1 Q And did you know where he lived?

2 A Yeah.

3 Q Where?

4 A Oh, Jack --

5 Q Yeah.

6 A -- right there in Merlin.

7 Q On Peach Street?

8 A Right.

9 Q So that morning before Mr. Woodcraft got
10 down close to your house, did you hear anything unusual?

11 A Yeah, I heard a gunshot when I was in the
12 garage. (Inaudible) what it sounded like a gunshot.
13 Don't sound the same way's a backfire, but it is a shot.

14 Q Did it sound close or far?

15 A Kind of close.

16 Q What did you do when you heard the shot,
17 anything?

18 A Yeah, I came out of the side door and got on
19 my back porch and walked down at the other end. When I
20 got to the other end I saw Leo go in front of my house
21 down to the garage. And I got (inaudible) asthma so I
22 can't run or holler, so I turned around, went to the
23 other end of the house and I was there and he was going
24 back the other way. By the time I got back there again
25 he was going down Pickett Creek to Hussey Lane.

CALLAHAN - D

271

1 Q Okay, let's backup a little bit.

2 A Okay.

3 Q Say you have bronchial asthma?

4 A Right.

5 Q Do you have an oxygen tank that you carry --

6 A Yeah.

7 Q -- when you need it?

8 A Um hum, sure do and an inhaler in my pocket.

9 Q Now if this is Pickett Creek --

10 A Um hum.

11 Q -- and this is Hussey, okay? Your driveway

12 we already know is the first driveway --

13 A To the right, yeah.

14 Q -- past Hussey, so --

15 A Right along in there, yeah.

16 Q -- (inaudible) there and your house sits

17 over here?

18 A Yeah, it's pretty close to Hussey Lane -- I

19 mean Pickett Creek --

20 Q Okay.

21 A -- the house is not --

22 Q This doesn't have to be exact (inaudible)

23 A Oh, yeah. Okay.

24 Q Does it sit in this direction?

25 A Right (inaudible) long ways.

272 CALLAHAN - D

1 Q Okay.

2 A And the garage (inaudible) The garage is
3 about three steps below the house.

4 Q This direction?

5 A No, in the (inaudible) of the house.

6 Q Up here?

7 A Right. Yeah.

8 Q Okay, so I didn't leave myself enough room?

9 A Yeah.

10 Q So the garage is where, back here?

11 A Right, it's about 20 feet from the end of
12 the retaining wall to the front door.

13 Q Does it line up right with the house?

14 A No, it kind of goes the other way. The house
15 is going this way and it goes crossway.

16 Q The garage goes like this?

17 A Right. Yeah.

18 Q So kind like an L?

19 A Right.

20 Q Okay. That's just (inaudible)

21 A Right.

22 Q I'll put a G for garage --

23 A Okay.

24 Q -- and house for house.

25 A Okay.

CALLAHAN - D

273

1 Q And you were in the garage --

2 A Right.

3 Q -- when you heard the gunshot, and was the -
4 - the scene that you saw was down in this area, right?

5 A Right.

6 Q So we'll just -- and, again, not to scale --

7 A Yeah.

8 Q -- (inaudible) this area (inaudible)

9 A Right. Right in there, yeah.

10 Q When you heard the shot what did you do?

11 A I come out of the garage, it's got the small
12 door on the side --

13 Q Stop me when I get to the door.

14 A Okay, right about there.

15 Q Okay.

16 A And then I come up behind the house, the
17 back --

18 Q Over here?

19 A No, the other side. That's the front. I got
20 the house backwards over here.

21 Q Where's (inaudible) you came out this rear
22 door --

23 A And went to the back of the house.

24 Q Over here?

25 A Right.

274

CALLAHAN - D

1 Q All right.

2 A And there's a gate --

3 Q Tell where -- how far you got.

4 A Well, I -- almost to the corner.

5 Q Stop me when I (inaudible)

6 A Okay. Right about there, and then the

7 driveway comes around to the front, goes around the

8 house.

9 Q All right. So I'm going to put two Xs --

10 A Okay.

11 Q Where you got to after you came out --

12 A Okay.

13 Q -- of the garage. And when you're there,

14 what do you see?

15 A Well, I'm looking kind of -- I can't see

16 anything (inaudible) end of the house --

17 Q Okay.

18 A -- but from there I could see Leo when he

19 come down the driveway and went around in front of the

20 house.

21 Q So Leo comes down your driveway this way?

22 A Right.

23 Q And (inaudible) --

24 A You go right in front of the --

25 Q -- over this way?

CALLAHAN - D

275

1 A Right.

2 Q Okay.

3 A He goes right -- the driveway goes right to

4 the garage.

5 Q So I'm going to put a dotted line.

6 A Okay.

7 Q He comes down your driveway --

8 A Right.

9 Q -- and then cuts over into this general area

10 (inaudible) --

11 A Right.

12 Q -- here? Does he say anything?

13 A No, and I didn't either. I didn't holler

14 (inaudible) I don't know if (inaudible) knew I was there

15 or not, but --

16 Q How did he appear, I mean --

17 A In a hurry.

18 Q Was he running or walking?

19 A No, just walking fast. I didn't see him run,

20 but --

21 Q Where did he go?

22 A To my garage.

23 Q All the way over to the door?

24 A I would -- well, I'm not sure whether he

25 went to the -- got to the door or not, but there's a

276 CALLAHAN - D

1 telephone right inside the door.

2 Q Did you lose sight of him then when he went
3 around (inaudible)

4 A Well, yeah, that's why I turned and went the
5 other way.

6 Q So you went back --

7 A Right. Back.

8 Q -- the way you came to (inaudible)

9 A Right, but I just stayed on the porch until
10 I got to the end of porch. He was leaving the garage and
11 going back up my driveway.

12 Q So he went back up the way he came?

13 A Right.

14 Q Back up to Pickett Creek?

15 A By the time I got back over there where I
16 could see him he was up on Pickett Creek.

17 Q And the last you saw he was walking down
18 Pickett Creek?

19 A Right, headed for Hussey Lane. (Inaudible) -

20 -

21 Q You know where -- well, in that direction?

22 A Oh, yeah, in that direction, downhill.

23 Q Do you know where he went after he got back
24 to Pickett Creek?

25 A No.

CALLAHAN - D

277

1 Q Did you see where he went?

2 A No, just down the road towards Hussey Lane,
3 so I didn't -- could see no more than that.

4 Q So you didn't see -- Hussey Lane is the
5 direction he went towards, but you didn't actually see
6 him go to Hussey Lane --

7 A No.

8 Q -- or did you?

9 A He was just going that direction.

10 Q Gotcha, okay. Okay.

11 MR. TITZLER: We'll label that diagram
12 of Mr. Callahan's State's Exhibit 104 and offer that.

13 MR. JOHNSON: No objection.

14 THE COURT: 104 is received.

15 Q So you had no verbal conversation with Mr.
16 Sandoval when he was down there --

17 A No, I did not.

18 Q -- in your driveway?

19 A No.

20 Q And he never came up to your residence and
21 knocked on the door --

22 A No.

23 Q -- or rang the doorbell or anything like
24 that? Never hollered for you?

25 A Never did. I didn't hear. I heard the shot

278

CALLAHAN - D

1 when I was in the garage.

2 Q So what did you do after you saw him go back
3 up your driveway and head down Pickett Creek?

4 A Well, I saw the two trucks there when I --
5 first time I went out to the garage, which is from my
6 back porch, I couldn't see Jack and I had to go up to --
7 in my driveway to see if Jack lay on the ground. Then I
8 walked over there and looked at Jack and he was dead,
9 and I went back in to call 911.

10 Q When you got up there do you remember seeing
11 -- is that Jack's truck in the front? We're looking at
12 State's --

13 A Right.

14 Q -- Exhibit 5A.

15 A Yeah, that's it.

16 Q Okay. And is that how it was when you saw
17 it?

18 A Yeah, it sure was.

19 Q And underneath that blanket there was that
20 Jack's body?

21 A That's Jack, his both feet were still
22 sticking in the truck.

23 Q And did you see Mr. Sandoval's Bronco there
24 like that?

25 A Sure did.

CALLAHAN - D

279

1 Q Was the door open?

2 A Yes.

3 Q Were they touching -- were the two vehicles
4 touching each other?

5 A Well, yes, they was. The Bronco was against
6 Jack's Ford.

7 Q Did you see the damage to the front left
8 fender of the Bronco?

9 A No, I didn't notice that. I didn't pay any
10 attention to it.

11 Q Didn't notice that?

12 A I didn't really pay any attention to it, but
13 --

14 Q Now --

15 A Looked like the grill was stuck in Jack's --
16 onto Jack's bumper though when I walked around there. I
17 didn't --

18 Q When you (inaudible)

19 A -- examine that close, but --

20 Q When you first got up there --

21 A Uh huh.

22 Q -- was there anybody else there besides
23 Jack's body?

24 A No, Steve was close by there, but I think he
25 must a started that way when I went down to call 911,

280 CALLAHAN - D

1 and I --

2 Q Did you notice whether or not Jack's pickup
3 truck was running?

4 A It was -- sure was running. Yes, it was.

5 Q The engine was on?

6 A Right.

7 Q Okay. And at some time when you were up in
8 that area of those two cars did you notice that they
9 were rolling backwards slowing?

10 A Yes.

11 Q And did you do something to stop that?

12 A Yes. Steve was right behind and grabbed a
13 rock while I held onto the truck and he went to put it
14 under Bronco's back wheel.

15 Q Okay. He did or you did?

16 A He did.

17 Q Now in the direction -- we're still looking
18 at State's Exhibit 5A.

19 A Okay.

20 Q And in this direction, going the direction
21 that Jack's truck and the Bronco were headed, is that
22 uphill of Pickett Creek?

23 A Yes, it is.

24 Q Okay. It's not a real steep hill?

25 A No.

CALLAHAN - D

281

1 Q But it's the --

2 A But it will roll.

3 Q What will roll?

4 A The car if you stop in the middle of the
5 road.

6 Q Okay. So you saw these things creeping back?

7 A Right.

8 Q And was Jack's truck still running when they
9 were creeping back?

10 A Yes, it was.

11 Q So it -- when it was running it was idling?

12 A Right.

13 Q And was it kind of shaking or rattling when
14 it was rattling?

15 A Well, it's an old truck, they get a certain
16 amount. I mean he had it running pretty good, but it
17 still was -- well --

18 Q How many years have you been a mechanic?

19 A Since 1963.

20 Q And if you knew that this Bronco was in
21 third gear and obviously Jack's truck was in neutral
22 because it was running --

23 A Right.

24 Q -- and given that the slope of that hill, if
25 the Bronco's in third gear, is it any surprise to you

282 CALLAHAN - D

1 that they were creeping backwards?

2 A No. Not so ever. Not in low -- high -- third
3 gear. Not going forward it -- the old cars don't have
4 any compression that a way. That's why he had a
5 transmission go three gears.

6 Q So at that point until the rock was there
7 the only thing that was holding those vehicles was the
8 transmission of the Bronco?

9 A Right.

10 Q And maybe a little bit of Jack's feet caught
11 in the door?

12 A Oh, yeah, it could be -- just -- sometime it
13 don't take much, but most times they start moving
14 they'll usually pick up a little speed, so -- you know,
15 we put the rock under it.

16 Q Now you also at some point turned the key
17 off in Jack's truck, right?

18 A Right.

19 Q Were the police there when you did that?

20 A Yeah, there's people, yeah, there was. They
21 was all around the place, and I just told somebody I
22 need to shut the truck off, and nobody say anything so I
23 stuck my arm through the left-hand door and the
24 (inaudible) key is right next to the -- where the door
25 closes on the inside, real close to the side.

CALLAHAN - D

283

1 Q (Inaudible) can see it hanging right there?

2 A Yeah, right. Right on the dash right -- very
3 close to the (inaudible) and I reached in there with two
4 fingers and turned it off.

5 Q Did you just reach through --

6 A I reached through the window.

7 Q Through the window?

8 A No, I didn't either. I think I reached
9 through the -- where the door cuts back there.

10 Q Right in here?

11 A Right.

12 Q So you were kind of up along side the hood?

13 A Yeah, just -- my right hand --

14 Q All right.

15 A -- hand --

16 Q All right.

17 A -- two -- index and thumb

18 Q Now you said you saw a gun and are you --
19 are you okay with looking at one of the pictures that --

20 A Sure.

21 Q -- shows Jack laying there?

22 A Um hum.

23 Q Okay. We'll look 10A. Is that what you saw
24 when you got up there?

25 A Now of course from here I can't see the --

284 CALLAHAN - D

1 from here I can't see the gun, but it was right under
2 this --

3 Q Okay.

4 A -- the stock was sticking out towards his
5 head.

6 Q Is that --

7 A Right under there, yeah.

8 Q Okay. Let me -- let's turn the lights back
9 on and I'll show the picture, State's Exhibit 10. Maybe
10 you can see it better with the light on, see what you're
11 talking about in terms of the gun?

12 A Yeah.

13 Q You see the butt --

14 A Yeah.

15 Q -- of it sticking out?

16 A The butt of it. All I saw was the butt.

17 Q (Inaudible)

18 A Six-shooter, that's the only thing that's
19 got that kind of butt on it.

20 Q Is that what you're talking about?

21 A Yeah.

22 Q Did you touch anything else at that crime
23 scene?

24 A No, I did not.

25 Q Did you see the rifle laying on the --

CALLAHAN - D

285

1 across the front seat with the muzzle down towards the
2 floor in the Bronco?

3 A No, the stock was kind of in-between the two
4 seats.

5 Q Okay.

6 A And the barrel was kind of pointing over one
7 of the seats.

8 Q This 36A, does that look like what you saw?

9 A No, it looks like the gun's turned around to
10 me. It's more like the butt was sticking down between
11 the seat. Unless I looked at it goofy. That is the left
12 door ain't it? Left side. Yeah, the steering wheel's
13 there, it has to be the left side.

14 Q Is that the gun that you saw though?

15 A Yeah, it was a light-colored gun. Yes, it
16 was. I thought I could see a scope on it, on the barrel
17 end of it. Maybe I looked the wrong way. But that's
18 approximately where it was setting.

19 Q This look like the gun, State's Exhibit --

20 A Yeah.

21 Q -- 70?

22 A It does.

23 Q And it has a scope on it --

24 A Yeah.

25 Q -- right? In the week before Mr. Woodcraft

286 CALLAHAN - D

1 was shot, did you help him do some work to the backend
2 of his pickup truck?

3 A Yes.

4 Q And what were you doing? What kind of work
5 were you doing on his pickup truck?

6 A Well, the biggest thing we had an old lumber
7 rack on it. After you cut all the tool boxes loose from
8 it, we never did take the lumber rack off. And it's made
9 out of channel iron and angle iron, and it gets heavy
10 where you can't really just pick them up out of holes.
11 You got to get it out of the post holes in the pickup.

12 Q So that's another project you were working
13 on --

14 A Right. With Jack, yeah.

15 Q -- a week before he'd taken all that off of
16 his truck?

17 A Right. In fact the head rack is still very
18 much (inaudible)

19 Q Does it take -- did it take you a little
20 time to get up from your house up the hill to --

21 A Well, yeah, you know, it -- it's not really
22 a long walk. But if I walk fast going up hill, I'm going
23 to sit down when I get to the top, but I can't see
24 anything, can't hardly breathe, so I have to go slow. As
25 long as I go slow and don't run out of air, doing pretty

CALLAHAN - D

287

1 good.

2 Q In the 10 years that you knew Jack Woodcraft
3 did you ever know him to be a drug dealer?

4 A No. He told me he tried -- try a little
5 different stuff and he didn't go for it so he didn't use
6 it.

7 Q And in the 10 years that you knew Jack
8 Woodcraft, did you form an opinion about whether or not
9 he was a peaceful man or a violent man?

10 A No, I think he had a little run-in with this
11 Robert, the guy that owned part of the claim with him,
12 but Robert gets to drinking beer and he's kind of
13 overboard sometime, but --

14 Q What was your opinion as to whether Jack was
15 a peaceful man or a violent man?

16 A Well, just the way he acts. He don't -- he's
17 got a language a little harsh. But far as being pushy or
18 anything like that, he wasn't. In fact he used muscle
19 for me instead of me trying to carry stuff. I can't
20 carry anything, so he was always there, used the hands.

21 Q So if you had to pick a word -- I'm going to
22 ask you to pick a word. Was he peaceful or violent?

23 A No, I think he'd be peaceful. He sounded
24 rougher than he is -- or was.

25 MR. TITZLER: Thank you, Mr. Callahan,

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CALLAHAN - X

1 that's all I have at this time.

2 THE WITNESS: Okay.

3
4 CROSS EXAMINATION

5 BY MR. JOHNSON:

6 Q Good afternoon, Mr. Callahan.

7 A Hi.

8 Q Now you've been a mechanic for a number of
9 years --

10 A Right.

11 Q -- almost 40 years now, and are you saying
12 that -- are you familiar with the '86 model Ford Bronco
13 at all?

14 A No, not very much. I know they got a 4 and a
15 6 (inaudible) but that's about it. Far as I know they
16 got a 6 too.

17 Q And do you know if they roll backwards while
18 in third gear?

19 A Just about any car will. If you got it in
20 third gear, what gear you have -- usually take off. You
21 have to use first and go to second and then third.

22 Q Right.

23 A Well, if you try to take off in third, you
24 wouldn't have enough power to get it moved, but it also
25 don't have any compression that low and turn everything

CALLAHAN - X

289

1 the wrong way.

2 Q Now but when the car's in gear, the gears
3 are engaged, isn't that right?

4 A Right. Um hum.

5 Q And that's impediment moving? That's without
6 the engine powering the tranny --

7 A Right.

8 Q -- it's impediment to move? It's easier to
9 push a car in neutral than --

10 A Oh, yeah, sure.

11 Q Okay.

12 A But you don't have to overcome the engine
13 compression, which is not very much when you're in third
14 gear.

15 Q Now you testified that Mr. Woodcraft would
16 come over to your house about four times a week,
17 roughly?

18 A Yeah. If he had anything to do, it's more
19 than that.

20 Q Okay. And what time he'd show up, about 8
21 o'clock?

22 A Right.

23 Q Did it vary?

24 A A few minutes maybe. It's not enough to
25 speak of. I mean we wasn't punching a time clock. He's

290 CALLAHAN - X

1 doing his own thing. But when he worked on a job you
2 don't make any money if you take a week and a half to do
3 it. You got to get it done and turn it out the door and
4 get some money.

5 Q So the usual pattern for Mr. Woodcraft is
6 he'd be at your house at about 8 o'clock every morning?

7 A Right.

8 Q Now the morning when Mr. Woodcraft was
9 killed, you heard the shot that was fired?

10 A I heard a shot. That was the one.

11 Q Did you hear a car accident?

12 A No.

13 Q And you were inside your garage?

14 A Right. The front door was open. And I'm not
15 sure whether the side door was open or not, but
16 essentially if the door's open don't make any
17 difference.

18 Q And this is -- help me out here.

19 A Okay.

20 Q When you say the front door, you talking
21 about the door (inaudible)

22 A Well, there's a difference between a 6-foot
23 slider and a 12-foot slider.

24 Q Well, you're not -- when you say the front
25 door, you talking about this (inaudible) --

CALLAHAN - X

291

1 A Right.

2 Q -- facing down on the page?

3 A No. No. Outside --

4 Q This (inaudible)

5 A Outside. Your side.

6 Q This (inaudible)

7 A That's the front. I got a pond and the
8 driveway goes down to the barn out that same side.

9 Q (Inaudible) so the front door is actually on
10 the right side of (inaudible)

11 A Go right inside that long (inaudible) of
12 building right.

13 Q Okay.

14 A Down -- that's the garage, right there where
15 you got your finger.

16 Q That's the garage?

17 A Yeah. Come down about middle ways of that,
18 down farther, and that's about along in there is a 12-
19 foot slider and that is the front door.

20 Q Okay.

21 A And the back door's straight across from the
22 other --

23 Q Out this --

24 A -- with a 6-foot slider.

25 Q Up here?

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CALLAHAN - X

1 A Yeah. On the backside. Yeah.

2 Q Okay. Mr. Callahan, do you have any trouble
3 with your vision? Do you normally wear glasses?

4 A Close-ups I do.

5 Q Okay. You see at a distance okay?

6 A Yeah.

7 Q And is there a lot of vegetation on your
8 property, lots of trees and stuff?

9 A Yeah.

10 Q Now you said that your opinion that Mr.
11 Woodcraft was a peaceful person, and you started to say
12 something, but there sounded like there were exceptions,
13 that he --

14 A Well, I don't know if anybody don't get mad
15 at something, and if you do, you don't have a mind of
16 your own or something -- something wrong.

17 Q Okay.

18 A He's running around ragged if he doesn't
19 have a -- get a little excited about something.

20 Q Did you ever hear about Mr. Woodcraft
21 attacking Mr. Sandoval at the Little Pantry Market?

22 A Well, I got it the other way around. Jack
23 was already there when Leo come by, is what everybody
24 told me down at the market, and he give Jack the finger.
25 And Jack told him to stop the truck and get out, and he

CALLAHAN - X

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1 did.

2 Q (Inaudible)

3 A That's what everybody --

4 Q You heard --

5 A Yeah, that's what everybody told me.

6 Q You heard it --

7 A More than one people there in Merlin told me
8 that.

9 Q Okay. Did you hear that from Jack?

10 A No.

11 Q After you heard the shot you went out to the
12 scene of the accident?

13 A Yes, I was on the way up.

14 Q Was anybody at the scene of the accident
15 before you got there?

16 A No. But see I went there twice. Once after
17 Leo left and I walked up and looked at Jack, and then
18 (inaudible) standing there -- laying there with his eyes
19 half open and gray colored. Far as I know he'd dead, so
20 I turned around then went down at the house and called
21 911. Then a few minutes later Leo calls from my
22 neighbor's house, two door down, it's 911, so they took
23 their -- took his call, which is alright.

24 Q Okay. And when you went to the scene of the
25 accident again --

294

CALLAHAN - X

1 A Right.

2 Q -- did you see the trucks -- both trucks are
3 still moving backwards?

4 A No, not then, nah ah. No, we's around there
5 for quite a while before they moved.

6 Q Well, you say the first time you went there
7 the trucks were -- were they rolling then?

8 A No, hah ah. No, they wasn't, they sit right
9 still, but --

10 Q And were they far apart or close together?

11 A No, they's close together. In fact I think
12 Leo's grill was buried in Jack's bumper I think. Looked
13 like it.

14 Q Okay.

15 A I don't know how much damage it done, if
16 done any or not, but they's too close together to not do
17 something.

18 Q Okay.

19 A Got a Tic Tac in my pocket, pills.

20 Q Do you need a moment, Mr. Callahan?

21 A No.

22 Q Okay.

23 A I got (inaudible)

24 Q Do you need some water?

25 A Huh?

CALLAHAN - X

295

1 Q Do you need some water?

2 A No. It just a Tic Tac.

3 Q Oh.

4 A Otherwise I'll cough here in a minute. If
5 you're lucky I'll start sneezing, so I don't want to do
6 that.

7 Q Now, Mr. Callahan, you spoke to the police
8 at the scene of the crime, didn't you?

9 A Right.

10 Q Did you tell them then that you'd seen Mr.
11 Sandoval go up into your house --

12 A Right.

13 Q -- and back and around? How long do you
14 think it was between the gunshot and your seeing Mr.
15 Sandoval going into your driveway?

16 A I don't think it'd be 5 minutes because I
17 come right out of the garage. I don't remember now what
18 I had in my hand. I must have dropped something, or lay
19 it down, or do something. I went out the side door and
20 up through the gate and on the back of my back porch.

21 Q Are you norm -- and when you're working
22 during the workdays, are you normally in your garage or
23 in your house?

24 A No, in the garage.

25 MR. JOHNSON: I don't have any further

296 TIMMONS - D

1 questions for this witness, Your Honor.

2 MR. TITZLER: Nothing further at this
3 time. I would ask that he remain available for the
4 recalling, but he's free to leave the courthouse today.

5 THE WITNESS: Okay.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MR. TITZLER: Vern Timmons.

10

11 VERNON TIMMONS,
12 called as a witness by the State, being first duly sworn
13 to tell the truth, the whole truth, and nothing but the
14 truth, testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. TITZLER:

18 Q Sir, would you please tell us your full name
19 and spell your last?

20 A Vernon Urben Timmons, T-i-m-m-o-n-s.

21 Q Thank you, sir. And back in September of
22 last year did you live out on Pickett Creek?

23 A Yes.

24 Q Just up the road past Hussey from Harvey
25 Callahan?

218 MARKL - D

1 THE WITNESS: Thank you.

2 MR. TITZLER: Call Brian Markl.

3
4 BRIAN MARKL,

5 called as a witness by the State, being first duly sworn
6 to tell the truth, the whole truth, and nothing but the
7 truth, testified as follows:

8
9 DIRECT EXAMINATION

10 BY MR. TITZLER:

11 Q Sir, would you please state your full and
12 spell your last name?

13 A Brian Floyd Markl, M-a-r-k-l.

14 Q Thank you. And you reside in Grants Pass?

15 A Yes, I do.

16 Q And did you back in September of last year?

17 A Yes.

18 Q On September 27th of last year were you with
19 Debbie Carter, a realtor, and being shown a property
20 down on Steelhead off of Pickett Creek?

21 A Yes.

22 Q And at that timeframe you were in the market
23 to buy property to build on, is that correct?

24 A Yeah (inaudible) property.

25 Q Do you recall approaching the area of

MARKL - D

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1 Pickett Creek where you turned off to go down to look at
2 the property?

3 A Yes.

4 Q What time of day was it, sir?

5 A I don't recall, about tenish, I would
6 presume.

7 Q Before noon?

8 A Yes.

9 Q Were you approaching Hussey Lane, that when
10 you -- the turnoff of Pickett Creek, on the Robertson
11 Bridge side?

12 A Yeah.

13 Q So what direction would you have turned on
14 Hussey, right or left?

15 A Right.

16 Q As you're approaching the right turn to
17 Hussey, did you observe any other vehicles on Pickett
18 Creek or Hussey?

19 A No.

20 Q As you turned right to go down -- who's
21 driving the car, you or Ms. Carter?

22 A Ms. Carter.

23 Q As you folks turn right to go down Hussey
24 and go down to turn left to go out to Steelhead, do you
25 see any other driving vehicles?

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MARKL - D

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A No.

Q Any people walking?

A No. I did not recall.

Q As you drive down Steelhead to the subject property that you were to look at, did you see any driving vehicles?

A No.

Q Any people walking?

A No.

Q Do you recall if your window was open or closed? Your passenger window.

A I believe it was closed.

Q Do you recall the condition of the road as you're going down Hussey and across over to Steelhead in terms of potholes or no potholes?

A It was a gravel road, you know, chip seal on Hussey and turned into a gravel around Steelhead.

Q How fast would you estimate your speed going down to Steelhead?

A 20 to 30 miles an hour.

Q How long would you say it took you to get down to Steelhead, down to the property off -- from Pickett Creek down to the property?

A Minute, minute and a half.

Q Did you pull into the driveway of the

MARKL - D

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1 property or just view it from the road?

2 A I know we turned around down there. I don't
3 recall -- actually I think I got out of the car and
4 looked at the property pins, and I believe Debbie Carter
5 turned the car around while I was out of the car, and
6 then we came back.

7 Q How long were you there at the property?

8 A Long enough for her to turn the car around.

9 Q So, and I don't want you to guess, can you
10 give a fair estimate of the time that you were there?

11 A Less than a minute. We drove down there,
12 turned the car around, pulled back out.

13 Q While you were there at the property did you
14 hear anything?

15 A Yes, I did.

16 Q What?

17 A Gunshot.

18 Q Had you heard any vehicle noise prior to the
19 gunshot?

20 A No.

21 Q Any collision type noise prior to the
22 gunshot?

23 A No.

24 Q How many gunshots did you hear?

25 A One.

222 MARKL - D

1 Q When you got back in the car and drove back
2 up to Pickett Creek was there any other delay as you're
3 leaving the property going back up to Pickett Creek?

4 A No.

5 Q When you got to the top of Hussey to turn
6 left on Pickett Creek did you see anything?

7 A Yeah, at that time I noticed Mary's car and
8 two other vehicles were --

9 Q Do you know Mary's last name?

10 A No, I do not.

11 Q Do you know where Mary works?

12 A Yes, at (inaudible) farm.

13 Q That farm down off of Hussey?

14 A Yes.

15 Q Okay. Did you know at that time who Mr.
16 Sandoval was?

17 A No.

18 Q You hadn't heard the name before at that
19 time?

20 A No.

21 Q As you're looking to the right up Pickett
22 Creek is that more or less what you saw? Maybe not the
23 same exact angle, but did you see that vehicle with
24 another one in front of it?

25 A Yes, on Mary's vehicle behind it.

MARKL - D

223

1 Q Okay. Did you get out of the car that you
2 were in and approach the Bronco and the vehicle that was
3 in front of it?

4 A Yes.

5 Q And as you did that, did you walk to the
6 right or the left side -- the passenger side or the
7 driver's side of the Bronco?

8 A The driver's side.

9 Q Did you walk up to be able to get to a
10 vantage point where you could see in the door of the
11 Bronco?

12 A Yes, the door was wide open.

13 Q And what did you see in there?

14 A (Inaudible) a rifle as I was walking by.

15 Q Show you 36A, is that essentially what you
16 saw?

17 A Yes.

18 Q After -- if you could speak into that
19 microphone a little bit more --

20 A Yes. (Still somewhat muffled.)

21 Q -- because you have a soft voice when you're
22 back there like that.

23 A And 5A -- State's 5A is that, although
24 further back perhaps from where you were, what the
25 vehicles looked like from the side?

224 MARKL - D

1 A Yes.

2 Q Now did you continue your forward progress
3 up towards the open door of the pickup?

4 A Yes.

5 Q Do you know where Ms. Carter stopped -- how
6 far up did she get?

7 A In the vehicle or --

8 Q If you know. If you know.

9 A In the vehicle or --

10 Q No. No. On foot.

11 A Actually I got out of the vehicle, I was
12 walking up, she was behind me. I instructed to her to go
13 ahead and call 911. I --

14 Q What was there -- go ahead.

15 A I was under the impression that it was a
16 vehicular accident.

17 Q Initially?

18 A Yes.

19 Q What was Mary's demeanor when you saw her?

20 A Basically waved us down and said, you know,
21 we need to call an ambulance, there's been an accident.

22 Q Did you walk up closer to the man that was
23 laying outside the pickup truck?

24 A Yeah.

25 Q And when you got closer to the man that was

MARKL - D

225

1 laying on the ground outside the pickup truck what did
2 you conclude had happened to him at that point?

3 A He got shot in the back of the head.

4 Q And the pickup truck -- the white pickup
5 truck, was it still running when you were up --

6 A Yes, it was.

7 Q -- there? What?

8 A Yes, it was.

9 Q Did you touch anything there?

10 A No, I started to reach over to turn the
11 truck off and, you know, this overwhelming feeling, you
12 know, this is a crime scene, I don't need to touch
13 anything, you know. Where is the shooter? We all need to
14 leave right now, you know. When I walked up I thought he
15 had been knocked out and hit the steering wheel or
16 something (inaudible)

17 Q Did you communicate that to anybody else?

18 A Yeah, I turned around and, you know, we all
19 need to leave and leave now. You know.

20 Q And did you?

21 A Yes.

22 Q Now as you're leaving -- or when you turned
23 around did you become aware of another vehicle that had
24 arrived sometime after you did?

25 A Yeah, there was guy down fishing down Hussey

226 MARKL - D

1 Lane.

2 Q Okay. What kind of car was he driving?

3 A Camouflage Datsun Nissan pickup.

4 Q Was there anybody else other than Ms.

5 Carter, Mary, and the guy in the camo colored pickup
6 that you saw in the immediate vicinity of these vehicles
7 depicted in State's Exhibit 5 before you left the scene?
8 Did you see anybody else?

9 A When I got out of the vehicle -- Debbie's
10 vehicle -- or before I got out of Debbie's vehicle I did
11 notice a gentleman at the back of the white truck and --
12 like he was hiding or whatever, and he was bowing down
13 behind the -- the back of the light truck and looking
14 over into the bed or whatever. And I didn't put two and
15 two together, you know, until I walked up and seen that
16 he had been shot, you know, at the --

17 Q The man that was crouching down had been
18 shot or the man in the road had been shot?

19 A The man in the road had been shot.

20 Q So the person that you such describe
21 crouching down is a different person than the man in the
22 road that you saw dead?

23 A Yes.

24 Q If you would be kind enough, would you come
25 down here and if -- if this is the edge of the back of

MARKL - D

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1 the pickup truck -- this is the edge of the back of the
2 pickup truck, can you show the position of the man that
3 you saw?

4 A (Inaudible) side of his face (inaudible)
5 this.

6 Q (inaudible) hands were up as though they
7 were on the edge of the pickup box?

8 A Yes.

9 Q Go ahead and retake the stand.

10 MR. JOHNSON: Your Honor, for
11 clarification sake, Mr. Markl, was that on the passenger
12 side or the driver's side of the pickup truck?

13 MR. TITZLER: That was my next
14 question, counsel.

15 MR. JOHNSON: Okay.

16 A It was on the passenger side.

17 Q Okay. So that would be in State's Exhibit 4A
18 to the right side of what we're looking at, is that
19 correct?

20 A Correct.

21 Q That side?

22 A Correct.

23 Q And this is 8A -- State's 8A, and you're
24 saying you saw this -- it was a male?

25 A Yes.

228

MARKL - D

1 Q Right in this area along side the passenger
2 side of the box --

3 A No, it was at the back of the --

4 Q -- (inaudible)

5 A -- truck.

6 Q Back here?

7 A Yes, and the Ford Bronco was probably 10, 15
8 feet away from that white truck.

9 Q Okay.

10 A As I remember it.

11 Q Were both of the vehicles stopped?

12 A Yes.

13 Q Neither was moving?

14 A Correct.

15 Q Now when you were interviewed sometime
16 shortly after within a week of this incident, you never
17 mentioned anything about this person on the right side
18 of the -- or behind the pickup truck did you?

19 A No, I did not.

20 Q Do you know -- and not by assumption or
21 speculation, do you know who that person was that you
22 say you saw on the rear of the pickup truck?

23 A No, I do not.

24 Q Do you know where that person went --

25 A No, I do not.

MARKL - D

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1 Q You didn't see where he went?

2 A No.

3 Q As you left you got back in Ms. Carter's
4 vehicle, is that right?

5 A Yes.

6 Q And then you turned left onto Pickett Creek
7 and proceeded back to town?

8 A Correct.

9 Q And just want to clarify, it's your
10 testimony that when you came up and walked up to the
11 driver's side -- we're looking now at State's 5A, as you
12 came up this -- the center line side of the vehicles
13 there was a 10-foot gap between them?

14 A Yes.

15 Q And were not touching each other?

16 A No, they were not.

17 Q And they were not moving?

18 A No, there were not.

19 Q The pickup truck --

20 A The white truck was running.

21 Q The pickup truck was running?

22 A Correct.

23 Q Did you see that it was a stick shift?

24 A Didn't notice. I presumed that that year of
25 truck and that model that it would be.

230

MARKL - D - X

1 Q That would mean it had to be in neutral to
2 be running, correct?

3 A (No audible response.)

4 MR. TITZLER: That's all the questions
5 I have.

6
7 CROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Markl, when you got up to the pickup
10 truck did you touch the pickup truck at all, in the bed?

11 A I did not. I started to reach over to truck
12 off and got overwhelmed with it all and turned around
13 and said we all need to leave, this is a crime scene,
14 basically where's the shooter, you know.

15 Q And said that -- when you told the other
16 people who are there they -- everybody should leave?

17 A Yes.

18 Q Did you cover the body before you left?

19 A No, I did not.

20 Q And everybody who was there, you all left
21 immediately?

22 A Yes. I don't know, me and Debbie got in the
23 truck and left. I don't know what the other people
24 (inaudible)

25 MR. JOHNSON: Okay. I don't have any

MARKL - ReD

231

1 further questions for this witness, Your Honor.

2

3

REDIRECT EXAMINATION

4

BY MR. TITZLER:

5

6

7

Q Didn't you tell me just before out in the lobby, actually this morning that you knew who Sandoval was on this day you (inaudible)

8

A I knew of him.

9

Q You didn't know him personally?

10

A Correct.

11

12

13

Q Have you been recently subjected to some intense emotions because of other situations in your life?

14

15

MR. JOHNSON: Your Honor, I'm going to object. It's beyond the scope of cross.

16

17

THE COURT: Well, we can call him back. I'm going to let him ask him.

18

A Yes.

19

20

21

22

Q And did that other circumstance also involved the killing of a human being -- preferably not that you're immediately related to, but did that other situation involve a killing of a person?

23

A Yes, it did.

24

25

Q And you (inaudible) as you sit here today are you quite emotionally distraught over both being

232 MARKL - ReD - ReX

1 here as well as that recent situation?

2 A Yeah, I'd like to think so. It's a little
3 bit --

4 Q And I take it you're being somewhat
5 sarcastic right now when you say just --

6 A No, not at all.

7 Q So just a little bit?

8 A I'd like to think so, yeah, just a little
9 bit.

10 MR. TITZLER: All right. Thank you,
11 nothing further.

12
13 RE CROSS EXAMINATION

14 BY MR. JOHNSON:

15 Q Just to clarify, Mr. Markl, that other
16 situation has nothing to do with this case?

17 A No.

18 MR. JOHNSON: No --

19 MR. TITZLER: And --

20 MR. JOHNSON: No further questions.

21 MR. TITZLER: -- the State didn't mean
22 to suggest that it did. Thank you.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 MR. TITZLER: Similar request, I'd ask

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KIRKLAND - D

1 OCTOBER 8, 2002, PM Session, Day Five of Seven

2
3 THE COURT: Have the jury come in.

4
5 (The jury enters the courtroom.)

6
7 THE COURT: Mr. Titzler, you may call
8 your next witness.

9 MR. TITZLER: We'll call William
10 Kirkland.

11
12 WILLIAM KIRKLAND,
13 called as a witness by the State, being first duly sworn
14 to tell the truth, the whole truth, and nothing but the
15 truth, testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. TITZLER:

19 Q Now please state your full name and spell
20 your last name.

21 A William Glen Kirkland, K-i-r-k-l-a-n-d.

22 Q And, Mr. Kirkland, you live out in the
23 Williams area, is that right?

24 A Yes, sir.

25 Q And you were building a house back in

KIRKLAND - D

635

1 September timeframe of 2001?

2 A Yes.

3 Q Okay, if you could I'd like you to slide
4 forward a little bit closer to the microphone because
5 you have a soft voice (inaudible) Okay, maybe a little
6 bit closer (inaudible) Thank you.

7 Back in September of 2001, is it fair
8 to say that Mr. Sandoval was probably your best friend?

9 A Yes, sir.

10 Q And how long had you known him?

11 A About 6 years.

12 Q And I think we mentioned you were building a
13 new house out in the Williams area, you and your wife
14 around that timeframe of September of 2001, is that
15 right?

16 A Correct.

17 Q During the entire time that you knew Mr.
18 Sandoval -- if I'm not mistaken, you told law
19 enforcement before that you did not know Mr. Sandoval to
20 be a hunter, is that right?

21 A Correct.

22 Q But you did know him to possess firearms?

23 A Yes, sir.

24 Q And in fact he possessed virtually
25 everyplace he went, is that right? In his car or on his

636 KIRKLAND - D

1 person?

2 A Yes, sir.

3 Q And you did, however, know Mr. Sandoval to
4 be a -- to plink at cans, or what have you, and target
5 shoot on occasion?

6 A Yes, sir.

7 Q Did you have a telephone conversation around
8 8 o'clock the morning of September 27th, 2001, the day
9 that Mr. Sandoval shot Jack Woodcraft?

10 A Yes, sir.

11 Q And do you agree that it was around 8
12 o'clock in the morning?

13 A Yeah, I'd say about 7:30.

14 Q Who called who?

15 A I called Leo.

16 Q All right. Now had -- by that date had you
17 become aware of who Jack Woodcraft was?

18 A He had been pointed out to me a couple
19 times.

20 Q And had you learned things about Mr.
21 Woodcraft by September 27th?

22 A Yes, sir.

23 Q And you learned all of that essentially from
24 Mr. Sandoval, is that right?

25 A Correct.

KIRKLAND - D

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1 Q So what did you know about a situation where
2 Jack Woodcraft assaulted Mr. Sandoval in the Little
3 Pantry Market parking lot in Merlin in mid-July of 2001?

4 A I had came over to Leo's and his
5 girlfriend's house.

6 Q On Peach Street?

7 A I think that's the name of it.

8 Q Just right behind the Little Pantry parking
9 lot --

10 A Correct.

11 Q -- right? Okay.

12 A I had came over there that day and they were
13 both sitting in the house. Leo's face was quite swollen
14 and him and Janice both told me that he was attack that
15 night before by the Jack Witchcraft guy --

16 Q Okay.

17 A -- and some affiliates of his.

18 Q So you were told by Mr. Sandoval that Jack
19 Woodcraft assaulted Leo Sandoval at the Little Pantry
20 Market?

21 A Correct.

22 Q And that Jack Woodcraft had affiliates with
23 him when he assaulted Mr. Sandoval?

24 A Correct.

25 Q And were you also told that Mr. Sandoval was

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1 walking out of the store when the assault took place?

2 A Correct.

3 Q And were you also told by Mr. Sandoval that
4 Mr. Woodcraft held a knife to him?

5 A Yes, sir.

6 Q Didn't you talk to Det. Mason about this
7 incident as well and relate to him what Mr. Sandoval had
8 told you about it?

9 A I believe so.

10 Q And didn't you tell Det. Mason that when you
11 saw Mr. Sandoval the day after this thing allegedly
12 occurred that you saw no injuries on him, just a little
13 bit of puffy, but no black eye?

14 A Correct.

15 Q Okay, but you just testified that his face
16 was all swollen?

17 A Yes, his face was swollen, but I didn't see
18 no bruising.

19 Q Okay. But everything you learned about that
20 situation at the Little Pantry was from the Defendant
21 Sandoval, correct?

22 A And his girlfriend.

23 Q Janice?

24 A Yes.

25 Q Janice didn't see it though, did she?

KIRKLAND - D

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1 A I have no idea.

2 Q Didn't Leo tell you that he was the only one
3 there from that -- that there were other witnesses, but
4 Janice wasn't there, just Leo was there?

5 A Correct.

6 Q Okay. So really everything that you learned
7 from Janice came from Mr. Sandoval?

8 A Correct.

9 Q Now with regards to the September 27th phone
10 call at 8 o'clock in the morning when you called Mr.
11 Sandoval, was he home?

12 A Yes, sir.

13 Q And did you speak with him?

14 A Yes, sir.

15 Q Did you describe to him what your plan was
16 that morning?

17 A Yes, I did.

18 Q What did you tell him your plan was that
19 morning?

20 A The way that the conversation ended out, the
21 very end thing that I had --

22 Q What I want you to tell the jury right now
23 is what you told Mr. Sandoval you were going to do that
24 morning.

25 A I was going to go down to the county co-op

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1 to pickup grass seed and that if I could come by I
2 would.

3 Q If you had enough gas you'd swing by and see
4 Mr. Sandoval at his house?

5 A Correct.

6 Q And you knew that he lived down on Cliffside
7 off of Hussey?

8 A Yes, sir.

9 Q Okay. You'd been there before?

10 A Yes, sir.

11 Q So you did tell Mr. Sandoval you were coming
12 in to buy grass seed, is that right?

13 A Yes, sir.

14 Q At the grange co-op?

15 A Yes, sir.

16 Q And in fact you did do that?

17 A Yes, sir.

18 Q But you didn't go see Mr. Sandoval?

19 A No, sir.

20 Q And you related this to Det. Mason, is that
21 right, in the same interview?

22 A Yes, sir.

23 Q And during that interview didn't Mr. --
24 didn't Det. Mason say to you is there anything else you
25 want to tell me about that conversation, or something to

KIRKLAND - D

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1 that affect?

2 A (No audible response.)

3 Q Did he say that to you?

4 A I'm sure he did. I don't remember right off
5 myself.

6 Q And you remember answering as far as I
7 remember that's how the conversation went?

8 A Correct.

9 Q And you had never said anything to Det.
10 Mason about Mr. Sandoval saying he had some seed that he
11 was going to bring out to you? You never told Det. Mason
12 that, did you?

13 A No, sir, I don't think so.

14 Q In fact the first time you ever remembered -
15 - ever mentioned that or purportedly remembered it was
16 to Mr. Sandoval's investigator, is that right?

17 A Yes, sir.

18 Q Do you recall when you spoke with Mr.
19 Sandoval's investigator?

20 A Just about a week ago, I think it was.

21 Q Okay. Would you agree that your recollection
22 of your conversation with Mr. Sandoval was better back
23 in early October of 2001 than it was a week ago?

24 A Yes, sir.

25 Q So is there any reason to think that your

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KIRKLAND - D

1 statement to Det. Mason was incorrect?

2 A No, sir.

3 Q So is it true that during your conversation
4 with Mr. Sandoval the morning of September 27th the only
5 information related about grass seed was you were coming
6 into buy some and nothing was said to you by Mr.
7 Sandoval about going out to your house to bring you
8 some, isn't that true?

9 A That's true. No one's ever asked me about
10 the whole phone conversation.

11 Q Nothing was -- you just testified that
12 nothing was said like that in the conversation. Is that
13 true or not?

14 A No, that's not.

15 Q Well, why then did you not tell the rest of
16 it to Det. Mason when you were given the opportunity to
17 just days after the shooting?

18 A Only because I have some disabilities that
19 mess up my thinking process.

20 Q Would you like to listen to your interview
21 with Mr. -- or Det. Mason to --

22 A Sure.

23 Q -- refresh your memory? You've actually
24 listened to it last week, right?

25 A Right.

KIRKLAND - D

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1 Q Okay.

2 MR. TITZLER: (Inaudible) tape in just
3 a minute (inaudible) cued.

4

5 (Tape plays.)

6

7 Q You hear that okay?

8 A Yes, sir.

9 Q That was the first of your interview with
10 Det. Mason, correct?

11 A Correct.

12 Q Would you agree that he very clearly gave
13 you the opportunity to elaborate on the phone
14 conversation?

15 A Yes, he did.

16 Q And you did not elaborate, is that right?

17 A No, I did not.

18 Q And that was just days after Jack Woodcraft
19 was shot in the back of the head?

20 A Yes, sir.

21 MR. TITZLER: Thank you. That's all the
22 questions I have at this time.

23

24

25

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KIRKLAND - X

CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Kirkland, when you spoke to Det. Mason were you speaking in person or over the phone?

A One sheriff came out to my house and another one called me at home.

Q The tape-recorded conversation we just heard was that in person or over the phone?

A I'm pretty sure that one was on the phone.

Q Now at this point, a year after the fact, do you remember anything being discussed about grass seed with Leo Sandoval on the conversation that you had on the morning of September 27th?

A Yes, sir.

Q What did you talk about?

A When I first called him he had said that he was sitting in his chair half asleep, that I more or less woke him up. He said something about what I was up to. I said I was planting a new lawn and landscaping going on. He actually said that he had a half a bag of grass seed.

I kind of took it in my own mind half a bag's great, but it's not enough for me to do a whole lawn. So I ended up telling Leo that I would go to his house if I could have enough gas after I went down to

KIRKLAND - X

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1 the co-op to pick up my own grass seed.

2 Q Now, Mr. Kirkland, how long have you known
3 Leo Sandoval?

4 A 6, 7 years.

5 Q Would you go and visit him at his house?

6 A Quite often.

7 Q And would he come visit you at your house?

8 A Quite often.

9 Q During that time that you met him did you
10 ever hear him express fear of Jack Woodcraft?

11 A A whole lot.

12 Q Was that before or after the beating at the
13 Little Pantry Market?

14 A Before.

15 Q So even before that beating Mr. Sandoval was
16 expressing fear of Jack Woodcraft?

17 A Yes, sir.

18 Q And Mr. Kirkland, do you have an opinion
19 about whether Mr. Sandoval is a peaceful or a violent
20 person?

21 A To me very peaceful.

22 MR. JOHNSON: Okay. I don't have any
23 further questions for this witness, Your Honor.

24

25

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KIRKLAND - ReD

REDIRECT EXAMINATION

1
2 BY MR. TITZLER:

3 Q Mr. Kirkland, everything you knew about Jack
4 and Mary and Michelle Clayburn you learned from Mr.
5 Sandoval, is that right?

6 A 'Correct.

7 Q Would it surprise you to know that Jack was
8 not accompanied by any other thugs when he allegedly
9 assaulted Mr. Sandoval at the Little Pantry?

10 MR. JOHNSON: Your Honor, I'm just
11 going to object. I don't think this is relevant for this
12 inquiry.

13 THE COURT: I'll overrule the
14 objection.

15 Q Would it surprise you to know that Jack did
16 not have anybody else helping him at the Little Pantry?

17 A Yes, sir.

18 Q Would it surprise you to know that Mr.
19 Sandoval was not walking out of the store, but driving
20 through the parking lot in his own vehicle?

21 A Yes, sir.

22 Q Would it surprise you to know that Mr.
23 Woodcraft didn't hold a knife to Mr. Sandoval, didn't
24 threaten him like Mr. Sandoval said he did, in fact Mr.
25 Sandoval didn't even say that to the police when he

KIRKLAND - ReD

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1 spoke with the police?

2 A Yes, sir.

3 Q Would that surprise you?

4 A Yes, sir.

5 Q Would it surprise you that Mr. Sandoval
6 didn't have any grass seed at all, what he had was
7 fertilizer for grass?

8 A Yes, sir.

9 Q Would it surprise you to know that Mr.
10 Sandoval on a prior occasion had pointed a gun at Jack
11 Woodcraft?

12 A Yes, sir.

13 Q That change your opinion about Mr. Sandoval?

14 A Just that he was fearing for his own safety.

15 MR. JOHNSON: Your Honor, if we'd take
16 a break, the batteries apparent -- have expired in his
17 hearing aid.

18 THE COURT: Everything okay?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: Go ahead, Mr. Titzler.

21 MR. TITZLER: That's all the questions
22 I have for Mr. Kirkland.

23 MR. JOHNSON: Nothing further, Your
24 Honor.

25 THE COURT: You may step down.

648 MOLER - D

1 MR. TITZLER: I would ask that Mr.
2 Kirkland be subject to recall possibly at a future date,
3 but he's free to leave today.

4 THE COURT: Do you understand that,
5 that you may be recalled as a witness?

6 THE WITNESS: Yes, Sir.

7 THE COURT: Okay, you're free to leave
8 the courthouse now though.

9 THE WITNESS: Okay, thank you.

10 MR. TITZLER: State calls Tressie
11 Moler.

12
13 TRESSIE MOLER,
14 called as a witness by the State, being first duly sworn
15 to tell the truth, the whole truth, and nothing but the
16 truth, testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. TITZLER:

20 Q Would you please state your full name and
21 spell your last name?

22 A Tressie Darlene Moler, M-o-l-e-r.

23 Q Thank you, ma'am. And you are -- what do you
24 do for a living?

25 A I work at Highland House. I'm a CNA.

MAUST - D

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1 MR. TITZLER: Thank you. Nothing
2 further.

3 MR. JOHNSON: No questions, Your Honor.

4 THE COURT: You may step down.

5 THE WITNESS: Okay.

6 MR. TITZLER: Could this witness be
7 excused?

8 MR. JOHNSON: No objection.

9 THE COURT: The witness is free to go.

10 MR. TITZLER: State calls Lacey Maust.

11
12 LACEY MAUST,
13 called as a witness by the State, being first duly sworn
14 to tell the truth, the whole truth, and nothing but the
15 truth, testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. TITZLER:

19 Q Would you please tell us your full name and
20 spell your last?

21 A Lacey J. Maust, M-a-u-s-t.

22 Q And, Mr. Maust, back in September of 2001,
23 did you work at the little Pantry in --

24 A Yes, sir.

25 Q -- Merlin?

658 MAUST - D

1 A Yes, sir.

2 Q And you still work there?

3 A Yes, sir.

4 Q Okay. And were you working in July at a time
5 when Jack Woodcraft and Leo Sandoval got into it out in
6 the parking lot?

7 A Yes, sir.

8 Q And did you know Jack Woodcraft at that
9 time?

10 A Yes.

11 Q How long had you known him?

12 A 5 and half years.

13 Q Did you know him outside of the -- outside
14 of the store socially on occasion?

15 A On occasion, yes.

16 Q Okay. And how would you characterize your
17 friendship with Mr. Woodcraft?

18 A It was more of an acquaintance other than a
19 friendship. But I would get off work at 10:30, 11:00 at
20 night, walk across the street to the local bar and have
21 a beer, play him a couple games of pool if he was there.

22 Q Okay. That would be Bandini's, is that
23 right?

24 A Baldini's, yes, sir.

25 Q Baldini's, okay.

MAUST - D

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1 A Forgive me, I've got a cold (inaudible)

2 Q They're going around. You need some Kleenex?

3 A I'm okay, I think.

4 Q Okay. We've got -- here, let me -- we've got
5 some right here. In case you (inaudible)

6 A Thank you very much.

7 Q So back in the timeframe that you knew Mr.
8 Woodcraft did you have an opinion about whether or not
9 he was a peaceful or a violent man?

10 A From all indications I received from him he
11 was very peaceful. I'd buy him a beer, played pool, and
12 I'd beat him and he took it pretty good, you know. He'd
13 sit down and put his name on the board and wait his turn
14 and shake my hand, never had any problem with him at
15 all.

16 Q Did you come to know Mr. Leo Sandoval during
17 the time that you worked at the store?

18 A I can't say I knew him by name. I did know
19 him by sight. I remember he'd like buy a couple gambling
20 tickets once in awhile when he'd come in. I believe it
21 was bingo or crossword, one of those. I wouldn't say
22 that he was a real bad gambler, just -- you work in a
23 little store like that you tend to know what people come
24 in to buy and whatnot.

25 Q You became aware -- I think it was maybe

660 MAUST - D

1 July 18th, does that sound right, the fight out in the
2 parking lot?

3 A That's sounds close enough to me, yes.

4 Q You went out and you were actually the one
5 that broke it up, is that right?

6 A Yes, 'sir.

7 Q And so you didn't see it start?

8 A No, sir.

9 Q Did you know if -- was Mr. Sandoval there --
10 did he arrive there in a vehicle?

11 A I would yes, even though I didn't see him
12 arrive in a vehicle, but his vehicle was there --

13 Q It was.

14 A -- and when I broke up the fight he got into
15 an older -- and old pickup truck that was multicolored.

16 Q Had he been in -- had Sandoval been into the
17 store before the fight -- immediately before the fight?

18 A I don't recall that.

19 Q Had Mr. Woodcraft been in the store just
20 before the fight?

21 A And that I can't recall either. He may have,
22 may have not.

23 Q When you got outside was the fight going on?

24 A The fight was wide open.

25 Q And who was winning in your opinion? Who was

MAUST - D

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1 on top?

2 A Jack was definitely on top. Leo was in a
3 fetal position, bleeding from the nose and Jack was --
4 he was just punching him and --

5 Q Okay.

6 A -- and yelling and screaming and cursing.

7 Q What did you do?

8 A I noticed it was Jack and -- from my
9 previously experiences knowing Jack I knew he wouldn't
10 hit me, so I grabbed him and pulled him off of Leo and -
11 - and he was a bigger guy than I am, so I pulled him off
12 temporarily and then he got back on him, and then I
13 pulled him off again and just kind of bear hugged him
14 and said get the hell out of here, you don't need any --

15 Q As you're pulling Jack Woodcraft off of Leo
16 Sandoval --

17 A Yes.

18 Q -- what's Jack Woodcraft saying to Sandoval?

19 A He's yelling and screaming and cursing a
20 lot. I mean if you want me, I can probably --

21 Q Just say it like it was.

22 A He says I'm tired of every time I turn
23 around I see you, and I'm sick of your crap and I never
24 want to see you again, you piece of shit. And calling
25 him, I think, a mother fucker, and he just -- you know,

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1 it's a lot of -- a lot of yelling and a lot of swearing,
2 a lot of cursing.

3 And I got the impression that every
4 time that Jack turned around or -- Leo was often there,
5 or real close within view of Jack every time he opened
6 his eyes, I guess, you know, every time he turned around
7 he saw a guy he didn't like and hell exploded at the
8 Little Pantry Market that day.

9 Q Had Jack ever related to you -- Jack
10 Woodcraft ever told you that ever since he started his
11 relationship with Mary Carlson that Sandoval wouldn't
12 leave him alone?

13 A Only after the fight. We never talked about
14 Leo before the incident, but after the fight I asked
15 him, you know -- this is a few days after the fight, and
16 I asked him what it was about and that's when he just --
17 he told me that it was -- Mary was involved and he was
18 involved with Mary, which is Leo's ex, and, you know,
19 without trying -- I didn't want to be too involved in
20 the whole thing, you know, but a -- yes, that was --

21 Q Did -- about 2 weeks before Jack was shot --
22 Jack Woodcraft was shot --

23 A Yes.

24 Q -- did Jack Woodcraft relate to you an
25 incident down at Robertson Bridge where Mr. Sandoval had

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1 pointed a gun at him?

2 A Yes, sir.

3 Q And what did Jack say about what he felt he
4 had to do in light of that situation at the bridge?

5 A Jack came in the store and --

6 Q What did he say he was going to do in
7 response to that?

8 A He said he was going to start packing.

9 Q Meaning to you what?

10 A And I says what -- I asked him, I says well,
11 what are you packing and he -- and he said a 45 caliber.
12 And it may have been a 44 if I -- I think it was a 45
13 that he told me, which is real big handgun that -- I'm
14 sure that you're aware of.

15 Q Was there any -- after this fight occurred
16 in the parking lot, so far as you knew, were there any
17 weapons involved?

18 A No.

19 Q Any knives or anything like that?

20 A No knives, no guns, just feet and fists.

21 Q Okay. And in fact you saw Jack kick Mr.
22 Sandoval --

23 A When I pulled --

24 Q -- as well?

25 A When I pulled Jack off of Mr. Sandoval he

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1 got in one last kick.

2 Q What did Mr. Sandoval do -- well, you had
3 said that you told Jack just get out of here, get out of
4 here.

5 A I told them both to leave before the cops
6 come because a --

7 Q Did Jack leave?

8 A Jack did leave, yes.

9 Q Okay. Well, we already hear from other
10 evidence that he then --

11 A I had to physically push him toward the
12 truck to make him. He didn't want to leave on his own, I
13 didn't think, but I --

14 Q Okay. We've heard that he spoke to the
15 police after the fact at his apartment. But what did Mr.
16 Sandoval do --

17 A Sandoval got up, brushed himself off a
18 little bit --

19 Q Okay.

20 A -- gathered himself. And there was I'd say
21 fifteen, twenty people just kind of standing in a half
22 moon shape circle watching him fight --

23 Q Uh huh.

24 A -- and then -- so when he -- when Jack left
25 and Leo got up he just sort of walking around and says

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1 Josh, you're my witness, you're my witness, and he
2 started pointing at different people, and you saw it,
3 yeah, yeah, you know. He just told people to say that
4 and that they were his witness.

5 Q At anytime during this fight did you ever
6 hear Jack Woodcraft say the word kill?

7 A You know it's been a whole year and I've
8 been thinking about that. I -- to this day I don't
9 remember the word kill, but it's very possible that he
10 may have said I'll kill you, you mother fucker, if I
11 ever see you again, or something like that.

12 Q Do you remember Jack saying the word kill?

13 A To this day, no.

14 MR. TITZLER: Okay. Nothing further.

15

16 CROSS EXAMINATION

17 BY MR. JOHNSON:

18 Q Mr. Maust, when you -- did you see the fight
19 start?

20 A No. They were already fighting when a -- a
21 lady had came into the store and told the cashier to
22 call the police, that there is a fight. So then of
23 course I looked up -- I was behind the dairy case and I
24 looked up, and it's a straight shot to the outside glass
25 doors and I saw that there was two -- I didn't know it

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1 was Jack and Leo from that point, but I saw that there
2 was a fight and they were both on the ground, Jack was
3 on top.

4 And like I said, I only knew it was
5 Jack until after I went outside, got a little closer,
6 but from the store I didn't know it was Jack and Leo.

7 Q And was it a fight, are they wrestling, or
8 is one -- you said that Leo was curled up in a fetal
9 position?

10 A Leo was curled up in the fetal position
11 protecting his head and maybe his stomach, and Jack was
12 just pounding away at his head. He was pretty pissed.

13 Q And when Jack Woodcraft kicked Leo Sandoval
14 in the head, was it the first or second time you pulled
15 him off?

16 A Second time. It was the last whack he got
17 before I pushed him toward his truck for him to leave.

18 Q And do you remember talking to the private
19 investigator?

20 A The gentleman with the gold earring?

21 Q That's the one.

22 A I do.

23 Q That's -- and did you remember telling him
24 that you heard Jack say I'll kill you, I'll kill you,
25 I'll kill you?

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1 A No. He may have asked me if -- he may have
2 asked me those questions, and I told him that that may
3 have been what he said, but I don't remember him saying
4 that.

5 Q Okay.

6 A And he might have taken that for what I
7 said, I don't know.

8 Q But -- now from -- when you rushed -- and I
9 say you rushed out from the dairy case to the fight --

10 A Yes, sir.

11 Q -- and how far from the front door to the --
12 where the people were fighting?

13 A 50 feet.

14 Q So you got there fairly quickly?

15 A Yes, sir.

16 Q Okay.

17 A And I don't know how long they were
18 fighting, or I don't know if there was any pushing
19 involved, or I don't know anything like that because
20 when I got out there they were pretty well into it. And
21 usually a fight starts with verbal talk and some pushing
22 usually, unless they're just -- hatred is just so
23 intense that they just started going at it instantly.
24 I'm not sure.

25 Q Okay. But you didn't see it start?

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1 A No.

2 Q Now when Mr. Sandoval would come into the
3 grocery store -- or your store --

4 A Um hum.

5 Q -- what was his demeanor like? What was --

6 A I never had a problem with him, seemed
7 peaceful, quiet, and I didn't know his name until this
8 trial. Jack was more talkative and I knew his name. He
9 was more talkative and outgoing.

10 Leo was out -- I wouldn't say he was a
11 bad person, but he wasn't overly talkative, maybe not
12 overly friendly, just came in, got what he wanted and
13 left.

14 Q Okay. And (inaudible) the police called to
15 the scene of the -- this fight?

16 A What was the question?

17 Q Were the police called to your store?

18 A Yes. The police did arrive at the store. I'm
19 not sure who called them.

20 MR. JOHNSON: Okay, I don't have any
21 further questions for this witness.

22 MR. TITZLER: Nothing further, Judge.

23 THE COURT: You may step down.

24 MR. TITZLER: This witness be excused?

25 MR. JOHNSON: No objection.

Findings and Ruling of the Court 201

1 My last comment is in respect to Mr. Wong's testimony. Mr. Sandoval
2 said that Mr. Whitcraft slammed on his brakes. He was never asked if there was
3 braking or slowing before that. (Indiscernible) he stated Mr. Whitcraft slammed on
4 his brakes and that is what the evidence shows.

5 So to try and discredit Mr. Sandoval's statement with Mr. Wong's
6 statement that Whitcraft was slowing down, again that's not inconsistent with what
7 Petitioner said. He said he slammed on the brakes, everybody agrees with that.

FINDINGS AND RULING OF THE COURT

BY THE COURT:

10 Thank you. Well, counsel, I will tell you that I have been doing post-
11 conviction cases for the better part of 21 years so I'm not new to this business. This
12 has been one of the more complex and difficult cases that I've ever had to address.

13 I first want to start by commending both lawyers. You did an excellent
14 job of presenting your sides; such an excellent job that I've been wrestling up here
15 with my notes to know what I'm going to do.

16 We all know that the standard for post-conviction cases is not best
17 practices. If it were, post-conviction would be granted many, many more times.

18 I read with interest Mr. Todd's declaration. And I wish to say for the
19 record that I've known Walter Todd for the better part of 30 years and have a great
20 deal of respect for Mr. Todd and I understand that he would have tried this case
21 differently.

22 And I, in fact, have had the, I guess you would call pleasure, of having
23 him try cases in my courtroom and he does a very fine job. And I certainly respect
24 his disagreement with trial counsel here on some of the things he did or didn't do
25 and, frankly, Ms. Mooney, I agree with him to some extent and I agree with you.

Findings and Ruling of the Court 202

1 I don't see how you can effectively represent a gentleman in a case like
2 this, you can say self-defense, fine. The statements come in and that's good, I
3 actually agree with Mr. Aaron on that point. I think the statements are a little
4 more helpful than maybe you give them credit for.

5 But my goodness, you know he's a military veteran, I think you need to
6 get the records. I think you need to at least consider and at least speak to a self-
7 defense expert and a use-of-force expert.

8 I don't agree on the evidence presented to me on the accident
9 reconstructionist. I just don't see Mr. Wong -- and I know Mr. Wong, he's testified
10 before me and he's a fine individual. I don't find his testimony in this case would
11 have necessarily been helpful to Petitioner.

12 So, frankly, I do find on those two particulars -- and the other thing,
13 you know, you look at the trial strategy of Mr. Scales, and certainly a lot of this is
14 covered by trial strategy, why he did or didn't do certain things. And I'm not here to
15 in hindsight judge him. That is absolutely not the standard that I'm here to do
16 (indiscernible).

17 But when you look at is his performance deficient, in those two areas,
18 not hiring -- and you don't want to (indiscernible) jury with eight experts, but in
19 hiring one or two or at least consulting with them (indiscernible) use-of-force and
20 self-defense and in conjunction with getting the military records and providing
21 those to the experts, I find Mr. Scales was deficient.

22 The problem, Ms. Mooney, I have for you -- in your case I should say,
23 not you personally -- in your case is finding adequate prejudice to Mr. Sandoval. In
24 that I have to look at all of the evidence that was presented.

25 And again, I had the trial transcript and I've read 90 percent of it. I

1 hope it was the second trial and not the first trial, but I believe it was.

2 And these witnesses that I've just indicated that I, experts, that I feel
3 Mr. Scales should have at least consulted with and probably called, they would have
4 been, I would assume, unless the jury was very anti-expert, of some benefit to the
5 Petitioner. But can I say -- and we talked about the Green v. Franke case, that was
6 talked about a lot this morning in my first hearing so I got -- I have read Green v.
7 Franke, but I got educated again on what the standard on prejudice is and it
8 basically has to have some tendency to affect the outcome. I mean that's not exactly
9 the language. I'm looking for it here.

10 It has to be more than a mere possibility, less than a probability.
11 That's the standard I can't get by, Ms. Mooney.

12 The evidence is extremely strong, circumstantial or not, that this was
13 a setup -- albeit, a really creative and unusual setup. And maybe if Mr. Whitcraft,
14 the victim, hadn't acted in the way he did everybody would have driven off and
15 something would have happened, possibly happened a week later, who knows.

16 But the fact of the matter is there is enough evidence for the jury in
17 this case, even hearing the experts that I've said I believe should have been called
18 or at least consulted, that I don't -- I cannot find as a matter of law that the
19 deficiencies by trial counsel had a tendency to affect and result under the standards
20 set forth not only by Strickland, but by Green v. Franke.

21 So with some reluctance, because this case bothers me -- I didn't -- and
22 I'm very serious this is one of the toughest cases I've had, and I've had hundreds. I
23 really think trial counsel should have done a better job for this gentleman.

24 But can I find that he prejudiced him to the point where he's entitled
25 to post-conviction relief? I just cannot do that and so my verdict is for the

Findings and Ruling of the Court 204

1 defendant. I will make the appropriate findings and the judgment.

2 Thank you very much.

3 MR. AARON: Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Mooney.

5 That will be all. Thank you, Vicki.

6 THE CLERK: Thank you, Judge.

7 (Whereupon, the proceedings were concluded at 2:36 p.m.)

8 * * * * *

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

LEONARD CONTRERAS SANDOVAL,

Petitioner,

v.

MARK NOOTH, Superintendent,
Snake River Correctional Institution,

Defendant.

Case No. 12109709P
POST-CONVICTION

**DECLARATION OF TIMOTHY
CHARPENTER**

I, Timothy Charpenter, declare that the following facts are true and correct to the best of my knowledge and belief:

1. A summary of my expert qualifications is as follows:

- a. I have served our country for over 23 years in the Marine Corps and Army. The past 19 years have been spent in Special Forces with the 3rd and 10th Group.
- b. I have led over 300 missions and have been on the front line for over 550 missions, many of which remain classified.
- c. My functional expertise falls into four major disciplines, Combatives, Medical, Small Unit Tactics, and Sniping. I wrote and implemented the Combatives program for the 3rd and 10th Special Forces Group and was personally responsible for the training of 2500 Operators.
- d. Currently, I am working with the Air Force Center of Excellence to develop and implement a similar program.
- e. I have been awarded the Bronze Star three times, once for Valor.

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f. Below is a selected list of training I received while in the military:

- i. Special Forces Assessment and Selection
- ii. Special Forces Basic Military Language (French) Honor Graduate
- iii. Special Forces Advanced Urban Combat
- iv. Special Forces Medical Sergeant Course – Advanced Medical, Dental, and Trauma Course
- v. 3rd Ranger BN Team Leader Course
- vi. 3rd Ranger BN Basic, Advanced Demolitions and CQB Charges;
- vii. US Army Ranger School – Advanced Leadership and Management Development Course
- viii. Advanced Non Commissioned Officers Course – Advanced leadership Development Course
- ix. Basic Non Commissioned Officers Course – Intermediate Leadership Development Course
- x. Primary Leadership Development Course – Basic Leadership and Management Development Course
- xi. Special Forces Advanced Recon and Target Exploitation Course – Advanced Special Operations Techniques
- xii. Special Operations Target Interdiction Course (Top Gun Award) – Advanced Sniper Operations and Employment
- xiii. Jumpmaster – Leadership and Operations of Airborne Training
- xiv. Instructor Trainer Course – Techniques of Instruction, Preparation, And Management
- xv. Modern Army Combatives Levels 1-4 (Honor Graduate) – Basic thru Advanced Hand to Hand Combat Techniques and Training

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- xvi. Survival, Evasion, Resistance, and Escape High Risk (level C) –
Resistance to Interrogation and Exploitation
- xvii. Special Operations Combatives Program Basic and Instructor Course
(Honor Graduate) – All Aspects of Special Operations Hand to Hand
Techniques
- xviii. U.S.N.S.T.A Controlled Force Level 1 and 2
- xix. Individual Infantry Training
- xx. Marine Corps Boot Camp (Company Honor Man)
- xxi. Marine Combat Training (Honor Graduate)
- xxii. Marine Corps NCO Non-Resident Course

2. In preparation for writing this report, I have reviewed the follow items:

- a. Law Enforcement Reports
- b. Trial Transcripts
- c. ERB/SRB/OMPF (NPRC Request)
 - i. Training
 - ii. Deployments
- d. Other Expert Reports (Considerations)
 - i. Leonard Sandoval
 - 1. Prior injuries
 - a. GSW
 - b. Back (Harrington Rods)
 - c. Psych (PTSD)
 - ii. Jack Whitcraft Autopsy
 - 1. Injuries sustained during the event

3. During his time in the military, Leonard Sandoval was trained as an aerial gunner in the U.S. Army. He has graduated from Basic Training and numerous military

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- 1 schools, and was deployed to combat in Vietnam. Additionally, he has received
 2 countless hours of undocumented Unit Level Training, and combat experience.
- 3 4. During these courses, Mr. Sandoval would have been instructed in rifle
 4 marksmanship, small unit tactics, close quarters combat, and hand-to-hand
 5 combatives. These basic skills would have then been sustained and enhanced by
 6 unit level training. The purpose of this training is not only to teach the
 7 fundamental combat skills that a soldier needs in combat, but also to create the
 8 trust and obedience necessary to survive in combat.
- 9 5. Unlike civilian training, military combat training serves two purposes, the first being
 10 the critical skill, and the second being the depersonalization of the implementation.
 11 Even in basic rifle marksmanship, military training seeks to desensitize soldiers to the
 12 horrors of war they will face. In the case of the rifle range, the military began using
 13 human shaped targets instead of the tradition round targets. A soldier then progresses
 14 to individual movement techniques and small unit tactics. These skills are generally
 15 aimed at operating as a fire team or squad, again placing them into training scenarios
 16 against live aggressor forces, or if using live ammunition, human shape targets. The
 17 use of targets the shape of the human form, moulage to simulate combat wounds, and
 18 the vernacular in military training, are used to depersonalize the use of lethal force.
 19 This is done in an attempt to minimize the emotional response and the difficulty that a
 20 soldier will have reacting in combat.
- 21 6. The ambush is a long established military tactic, in which combatants take advantage
 22 of concealment and the element of surprise to attack unsuspecting enemy combatants.
 23 Ambushes are classified into two types:
- 24 a. Deliberate – This is the preferred method but requires time to plan, conduct a
 25 reconnaissance, and place unit into position.
 26

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- 1 b. Hasty – Used for targets of opportunity, selecting a hasty “kill zone” and
- 2 positions. The key to this type of ambush is speed and violence of action.
- 3 7. The actions of Mr. Whitcraft, in military terminology, were a “hasty” ambush.
- 4 a. Mr. Whitcraft initiated the ambush by suddenly stopping his vehicle leaving
- 5 8’ of skid marks, in effect creating a “kill zone.”
- 6 b. By reversing his vehicle, Mr. Whitcraft sealed off Mr. Sandoval’s immediate
- 7 routes of escape, and attempted to disable his vehicle to gain the advantage.
- 8 c. By immediately opening his door, Mr. Whitcraft prepared to exploit the “kill
- 9 zone” with a drawn and cocked pistol.
- 10 8. For response to an ambush, the military trains using “react to contact” battle drills
- 11 found in FM 7-8. These battle drills were developed during the Vietnam era due to
- 12 the ambush being one of the preferred tactics of that enemy. A battle drill, doctrinally
- 13 speaking, is “a collective action rapidly executed without a deliberate decision
- 14 making process.” “React to Ambush” is battle drill #4, which states:
- 15 a. A soldier in the kill zone immediately returns fire, take up a covered
- 16 position, and throw fragmentation grenades, and smoke grenades. Soldiers
- 17 in the kill zone assault through the ambush using fire and movement.
- 18 b. Obviously, in this case there are no grenades.
- 19 9. Military training methodology seeks to provide a conditioned response in acute stress
- 20 situations, where adrenaline reduces higher-order executive functioning. Realizing
- 21 that, in a life-threatening combat situation, military members will react with a “fight,
- 22 flight or freeze” reaction caused by the initial adrenaline response, followed by a
- 23 cortisol response (emotional). Because “flight or freeze” during combat is not
- 24 desirable, and often fatal, members are conditioned to react quickly and aggressively
- 25 with lethal force to preserve the lives of fellow members of the military, innocents or
- 26 themselves. To define these reactions in the presence of acute stress, Dr. Joshua D.

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Greene, of the Department of Psychology at Harvard University stated, “emotional responses, which are influenced by human biological make-up and social experiences, are like presets: fast and efficient, but also mindless and inflexible.”

10. In addition to the training Mr. Sandoval received, he deployed to Vietnam as a member of the U.S. Army. While in Vietnam, he experienced intense combat and his unit suffered numerous casualties.

11. These combat experiences would have reinforced Mr. Sandoval’s military training, creating a conditioned response akin to muscle memory in the presence of an imminent threat. Because of Mr. Sandoval’s constant exposure to danger, he would have been conditioned to respond quickly to close personal danger.

12. Mr. Sandoval’s account of the event in question, vernacular used, and combat experience, coupled with his training, are consistent with someone of similar training and experience reacting instinctively to an imminent threat.

13. After reviewing the provided information regarding the event in question, I can conclude that Mr. Sandoval was faced with a sudden confrontation that placed him in an ambush situation. The event, and his previous altercation with Mr. Whitcraft, put Mr. Sandoval in an acute stress state of “fight or flight.” At this point, he reacted as any rational objective person would when in fear for their life.

14. From my training, personal experience, and teaching/development of combative training for the U.S. military, once a person is truly in fear for their life, in a state of “fight or flight,” it is impossible to separate reactions from their biological response and social experience. In Mr. Sandoval’s case, he reacted as he was trained. Consistent with this training, he stayed behind cover and engaged until he felt the threat was eliminated, at which point he stopped. Mr. Sandoval’s reaction to defend himself with lethal force is consistent with his military training and combat experience.

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1 15. It is my opinion that during the confrontation with a violent situation, and armed
 2 individual, Mr. Sandoval tried to defend himself, became overwhelmed, and found
 3 himself in fear for his life. In a state of self-preservation, he used lethal force. The
 4 threat, in combination with his past training and experience, led to the event in
 5 question.

6 16. Had I been called to testify at Mr. Sandoval's 2009 trial, between the dates of
 7 February 9 and February 26, I would have appeared at the Josephine County
 8 Courthouse at the appointed time, and my testimony and opinion would have been the
 9 same as what is reflected herein. Additionally, had I been subpoenaed to additional
 10 hearings I would have appeared at specified time, date and location.

11 Pursuant to ORCP 1E, I hereby declare that the above statement is true to the best of my
 12 knowledge and belief, and that I understand it is made for use as evidence in court and is subject
 13 to penalty for perjury.

14 DATED this 6TH day of DECEMBER, 2015.

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 18 TIMOTHY CHARPENTER

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR**

<p>LEONARD CONTRERAS SANDOVAL,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>MARK NOOTH, Superintendent, Snake River Correctional Institution,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>Case No. 12109709P POST-CONVICTION</p> <p>SUPPLEMENTAL DECLARATION OF TIMOTHY CHARPENTER</p>
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I, Timothy Charpenter, declare that the following facts are true and correct to the best of my knowledge and belief:

1. I have provided sworn testimony as follows:

a. In 2004 in Iraq:

i. Role: Lethal Force Advisor to the Commander, CIF.

ii. Situation: Provided sworn statements and expert testimony during review of an event relating to the capture and detention of High Value Target.

b. In 2012 in Afghanistan

i. Role: Joint Task Force

ii. Situation: While serving high risk arrest warrants as part of Joint Task Force with members from DoD, FBI, and CIA, I was called for an After Action Report concerning the disarmament and arrest of subject.

c. Also in 2012 in Afghanistan

Page 1 of 2 – SUPPLEMENTAL DECLARATION OF TIMOTHY CHARPENTER

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PETITIONER'S EXHIBIT 25
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1 i. Role: Joint Task Force Cell Leader

2 ii. Situation: While deployed as part of Joint Special Operations Forces,
3 as a cell leader in Iraq, I evaluated cell members' use of force as part
4 of the After Action Reporting process.

5 2. To supplement my previous sworn statements regarding Mr. Sandoval's military
6 training:

- 7 a. Modern small unit tactics in the military are based on Vietnam era doctrines.
8 This includes the "hasty ambush" and the "react to contact" drill that follows.
9 This is still military doctrine in Field Manual 7-8. The small unit tactics taught
10 to Mr. Sandoval and other Vietnam veterans are the same being taught to the
11 modern military. Especially in regards to reaction to a near ambush.
- 12 b. In reference to Mr. Sandoval being out of the military for 30 years, I have
13 found during 23 years of training members of the US military that a person's
14 response during times of intense stimuli are a collection of all of their
15 experiences. Those I have trained who played sports even as very young
16 children reach back to those reactions when the body is in a "fight or flight"
17 condition. This is the basis for much of modern combative methodology. Mr.
18 Sandoval received military level training that was reinforced by actual
19 combat. This would be a life long experience and the most relevant when he
20 was placed in a life-threatening situation.

21 Pursuant to ORCP 1E, I hereby declare that the above statement is true to the best of my
22 knowledge and belief, and that I understand it is made for use as evidence in court and is subject
23 to penalty for perjury.

24 DATED this 8 day of Feb, 2016.

25 
26 TIMOTHY CHARPENTER

Page 2 of 2 – SUPPLEMENTAL DECLARATION OF TIMOTHY CHARPENTER

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PETITIONER'S EXHIBIT 25
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

LEONARD CONTRERAS SANDOVAL,

Case No. 12109709P
 POST-CONVICTION

Petitioner,

DECLARATION OF ROY R. BEDARD

v.

MARK NOOTH, Superintendent,
 Snake River Correctional Institution,

Defendant.

I, Roy R. Bedard, declare that the following facts are true and correct to the best of my knowledge and belief:

1. I am qualified as an expert in self-defense. (*Attachment A, Expert Report of Roy R. Bedard, attached hereto and incorporated by reference herein.*)
2. I have evaluated the facts and circumstances of the underlying shooting incident occurring on September 27, 2001, involving Leonard Sandoval and Jack Whitcraft, and have rendered my opinion in Attachment 1. *Id.*
3. Had I been called to testify at Mr. Sandoval's 2009 trial, between the dates of February 9 and February 26, I would have appeared at the Josephine County Courthouse at the appointed time, and my testimony and opinion would have been the same as what is contained in Attachment 1. *Id.*

Page 1 of 2 – DECLARATION OF ROY R. BEDARD

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PETITIONER'S EXHIBIT 17
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1 Pursuant to ORCP 1E, I hereby declare that the above statement is true to the best of my
2 knowledge and belief, and that I understand it is made for use as evidence in court and is subject
3 to penalty for perjury.

4 DATED this 27TH day of JANUARY, 2016.

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8 ROY R. BEDARD
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Page 2 of 2 – DECLARATION OF ROY R. BEDARD

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PETITIONER'S EXHIBIT 17
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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR**

LEONARD CONTRERAS SANDOVAL,

Petitioner,

v.

MARK NOOTH, Superintendent,
Snake River Correctional Institution,

Defendant.

Case No. 12109709P

POST-CONVICTION

EXPERT REPORT OF ROY R. BEDARD

I. INTRODUCTION

My name is Roy R. Bedard. I reside in Tallahassee, Florida. I am a full-time professional law enforcement, civilian, and corrections trainer in defensive tactics and use of force. I am also the owner and president of RRB Systems International, a police and public safety product and training corporation headquartered in Tallahassee, FL that conducts law enforcement, corrections and public safety training throughout the world. I have an extensive background in law enforcement procedures and training spanning twenty-nine years. I have been listed as a subject matter expert in use of force and defensive tactics by the Florida Department of Law Enforcement. I been previously qualified as an expert in police procedures, police use of force, survival stress and self-defense. I have provided opinions throughout the United States in over one hundred civil and criminal cases involving use of force and self-defense. I have been asked by Petitioner's counsel to provide expert analysis of the evidence submitted in the case of the *State of Oregon v. Leonard Contreras Sandoval*.

II. QUALIFICATIONS AND BACKGROUND

I have taught hundreds of professional courses over the last twenty-nine years to law enforcement and civilian audiences on the topics of police and corrections procedures, police management, use of force, defensive tactics and civil liability. I have taught private and public self-defense courses at the Florida State University for the Center for Participant Education and Florida Institute of Martial Arts since 1981. I have taught advanced defensive tactics courses to law enforcement academies, corrections, and police agencies throughout Florida and many other parts of the nation. I have provided training and policy development to the Federal Law Enforcement Training Center and Federal Bureau of Prisons. I have developed original police tactics training courses, as well as hold patents, trademarks and copyrights on a variety of police equipment and law enforcement training. I have produced films and television shows that are used in colleges and law enforcement academies across the state and nation. These films address the areas of use of force, police procedure, non-lethal uses of force, and issues involving Civil and Criminal liability.

I received a Bachelors degree from the Florida State University in Criminology and Criminal Justice in 1999. I hold a Masters degree in Educational Psychology from the Florida State University and I am currently completing a Doctoral degree in the same course of study. For the past twenty-nine years, I have served as a full time police officer, police trainer and reserve police officer. I began at the Florida State University as a patrol officer in 1987 and participated in most of my full time police career as a field-training officer. I have been active with the Tallahassee Police Department since 1990.

I am an adjunct trainer at the Florida Public Safety Institute since 1987, in Havana Florida providing training services for basic, advanced and specialized law enforcement and corrections officials.

I am a certified active police officer and police instructor by Florida's Criminal Justice Standards and Training Commission (CJSTC). I am a State-certified private investigator and currently serve as a task force member to the Use of Force and Defensive Tactics Development Committee for police and corrections officers of the State of Florida at the Florida Department of Law Enforcement in Tallahassee, Florida. The curriculum I have written has been administered to over 30,000 law enforcement officers in the State of Florida.

I have previously appeared as an expert witness in a variety of civil and criminal cases having been qualified in both state and federal courts as an expert in use of force, police procedures self-defense and survival stress. My experience and publications are described more fully in my curriculum vitae, prepared by me and attached to this report.

III. MATERIALS PROVIDED TO ME BY PETITIONER'S COUNCIL

- Detective Rylander's Interview with Leonard Sandoval 09/27/01;
- Detective Rylander's Interview with Leonard Sandoval 10/08/01;
- Josephine County Sheriff's Department Incident Report #01-9928 by Det. Gerald Rylander 11/30/01;
- Josephine County Sheriff's Department Supplemental Report #01-9928 by Det. Gerald Rylander 08/27/02;
- Josephine County Sheriff's Department Supplemental Report #01-9928 by Det. Gerald Rylander;
- Map of Hussey Lane and Pickett Creek Rd;
- Photos of Hussey Lane and Pickett Creek Rd;
- Drawing by Leonard Sandoval 10/08/01;
- Transcripts of 911 calls 09/27/01;
- Crime Scene photos MVC-843X.jpg – MVC-871L.jpg (sequential);
- Autopsy Photos of Whitcraft DSC00113.jpg - DSC00116. Jpg (sequential);
- Personal Review of all property and evidence listed in Josephine County Sheriff Homicide Case Information packet;
- Site visit to crime scenes;
- Personal interview with Leonard Sandoval ;
- Supreme Court review CC 01CR0641; CA A119980; SC S53457 in *State of Oregon v Leonard Sandoval*;
- Request Pertaining to Military Records;
National Personnel Records Center, National Archives: Leonard Sandoval.
-

IV. ADDITIONAL SOURCES AND MATERIALS

In addition to the materials provided to me by defense counsel, I have relied upon a number of texts and treatises that are considered relative to the case and my particular area of expertise.

- Personal Interview with Leonard Sandoval;
- Olson, Dean T, Improving Deadly Force Decision Making, FBI Law Enforcement Bulletin, Feb 1, 1998;
- Florida Department of Law Enforcement Criminal Justice Standards and Training Use of Force Matrix (2007);
- Florida Department of Law Enforcement Criminal Justice Standards and Training Basic Recruit Training (BRT) for Law Enforcement and Corrections, (2007) Curriculum Chapter 4;
- Harley, E.M. (2007) Hindsight bias in Legal Decision Making, *Social Cognition*, Vol. 25, No. 1 pp. 48-63;
- Roese, N.J. & Vohs, K.D (2012) Hindsight Bias, *Perspectives on Psychological Science*, Vol. 7 No. 5;
- ORS 161.015 (3) As used in chapter 743, Oregon Laws 1971;
- Artwohl, A & Christenson, L. (1997) What Cops Need to know to Mentally and Physically Prepare for and Survive a Gunfight, Paladin Press, Boulder Colorado;
- Artwohl, A. (2002, Oct) Perceptual and Memory Distortions During Officer involved Shootings, *FBI Law Enforcement Bulletin*, IACP Net document No. 564080;
- Kennedy, Carrie H. & Zillmer, Eric (2006) Military Psychology: Clinical ad Operational Applications, The Guilford Press, New York, New York;
- Grossman, Dave (1995) On Killing; The Psychology Cost of Learning to Kill in War and Society, Back Bay Books, Little Brown and Company, New York, Boston;
- Grossman, Dave & Christenson, L (2007) On Combat; The Psychology and Physiology of Deadly Conflict in War and Peace, Back Bay Books, Little Brown and Company, New York, Boston;
- Brown, R.M, (1991) No Duty to Retreat; Violence and Values in American History and Society, University of Oklahoma Press, Norman;

- Számádo, Szabolic (2008) How Threat Displays work: species-specific fighting techniques, weaponry and proximity risks, *Animal Behavior* Volume 76, Issue 5, November 2008, Pages 1455–1463;
- Miller, R & Kane, L (2012) Scaling Force; Dynamic Decision Making Under Threat of Violence, YMAA Publications, Wolfeboro;
- Brown v. United States 256 U.S. 335, 41 S.Ct. 501, 65 L.Ed. 961 (1921);
- DeBecker, G (2002), Fearless; Real Truth About Risk, Safety and Security in a time of Terrorism, Little, Brown and Co, New York;
- Olson, Dean T, (1998, Feb 1), Improving Deadly Force Decision Making, FBI Law Enforcement Bulletin;
- Harley, E.M. (2007) Hindsight bias in Legal Decision Making, *Social Cognition*, Vol. 25, No. 1 pp. 48-63;
- Roese, N.J. & Vohs, K.D (2012) Hindsight Bias, *Perspectives on Psychological Science*, Vol. 7 No. 5;
- Graham v. Connor, 490 U.S. 386 (1989);
- Rassin, E Eerland, A & Kuijpers, I (2010) Let's find the evidence; An Analogue Study of Confirmation Bias in Criminal Investigations, *Journal of Investigative Psychology and Offender Profiling*, Vol. 7 pp. 231-246;
- Kasson, S. M. (2005). On the psychology of confessions: Does Innocence Put Innocents at Risk?, *American Psychologist*, 60, 215–228;
- Meissner, Christian A. (2002) "He's Guilty!" Investigator Bias in Judgments on Truth and Deception, *Law and Human Behavior*, Vol. 26, No. 5 pp. 469-480;
- Gladwell, Malcolm (2005) Blink: The Power of Thinking Without Thinking, Little, Brown and Co., New York;
- Lazarus, Richard S. (1984) Stress, Appraisal and Coping, Springer Publishing, NY;
- Grinker, Roy R. & Spiegel, John P., (1945), Men Under Stress, McGraw Hill, NY;
- Officer Involved Shooting Guidelines, Ratified by the IACP Psychological Services Section, 2009;

V. PREFACE

Leonard Contreras Sandoval is currently in custody in Malheur County Oregon, convicted of the murder of Jack Whitcraft in 2001. I have been asked to opine regarding the facts and circumstances that occurred on the evening of September 27, 2001 involving the shooting death of Whitcraft. It is uncontested that Sandoval shot Whitcraft one time with a 7mm rifle round originating from a rifle that Sandoval had in his truck. The prosecution argued at trial that Sandoval unlawfully killed Whitcraft by planning and staging his murder, while the defendant has argued to the contrary; that the shooting was spontaneous and done in self defense during Whitcraft's attack upon Sandoval, first by the use of a motor vehicle and immediately thereafter by the threat of a .44 caliber handgun.

Sandoval gave a recorded statement in a 911 call to police describing the incident within minutes of it occurring.¹ He further provided a taped statement approximately two hours after the time of his arrest. He admitted to shooting Whitcraft and described the incident in the immediate aftermath of the encounter. Sandoval maintained then, as he does now, that the lethal actions he took against Whitcraft were for the express purpose of preserving himself against deadly physical force² presented to him by Whitcraft. Sandoval contends that his use of deadly force was reasonable, necessary and consistent with the Oregon Revised Statutes.

I traveled to the Snake River Correctional Institute in Ontario, Oregon where I interviewed Sandoval while he was in custody.³ I also traveled to the crime scene⁴ to inspect for myself the location of the initial provocation and the subsequent shooting. I attended an evidence view of the evidentiary items that have been held in property and evidence at the Josephine County Sheriff's Office,⁵ and I thoroughly and exhaustively reviewed the case file, including the items listed in section III of this report.

With respect to the claim of self-defense, I have been asked to consider the evidence in this case, to apply my education, experience, and knowledge in the area of self-defense and lawful use of force to the underlying facts, and to assist in explaining the complexities of a self-defense encounter.

¹ See 911 call transcript, September 27, 2001, 9:45am

² Whereas Deadly Force is described as force likely to cause a person serious physical injury or death. ORS 161.015 (3) As used in chapter 743, Oregon Laws 1971

³ Interview conducted on May 29, 2013

⁴ Crime scene visited May 29, 2013

⁵ The automobiles driven by Whitcraft and Sandoval have been disposed of several years prior to my visit.

My opinions are based upon my twenty-nine years experience as a law enforcement officer who has not only taught the principles of legal use of force but also investigated hundreds of force cases involving police personnel and civilians. I couple this with my experience of over thirty-five years as a personal defense trainer for both police officers and civilians. My experience includes hundreds of personal uses of force in the field to include the use of deadly force (shooting) and the use and display of a variety of weapons (batons, pepper spray, flashlights, etc.) for the defense of myself and others.

In addition to this practical experience I draw my knowledge from a career of training police, military and corrections personnel throughout the nation and abroad who have shared their personal experiences using deadly force. I have significant experience in post-critical incident reviews and face-to-face interviews with individuals who I believe have killed in self-defense. I have provided expert examination of forensic evidence in dozens of self-defense claims and have previously offered opinions to the court. I am formally educated in the science of police use of force and the broader academic area of performance psychology as it relates to anxiety (stress), and arousal, common features of self-defense encounters. It is this education, experience and knowledge that I have applied to form my opinions of the evidence in this case.

VI. DETERMINATIONS FROM WHICH I HAVE FORMED MY OPINIONS

1. In 1994 Leonard Sandoval and his wife Mary moved from Las Vegas, Nevada to a small Oregon community in Josephine County.
2. By 1996, Mary is alleged to have begun an intimate relationship with another town resident, Jack Whitcraft. She asked Sandoval for a divorce, and it was granted.
3. During this same period of time, Sandoval confronted Whitcraft about the illicit relationship that he was having with Sandoval's wife. According to Sandoval, Whitcraft lifted a wrench towards him and threatened him. This was the first of many threatening encounters that would later occur between Sandoval and Whitcraft.
4. Many people interviewed by police in the community agree that Sandoval and Whitcraft maintained an uneasy relationship between 1996 and 2001.

5. In 1997, a year after his divorce from Mary, Sandoval met Janice Webber, a women who he became romantically involved with.
6. Coincidentally, Janice lived in a home on a small street only a few doors down from the residence of Whitcraft and Sandoval's former wife Mary.
7. It is alleged by Sandoval that Mary would see him on "her" street regularly as he visited Webber. His presence appears to have unnerved her and she kept a significant log regarding his comings and goings.
8. Sandoval believes that Mary created hysteria in the neighborhood by filing false complaints about him, telling lies to her new husband Jack Whitcraft, and "poisoning the minds" of her neighbors with falsehoods about Sandoval.⁶
9. The tension between Sandoval and Whitcraft reportedly increased over the coming years.
10. On September 27th, 2001 Whitcraft was in possession of Mary's .44 caliber revolver, the same weapon that Sandoval says he gave to Mary several years earlier while they were still married.
11. Sandoval was retired from the U.S. Army.⁷ He was a former Vietnam veteran that received several awards for combat related acts of heroism including the Award of the Air Medal (5 Nov. 1969) National Defense Service Medal, Air Medal for Heroism (1 July, 1969) 2nd award (26 Nov. 1970), Vietnam Campaign Medal w/60 device and the Vietnam Service Medal w/3 Bronze service stars (29 Nov. 1970), Distinguished Flying Cross (4 May, 1970), Award of the Army Commendation Medal (1 July, 1969) & The Purple Heart (21 Oct. 1971). He was also designated by the US military a rifle marksman.
12. He was designated as a Specialist Four, United States 121st Aviation Company (Assault Helicopter), APO 96294, Date of action 08/26/69 – 09/27/69

⁶ For all of the assertions of conflict between Sandoval and Whitcraft there is surprisingly little law enforcement documentation to substantiate the rumors and conjecture.

⁷ See National Personnel Records Center, National Archives for Leonard Sandoval

13. On Thursday, September 27th 2001 at approximately 9:40 in the morning. Sandoval claimed he was entering the intersection from Hussey Lane onto Pickett Creek Road in his pickup truck after leaving his home one street away.
14. Before Sandoval pulled out, he said he provided right of way for a northbound truck as it cleared the intersection.
15. Sandoval said he recognized the truck as Whitcraft's.
16. This was not the first time that Sandoval observed Whitcraft pass his street. Whitcraft had for years provided auto repair work for a friend who lived a short distance from Sandoval's home, directly off of Pickett Lane Road.
17. As Sandoval pulled behind Whitcraft's vehicle, Whitcraft applied the brakes and slowed his vehicle to an eventual stop.
18. Sandoval stopped his truck behind Whitcraft.
19. Whitcraft placed his truck in reverse and smashed into the front end of Sandoval's truck.⁸
20. Sandoval remained in his truck as the collision occurred. He immediately observed through the back windshield of Whitcraft's vehicle that Whitcraft "leaned to the right and came up with a large pistol."
21. Sandoval grabbed the .7mm rifle that he had in the cabin of his vehicle.
22. Sandoval pulled the weapon to his left side in order to get a clear unobstructed angle on Whitcraft.
23. Sandoval watched as Whitcraft turned sideways in his seat and began to open the driver's side door.
24. Whitcraft's vehicle assault upon Sandoval suggested to Sandoval that he was still in immediate danger if Whitcraft were permitted to continue his aggressive actions with a handgun.

⁸ Trained law enforcement officers would assess this intentional act by Whitcraft as an act of deadly force because it was reasonably likely to cause great bodily harm or death.

25. Sandoval pushed his rifle outside of his driver's side window and without finding the rifle's sight, fired one round from the left side of his body through the back of Whitcraft's rear windshield.
26. The glass shattered and for a moment and Sandoval said he lost clear sight of Whitcraft
27. Sandoval pushed his door open. Using the frame of his truck for cover, Sandoval said that he sat and waited for what he approximated to be about 10 seconds.
28. Unbeknownst to Sandoval, Whitcraft had suffered a fatal wound to the lower left area of his skull and neck from the single 7mm shot.
29. Moments later, Whitcraft slumped forward and rolled out of his truck onto the ground. A hanging speaker wire under the dash of his vehicle entangled his feet.
30. As his fell forward, his feet tethered to the truck by the speaker wire, Whitcraft spun to his side or back, still clutching the .44 revolver in his right hand.
31. Sandoval exited his vehicle with his rifle in his hands. He approached Whitcraft cautiously to inspect him and assure that he no longer presented a threat.
32. Sandoval returned to his vehicle and placed his rifle back in the front seat.
33. He immediately walked to a neighbor's house to report the incident.

VII. THE PERCEPTIONS OF LEONARD SANDOVAL

In police investigations, the use of deadly force must take into consideration the perceptions of the person who applied the force. To consider the validity of a shooting the investigator must attempt to understand the paradigm of the shooter at the moment the use of deadly force occurred. This is particularly important in claims of self-defense. There are many qualitative variables that influence a person's perceptions of fear. An enquiry into the defendant's perceptions must then be matched to the objective facts and circumstances supported by the evidence to make an investigatory conclusion that the defendant's actions were objectively reasonable—or not.

The collection of evidence can be modeled upon a continuum of force to show whether there is proportionality between the defendant's use of force and the perceived threat. Police throughout the nation commonly use force modeling to explain and investigate appropriate levels of force.

Leonard Sandoval has repeatedly described to police that he had an ongoing fear of Jack Whitcraft. Many witnesses interviewed by the Josephine County Sheriff's Office support the assertion that Sandoval had a dangerous and ongoing conflict with Whitcraft. Though the witnesses may not agree on who the primary antagonist was during each encounter, it is generally accepted in the evidence that Sandoval maintained a tense and uncertain relationship with Whitcraft. One incident in particular stands out and demonstrates why Sandoval would have reasonably had a heightened concern regarding the potential danger that Whitcraft posed to him on September 27th, 2001.

According to the Josephine County Sheriff's Office documents, deputies responded to a call a few weeks prior to the shooting at the Lil Pantry store located at 979 Rogue River Highway, in Grants Pass, Oregon. On that date, Whitcraft violently assaulted Sandoval, punching him several times with his fists. The Josephine County Sheriff's Office (JCSO) responded and took a report but did not make an arrest.

It is noted that for all of the problems alleged by witnesses to have occurred between these two men and their respective women, there is surprisingly little documentation or follow-up by local law enforcement to demonstrate that they attempted to assist in resolving the dispute and restoring peace between them. Considering that the on-going dispute between Sandoval and Whitcraft was public knowledge, the lack of law enforcement intervention creates in my view, a reasonable belief that Sandoval could not rely on law enforcement for protection against Whitcraft. It is reasonable that Sandoval, as he would later claim, believed that he needed to protect himself against Whitcraft if and whenever the two would meet.

Assuming Sandoval's version of events, the historical record compels triers of the fact to place themselves in the shoes of Sandoval at the time Whitcraft viciously rammed his vehicle and attempted to exit with a handgun. It is reasonable to assume, based upon this history, that Sandoval was not only placed in imminent fear for his life, but at that particular moment was completely self-reliant. There was no time to call for police or to safely flee from the threat that

was upon him. Indeed, Sandoval had no legal reason to do so either.⁹ It is reasonable that Sandoval took the actions he did to preserve himself against what he reasonably believed to be a rapidly unfolding deadly threat.

During my interview of Sandoval I questioned him about the shot that he placed in the back of Whitcraft's rear window. It was a critically important shot that found its mark as Whitcraft began to exit the vehicle. Had Sandoval missed striking him with that single shot, Whitcraft might likely have been able to exit his truck and charge towards Sandoval while repeatedly firing his large caliber .44 magnum revolver. It appears from Sandoval's statement and the corroborating evidence that this is what Whitcraft had intended to do.

Sandoval described that he fired the shot without leaving the front seat of his truck. By looking at the crime scene photos it seems that Sandoval would have had a difficult if not impossible time shooting Whitcraft from a right-shouldered position (Sandoval claimed to be right handed) without first shooting through his own windshield. Yet the pictures I reviewed showed that Sandoval's windshield was intact with no evidence of a bullet hole originating from inside of his vehicle. Further, if Whitcraft would have survived that first shot or if Sandoval would have missed altogether, Sandoval, in my view, would have been trapped in the front seat of his truck taking round after round while desperately trying to cycle his bolt-action rifle in the confined area. I asked Sandoval why he didn't choose to exit his own truck to avoid being a proverbial sitting duck. Sandoval answered, "I don't know." As I probed the question deeper the answer became more evident as Sandoval began to describe his military past.

Sandoval explained, "I snatched the rifle from the seat, tossed it across my body (showing me) and extended it out the window on my left side. I never aimed. I fired one time. It was a lucky shot." I asked if Sandoval had ever done anything like that before and he said "Oh yeah, I've shot from a hundred different positions."

As a trained military soldier in the Vietnam War, Sandoval told me he was schooled in various methods of firearm combat. He was a "door-gunner"¹⁰, a crewman that is tasked with firing and maintaining manually directed armament to targets below from aboard a moving helicopter. Door gunners from the Vietnam War are exceedingly hard to find. It is well known

⁹ State v. Sandoval, 342 Or. 506, 513-14, (2007)

¹⁰ See National Personnel Records Center, National Archive; Leonard Sandoval

that door gunners had a low life expectancy.¹¹ They are considered an extraordinary type of combat veteran due to the extreme skills (and perhaps luck) that is needed to survive such a dangerous assignment. Door gunners do not shoot from behind cover. They sit in the doorway of an open helicopter and use a variety of shooting techniques including retaining and suspension straps to allow them to lean in and out of the helicopter to increase their shooting angles. They shoot from either left or right shoulder positions to cover extreme deviations of open space with the rifle.

As an example of the skills acquired by Leonard Sandoval, the US Army awarded him the air medal for heroism. In his award, the Army wrote:

These men distinguished themselves by exceptionally valorous actions while serving aboard a group of troop transport helicopters during a combat assault operation against a numerically superior and well trained enemy force. During the action, their aircraft received numerous hits in critical areas. With complete disregard for their own safety, they leaned out of their helicopters exposing themselves to the murderous enemy fire trying to suppress and destroy the enemy gunners.¹²

These skills were taught to Sandoval in the military and he told me that he developed the ability to shoot from a variety of positions, including sitting positions and moving the weapon from shoulder to shoulder. It is entirely reasonable then that Sandoval, who reported to me that he chose to barricade himself by using the available cover afforded by his vehicle, did not exit the vehicle, as most untrained people might reasonably have done. Rather he chose to stay in his truck and relied upon the skills he had developed as a combat soldier trained to fight out of the tight confines of a vehicle.

Sandoval told me that he felt reasonably calm when he fired his rifle. It was only after he fired the shot that he felt extreme anxiety and nervousness. Where he claimed that the single shot was a “lucky shot,” my experience suggests that his kill shot was the product of the precision practice that Sandoval underwent in a formal hostile, military environment. The physiological calmness he said he felt followed by the nervousness and anxiety is a common characteristic regularly reported by trained combatants who have killed in self-defense.¹³

¹¹ Leonard Sandoval was shot through the thigh while in the door gunner position. The wound nearly killed him

¹² See National Personnel Records Center, National Archive; Leonard Sandoval, Award of the Medal of Heroism, 13 May 1970

¹³ Grossman, Dave (1995) On Killing: The Psychology Cost of Learning to Kill in War and Society, Back Bay Books, Little Brown and Company, New York, Boston

VIII. OBJECTIVE REASONABLENESS

Though the standard for determining the appropriateness of a person's use of force decisions is *objective reasonableness*, violence is always a subjective experience. Interpersonal violence naturally results in a caustic phobic response, that for most, evokes powerful emotions. A person who is violently assaulted will most often experience a highly stressful and highly emotional episode.

An individual's ability to manage anxiety (stress) is complex and multi-dimensional. Depending on a person's past experiences, certain coping schemas are called upon during periods of anxiety. Performance psychology plots human performance along two cross-sectional dimensions, namely the *performance* itself, and its consequence based on the level of *arousal*. Performance factors include both cognitive and physical abilities.

Stressful events are dynamic. Stressors cause anxiety, and anxiety turns the attention towards the ongoing relationship between the person and the environment. As an event unfolds it is a continuous process of interplay and feedback.¹⁴ Though a stressor may evoke different emotions among different people, it is the emotion, rather than the stressor that is physiologically adapted to the consequential behaviors. Whereas different people treat emotions differently, the emotions of *anger* and *fear* are relatively constant in the behaviors that they evoke. Extreme fear is most likely evoked as an adaption to the state of being terminally threatened.

Reactions to fear are physiological. Survival stress changes and distorts the cognitive and somatic experience. Fear is mediated by different parts of the human brain, many of which lie in the subcortical regions beyond conscious control. When cognitive decision-making is influenced by the fear emotion, the person compares the level of threat to his or her ability to manage or effectively cope with it.¹⁵ Available resources are called upon creating an intricate interplay between the original perception and the evolved perceptions that occur as a result of ongoing coping effectiveness. Perhaps during this interplay new emotions emerge that may replace or come along with the fear emotion. Therefore, a different person viewing exactly the same stressor

¹⁴ Lazarus, Richard S. (1984) *Stress, Appraisal and Coping*, Springer Publishing, NY

¹⁵ *Id.*

might interpret it differently and cope with it differently depending on his or her past experiences, and individual ability to manage it. This punctuates the need for triers of the fact to first consider the paradigm of the accused.

As an example, all things constant, a smaller person being threatened by a larger person would reasonably feel greater fear than if the size and stature roles were reversed. On the other hand, a smaller combatant with significant training in self-defense would be reasonably expected to appraise the threat differently and feel a less intense fear from the appraised threat than a larger lessor trained combatant. A person who is armed with superior weaponry might even appraise the deadly situation as a challenge, rather than a threat. In this instance, the fear emotion may be reduced significantly or perhaps may not psychologically emerge at all. This is why well-trained individuals often report a feeling of calmness in the face of deadly threats and only report nervousness and anxiety in hindsight when the magnitude of what has been done is cognitively assessed.

To express the idea more clearly, consider a person who upon seeing a snake is suddenly gripped with fear. The fear emotion might sensibly arouse a behavior that causes the person to run away for his own safety. However if other facts and circumstances were added to the equation, like for instance the presence of a vulnerable child who was also in danger of the snake, fleeing might not be a viable moral or ethical option. Though still afraid, the fear emotion would comingle with the unfortunate but unchangeable fact that a vulnerable child remains in great danger from the snake. Rather than fleeing the area, the natural coping schema of *flight* would naturally morph into an alternative instinctual behavior and generate the schema *to fight*. The same person, bound by moral obligation might instead begin looking for a stick that is lying nearby. Grabbing an external weapon is instinctual for humans that are not naturally endowed with fangs, claws or other formidable defensive onboard weaponry. The use of weaponry is a human coping mechanism that has guaranteed human survival as a species for more than 200,000 years.

As the coping schema changes, the person, though still quite afraid, will choose a different solution. Rather than fleeing, they may choose to fight. In our example, the person might instead engage the snake and viciously strike it until it no longer moved. Many laypersons have experienced this or a similar event, where fighting a threat becomes a more practical option than running from it. Though the two responses to the presence of the snake would be

dramatically different, both reactions would be understood as *objectively reasonable* based upon the totality of the facts and circumstances that supported the decision to flee or to fight.

Because fear is processed differently than all other emotions, certain difficult-to-explain behaviors, when observed in the context of a stressful event, reveal patterns of conduct that infer the *fight/flight* state-of-mind. These involuntary behaviors are difficult to force or to fake. A person has little, if any, control over the subcortical processes that drive these behaviors. It is nearly impossible for instance to consciously control heart rate, blood pressure, adrenal secretion, visceral processing, sweating or any of the fear related physiological responses just by thinking about them. The subsequent overt behaviors that result from the stress-induced imbalance of a person's physiology might seem unusual to the calm observer who cannot objectively understand why the person acted the way he did while under duress. It is a natural psychological default for a person who sits in judgment to consider the described facts from only their own past experiences and limited point of view. "I wouldn't have done that," is the fallacy of the non-tested hypothesis and perhaps the greatest cognitive fallacy that threatens a fair and impartial review of any defendant's actions. On the contrary, a fair legal review of subjective behaviors can only be accounted for *objectively* when a person compares the behavior patterns from known incidents of fight/flight circumstances, and applies the known observed patterns and accepted theories of high arousal to the defendant's individual case.

The emotions of *fear* and *anger* are processed by the limbic system, a primitive structure of the midbrain intricately connected to the central nervous system. Aggression (Anger) is presumed to be dependent upon frustration. Aggression is the perceived intention of a person to hurt, injure or to give one his due. Conversely, anxiety (fear) is an emotion that results from the perception of future danger, under ambiguous and symbolic conditions.¹⁶

Objective reasonableness once demanded that a person retreat until his back was against the wall before the use of deadly force was considered appropriate under law. The idea of a *duty to retreat*, hearkens back to the 13th century when the State preferred a monopoly on killing persons within the empire.¹⁷ But as our snake example pointed out above, there are times when

¹⁶ Lazarus, Richard S. (1984) *Stress, Appraisal and Coping*, Springer Publishing, NY, pp. 265

¹⁷ Brown, R.M., (1991) *No Duty to Retreat; Violence and Values in American History and Society*, University of Oklahoma Press, Norman

running and/or preserving the life of the attacker is not a viable option. The Federal Courts began to recognize the need for standing one's ground as early as 1921.¹⁸

In the 1970s and 1980s, in an attempt to address claims of excessive force by police officers, the courts formally recognized survival stress attributes and have spoken to them in many subsequent legal proceedings. The modern objective reasonable standard for using force looks at 1) the severity of the crime, 2) the immediacy of the threat posed by the subject, and 3) whether the subject sought to evade or resist arrest.¹⁹ The first two conditions identified by the court would be considered applicable to any person who is under direct attack from another whereas the third condition is more particular to the strict role of a law enforcement officer. We can therefore reasonably borrow from the accepted standards used in police investigations of force to apply this methodology to determine the objective reasonableness of Sandoval's decision to shoot Whitcraft. In this case, it is understood that Sandoval was witnessing an aggravated assault, a felony. Beyond smashing his vehicle into Sandoval's vehicle, the presence of the firearm and the intent Whitcraft showed by grabbing it and displaying it clearly demonstrates that this was an ongoing deadly threat.

The reasonableness of a use of force through a fact-dependent enquiry is based upon the "totality of the circumstances." *[T]he question is whether the person's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.*²⁰ Using these judicially accepted standards regarding the use of deadly force in defensive situations, Leonard Sandoval's use of deadly force against Jack Whitcraft can be objectively analyzed.

IX. DECISION MAKING UNDER STRESS

Within the limbic system lies the amygdala, a small subcortical structure contained within the medial temporal lobes of the brain. Through the central nervous system the amygdala calls upon additional latent resource of the body to help manage threats. Electrical impulses are sent to the adrenal glands that activate a discharge of catecholamines (stress hormones) into the system. Adrenalin (epinephrine, norepinephrine and cortisol) is secreted into the body through the bloodstream. These chemicals organically influence neural receptors, the vascular system and

¹⁸ Brown v. United States 256 U.S. 335, 41 S.Ct. 501, 65 L.Ed. 961 (1921)

¹⁹ Graham v Connor, 490 U.S. 386,396 (1989); Scott v Harris, 550 U.S. 372, 382-84 (2007)

²⁰ Graham 490 U.S. at 397

the person's motor ability. A rush of adrenalin assures that the person is more capable of defending himself against the perceived threat by providing increased strength, greater endurance, and enhanced perceptual abilities.

The mind, in an attempt to facilitate the optimal chance for survival, often suspends the operations of the comparatively slow cognitive processing associated with more advanced brain functioning.²¹ As a result, executive functioning is also suspended along with the advanced reasoning powers assigned to the neo-cortex. Perceptions transition from thoughtfulness, reflection and reason to a process known as *heuristics*, mental shortcuts that look for experience based solutions and highly efficient problem solving techniques. The results are often unrefined and the outcomes are often brutally apparent. Under the threat of death or potential serious injury, the midbrain is vicious. When it enters the fight, it discounts morality, proportionality and fairness. It has a one-sighted objective and that is survival. It will fight to the extreme to guarantee a positive outcome.

"Intuition has many messengers but the clearest and most urgent is fear. Nothing in life gets attention as reliably as fear—and that's the way the system is designed to work. Fear does some miraculous things when we perceive that we are in the presence of danger. First it gets our bodies ready for action with a dose of adrenalin. It heats up the lactic acid in our muscles for running or fighting, and it even gives us a chemical called cortisol that makes our blood clot more quickly in a fight. It's an amazing system designed to be a brief signal that gets you to listen, address the risk, and move on."

Gavin de **Becker** – *Fearless; Real truth about risks, safety and security in a time of terrorism*

²¹ Grossman, Dave & Christenson, L (2007) *On Combat: The Psychology and Physiology of Deadly Conflict in War and Peace*, Back Bay Books, Little Brown and Company, New York, Boston

Escalating levels of arousal effect both conscious and subconscious processes of the mind. When anxiety increases, performance is also expected to increase—to a degree. However, when anxiety begins to exceed a person's perceived ability to manage it, performance plateaus and begins a negative descent. (See figure 1.) If anxiety reaches an extreme state, panic sets in and performance and decision-making suffer catastrophically. (See figure 2.)

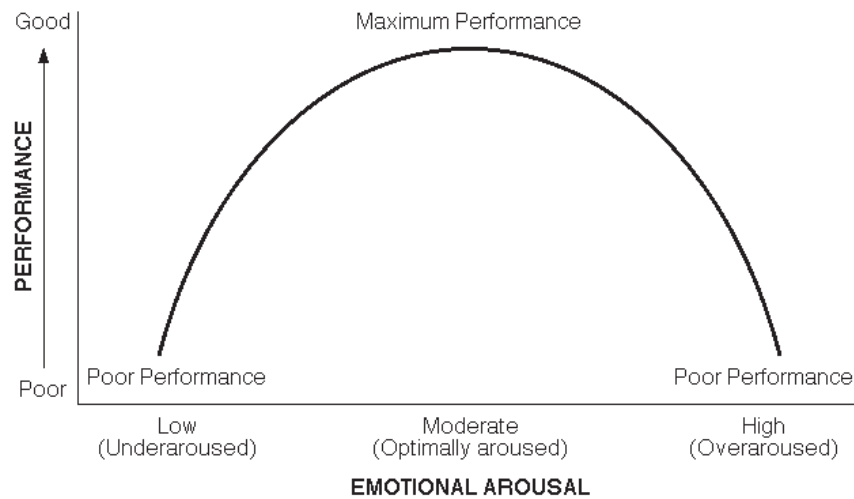


FIGURE 1: YERKS-DODSON (1908)

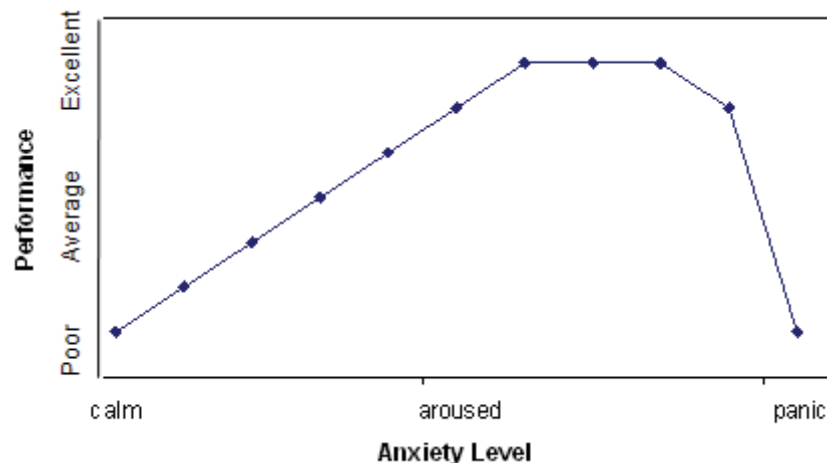


FIGURE 2: Catastrophe Model

These widely accepted models of performance under pressure are important to lay the foundational understanding of how extreme anxiety (stress) caused by fear can affect a person's cognitive and physical skills beyond his or her ability to control.

In combat, acute anxiety (stress) often results in a physiological reaction commonly called the fight/flight phenomena as referred to earlier in this report. Whereas the phenomena might suggest two alternative choices to a perceived threat, in fact, there are four alternative choice selections available to a person who faces the potential of violence. These strategies modulate with increasing states of anxiety.²² (See figure 3.)

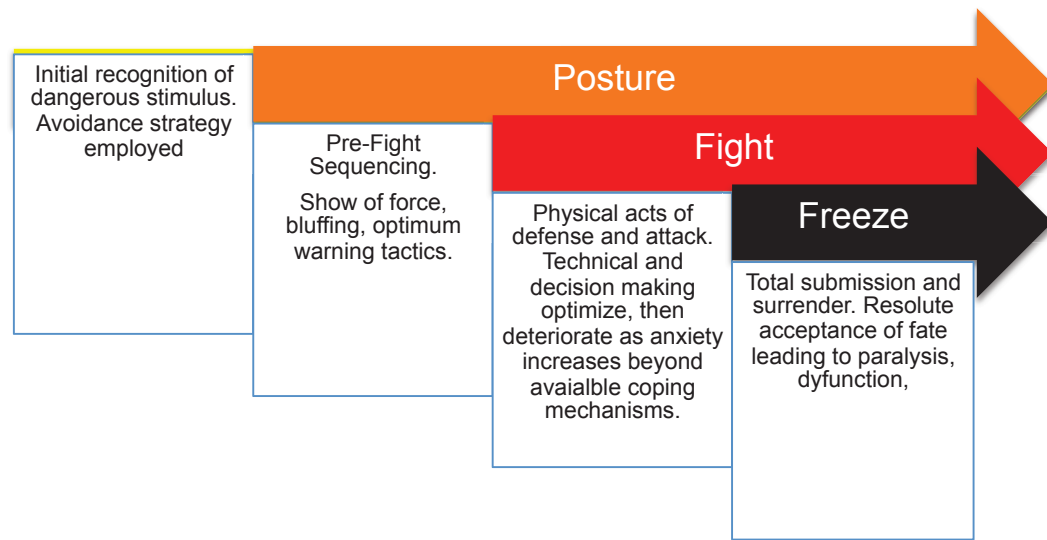


FIGURE 3: Fight/Flight Model

²² The term fight/flight will continue to be used in this report for the purposes of operationalizing the concept generally familiar to triers of fact.

Anticipated actions and behaviors become less conscionable when the fight/flight processes are engaged. The survival mechanisms of the mind operate independently of conscious awareness and are not subject to vetting through the advanced cognitive processes of the cortex.

X. FORCE TYPE

In self-defense investigations, it is important to dissect the entire event into smaller sections along a continuum. Force transactions generally form a dual modality with negative correlation. In the simplest sense, offensive actions are most often countered with defensive actions and vice versa as a principle of performance psychology. This can be seen most commonly in the myriad of sports that rely on offense/defense pairing of opposing sides. Whether the sport is designed to provide an opportunity to play offense or defense (American football, baseball, etc.) or the game naturally generates an offense or defense based upon the circumstances of the moment (basketball, soccer, boxing) it holds true that when one person or side is on the offense, it is natural for the opposing side to assume the defense.

During periods of actual combat this axiom also holds true. Along the continuum of the timeframe of a violent encounter there are moments when a fighter is either attacking or defending. When deadly force is used, it must be shown that the person used deadly force as a defensive measure for his or her own protection or the protection of another to be considered lawful.

Defensive force is called *affective violence*. Affective violence occurs reactively to offensive force or *acquisitive violence*. To properly analyze the use of defensive force it is critical to recognize that *affective violence* is a reactionary, basal response to a perceived imminent threat that is often beyond the complete cognitive control of the actor.

On the other hand, *acquisitive violence* is not preceded by autonomic arousal. It is most often characterized by the *absence of emotion and threat*. This type of violence is generally controlled, crafty, cunning and cognitively planned.²³ Acquisitive violence is offensive and predatory. It is motivated by the express purpose of obtaining something of value from another through the thoughtful and calculated use of force.

²³ Meloy, R. Empirical Basis and forensic application of affective and predatory violence, Australian and New Zealand Journal of Psychiatry 2006; 40:539–547

Comparing these two distinct violence types assists in the larger enquiry regarding a person's *motive* for violence. This is an important legal distinction that separates predatory crimes from all other acts of self-preservation or protection of others. For example, a police officer that kills a person to prevent him from committing a forcible felony would be said to have used *affective violence* to stop the threat. Compare this to the *acquisitive violence* of the attacker who was attempting to acquire something of value. Value is the defining feature of acquisitive violence. Value does not have to be tangible like a watch or wallet. It can be intangible, like the feeling of power that one might derive from victimizing or injuring another person. Several models of force transactions have been created over the last several decades to help explain the *affective/predatory* (acquisitive) force modality. Some of these models will be discussed in greater details later in this report.

XI. CORROBORATING SANDOVAL'S STATEMENTS

Sandoval voluntarily gave Detective Rylander a statement immediately after the shooting occurred. The recorded time for the incident was September 27th at 9:47 a.m. and the interview was given the same date at 11:11 a.m., a total of one hour and twenty-four minutes after the fact. He voluntarily spoke to Rylander again on October 8, 2001 at 3:35 p.m. Both statements were recorded and later transcribed.

Sandoval intimated to Detective Rylander that he used self-defense when he shot Whitcraft. He told witness Steven Krueger to call the police because he shot somebody in self-defense.²⁴ He also called 911 and the first words he spoke were, "Yes, 9-1-1-a man tried to kill me and I had to shoot in self defense."²⁵ He told investigators that had he not killed Whitcraft that it would have likely been his own life that would have been taken. A study of these interviews show that Sandoval recalled much more detail in his second interview than in his first. The high level of anxiety so apparent in the first statement was also not obvious in the second statement.

In both interviews, Sandoval explained to investigators the facts and circumstances as he could best recall that led to the shooting of Whitcraft. He described the people and the social dynamics that existed between Whitcraft, his ex-wife Mary, his new girlfriend Janice and

²⁴ See transcript of 9-1-1 calls, Sept. 27, 2001, pp. 1 lines 2-6

²⁵ See transcript of 9-1-1 calls, Sept. 27, 2001, pp. 7, line 11

himself. He told the investigator that he and Whitcraft had a long history of intolerance towards each other. It is easy to recognize from the first interview that Sandoval was extremely affected by the incident. He rambled as he gave his statement and after catching himself muttered throughout his statements, “Phew, I’m all shook up,” “I’m shaking,” “I’m confused,” and “I’m nervous sir.” He also continued to demand more drinking water. Sandoval offered information about his relationship with his ex-wife, much of it not self-serving. He told the detective that Mary had him arrested before and had an injunction placed against him. He also informed the detective that Whitcraft had previously assaulted him stating, “he clobbered me, beat the shit out of me, drug me from my car.”

Sandoval went on to give the investigator an accounting of that morning. He told Rylander that he got up at about at 8:00 [a.m.], “middle” [sic] around the house, fed the animals and then spoke with his friend Bill Kirkland on the phone. He told Kirkland that he had a bag of grass seed that he would bring him for planting around his new house. Sandoval said he loaded the seed in his ’86 Ford Bronco and left his house on Hussey Lane heading towards Pickett Creek. A bag of Weed and Feed was later found in the ’86 Bronco II to corroborate this statement. Sandoval said he intended to stop and speak with Tyrone Montgomery who worked as a Veteran’s Service Officer to check on his benefits. Montgomery lived on Pickett Creek to the right of Sandoval’s street.

Sandoval said he drove (east) to the intersection of Pickett Creek and Hussey Lane. He said he sat in his vehicle waiting for the intersection to clear. His intent was to make a right hand turn (north) onto Picket Creek, the direction of Montgomery’s house, when Whitcraft passed him driving north on Pickett Creek in a Ford pick-up truck. Sandoval said he made the right turn and subsequently fell in behind Whitcraft’s vehicle. He stated that almost immediately Whitcraft slammed on his brakes and came to a stop. The vehicle collision occurred a very short distance from the intersection, as Sandoval said it had. Whitcraft then threw his vehicle in reverse and struck Sandoval’s vehicle. The reporting officer, Trooper Holly Bridges, who took the initial traffic crash report, also later corroborated this fact as did Rylander.²⁶ Given these facts, had the incident ended here, it is likely that Whitcraft would have been charged with a crime for attempting to seriously injure or kill Sandoval.

²⁶ See report by Rylander, 11/30/01, pg. 27, “In re-examining the scene with Amish, Kuemichael, Jeffers and Dykes, it appeared that the Whitcraft vehicle had slid to a stop and then it was backed into the Sandoval Bronco...skid marks, debris and vehicle parts support the conclusion.”

Sandoval told the investigator that after he was struck by Whitcraft's vehicle, he saw Whitcraft through his back window reaching over (showing him) and raising a gun. He said he was clear about what he saw. A .44 caliber revolver was later found under Whitcraft's head, further corroborating Sandoval's account. Sandoval said he saw Whitcraft swing his body to the left and begin to open the driver's side door. At this point Sandoval grabbed the 7mm Mauser, bolt-action rifle that was in his back seat. Sandoval told the investigator that Whitcraft had one leg out of the vehicle, had turned and was now pointing the gun towards him. It is not clear from the interview if Sandoval reported Whitcraft was partially or fully out of the automobile at this moment. Sandoval's two different descriptions during the same interview suggest confusion rather than deceit, as neither recollection is more self-serving than the other. He said he believed that Whitcraft was going to shoot him. The state presented evidence that Whitcraft was shot on the left side of his neck and lower skull, indicating most likely that Whitcraft was facing the driver's side door at the moment he was struck. This is consistent with the version of Whitcraft exiting the vehicle when the shot was fired. Because the 7mm round pierced the rear windscreen of the truck before hitting Whitcraft, it is clear that Whitcraft was still at least partially in the vehicle when he was hit. Based on the state's forensic evidence it is unlikely that Whitcraft had completely exited his vehicle when Sandoval fired. However, it is not unlikely that Whitcraft had opened the door and was beginning to exit with his leg(s), as Sandoval also described, when the round struck him.

A picture of the entry point of the bullet in the rear windscreen appears to be more than a foot into the glass slightly right of the center of the steering wheel. This location, matched with the wound suffered by Whitcraft, comports with Sandoval's recollection that Whitcraft had leaned more deeply into the cabin of the truck when he is alleged to have grabbed the revolver and /or when he turned towards the door, and swung his feet out first. Both of these motions would likely have required a gross inward lean into the truck's cabin.

Sandoval stated that he stayed in his truck when he saw the threat and threw the door open to fire between the doorframe and the door. He iterated that he stayed in the vehicle as a measure of self-defense in order to use the vehicle frame as cover. The exact trajectory of the bullet's path has not been established forensically. Sandoval's account of where he stated he was when he fired is not unreasonable and has not been disproven.

After shooting Whitcraft and observing him fall to the ground, Sandoval said he exited his vehicle and approached the body. He said he saw the handgun as later shown in the crime scene photo under Whitcraft's head. Sandoval then contacted a neighbor at 230 Hussey Lane and requested that 911 be called. Sandoval did not approach too closely and thus could not tamper with the crime scene. A visual inspection of the Sandoval's photographs immediately taken after the shooting along with the seized clothing and in particular the shoes held in evidence provides clear evidence through the absence of blood spatter or exchange that he did not make contact with Whitcraft's bloody body or the bloody ground surrounding the area where Whitcraft lay.

All of the physical evidence supports the statements given by Sandoval. I do not find any inconsistency with Sandoval's initial 911 call or subsequent statements with respect to the material facts nor have I seen a dispute in the investigators findings to suggest that the events are in any way otherwise than the way Sandoval described them. There is no reason then to dispute the credibility or reliability of Sandoval's version of events. Though a variety of alternative hypothesis may be offered, none would be more consistent with the evidence that is presented in this case. The evaluation of the appropriateness of Sandoval's use of force must then assume the following: (1) Whitcraft provoked the exchange of force by stopping in front of Sandoval on the roadway, placing his truck in reverse and ramming Sandoval's vehicle; (2) Whitcraft's use of force was acquisitive (predatory); (3) Sandoval reacted to the attack using affective (defensive) force; (4) Whitcraft leaned deeply into the cabin of the truck either to fetch a firearm that was on or near the passenger side of the truck or to begin exiting the driver's side door; (5) Whitcraft could not have exited the truck completely as his feet were entangled in speaker wire and he was shot while still sitting in the truck's cabin; (6) Whitcraft did grab a .44 caliber revolver as he was exiting the truck and Sandoval did see it; (7) Sandoval grabbed his rifle and swung it outside his truck before shooting it. 8) Whether Sandoval fired from his left shoulder or his right shoulder is inconsequential, he had highly developed skills in firing from both positions; (9) Sandoval placed one round on the left side of Whitcraft's head and neck, demonstrating that Whitcraft was most likely exiting the truck when he was hit; (10) The threat to Sandoval was imminent and on going; (11) Whitcraft's perceived threat to Sandoval was deadly in nature, and if allowed to persist was likely to cause Sandoval death or great bodily harm; (12) Sandoval did not tamper with the crime scene at any time; (13) Sandoval immediately looked to law enforcement for help and assistance.

XII. CRITICAL INCIDENT AMNESIA

Where Sandoval's statements about the events of the morning of September 27th have been corroborated by the physical evidence, I noted that Sandoval was unclear on some of the highly specific details involving the actual shooting, (*i.e.* whether Whitcraft actually fully exited the vehicle, what hand Sandoval shot with, etc.). It is quite common during periods of what is colloquially known as "fight/flight" that high physiological arousal occurs resulting in physical changes (accelerated heart rate, increased respiration, vaso-constriction) and mental changes, such as perceptual distortions, observable shifts in cognitive analysis, decision making, and severe lapses in memory, a phenomena known as critical incident amnesia.

It has been my experience, that participants who have survived life-threatening episodes are most often eager to tell their story to law enforcement officers or to any others who will listen. This most likely stems from their personally held belief that he or she was the victim in the ordeal. The compelling need to talk is exacerbated by the subconscious activation of the sympathetic nervous system that in the aftermath of the encounter rejoices in survival with a period of exhilaration.²⁷ This eagerness to talk confounded by critical incident amnesia will often result in unintended and unrealized fabrications, as the teller attempts to fill in the missing memories to establish a coherent story. At times the teller may also develop false memories, particularly when law enforcement officers or others give suggestive or false statements regarding certain objective facts that the victim does not clearly recall.

Trained police investigators should be familiar with the phenomena of critical incident amnesia. It is a phenomenon that has been published in a variety of sources for the police profession. The International Association of Chiefs of Police (IACP)²⁸ and the Americans for Effective Law Enforcement (AELE) are two policy-influencing organizations that speak directly to the phenomena and offer recommendations for interviewing *officers* involved in deadly force incidents during internal affairs interviews. The most important aspect of these interviews is that they are not conducted immediately after the fight/flight episode as officers, like civilians, will

²⁷ Grossman, Dave (1995) *On Killing: The Psychology Cost of Learning to Kill in War and Society*, Back Bay Books, Little Brown and Company, New York, Boston

²⁸ Officer Involved Shooting Guidelines, Ratified by the IACP Psychological Services Section, 2009

often make exaggerated statements that later appears to be callous, cold and unkind²⁹. They will often create or imagine details in order to bring cohesion to their scattered and missing memories. It is common practice for law enforcement officers throughout the nation to afford the courtesy to another officer who has used deadly force, the time to sleep before a full interview is conducted. This assures a more complete recount of the events and prevents the callous bravado that accompanies the period of exhilaration. This interview technique has proven to reduce liability for both the officer and the employing agency. It is a matter of policy for many agencies to not interview their own officers until 24-72 hours has elapsed with respect to criminal and internal affairs investigations (see IACP and AELE recommendations attached).

Having had the opportunity to hold dozens of discussions and read transcripts with officers and civilians who had just recently used deadly force I have personally observed the rambling and confused statements they offer when the sympathetic nervous system is aroused. As a police officer that has used deadly force, I can recall the confusion and lapses in my own memory that I personally experienced for several hours after the event.

Well-trained investigators are taught to use caution and to not perceive early statements given within the critical window, before a sleep cycle has occurred, as intentional lying; particularly when later statements contradict earlier statements. The literature describes that after the mind has been afforded the proper time to synthesize and process the scattered information, testimony becomes significantly more accurate.³⁰ In general, most of the information that is given during the first 24 hours, especially prior to a proper sleep cycle, is more fallible and suspicious when held up against objective facts of the case.

Sandoval was interviewed within a couple of hours of his incident, well within the window of critical incident amnesia. A reading of the 911 calls and the first interview convince me that he was presently shaken and highly aroused, a signature of the activation of the sympathetic nervous system. It's clear that Sandoval was extremely cooperative and tried to

²⁹ Kennedy, Carrie H. & Zillmer, Eric (2006) *Military Psychology: Clinical and Operational Applications*, The Guilford Press, New York, New York: excerpt pg. 77 "The survivor who feels this elation is experiencing euphoria resulting from both a sense of relief at having survived, and an involuntary biochemical reaction resulting from the release of endorphins and other sensory- and mood-enhancing chemicals into the bloodstream."

³⁰ Artwohl, A. (2002, Oct) Perceptual and Memory Distortions During Officer involved Shootings, *FBI Law Enforcement Bulletin*, IACP Net document No. 564080

answer the 911 operator and investigator's questions as best he could. At times, it seems obvious that he was a filling in blanks consistent with the condition of critical incident amnesia. With the exception of describing himself as having to use self-defense against Whitcraft, none of his statements were particularly self-serving. His statements do not appear to be well planned or pre-scripted.

Comparing and contrasting Sandoval's first statements that occurred within the first 24 hours with an interview that I took several years later, I found significantly more details and a more comprehensive story that had emerged over time. This is common as defendants usually study their own case file including photographs and documents that they were not privy to before their initial statement. Though it is not surprising that Sandoval's later account of the events are more rich with detail, I noted that the superstructure of his story remained identical, it was only the detailed memories that were far more pronounced. Most importantly to my analysis, I noted that Sandoval's later statement was not inconsistent or contradictory to his original assertion where he declared self-defense.

XIII. THE USE OF DEADLY FORCE

As previously noted, Sandoval's statements have been corroborated by the available evidence, and in my opinion are not reasonably in dispute. It is important still to understand the accepted model and standard for using deadly force against an active threat to assure that Sandoval's use of force was proportional to the threat that he reasonably perceived.

Force models are regularly used by law enforcement agencies nationwide to investigate deadly force incidents and they are taught in police academies to law enforcement officers as a method for weighing, articulating, measuring and documenting their own uses of force. They learn that there are specific legal requirements necessary to justify the use of deadly force.³¹ In Oregon, deadly force is that which is likely to cause death or serious bodily injury.³² To lawfully use deadly force, a person must demonstrate a reasonable belief that his life or another's life is in imminent jeopardy.

Regardless of whether the intended recipient of the force lives or dies, a person must be able to articulate a reasonable belief that his/her life or some other person's life was in imminent

³¹ Olson, Dean T, Improving Deadly Force Decision Making, FBI Law Enforcement Bulletin, Feb 1, 1998

³² ORS 161.015 (3) As used in chapter 743, Oregon Laws 1971

danger of suffering death or serious bodily harm from the actions of another before being justified in the delivery of deadly force.

At present, there are no nationally accepted civilian models for force justification. However there are well-established models in the police and military sciences that are in my opinion suitable for review. These models represent continuums of force that underlie the psychological construct of *objective reasonableness*. Though Sandoval is not a trained law enforcement officer, and has no formal education in the use of force, these models may still apply because they are objective in their design with respect to force proportionality in light of perceived danger.


The underlying notion of objective reasonableness is that proper force responses must be proportional to the perceived threat. Consider the following force matrix used for decades in the State of Florida,³³ and that I assisted in authoring. Similar continuums are used throughout the nation including many agencies in the State of Oregon.

FDLE

Florida Department of Law Enforcement

MATRIX

RECOMMENDED RESPONSE TO RESISTANCE AND LEVELS OF RESISTANCE



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6 Aggravated Physical	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>
5 Aggressive Physical	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	
4 Active Physical	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	
3 Passive Physical	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>		
2 Verbal	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>		
1 Presence	<div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>	<div>X</div> <div>X</div> <div>X</div> <div>X</div> <div>X</div>		

Checked areas represent suggested, acceptable, beginning response levels. Any response in an unchecked area requires explanation. Refer to definitions for each level of resistance and response.

Arrival	Intervention Stance	Dialogue	Verbal Direction	Touch	Restraint Devices	Transports	Take Down	Pain Compliance	Counter Moves	Intricate Weapons	Incapacitation	Deadly Force
Officer Presence		Communication		Physical Control			Intermediate Weapons		Incapacitating Control		Deadly Force	
1		2		3			4		5		6	

Effective 2/7/2002

-----RESPONSE LEVELS-----

Incorporated by Reference in Rule 11B-27.001(4)(c)1., F.A.C.

³³ See FDLE Use of Force matrix (2007)

To aid the discussion of proportionality, note that the *Threat* (Resistance) categories shown in this typical police force continuum are equally matched with a proportional level of *Response*. In this example, verbal threats are met with verbal responses, passive threats with physical control, active threats with intermediate weapons (batons, pepper-spray, etc.).

Note also, that the only time lethal force may be used is when a person faces an aggravated physical threat. An aggravated physical threat suggests that the threatened person perceives that the aggressive actor has made some action that is likely to cause death or serious bodily injury. Often an aggravated physical threat involves the perception of the use of a weapon. However, that is not always the case. A person can reasonably perceive aggravated threats in other ways.

It is important to also know that law enforcement officers may not use lethal force for the strict purposes of making arrests.³⁴ They may only use lethal force for the protection of self or others. This self-defense requirement is identical to any civilian's rights to use deadly force.

Because lethal force can result in grave consequences, police officers are further taught to consider the elements of the threat objectively. They must understand perceptually why they believed that their life or the lives of others were in imminent jeopardy of death or great bodily harm, and they must explain these elements within a reasonable degree of certainty after the force was used. If anything, this training creates a higher standard for law enforcement officers compared to civilians.

This is a sensible schema for decision-making and one that equally applies to anyone who uses lethal force. Sandoval was intentionally rammed by Whitcraft's truck as he sat in his vehicle. Sandoval alleged that he clearly saw Whitcraft raise a gun and begin to exit his truck. The evidence shows that Whitcraft fell out of his truck after he was shot. A .44 Magnum revolver was photographed on the crime scene lying under Whitcraft's head. The weapon was located in such an area that anyone who may have planted it there would be sure to have a significant amount of blood on their hands, their clothing and/or the soles of their shoes. After personally inspecting all of the clothing worn by Sandoval on the day of the shooting, I noted that no visually observable blood was present on any clothing item, nor was it present on the soles or uppers of Sandoval's shoes. Whereas the absence of this blood spatter and/or trace evidence on Sandoval's clothing and shoes provides powerful inferential evidence to falsify the

³⁴ With some exception for escaped, adjudicated prisoners.

hypothesis that Sandoval might have planted the weapon, I noted that none of the police reports recorded this fact.

The evidence seems consistent that, as the rapidly unfolding threat presented by Whitcraft progressed, Sandoval reasonably concluded that his life was in imminent danger of great bodily harm or death. The proper proportional response to this threat is the use of deadly force.

XIV. ABILITY, OPPORTUNITY, JEOPARDY AND PRECLUSION

A further study of accepted use of force procedures can be made by again looking at law enforcement standards. Police officers are regularly taught how to articulate use of deadly force by breaking down the perceived threat into four distinct sub-components—*ability*, *opportunity*, and *jeopardy*.³⁵

A person who uses deadly force in defense of self or others must *reasonably believe* that a subject had the *ability* to cause death or serious bodily harm to the officer or another. Determining ability requires that the subject recount specific features of the threat that could, if allowed to fully transpire, result in that person's or another person's death or serious bodily harm.

As an example, a person who holds an object that can pierce, penetrate, slash, cut, cause significant bodily trauma or in other ways leave broken bones, permanent disfigurement, scarring, or extended hospital stays would be said to have the ability to cause death or serious injury. This would of course include the possession of conventional weapons like knives, guns, or explosives, but could also include any item that could be wielded to cause the type of injuries described from cement bricks to liquor bottles to ballpoint pens.

Further, determining a subject's ability to cause death or great bodily harm may extend to allow for something more ambiguous like an attacker's much larger size in relationship to a defending officer.

Next, a person must *reasonably believe* that, if the subject does possess the ability to cause death or serious bodily harm, then the subject must also have the *opportunity* to cause such harm due to the immediacy and proximity to the endangered other. For instance, a subject who

³⁵ Florida Department of Law Enforcement Criminal Justice Standards and Training Basic Recruit Training (BRT) for Law Enforcement and Corrections, (2007) Curriculum Chapter 4

possesses the *ability* to cause death with a sharpened knife, may lack the *opportunity* if the knife's cutting abilities are mitigated by distance.

Whereas a person wielding a firearm may provide the subject a deadly opportunity to cause death or serious bodily harm from hundreds of yards away, a person wielding a knife would have no such opportunity at such a great distance. It is a rule of *opportunity*, that persons may not create their own exigencies, that is to say intentionally place themselves in harm's way needlessly and purposelessly, then appeal to the idea that their life was in imminent danger. Stand your ground laws however, mitigate the need to retreat in the face of danger and should not be confused with the creation of an exigency.

Third, a person must *reasonably believe* that he or another is in imminent *jeopardy* of death or serious bodily harm, either deliberately or incidentally to some other person's actions. How jeopardy is established is left to the person's reasonable analysis of the events and an articulated explanation of the totality of circumstances that gave rise to his/her reasonable belief that the actions of another, if allowed to continue, would be likely to cause death or great bodily harm to another. It may be a visual observation, an auditory comment or some other perception that actor perceives as authentic. If for instance a person were to see another shoot someone, then turn the gun towards him his visual observations would suffice to show jeopardy. Also, if a person were to hear a threat of harm or death from another, under certain tense circumstances the mere uttering of the threat may be sufficient to take action under the jeopardy clause.

These three criteria make up the standard of care by which all acts of deadly force can be reasonably measured. In analyzing the incident between Sandoval and Whitcraft, we can look at the available evidence to support or reject a conclusion that deadly force was appropriate.

Sandoval had a history of problems and violence with Whitcraft. Having previously been physically battered by Whitcraft, Sandoval likely recognized that Whitcraft was someone to be feared.

When Whitcraft rammed Sandoval's vehicle, he clearly used deadly force. When he reached into the vehicle cabin and raised a firearm for Sandoval to see, he presented still another imminent and ongoing deadly threat. In this respect, Whitcraft demonstrated the *ability* to cause Sandoval death or great bodily harm.

The close proximity of Sandoval to Whitcraft, about one car length, infers that a firearm would have the *opportunity* to cause Sandoval death or great bodily harm. Indeed a well-aimed

.44 caliber bullet will travel that far with relative accuracy and deadly results. The previous use of the truck to batter Sandoval's vehicle coupled with the display of the weapon and the hasty attempt to exit the vehicle, suggests Whitcraft's intent and shows that Sandoval was in immediate *jeopardy*. Because the incident occurred on the roadway, there was no safe location for Sandoval to retreat or take cover, had he wanted to. If Whitcraft would have fully exited his pick-up truck and become mobile on foot, he would have easily been able to shoot, injure or kill Sandoval, who would have remained trapped in his vehicle. The alternative was for Sandoval to take pre-emptive action and to fire first before Whitcraft could manage himself into a tactically superior position. Though not required by law, if Sandoval did choose to run from the minimal cover afforded by his Bronco, he could not have guaranteed poor marksmanship from Whitcraft, nor could he outrun the effective lethal distance offered by a .44 Magnum round. Instead, the evidence shows that Sandoval stood his ground and assured that by using deadly force he would eliminate the threat to him.

XV. INTENT VS. VOLITION

The crime Sandoval is charged with requires *intent*. The act of killing is separated under the law by categories of *volition*. In order to operationalize these definitions, the following is offered. Volition is a construct of cognitive processing. It is the process by which a person decides upon and commits to some particular course of action. In some legal arenas, volition is often confused with intent, but they are distinct in that intent regards an act as purposeful or not (Did you mean for it to happen?). Volition is the state of mind that drives those actions (Why did you feel it was necessary?) This is a critical distinction in self-defense law because combat crimes (battery, assault, murder, etc.) require intent. This is precisely why law enforcement officers are rarely prosecuted or found guilty of a crime after using deadly force. A law enforcement officer in the hindsight of a use of deadly force is trained to explain that he or she did not shoot to kill (intent); rather they shot to stop a person's behavior (volition). Volition is multidimensional. It accounts for several actions that might be taken (fight, flight, posture, submit) in any given instant. Intent is a single minded construct and accounts only for the final objective (to kill).

Looking again at law enforcement's theory of deadly force, officers are trained to *not* consider a person's death the intended consequence of their shooting. In fact, statistics show that

far more people shot by law enforcement officers survive the encounter than are killed. If it were an officer's intent to kill, the statistics would quickly reflect this radical systemic change from volition to intent by an enormous increase in citizens killed by police as the officers would continue to fire upon them long after the threat had ceased.

It can be said that where all intent involves volition, not all volition involves intent.

Murder - Intent	Self-Defense - Volition
"Yes, I intended to kill him and that was my purpose." or "No I did not intend to kill him and that was not my purpose."	"I used force to protect myself. I realized then that the force I was about to use might result in harm or death, but I used force for self-protection, not to harm or kill him."

The State of Oregon recognizes this distinction in law and distinguishes acts of self-defense from assault, manslaughter and murder by the volition of the actor. Civilian actors, like law enforcement officers, may justifiably use force if they *reasonably believe* it is for the purpose of preventing another's unlawful behavior. This includes the use of deadly force to prevent certain defined criminal behaviors and to protect self and others. Even in criminal matters where intent is proven, volition still plays a major role throughout the criminal justice process – from arrest to sentencing. The terms manslaughter, negligent homicide, and various degrees of murder all show intent with different degrees of volition. This powerful distinction forms the basis of the theory of self-defense and its validity under law.

In speaking to Sandoval, I asked him specifically, "were you trying to kill Jack Whitcraft?" to which he responded, "I was trying not to get killed!" Recalling that Sandoval fired only one time, and then waited to assess what Whitcraft would do next comports with my finding that Sandoval was relatively calm when he fired, probably due to his military experience. This evidence suggests that Sandoval did not intentionally kill Whitcraft but rather used deadly force in an effort to preserve his own life.

XVIII. FINDINGS

There has been no evidence presented to me to contradict the version of events told by the Sandoval, that he used deadly force in defense of himself when he shot Whitcraft on September 27th, 2001.

Sandoval's version of events is plausible and supported by the available evidence. During the initial interview, his story was coherent and sensible. Some of the specific details, mostly immaterial, appeared confused, which is not uncommon during periods of high arousal. Though Sandoval's stories have slight variations, the super structure of his story has remained the same. It is my opinion that the 911 call and the first interview both occurred while Sandoval was still under the influence of his sympathetic nervous system.

Sandoval did not run from the scene. It was he who initiated the phone call to police. Sandoval does not appear to be a highly sophisticated thinker. If it was his objective to deceive police it is more likely that he would have fled from the scene and forced police to determine who killed Whitcraft. Instead, he immediately called police and eagerly confessed his involvement. He later told me that he felt relieved when the police first arrived on the scene believing that he was the victim of a deadly assault by Whitcraft. As a matter of record, Sandoval told the dispatcher immediately following the shooting, "Oh boy, I hope the officers get here."³⁶

I believe that Sandoval was at times filling in memory blanks to supply a comprehensive story for the police. These minor variations in details are to be expected in the hindsight of a critical incident. As is typical of victims of attack who have prevailed, Sandoval showed that he was eager to help the officers understand the events that happened that morning. In fact, he called them back after his initial interview to provide more details about the event.

This problem in memory retention, known as *critical incident amnesia*, is the reason why police investigators give other law enforcement officers 24-48 hours before taking a detailed statement regarding critical incidents. Unfortunately for Sandoval, no such courtesy was extended. Sandoval was interviewed within 2 hours of killing

³⁶ See transcript of 9-1-1- phone calls, Sept. 27, 2001, page 22, line 11

Whitcraft, and it was the information gleaned from this interview that provided the substance used by law enforcement to justify Sandoval's arrest.

Though this general rule of investigations has assisted in gathering more reliable recollections from police officer's and has helped dispel claims police officers routinely lie to save themselves, it has created an unfortunate double standard in the criminal justice system that I believe greatly contributes to the disparity between the investigations of civilian and police use force.

Sandoval recollected in the original interview and the evidence shows that Jack Whitcraft was actively attacking him at the time Sandoval used deadly force against him. This is not reasonably in dispute. Sandoval's account is consistent with the officers report that described Whitcraft ramming him with his truck and the .44 magnum revolver found in the blood soaked area beneath Whitcraft's head. It is my opinion that it would be highly unlikely for Sandoval to plant a firearm in this location without showing blood or trace evidence on his hands or clothing.

Witnesses agree that Sandoval and Whitcraft had a long history of dispute. There is evidence to show that in at least one other incident, Whitcraft initiated violence against Sandoval.

Sandoval observed Whitcraft assaulting him. In the critical timeframe afforded by Whitcraft's actions, Sandoval accurately appraised the situation as a rapidly unfolding deadly threat. Sandoval's military record shows that he was a highly-trained military door gunner who regularly practiced with a rifle. His description of brandishing the rifle offhand and finding the target with great accuracy is not implausible given his training and experience.

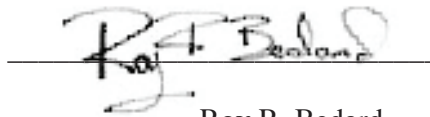
It is my opinion that Sandoval's explanation of why he decided to shoot was consistent with accepted standards of appropriate self-defense. His use of deadly force was proportional to the threat that he described, and can be equally inferred from the forensic evidence. Further, it is my opinion that given the same set of facts and circumstances, if Sandoval had enjoyed the benefit of being investigated under the same criteria used for investigating law enforcement officers, he would not have been formally

charged with a crime. The models used by members of the profession would have demonstrated a proportional response to the perceived threat.

Instead, Rylander appeared to have reasoned, using a different and unaccepted set of criteria, that since Whitcraft had not yet exited his vehicle, that he had not had an opportunity to fire a shot and did therefore did not represent a deadly threat. From this unsupported reasoning, Rylander charged Sandoval with Murder.³⁷

Sandoval's reaction to Whitcraft's violent attack did not occur before Whitcraft presented a deadly threat but rather while Whitcraft continued the deadly assault upon him. Sandoval's decision to shoot occurred within an extremely compressed, tense and rapidly unfolding timeframe based upon his assessment of the active and on-going deadly threat. His assessment in hindsight was accurate and consistent with an act of self-defense. It is my opinion that Sandoval used deadly force to protect himself from what he reasonably believed was an imminent threat of danger of great bodily harm or death during the moment he shot Whitcraft.

These are my findings based on the relevant evidence submitted to me. As additional information is made available and as new facts may be uncovered during the discovery process, my professional opinions may change to reflect newfound information. However, the opinions expressed herewith are current and are based upon the information reviewed and my experience as of this date.



Roy R. Bedard
November 24, 2015

³⁷ See Investigative report by Rylander, pg. 27

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MALHEUR

6 LEONARD CONTRERAS SANDOVAL,

7 Petitioner,

8 v.

9 MARK NOOTH, Superintendent,
10 Snake River Correctional Institution,

11 Defendant.

Case No. 12-10-9709-P

DECLARATION OF STEPHEN D. CAMPBELL

POST CONVICTION

ORS 20.140 - State fees deferred at filing

12 I, Stephen D. Campbell, declare:

13 1. I was an attorney licensed to practice law in the State of Oregon between
14 September 12, 1980, and January 1, 2016, when I elected inactive status following my
15 retirement. I was the District Attorney of Josephine County between January 3, 2005, and
16 February 28, 2015, and in that capacity, I represented the State of Oregon in the case *State of*
17 *Oregon v. Leonard Contreras Sandoval*, Josephine County Circuit Court Case No. 01CR0641.

18 2. Petitioner was convicted of murder in 2002 in the shooting death of Jack
19 Whitcraft. On appeal, petitioner assigned error to an instruction on self-defense that imposed a
20 duty to retreat. The Oregon Supreme Court agreed and reversed and remanded the case for a
21 new trial. I represented the State during that second trial.

22 3. The State did not dispute that, if the events unfolded as petitioner said they did, he
23 would have a valid claim of self-defense. That is, assuming petitioner was innocently following
24 Whitcraft, who slammed on his brakes, reversed into petitioner's car, retrieved a gun, and
25 pointed it at petitioner, all without any provocation from petitioner, there is no doubt that an
26 objectively reasonable person would fear for his life. The dispute at trial centered on whether

1 those facts were accurate. The State offered substantial evidence from which the jury could infer
2 that petitioner planned the altercation with the hope that Whitcraft would pull his gun on
3 petitioner, allowing him to kill Whitcraft and claim self-defense.

4 4. I have reviewed petitioner's proposed exhibit 17, a report from Roy R. Bedard. I
5 believe that I would have objected to introduction of that report or any related testimony. Bedard
6 begins from the assumption that the events unfolded as petitioner says they did, and concludes
7 that petitioner acted appropriately in self-defense. But, as described above, that was not the
8 dispute at trial. Therefore, the opinions Bedard offers would have been irrelevant and unhelpful
9 to the jury. Moreover, Bedard's frequent adoption of petitioner's explanation of the facts does
10 not appear to be based on any expert knowledge, but instead is based on Bedard's own
11 credibility determination, which would be an improper comment on the credibility of a witness.
12 I likewise would have objected to his opinions on psychology and the law because he does not
13 appear to be qualified as an expert in those fields. I would also have objected to his explanations
14 of the law of self-defense as improperly invading the court's duty to instruct the jury as to what
15 the law is.

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Page 2 - DECLARATION OF STEPHEN D. CAMPBELL

JA/kk4/7138203-v1

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4700 / Fax: (503) 947-4704

EXHIBIT 104, Page 2 of 3
Case No. 12-10-9709-P

NATIONAL PERSONNEL RECORDS CENTER

1 ARCHIVES DRIVE ST LOUIS, MO 63138-1002

www.archives.gov



March 2, 2015

GINGER MOONEY
285 LIBERTY ST NE, STE 360
SALEM, OR 97301

RE: Veteran's Name: SANDOVAL, Leonardo
SSN/SN: ***690**
Request Number: 2-11995815459

Dear Recipient:

Thank you for contacting the National Personnel Records Center. We are pleased to respond to your request for a copy of your Official Military Personnel File (OMPF) and available medical record by providing the enclosed document(s).

Additional service medical records (SMRs) may be available with the Department of Veterans Affairs (VA). We suggest that you contact the nearest VA Regional Office to obtain copies of the records. If a claim has been filed with the VA it would be helpful to include the VA claim number when contacting them. You may call **1-800-827-1000** to locate a VA office near you.

To help us protect Personally Identifiable Information (PII) of third parties and minimize costs to taxpayers, certain routine documents are omitted from our response. Examples of these include leave papers, group travel orders, identification card applications, letters of recommendation, and similar material. The information in your package, if available, includes the following:

Military Service Dates	Disciplinary Action(s)
Character of Service	Lost Time
Promotions and Reductions	Enlistment contract(s)
Duty Stations and Assignments	Entry and Separation Physical Exams
Foreign or Sea Service	Immunizations
Military Schooling and Training	Dental Examinations
Awards and Letters of Commendation	Clinical Summaries/Cover Sheets

This extract contains copies of the essential documents to certify your entitlement to most rights and benefits associated with military service, to identify the key events in your military service, and to document the significant events in your health care. If you provided hospitalization information (i.e. hospital and dates) you may also be receiving copies of information from your Inpatient (Clinical) Records. Clinical treatment records are not part of your OMPF or medical record and are filed by hospital and date discharged (month and year). Without this information we might not be able to search for or find hospitalization records.

If Separation Documents were in your OMPF, you are receiving copies of every one. Separation Documents may include the following information: type and character of discharge, authority

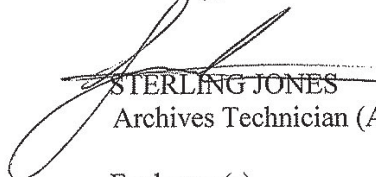
PETITIONER'S EXHIBIT 8
Page 1 of 40

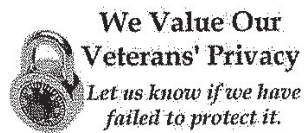
and narrative reason for separation, reenlistment eligibility code, and separation program designator/number. If you require a copy of the separation document that does not contain this information, please submit a follow-up request for a "**deleted**" Separation Document citing the case number on the top of this letter. A seal is affixed to the Separation Document(s) to attest to authenticity.

The Privacy Act of 1974 does not permit the release of personal information without the authorization of the individual concerned; therefore, if present in the record, personal data pertaining to other individuals have been blacked out.

If you have questions or comments regarding this response, you may contact us at 314-801-0800 or by mail at the address shown in the letterhead above. If you contact us, please reference the Request Number listed above. If you are a veteran, or a deceased veteran's next of kin, please consider submitting your future requests online by visiting us at <http://vetrecs.archives.gov>.

Sincerely,


STERLING JONES
Archives Technician (AFN-MC1B)
Enclosure(s)



THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA	1. LAST NAME, FIRST NAME-MIDDLE NAME SANDOVAL LEONARDO CONTRERAS		2. SERVICE NUMBER RA 18874206		3. SOCIAL SECURITY NUMBER 564 82 7690		
	4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS ARMY RA AV		5a. GRADE, RATE OR RANK PFC	6. PAY GRADE E3	7. DATE OF RANK 12 Sep 71	8. DATE OF BIRTH 15 Jul 50	
	7. U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8. PLACE OF BIRTH (City and State or Country) TUCSON, ARIZONA		9. DATE OF BIRTH 15 Jul 50		
SELECTIVE SERVICE DATA	10a. SELECTIVE SERVICE NUMBER 02 004 50 0137		b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE LB#4 GLOBE, ARIZONA			c. DATE INDUCTED NA	
	11a. TYPE OF TRANSFER OR DISCHARGE TRANSFERRED TO USAR (SEE 16)		b. STATION OR INSTALLATION AT WHICH EFFECTED FORT CARSON, COLORADO				
TRANSFER OR DISCHARGE DATA	c. REASON AND AUTHORITY PARA 5-3 AR 635-200 SPN 21L DA MSG 110102Z Dec 71		d. EFFECTIVE DATE 20 Dec 71		e. TYPE OF CERTIFICATE ISSUED NONE		
	12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 78th MED Co		13a. CHARACTER OF SERVICE HONORABLE		15. REENLISTMENT CODE RE-3B		
	14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED USAR CONTROL GROUP (REINFORCEMENT) USAAC, ST. LOUIS, MISSOURI		16. TERMINAL DATE OF RESERVE/ UMT&S OBLIGATION 26 Dec 74				
	17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY: <input checked="" type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> REENLISTED <input type="checkbox"/> OTHER		b. TERM OF SERVICE (Years) 3		c. DATE OF ENTRY 27 Dec 68		
SERVICE DATA	18. PRIOR REGULAR ENLISTMENTS NONE		19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC PV1		20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) LOS ANGELES, CALIFORNIA		
	21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code) 1833 1/2 E Gage Ave Los Angeles, L.A., California 90001		22. STATEMENT OF SERVICE				
	23a. SPECIALTY NUMBER & TITLE 67A10		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER 621.		c. FOREIGN AND/OR SEA SERVICE USARPAC		
	24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED NATIONAL DEFENSE SERVICE MEDAL VIETNAM CAMPAIGN MEDAL W/60 DEVICE VIETNAM SERVICE MEDAL W/3 BRONZE SERVICE STARS		25. EDUCATION AND TRAINING COMPLETED ATP 21-114 BENEFITS OF HONORABLE DISCHARGE CRR TRAINING CODE OF CONDUCT GENEVA CONVENTION				
	26a. NON-PAY PERIODS TIME LOST (Preceding Two Years) 8-23 Feb 71 12-20 Apr 71 17 May-25 Jun 71 3-16 May 71 22-23 Jun 71		b. DAYS ACCRUED LEAVE PAID INDEBT		27a. INSURANCE IN FORCE (NSLI or USGLI) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		c. MONTH ALLOTMENT DISCONTINUED NA
	28. VA CLAIM NUMBER NA		29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input checked="" type="checkbox"/> \$15,000 <input type="checkbox"/> \$10,000 <input type="checkbox"/> \$5,000 <input type="checkbox"/> NONE				
REMARKS	30. REMARKS 9 YEARS EDUCATION BLOOD GROUP: B POS VIETNAM: 23 Jun 69 - 29 Oct 70						
	31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code) St Rt Box 104 Wickenburg, Arizona 85392						
AUTHENTICATION	33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER RAYMOND E. BOWEN, JR. CPT AGC, ASST AG		34. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED <i>Leonardo C. Sandoval</i>				
	34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <i>Raymond E. Bowen Jr.</i>						

DD FORM 1 JUL 70 214

PREVIOUS EDITION OF THIS FORM IS TO BE USED.

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

2

PETITIONER'S EXHIBIT 8
Page 3 of 40

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA	1. LAST NAME, FIRST NAME-MIDDLE NAME SANDOVAL LEONARDO CONTRERAS		2. SERVICE NUMBER RA 18874206		3. SOCIAL SECURITY NUMBER 564 82 7690	
	4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS ARMY RA AV		5a. GRADE, RATE OR RANK PFC	6. PAY GRADE E3	7. DATE OF RANK 12 Sep 71	8. DATE OF BIRTH 15 Jul 50
SELECTIVE SERVICE DATA	7. U.S. CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8. PLACE OF BIRTH (City and State or Country) TUCSON, ARIZONA		9. DATE OF BIRTH 15 Jul 50	
	10a. SELECTIVE SERVICE NUMBER 02 004 50 0137		b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE LB#4 GLOBE, ARIZONA		c. DATE INDUCTED NA	
TRANSFER OR DISCHARGE DATA	11a. TYPE OF TRANSFER OR DISCHARGE TRANSFERRED TO USAR (SEE 16)		b. STATION OR INSTALLATION AT WHICH EFFECTED FORT CARSON, COLORADO			
	c. REASON AND AUTHORITY PARA 5-3 AR 635-200 SPN 21L DA MSG 110102Z Dec 71		d. EFFECTIVE DATE 20 Dec 71		e. TYPE OF CERTIFICATE ISSUED NONE	
	12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 78th MED CO		13a. CHARACTER OF SERVICE HONORABLE		15. REENLISTMENT CODE RE-3B	
	14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED USAR CONTROL GROUP (REINFORCEMENT) USAAC, ST. LOUIS, MISSOURI		16. TERMINAL DATE OF RESERVE/UMTS OBLIGATION 26 Dec 74			
SERVICE DATA	17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION a. SOURCE OF ENTRY: <input checked="" type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> REENLISTED <input type="checkbox"/> OTHER		b. TERM OF SERVICE (Years) 3		c. DATE OF ENTRY 27 Dec 68	
	18. PRIOR REGULAR ENLISTMENTS NONE		19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC PM1		20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) LOS ANGELES, CALIFORNIA	
	21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code) 1833 1/2 E Gage Ave Los Angeles, L.A., California 90001		22. STATEMENT OF SERVICE a. CREDITABLE FOR BASIC PAY PURPOSES (1) NET SERVICE THIS PERIOD 2 8 28 (2) OTHER SERVICE 0 0 0 (3) TOTAL (Line (1) plus Line (2)) 2 8 28 b. TOTAL ACTIVE SERVICE 2 8 28 c. FOREIGN AND/OR SEA SERVICE USARPAC 1 4 7			
	23a. SPECIALTY NUMBER & TITLE 67A10		b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER 621.			
	24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED NATIONAL DEFENSE SERVICE MEDAL VIETNAM CAMPAIGN MEDAL W/60 DEVICE VIETNAM SERVICE MEDAL W/3 BRONZE SERVICE STARS		25. EDUCATION AND TRAINING COMPLETED ATP 21-114 BENEFITS OF HONORABLE DISCHARGE CRR TRAINING CODE OF CONDUCT GENEVA CONVENTION			
	26a. NON-PAY PERIODS TIME LOST (Preceding Two Years) 8-28 Feb 71 12-20 Apr 71 17 May-25 Jun 71 3-16 May 71 22-23 Jun 71		b. DAYS ACCRUED LEAVE PAID INDET		27a. INSURANCE IN FORCE (NSLI or USGLI) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
VA AND EMP. SERVICE DATA	28. VA CLAIM NUMBER NA		29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input checked="" type="checkbox"/> \$15,000 <input type="checkbox"/> \$10,000 <input type="checkbox"/> \$5,000 <input type="checkbox"/> NONE		c. MONTH ALLOTMENT DISCONTINUED NA	
	30. REMARKS 9 YEARS EDUCATION BLOOD GROUP: B POS VIETNAM: 23 Jun 69 - 29 Oct 70					
AUTHENTICATION	31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code) St Rt Box 104 Wickenburg, Arizona 85392		32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED <i>Leonardo C. Sandoval</i>			
	33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER RAYMOND E. BOWEN, JR. CPT AGC, ASST AG		34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <i>Raymond E. Bowen Jr.</i>			

DD FORM 214
1 JUL 70

PREVIOUS EDITION OF THIS FORM IS TO BE USED.

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

2

PETITIONER'S EXHIBIT 8
Page 4 of 40

DEPARTMENT OF THE ARMY
OFFICE OF THE ADJUTANT GENERAL
U. S. ARMY RESERVE COMPONENTS PERSONNEL AND ADMINISTRATION CENTER
ST. LOUIS, MISSOURI 63132

19 NOV 74

AGUZ-RAD
LETTER ORDERS NUMBER 11-1343661

SUBJECT: DISCHARGE FROM USAR

SANDOVAL LEONARDO 564-82-7690
PO BOX 762
WINKELMAN AZ 85292

PFC 11B10
REINFORCEMENT

TC 340. ABOVE NAMED INDIVIDUAL DISCHARGED ON DATE INDICATED.

AUTHORITY: BY DIRECTION OF THE SECRETARY OF THE ARMY, PAR 3-1, AR 135-178

COMPONENT: READY RESERVE

RELIEVED FROM: USAR CONTROL GROUP REINFORCEMENT

EFFECTIVE DATE OF DISCHARGE: 1 DECEMBER 1974

TYPE OF DISCHARGE: HONORABLE

REASON FOR DISCHARGE: EXPIRATION OF TERM OF SERVICE

SELECTIVE SERVICE NUMBER: N/A

SPECIAL INSTRUCTIONS: IF RESERVE IDENTIFICATION DD FORM 2A (RED) IS IN YOUR POSSESSION
RETURN IT TO THIS HEADQUARTERS, ATTN: AGUZ-SEC.

* * * * *
* TAG, RCPAC *
* OFFICIAL *
* * * * *

LOUIS J. PROST
BRIGADIER GENERAL, USA
COMMANDING

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PETITIONER'S EXHIBIT 8
Page 5 of 40

EXHIBIT 131, Page 5 of 40
Case No. 2:19-cv-01278-SI

ENLISTMENT CONTRACT - ARMED FORCES OF THE UNITED STATES						Form Approved Budget Bureau No. 22-R016	
(Also to be used by AFES in conjunction with induction processing as a means of providing data for manpower information reporting systems.)							
1. SERVICE NO. RA18874206	2. HIGHEST SCHOOL GRADE COMPLETED A	3. RATE/GRADE PVT 1 E-1	4. BRANCH/CLASS AND COMPONENT RA	5. LAST NAME - FIRST NAME - MIDDLE NAME SANDOVAL LEONARDO			
6. DATE OF ENL/INDUC 27 DEC 68	7. TERM OF ENLISTMENT/INDUC 3 YEARS <input type="checkbox"/> MINORITY		8a. MARITAL STATUS S	8b. NO. DEPEND 0	9. NAME & LOCATION OF ACTIVITY EFFECTING ENLISTMENT/REENLISTMENT/INDUCTION AFES, LOS ANGELES, CALIF. 65		
10. AFQT SCORE 7C 020 IV	11. ENLISTED/REENLISTED/INDUCTED <input checked="" type="checkbox"/> 1ST ENLIST <input type="checkbox"/> REENL <input type="checkbox"/> INDUCTION			12. AUTHORITY FOR ENLISTMENT/REENLISTMENT/INDUC TABLE 5-5 AR 601-216			
13. TERM OF ACDU (Reserve only) N/A MONTHS	14. ACTIVE/INACTIVE STATUS (Reserve only) <input checked="" type="checkbox"/> RETAINED ON AD <input type="checkbox"/> IMMED AD (within 24 hrs) <input type="checkbox"/> INACTIVE DUTY			15. ACCEPTED AT RS/HUNTINGTON PK CA SSG SPILLE			
16. DATE MIL OBLI INC N/A	17. PMOS/AFS CODE/MOD 09800	18. RELIGION ROMAN-CATH	19. SSAN 564-82-769	20. CONTRACT DUTY LIMITATIONS N/A			
21. DATE OF BIRTH 15 JUL 50	22. CITIZENSHIP <input checked="" type="checkbox"/> US <input type="checkbox"/> NAT US		COUNTRY (Specify)		23. PLACE OF BIRTH (City, state or country) TUCSON ARIZONA		
24. DATE OF TRANSFER N/A	25. PHYSICAL PROFILE 111111A		26. N/A	27. TRANSFER TO (Activity and location) N/A		28. N/A	
29. DATE LAST DC/RAD N/A	30. SVC FROM WHICH LAST DISCHARGED N/A	31. N/A	32. CLASS 1A	33. TYPE OF LAST DISCHARGE N/A		34. NONE	
35. DATE OF RATE/GR N/A	36. SELECTIVE SERVICE NO. 02-004-50-0137		37. RATE/GR APT/RAPT N/A	38. SELECTIVE SERVICE LOCAL BD (Bd No., city & state) #4 GLOBE AR			
39. B ASD/ADBD 27 DEC 68	40. TOTAL ACTIVE FEDERAL SERVICE N/A YEARS MONTHS DAYS			41. HOME OF RECORD 1833 1/2 E GAGE AVE LOS ANGELES LA CALIF 90001			
42. BP ED/PEBD 27 DEC 68	43. TOTAL INACTIVE FEDERAL SERVICE N/A YEARS MONTHS DAYS			44. MENTAL TEST SCORES SEE ITEM #56			
45. SEX M	46. RACE C	47. DATA PROCESSING CODE N/A					
48. AIRBORNE							
49. PRIOR SERVICE							
BRANCH & CLASS/ARMED FORCE & COMPONENT	SERVICE NUMBER	DATE ENL, IND, APT, AND/OR OAD	DATE OF DISCHARGE OR RELEASE	GRADE/RATE OR RANK	TYPE OF DISCHARGE	REASON FOR DISCHARGE	TIME LOST (No. Days)
NONE							
<p>50. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for fraudulent enlistment and that, if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance.</p> <p>I am of the legal age to enlist. I have never deserted from and I am not a member of the Armed Forces of the United States, the US Coast Guard or any Reserve component thereof; I have never been discharged from the Armed Forces or any type of civilian employment in the United States or any other country on account of disability or through sentence of either civilian or military court unless so indicated by me in item 56, "Remarks" of this contract. I am not now drawing retired pay, a pension, disability allowance, or disability compensation from the government of the United States.</p> <p>51. SECTION 5538 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of war or in time of national emergency declared by the President for such period as he considers necessary in the public interest. Each member whose enlistment is extended under this section shall be discharged not later than six months after the end of the war or national emergency, unless he voluntarily extends his enlistment. (b) The substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or Regular Marine Corps."</p> <p>52. SECTION 5540 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States. (b) Each member retained under this section — (1) shall be discharged not later than 30 days after his arrival in the United States; and (2) except in time of war is entitled to an increase in basic pay of 25 percent. (c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service."</p> <p>53. I understand that, upon enlistment in a Reserve component of any of the Armed Forces of the United States, or upon transfer or assignment thereto, in time of war or National emergency declared by Congress, or when otherwise authorized by law, I may be ordered to active duty for the duration of the war or National emergency and for six months thereafter. OR SUCH OTHER PERIOD AUTHORIZED BY LAW.</p> <p>54. I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, geographical area, schooling, special programs, assignment of government quarters, or transportation of dependents except as indicated.</p>							

DD FORM 4, 1 AUG 66

REPLACES DD FORM 4, 1 OCT 63, WHICH IS OBSOLETE

55. I swear (or affirm) that the foregoing statements have been read to me, that my statements have been correctly recorded and are true in all respects and that I fully understand the conditions under which I am enlisting.	
SIGNATURE OF WITNESS D. A. RESNICK, 1LT AGC	SIGNATURE OF APPLICANT (First Name - Middle Name - Last Name) Leonardo NMN Sandoval
56. REMARKS REF ITEM: #3 TABLE 2-9 AP 601-214 DATE DD FORM 53 FORWARDED 27 DEC 68 AQB: IN102 AE106 EL075 GME93 MM094 CL088 GT082 1833 1/2 E GAGE AVE LOS ANGELES CALIF 90001	
57. OATH OF ENLISTMENT (For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)	
I, <u>LEONARDO SANDOVAL</u> , do hereby acknowledge to have voluntarily enlisted under the conditions prescribed by law, this <u>27TH</u> day of <u>DEC</u> , 19 <u>68</u> , in the <u>UNITED STATES ARMY</u> for a period of <u>THREE</u> years unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.	
SIGNATURE Leonardo NMN Sandoval	
58. OATH OF ENLISTMENT (For service in National Guard or Air National Guard)	
I do hereby acknowledge to have voluntarily enlisted this _____ day of _____, 19_____, in the (Army) (Air) National Guard of the State of _____ and as a Reserve of the (Army) (Air Force) with membership in the (Army National Guard of the United States) (Air National Guard of the United States) for a period of _____ (Years - Months - Days) under the conditions prescribed by law, unless sooner discharged by proper authority.	
I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice. So help me God.	
SIGNATURE	
59. CONFIRMATION OF ENLISTMENT	
The above oath was subscribed and duly sworn to before me this <u>27TH</u> day of <u>DECEMBER</u> , 19 <u>68</u> . To the best of my judgment and belief, enlistee fulfills all legal requirements, and in enlisting this applicant, I have strictly observed the regulations governing such enlistment. The above oath, as filled in, was read to the applicant prior to subscribing thereto.	
TYPED NAME, GRADE/RANK, AND ORGANIZATION OF ENLISTING OFFICER D. A. RESNICK, 1LT AGC AFCEES, LOS ANGELES, CALIF. 65.	SIGNATURE OF ENLISTING OFFICER 

DEPARTMENT OF THE ARMY
HEADQUARTERS 1ST AVIATION BRIGADE
APO San Francisco 96384

GENERAL ORDERS
NUMBER 5687

"NGUY HIEM"

5 November 1969

AWARD OF THE AIR MEDAL

1. TC 320. The following AWARDS are announced.

Awarded: Air Medal

Date action: As indicated in Standard Name Line

Theater: Republic of Vietnam

Reason: For meritorious achievement while participating in aerial flight.

Authority: By direction of the President under the provisions of Executive Order 9158, 11 May 1942, as amended by Executive Order 9242-A, 11 September 1942, AR 672-5-1 and USARV Reg 672-1 dated 1 July 1969.

ANDERSON, CARL D. SSAN: [REDACTED] SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 12 August 1969 to 30 August 1969

BENTHEIMER, DEAN R. SSAN: [REDACTED] SPECIALIST FIVE United States Army
57th Aviation Company (Assault Helicopter), APO 96499
Date action: 29 August 1969 to 11 September 1969

CAGLE, BILLY G. SSAN: [REDACTED] SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 28 August 1969 to 7 September 1969

CENTNER, ROBERT P. SSAN: [REDACTED] SPECIALIST FIVE United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 11 August 1969 to 26 August 1969

COUTURE, WILLIAM E. SSAN: [REDACTED] SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 31 May 1969 to 14 August 1969

DAGRE, JOHN C. SSAN: [REDACTED] SPECIALIST FIVE United States Army
Headquarters and Headquarters Company, 52nd Aviation Battalion (Combat),
APO 96494
Date action: 8 June 1969 to 10 July 1969

SLOANE, PAUL S. SSAN: [REDACTED] SPECIALIST FOUR United States Army
119th Aviation Company (Assault Helicopter), APO 96294
Date action: 18 May 1969 to 18 September 1969

KOVICH, PETER M. SSAN: [REDACTED] SPECIALIST FOUR United States Army
119th Aviation Company (Assault Helicopter), APO 96294
Date action: 19 February 1969 to 23 September 1969

MANUEL, GILES W JR. SSAN: [REDACTED] SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 17 August 1969 to 23 August 1969

MC GREGOR, WAYNE G. SSAN: [REDACTED] SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 13 August 1969 to 30 August 1969

MORRIS, BRUCE D. SSAN: [REDACTED] SPECIALIST FOUR United States Army
119th Aviation Company (Assault Helicopter), APO 96294
Date action: 8 February 1969 to 12 April 1969

RASCO, GARY L. SSAN: [REDACTED] SPECIALIST FIVE United States Army
119th Aviation Company (Assault Helicopter), APO 96294
Date action: 24 August 1969 to 27 September 1969


SANDOVAL, LEONARD C. SSAN: 564-82-7690 SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296
Date action: 25 August 1969 to 30 August 1969

GENERAL ORDERS NUMBER 5687, dated 5 November 1969, DEPARTMENT OF THE ARMY
HEADQUARTERS 1ST AVIATION BRIGADE, APO San Francisco 96384 (cont)

WHITE, LARRY D. SSAN: [REDACTED] STAFF SERGEANT United States Army
221st Aviation Company (Surveillance Airplane), APO 96296
Date action; 19 January 1969 to 28 August 1969

FOR THE COMMANDER:

OFFICIAL:


RAY C. SCOTT
CW4, USA
Asst Adj Gen

GEORGE E. HANDLEY, JR.
Colonel, Field Artillery
Chief of Staff

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DEPARTMENT OF THE ARMY
HEADQUARTERS 1ST AVIATION BRIGADE
APO San Francisco 96384

GENERAL ORDERS
NUMBER 3162

"NGUY HIEM"

4 May 1970

AWARD OF THE DISTINGUISHED FLYING CROSS

TC 439. The following AWARD is announced.

SANDOVAL, LEONARD C. SSAN: 564-82-7690 SPECIALIST FOUR United States Army
121st Aviation Company (Assault Helicopter), APO 96296

Awarded: Distinguished Flying Cross

Date of service: 27 February 1970

Theater: Republic of Vietnam

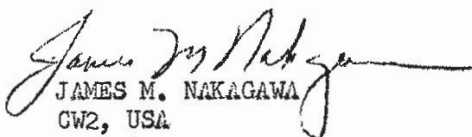
Authority: By direction of the President under the provisions of the Act of Congress, approved 2 July 1926, AR 672-5-1 and USARV Reg 672-1 dated 1 July 1969.

Reason: For heroism while participating in aerial flight evidenced by voluntary actions above and beyond the call of duty: Specialist Four Sandoval distinguished himself by exceptionally valorous actions while serving as gunner on a transport helicopter during an emergency night resupply and medical evacuation mission. With complete disregard for his own safety, Specialist Four Sandoval exposed himself to murderous enemy fire while delivering and unloading critically needed ammunition to an outnumbered friendly force being overrun by enemy soldiers. He then exited his aircraft to help place seriously wounded allied soldiers on the helicopter without thought for his own life. His actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

FOR THE COMMANDER:

OFFICIAL:

JERRY M. BUNYARD
LTC, Field Artillery
Chief of Staff


JAMES M. NAKAGAWA
CW2, USA
Asst AG

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE
APO San Francisco 96384

GENERAL ORDERS
NUMBER 3646

"NGUY HIEM"

13 May 1970

AWARD OF THE AIR MEDAL FOR HEROISM

TC 439. The following AWARDS are announced.

Awarded: As indicated in Standard Name Line

Date of service: 24 February 1970

Theater: Republic of Vietnam

Authority: By direction of the President under the provisions of Executive Order 9158, 11 May 1942, as amended by Executive Order 9242-A, 11 September 1942, AR 672-5-1 and USARV Reg 672-1 dated 1 July 1969.

Organization: 121st Aviation Company (Assault Helicopter), APO 96296

Reason: For heroism while engaged in aerial flight in connection with military operations against a hostile force: These men distinguished themselves by exceptionally valorous actions while serving aboard a group of troop transport helicopters during a combat assault operation against a numerically superior and well trained enemy force. During the action, their aircraft received numerous hits in critical areas. With complete disregard for their own safety, they leaned out of their helicopters exposing themselves to the murderous enemy fire trying to suppress and destroy the enemy gunners. Their valor and professionalism against a hostile force was instrumental in the successful completion of the mission. Their actions were in keeping with the highest traditions of the military service and reflect great credit upon himself, his unit, and the United States Army.

GREECE, ROBERT A. SSAN: [REDACTED] SPECIALIST FOUR United States Army

Awarded: Air Medal with "V" Device

CUMMINGS, DONALD V. SSAN: [REDACTED] SPECIALIST FIVE United States Army

Awarded: Air Medal with "V" Device

MARCOUX, GEORGE A. SSAN: [REDACTED] SPECIALIST FOUR United States Army

Awarded: Air Medal Second Award with "V" Device

MURPHY, KENNETH R. SSAN: [REDACTED] SPECIALIST FOUR United States Army

Awarded: Air Medal with "V" Device

SANDOVAL, LEONARD C. SSAN: 564-82-7690 SPECIALIST FOUR United States Army

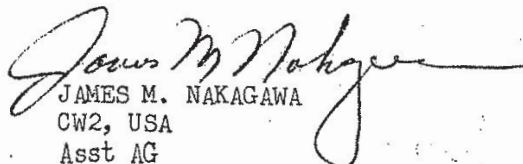
Awarded: Air Medal Second Award with "V" Device

SCOTT, IRA G. SSAN: [REDACTED] SPECIALIST FOUR United States Army

Awarded: Air Medal Second Award with "V" Device

FOR THE COMMANDER:

OFFICIAL:


JAMES M. NAKAGAWA
CW2, USA
Asst AG

JERRY M. BUNYARD
LTC, Field Artillery
Chief of Staff

GENERAL ORDERS NUMBER 3646, dated 13 May 1970, DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE, APO San Francisco 96384 (cont)

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE
APO San Francisco 96384

GENERAL ORDERS
NUMBER 4327

"NGUY HIEM"

27 May 1970

AWARD OF THE ARMY COMMENDATION MEDAL

TC 439. The following AWARDS are announced.

Awarded: Army Commendation Medal (First Oak Leaf Cluster)

Dates of service: As indicated in Standard Name Line

Theater: Republic of Vietnam

Authority: By direction of the Secretary of the Army under the provisions of AR 672-5-1 and USARV Reg 672-1 dated 1 July 1969.

Reason: For meritorious service in connection with military operations against a hostile force.

BRANDENBURG, MICHAEL D. SSAN: [REDACTED] SPECIALIST FOUR United States Army, Headquarters and Headquarters Company, 11th Aviation Battalion (Combat), APO 96289
Dates of service: July 1969 to July 1970

PADGET, MICHAEL J. SSAN: [REDACTED] SPECIALIST FIVE United States Army 121st Aviation Company (Assault Helicopter), APO 96296
Dates of service: May 1969 to May 1970

QUINSENBERRY, WILLIAM W. SSAN: [REDACTED] SPECIALIST FIVE United States Army, 121st Aviation Company (Assault Helicopter), APO 96296
Dates of service: June 1969 to June 1970

SANDOVAL, LEONARDO C. SSAN: 504-82-7690 SPECIALIST FOUR United States Army 121st Aviation Company (Assault Helicopter), APO 96296
Dates of service: June 1969 to June 1970

STREICH, PAUL G. SSAN: [REDACTED] SPECIALIST FOUR United States Army 121st Aviation Company (Assault Helicopter), APO 96296
Dates of service: June 1969 to June 1970

WADAS, PAUL L. SSAN: [REDACTED] SPECIALIST FOUR United States Army 121st Aviation Company (Assault Helicopter), APO 96296
Dates of service: June 1969 to June 1970

THOMAS, VERNON J. SSAN: [REDACTED] STAFF SERGEANT United States Army 142nd Transportation Company, APO 96349
Dates of service: May 1969 to May 1970

JOHNSON, TOMMY R. SSAN: [REDACTED] SPECIALIST FIVE United States Army 142nd Transportation Company, APO 96349
Dates of service: May 1969 to May 1970

BRIDGEMAN, WILLIAM SSAN: [REDACTED] SPECIALIST FIVE United States Army 221st Aviation Company (Surveillance Airplane), APO 96296
Dates of service: July 1969 to July 1970

GILMOUR, GARY SSAN: [REDACTED] SPECIALIST FOUR United States Army 221st Aviation Company (Surveillance Airplane), APO 96296
Dates of service: July 1969 to July 1970

MATTHEWS, JAMES W. SSAN: [REDACTED] SPECIALIST FOUR United States Army 221st Aviation Company (Surveillance Airplane), APO 96296
Dates of service: July 1969 to July 1970

PLUMMER, CHARLES A. SSAN: [REDACTED] SPECIALIST FOUR United States Army 221st Aviation Company (Surveillance Airplane), APO 96296
Dates of service: July 1969 to July 1970

GENERAL ORDERS NUMBER 4327, dated 27 May 1970, DEPARTMENT OF THE ARMY
HEADQUARTERS 1ST AVIATION BRIGADE, APO San Francisco 96384 (cont)

RICHARDS, DONALD R. SSAN: [REDACTED] SPECIALIST FOUR United States Army
221st Aviation Company (Surveillance Airplane), APO 96296

Dates of service: July 1969 to July 1970

SMITH, MILES SSAN: [REDACTED] SPECIALIST FOUR United States Army
221st Aviation Company (Surveillance Airplane), APO 96296

Dates of service: July 1969 to July 1970

FRY, KENNETH E. SSAN: [REDACTED] SPECIALIST FIVE United States Army
Headquarters and Headquarters Company, 145th Aviation Battalion (Combat)
APO 96227

Dates of service: June 1969 to June 1970

BALDWIN, JOHN W. JR. SSAN: [REDACTED] SPECIALIST FOUR United States Army
Headquarters and Headquarters Company, 145th Aviation Battalion (Combat)
APO 96227

Dates of service: June 1969 to June 1970

CLARIN, LYNN O. SSAN: [REDACTED] SPECIALIST FIVE United States Army
Headquarters and Headquarters Company, 145th Aviation Battalion (Combat)
APO 96227

Dates of service: June 1969 to July 1970

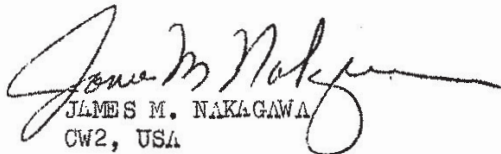
DOUGHERTY, ROBERT E. SSAN: [REDACTED] SPECIALIST FIVE United States Army
Headquarters and Headquarters Company, 145th Aviation Battalion (Combat)
APO 96227

Dates of service: September 1969 to July 1970

FOR THE COMMANDER:

OFFICIAL:

JERRY M. BUNYARD
LTC, Field Artillery
Chief of Staff


JAMES M. NAKAGAWA
CW2, USA
Asst AG

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 3D SURGICAL HOSPITAL (MA)
APO San Francisco 96215

GENERAL ORDER
NUMBER 170

22 October 1970

1. TC 439. The following AWARD is announced.

AWARDED: Purple Heart as indicated
Date(s) of service: As indicated in Standard Name Line
Theater: Republic of Vietnam
Authority: By direction of the President and under the provisions
of Army Regulation 959791 dated 20 September 1964.
Reason: For wounds received in connection with military operations
against a hostile force.

PURPLE HEART (FIRST AWARD)

BAYARD, James W. (SSAN: [REDACTED]) SPECIALIST FOUR
335th Avn Co APO 96359
Action Date: 21 October 1970

REDD, Carl P. (SSAN: [REDACTED]) SPECIALIST FIVE
335th Avn Co APO 96359
Action Date: 21 October 1970

SANDOVAL, Leonardo C. (SSAN: 564-82-7690) SPECIALIST FOUR
162nd Avn Co APO 96215
Action Date: 21 October 1971

FOR THE COMMANDER:

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ROBERT J. MILLER
1LT, MSC
Adjutant

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DEPARTMENT OF THE ARMY
HEADQUARTERS, 1ST AVIATION BRIGADE
APO San Francisco 96384

GENERAL ORDERS
NUMBER 11667

"NGUY HIEM"

26 November 1970

AWARD OF THE AIR MEDAL FOR HEROISM

TC 439. The following AWARDS are announced.

CONRAD, GARY M. [REDACTED] 121st Aviation Company (Assault Helicopter)
APO 96296
Awarded: Air Medal with "V" Device

ROBERTS, DENNIS J. [REDACTED] 121st Aviation Company (Assault Helicopter)
APO 96296
Awarded: Air Medal Second Award with "V" Device

~~SANDOVAL, LEONARDO G.~~ 564-82-7690 121st Aviation Company (Assault Helicopter)
APO 96296
Awarded: Air Medal Third Award with "V" Device

TIERNEY, DARRELL G. [REDACTED] 121st Aviation Company (Assault Helicopter)
APO 96296
Awarded: Air Medal Second Award with "V" Device

Awarded: As indicated in: Standard Name Line

Date of service: 11 August 1970

Theater: Republic of Vietnam

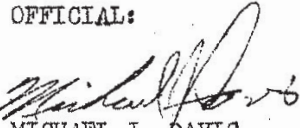
Authority: By direction of the President under the provisions of Executive Order 9158, 11 May 1942, as amended by Executive Order 9242-A, 11 September 1942, AR 672-5-1 and USARV Supplement 1 to AR 672-5-1 dated 10 August 1970.

Reason: For heroism while engaged in aerial flight in connection with military operations against a hostile force: These men distinguished themselves by exceptionally valorous actions while serving as helicopter crewmembers during a combat assault in the vicinity of Long Phu. While their aircraft were acting as the only gunships available, these men provided protective fire for a transport helicopter extracting Allied ground troops. At a time when extremely poor weather was imminent, their aircraft began receiving heavy automatic weapons fire from a well entrenched enemy position. With complete disregard for their own safety, these men repeatedly exposed themselves to hostile fire to place accurate and effective fire upon the enemy. Through their expert aerial gunnery and undaunted courage in the face of enemy fire, they were highly instrumental in the success of the mission. Their actions were in keeping with the highest traditions of the military service and reflect great credit upon themselves, their unit, and the United States Army.

GENERAL ORDERS NUMBER 11667, dated 26 November 1970, DEPARTMENT OF THE ARMY,
HEADQUARTERS, 1ST AVIATION BRIGADE, APO San Francisco 96384 (cont)

FOR THE COMMANDER:

OFFICIAL:



MICHAEL J. DAVIS
CPT, AGC
Asst AG

CHARLES R. SMITH JR.
Colonel, Infantry
Chief of Staff

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FT BEN HARRISON, INDIANA 46249



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY VIETNAM
APO SAN FRANCISCO 96375

AVHAG-PD

29 November 1970

SUBJECT: Authorization for Individual Foreign Award

SP4 Leonardo C. Sandoval, 564-82-7690
121st Avn Co, 13th Avn Bn,
164th Avn Gp, 1st Avn Bde
APO 96296

1. Under the provisions of AR 672-5-1, you are hereby authorized to accept and wear the following decoration which was presented to you by the Government of the Republic of Vietnam:

GALLANTRY CROSS WITH BRONZE STAR

2. This letter constitutes authorization to have the award entered on your personnel records. Inclosed are the official Vietnamese decree, an English translation, and a copy of this letter for inclusion in your Field 201 File.

3. The only elements received through official channels for this decoration are attached and no other elements are forthcoming. This headquarters is not authorized to stock and issue medals or ribbons pertaining to foreign awards.

FOR THE COMMANDER:

SIGNED

3 Incl
as

ALBIN T. ZUKOWSKI
Major, AGC
Asst Adjutant General

Copy furnished:

X AGPERSCEN, DA ATTN: AGPE-F
Ft Benjamin Harrison, Indiana 46249
TAGO, DA ATTN: AGPF-F
(for official personnel file)
X CG, 1st Avn Bde

USARV FL 194 Revised 7 Oct 70 PREVIOUS EDITIONS OBSOLETE

DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY AIR DEFENSE CENTER AND FORT BLISS
Fort Bliss, Texas 79916


SUMMARY COURT-MARTIAL ORDER
NUMBER 4

8 April 1971

Pursuant to the authority of paragraph 94, MCM, so much of the sentence as is in excess of forfeiture of \$168.00 per month for one month in the summary court-martial case of Private First Class Leonardo C. Sandoval, 564-82-7690, US Army, Medical Holding Company, William Beaumont General Hospital, El Paso, Texas, adjudged on 1 April 1971 and promulgated in Summary Court-Martial Order Number 10, Headquarters, William Beaumont General Hospital, El Paso, Texas, dated 1 April 1971, is set aside. All rights, privileges, and property of which the accused has been deprived by virtue of that portion of the sentence so set aside will be restored.

BY COMMAND OF MAJOR GENERAL CASSIDY:

OFFICIAL:


RAYMOND T. BROCHU
CW3, USA
Act Asst AG

WILLIAM E. HOLMES
Colonel, GS
Chief of Staff

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- 2 - Custodian, Mil Personnel Financial Data Records, FBT
- 5 - MPB

U.S. Army Air Defense Center & Ft. Bliss

Office of the Staff Judge Advocate

Fort Bliss, Texas 79916

Findings and sentence, as approved
by convening authority, correct in law
and fact.



DEPARTMENT OF THE ARMY
HQ WILLIAM BEAUMONT GENERAL HOSPITAL
EL PASO, TEXAS 79920

SUMMARY COURT-MARTIAL ORDER
NUMBER 10

1 April 1971

Before a Summary Court-Martial which assembled at William Beaumont General Hospital, El Paso, Texas, pursuant to Court-Martial Convening Order Number 2, Headquarters William Beaumont General Hospital, El Paso, Texas, 27 January 1971, was arraigned and tried:

Specialist Four (E-4) Leonardo C. Sandoval, 564-82-7690, U. S. Army, Medical Holding Company, William Beaumont General Hospital, El Paso, Texas

Charge: Violation of the Uniform Code of Military Justice, Article 86

Specification: In that Specialist Fourth Class Leonardo C. Sandoval, US Army, Medical Holding Company, William Beaumont General Hospital, El Paso, Texas 79920, did on or about 0700 hours 8 February 1971, without proper authority absent himself from his unit, to wit: Medical Holding Company, William Beaumont General Hospital, El Paso, Texas 79920, and did remain so absent until on or about 1325 hours 1 March 1971.

PLEAS

To the Specification, of the Charge: Guilty
To the Charge: Guilty

FINDINGS

Of the Specification, of the Charge: Guilty
Of the Charge: Guilty

SENTENCE

To be reduced to the grade of Private First Class E-3, and to forfeit \$189.00 per month for one month. (No previous convictions considered).

The sentence was adjudged on 1 April 1971.

U.S. Army Air Defense Center & Ft. Bliss
Office of the Staff Judge Advocate
Fort Bliss, Texas 79916

Findings and sentence, as approved
by convening authority, correct in law
and fact.

Cpt Robert B. Warren - as amended by Summary C.M.O. # 4, Hq. Ft. Bliss, 8 April 1971

SCMO, 10, HQ WBGH, EPTX, 1 Apr 71 (Continued)

ACTION
DEPARTMENT OF THE ARMY
HQ WILLIAM BEAUMONT GENERAL HOSPITAL
EL PASO, TEXAS 79920

1 April 1971

In the foregoing case of Specialist Four Leonardo C. Sandoval, 564-82-7690, US Army, Medical Holding Company, William Beaumont General Hospital, El Paso, Texas, the sentence is approved and will be duly executed.

/s/Robert M. Hardaway, III, M.D.
/t/ROBERT M. HARDAWAY, III, M.D.
Brigadier General, MC
Commanding

BY COMMAND OF BRIGADIER GENERAL HARDAWAY:

OFFICIAL:

MARVIN SPATZ
MAJ, MSC
Adjutant

Charles E. Dyer
CHARLES E. DYER, II
CPT, MSC
Asst Adjutant

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- 4 - F&AO
- 1 - CO, USA Pers Svc Spt Cn ATTN: AGPE-F Ft Benjamin Harrison IN 46249
- 1 - Chief, Ex Div MPO Fin Cn USA Indianapolis IN 46249
- 5 - MPB

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is the Office of the Judge Advocate General.

This form will be used in ALL cases involving officers and warrant officers, and in those cases involving enlisted personnel when punishment OTHER THAN oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof is considered appropriate punishment.

NAME SANDOVAL, LEONARD C.	SERVICE NUMBER/SSAN 564 82 7690	BASIC PAY PER MONTH 180.90	SEA OR FOREIGN DUTY PAY NONE	TOTAL PAY 180.90
ORGANIZATION USAPERSCONFAC, USATC-I	DATE OF BIRTH 15 July 1950	GRADE PFC E-3	CONTRIBUTION TO QUARTERS ALLOWANCE (Class O) (Para 131c (8) and (9) MCM, 1969) NONE	

SECTION I - NOTIFICATION

ORGANIZATION AND STATION OF NOTIFYING OFFICIAL

THRU: 1 25 JUNE 1971
 THRU: 1 (Date)
 TO: PFC E3 Leonard C. Sandoval, 564 82 7690
 (Grade, first name, middle initial, last name, Service No./SSAN)
 USAPERSCONFAC, USATC-I, Ft Ord, CA
 (Organization)

1. It has been reported that, on or about 17 May 1971 19 , at ////////////////, you did, without authority, absent yourself from your organization, to wit: Medical Holding Company, William Beaumont General Hospital located at El Paso, Texas, and did remain so absent until on or about 22 June 1971. (Violation of Art 86, UCMJ).

2. It is the ³ intention of the ³ Commanding Officer ³ of this organization to impose nonjudicial punishment upon you as to such offense(s)⁴ under the provisions of Article 15, UCMJ unless you expressly demand trial by court-martial⁵
 (my) (the) (as) (of) (a principal assistant to whom the) (the)
 (Officer) (General) (has delegated his Article 15 authority)

3. You are directed to acknowledge receipt of this communication in Section II of this form within 24 hours ³
 after your receipt thereof.⁶ You may submit any matter in mitigation, extenuation, or defense. That is to say you may present any excuses, explanations, or reasons for your actions whatever.
 (hours) (days)

4. You are hereby informed that under the provisions of Article 31, UCMJ, you are not required to make any statement regarding the offense(s)⁴ described above, and that any statement you may desire to make concerning the offense(s)⁴ may be used as evidence against you in a trial by court-martial.

FOR THE COMMANDER:⁷

CHARLES B WHITE, CPT, Inf
 (Typed or printed name, grade and branch)

Cmdg Officer, Co C, USAPERSCONFAC
 (Title)

/s/ Charles B White

DA FORM 2627-1

REPLACES EDITION OF 1 MAR 65, WHICH WILL BE USED.

1
 PETITIONER'S EXHIBIT 8
 Page 22 of 40

SECTION II - ACKNOWLEDGMENT OF NOTIFICATION

THRU: _____ 1
 THRU: _____ 1
 TO: _____ 8

 (Organization)

25 June 71
(Date)

I acknowledge receipt of the foregoing communication. Trial by court-martial is not ³ demanded. ⁵
 (is) (is not)
is not ³ in extenuation, mitigation, or defense submitted herewith
 (The following matters) (Matters) (are) (are not)
3
 (and are attached hereto) (and are contained in Section V)

SANDOVAL, Leonard C. E-3, 564-82-7690
 (Typed or printed name, grade and Service No./SSAN)

/s/ Leonard C. Sandoval

SECTION III - IMPOSITION OF PUNISHMENT

(If, at this time, it is determined that no punishment is warranted, the individual concerned shall be notified of this fact and the record destroyed.)

THRU: _____ 1
 THRU: _____ 1
 TO: E-3 Leonard C. Sandoval, 564-82-7690
 (Grade, first name, middle initial, last name, Service No./SSAN)
USA Pers Con Fac, Ft Ord, CA 93941
 (Organization)

25 June 1971
(Date)

1. The following punishment(s) ⁴ are ³ hereby imposed:
 (is) (are)

Forfeiture of \$70.00 a month for two months and reduction of grade to E-2.

2. You are advised of your right to appeal in accordance with para 135, MCM, 1969. You are directed to indicate on Section IV of this form the date of receipt of this communication within 48 ³ after your receipt thereof and to make any appeal you may desire to make. ⁶ If you exercise your right to appeal, your appeal should be addressed

to HQ Comdt HQ Comd USATC & FT Ord, CA 93941 ¹⁰
Incl

ARTHUR M. WILCOX JR. MAJ, INF
 (Typed or printed name, grade and branch)

Acting Commander USAPCF
 (Title)

/s/ Arthur M. Wilcox Jr.

2

/ If signed personally, strike out command line.

4

☆ GPO: 1969 — 343-785/650

PETITIONER'S EXHIBIT 8
 Page 23 of 40

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

SECTION IV - ACKNOWLEDGEMENT OF IMPOSITION OF PUNISHMENT

THRU: POSITIVE COMMUNICAL OFFICE 1 25 June 1971
 THRU: 1 (Date)
 THRU: 1
 TO: 11

I received the foregoing communication (Section III) on

25, June 71
 (Date)

I DO NOT appeal from this punishment. ¹²
 (Do) (do not)

13

Incl

13

(Typed or printed name, grade and Service No. (SSAN))

/s/ Leonard E. Sandoval

SECTION V

THIS SPACE MAY BE USED FOR ADDITIONAL REMARKS AND CONTINUATION OF SECTIONS. THE CORRESPONDING SECTION BEING CONTINUED SHOULD BE INDICATED. THIS SPACE ALSO MAY BE USED FOR SUMMARIZING AND ORAL PROCEEDINGS. (See 133a, MCM, 1969.) IF ADDITIONAL SPACE IS REQUIRED, USE REVERSE SIDE OF THIS PAGE OR ATTACH ADDITIONAL SHEETS NUMBERING EACH SHEET CONSECUTIVELY STARTING WITH PAGE 5.

13

(See Reverse Side)

1. NAME (Last, first, middle initial) AND SERVICE NUMBER

9. RELIGION ROMAN CATH		10. MAR. STATUS and NO. DEPN S O		11. ENLISTED, INDUCTED, REENLISTED, EXTENDED, AND/OR OAD		12. NON-CONUS RESIDENT		24. APTITUDE TESTS				25. OTHER TESTS			
COMPONENT	EFFECTIVE DATE (Day, Month, Year)	LENGTH	*	EXPIRATION DATE (Day, Month, Year)		FORM	SCORE	RETEST SCORE	APTITUDE AREAS	SCORE	RETEST SCORE	TEST	SCORE	GROUP	DATE
RA	27DEC68	300		5MAR72		VE	82		IN	102		MDB-1*	122	AB	9JAN69
				Ref 44		AR	82		AE	106		OCT-			
						SM	99		EL	75		ALAT-			
ORDERED TO ACTIVE DUTY				70DBT		PA	82		GM	93		AFAT	20	IR	27DEC68
				20DEC71		ACS	94		MM	94					
14. RESERVE COMPONENT INFORMATION					15. RES COMM AND WO STATUS					26. TRAINING RECOMMENDED					
READY RESERVE OBLIGATION EXPIRATION DATE					GRADE	BRANCH	SERVICE NUMBER		CL	83					
DA FORM 1140 AGREEMENT EXPIRATION DATE					DA FORM 67-5			MA	74	GT	82				
					SUBM FOR PERIOD			ELI	75	RC	71				
RETIREMENT YEAR ENDING DATE					16. SERVICE DATES			GIT	2107	CO-A	None				
					TYPE DATE			CI	2112	CO-B	None				
SERVICE OBLIGATION EXPIRATION DATE					BASD ADJ 6MAR69			ARC	60						
					BPED ADJ 6MAR69			PLACE TESTED	CACAL	PLACE RETESTED					
CRITICAL OCCUPATION AND DOT CODE					BESD			DATE TESTED	27DEC68	DATE RETESTED					
					LAST PCS 24MAY69										
HOME OF RECORD					FSA CODE 6 29OCT70										
17. PHYSICAL STATUS															
P	U	L	H	E	S										
HEIGHT 5 FT. 7 IN.	WEIGHT 135 LBS.		GLASSES		YES	NO									
18. ASSIGNMENT LIMITATIONS															
19. INVESTIGATIONS AND CLEARANCES															
DOD NAC CENTER															
SPH Compl 26 Dec 68 Latest SPH Compl: 26 Dec 68															
20. BIRTHPLACE AND CITIZENSHIP															
SELF	TUCSON ARIZ		US		21. RESIDENCE IN FOREIGN COUNTRY										
SPOUSE	None				LAST YEAR	COUNTRY	LENGTH	22. LANGUAGES (Specify)							
FATHER	Buckeye ARIZ		US		INTER. TRANS.										
MOTHER	Hayden ARIZ		US		SPK ABIL READ ABIL DATE OF TEST DATE DA FORM 330 SUBMITTED										

* Space reserved for future coding.

2

★ GPO : 65 Q - 782-703

1

INSERT SHEET NO. 1

SANDOVAL, LEONARDO
564-82-7690

INSERT SHEET TO DA FORM 20
RECORD OF COURT-MARTIAL CONVICTION
(AR 600-200)

NAME (Last, first, middle initial) AND SERVICE NUMBER

49. TYPE COURT MARTIAL	a. NUMBER	b. HEADQUARTERS	c. ARTICLE	53. ALTERATION, SUSPENSION, REMISSION, SETTING ASIDE OF TRIAL RESULTS PER ¹
Summary	10	William Beaumont General Hospital	86	SCMO 4 Hq USAADCENFB 8Apr71 ¹ Delete words not applicable
50. SYNOPSIS OF SPECIFICATIONS, INCLUDING DATE OF OFFENSE				54. SIGNATURE & TYPED OR PRINTED NAME, GRADE, ORG
AWOL 8Feb71 to 1Mar71				WARREN N. KERBER, 1LT, MSC, Hq WBGH
51. SENTENCE AS APPROVED, INCLUDING DATE ADJUDGED AND DATE APPROVED				55. ORDERS SUSPENDING SENTENCE VACATED PER
Reduced to PFC and to forfeit \$189.00 per mo for one mo. Adjudged: 1Apr71 Approved: 1Apr71				
52. I CERTIFY THAT THE FOREGOING IS CORRECT (Signature and typed or printed name, grade, organization)				56. SIGNATURE & TYPED OR PRINTED NAME, GRADE, ORG
ROY C. JAMES, LTC, MSC, Hq William Beaumont General Hospital				
49. TYPE COURT MARTIAL	a. NUMBER	b. HEADQUARTERS	c. ARTICLE	53. ALTERATION, SUSPENSION, REMISSION, SETTING ASIDE OF TRIAL RESULTS PER ¹
				¹ Delete words not applicable
50. SYNOPSIS OF SPECIFICATIONS, INCLUDING DATE OF OFFENSE				54. SIGNATURE & TYPED OR PRINTED NAME, GRADE, ORG
51. SENTENCE AS APPROVED, INCLUDING DATE ADJUDGED AND DATE APPROVED				55. ORDERS SUSPENDING SENTENCE VACATED PER
52. I CERTIFY THAT THE FOREGOING IS CORRECT (Signature and typed or printed name, grade, organization)				56. SIGNATURE & TYPED OR PRINTED NAME, GRADE, ORG
49. TYPE COURT MARTIAL	a. NUMBER	b. HEADQUARTERS	c. ARTICLE	53. ALTERATION, SUSPENSION, REMISSION, SETTING ASIDE OF TRIAL RESULTS PER ¹
				¹ Delete words not applicable
50. SYNOPSIS OF SPECIFICATIONS, INCLUDING DATE OF OFFENSE				54. SIGNATURE AND TYPED OR PRINTED NAME, GRADE, ORG
51. SENTENCE AS APPROVED, INCLUDING DATE ADJUDGED AND DATE APPROVED				55. ORDERS SUSPENDING SENTENCE VACATED PER
52. I CERTIFY THAT THE FOREGOING IS CORRECT (Signature and typed or printed name, grade, organization)				56. SIGNATURE & TYPED OR PRINTED NAME, GRADE, ORG

DA FORM 20B
JAN 65

REPLACES DA FORM 26, 1 NOV 54, WHICH IS OBSOLETE EFFECTIVE 1 APR 65.

Standard Form 88
(Rev. June 1956)
Bureau of the Budget
Circular A-32 (Rev.)

REPORT OF MEDICAL EXAMINATION

88-111-01

1. LAST NAME—FIRST NAME—MIDDLE NAME <u>SANDOVAL, Leonardo NMN</u>			2. GRADE AND COMPONENT OR POSITION <u>RA</u>		3. IDENTIFICATION NO.	
4. HOME ADDRESS (Number, street or RFD, city or town, zone and State) <u>1833 1/2 E. Gage Ave. Los Angeles, Calif. 90001</u>			5. PURPOSE OF EXAMINATION <u>RA</u>		6. DATE OF EXAMINATION <u>27 Dec 68</u>	
7. SEX <u>Male</u>	8. RACE <u>Cau</u>	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY _____ CIVILIAN _____		10. AGENCY		11. ORGANIZATION UNIT
12. DATE OF BIRTH <u>15 Jul 50</u>		13. PLACE OF BIRTH <u>Tucson, Ariz.</u>		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN <u>Nicolas Sandoval Father</u> <u>[REDACTED]</u>		
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS <u>AFES, LOS ANGELES, CALIF. 90015</u>				16. OTHER INFORMATION		
17. RATING OR SPECIALTY				TIME IN THIS CAPACITY (Total)		LAST SIX MONTHS

CLINICAL EVALUATION		ABNOR-
NO.	(Check each item in appropriate column; enter "NE" if not evaluated.)	MAL
18.	HEAD, FACE, NECK, AND SCALP	
19.	NOSE	
20.	SINUSES	
21.	MOUTH AND THROAT	
22.	EARS—GENERAL (Int. & ext. canals) (Auditory acuity under items 70 and 71)	
23.	DRUMS (Perforation)	
24.	EYES—GENERAL (Visual acuity and refraction under items 68, 69 and 67)	
25.	OPHTHALMOSCOPIC	
26.	PUPILS (Equality and reaction)	
27.	OCULAR MOTILITY (Associated parallel movements, nystagmus)	
28.	LUNGS AND CHEST (Include breasts)	
29.	HEART (Thrust, size, rhythm, sounds)	
30.	VASCULAR SYSTEM (Varicosities, etc.)	
31.	ABDOMEN AND VISCERA (Include hernia)	
32.	ANUS AND RECTUM (Hemorrhoids, fistulae) (Prostate, if indicated)	
33.	ENDOCRINE SYSTEM	
34.	G-U SYSTEM	
35.	UPPER EXTREMITIES (Strength, range of motion)	
36.	FEET	
37.	LOWER EXTREMITIES (Except feet) (Strength, range of motion)	
38.	SPINE, OTHER MUSCULOSKELETAL	
39.	IDENTIFYING BODY MARKS, SCARS, TATTOOS	
40.	SKIN, LYMPHATICS	
41.	NEUROLOGIC (Equilibrium tests under item 72)	
42.	PSYCHIATRIC (Specify any personality deviation)	
43.	PELVIC (Females only) (Check how done)	
	<input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

44. DENTAL (Place appropriate symbols above or below number of upper and lower teeth, respectively.)																		REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES ACCEPTABLE	
O—Restorable teeth X—Missing teeth (6 X 8)—Fixed bridge, brackets to include abutments /—Nonrestorable teeth XXX—Replaced by dentures																			
R	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	L		
I	32	31	30	29	28	27	26	25	24	23	22	21	20	19	18	17	E		
G																	F		
H																	T		
T																			

LABORATORY FINDINGS				7 DEC 1968			
45. URINALYSIS: A. SPECIFIC GRAVITY				46. CHEST X-RAY (Place, date, film number and result)			
B. ALBUMIN <u>NEGATIVE</u>				94 AFES, LOS ANGELES, CALIF.			
C. SUGAR <u>NEGATIVE</u>				70mm X-Ray — Negative			
47. SEROLOGY (Specify test used and result)				48. EKG			
49. BLOOD TYPE AND RH FACTOR				50. OTHER TESTS			
RPR-NON REACTIVE				NORMAL			

PETITIONER'S EXHIBIT 8
Page 30 of 40

MEASUREMENTS AND OTHER FINDINGS																							
51. HEIGHT <u>67 1/2</u>		52. WEIGHT <u>133</u>		53. COLOR HAIR <u>Bx</u>		54. COLOR EYES <u>Bx</u>		55. BUILD: (Check one) <u>Med</u>		SLENDER	MEDIUM	HEAVY	OBESE	56. TEMPERATURE									
57. BLOOD PRESSURE (Arm at heart level)												58. PULSE (Arm at heart level)											
A. SITTING		B. RECUMBENT		C. STANDING (3 min.)		A. SITTING		B. AFTER EXERCISE		C. 2 MIN. AFTER		D. RECUMBENT		E. AFTER STANDING 3 MIN.									
59. DISTANT VISION		60. REFRACTION		61. NEAR VISION																			
RIGHT 20/ <u>20</u> CORR. TO 20/		BY S. CX		20/ <u>20</u> CORR. TO BY																			
LEFT 20/ <u>20</u> CORR. TO 20/		BY S. CX		20/ <u>20</u> CORR. TO BY																			
62. HETEROPHORIA (Specify distance)																							
ES°		EX°		R. H.		L. H.		PRISM DIV.		PRISM CONV. CT		PC		PD									
63. ACCOMMODATION				64. COLOR VISION (Test used and result)				65. DEPTH PERCEPTION (Test used and score)				UNCORRECTED											
RIGHT LEFT				<u>FLAT</u>				<u>4/14</u>				CORRECTED											
66. FIELD OF VISION				67. NIGHT VISION (Test used and score)				68. RED LENS TEST				69. INTRAOCULAR TENSION											
70. HEARING				71. AUDIOMETER								72. PSYCHOLOGICAL AND PSYCHOMOTOR (Tests used and score)											
RIGHT WV		/15 SV		/15		250 266		500 512		1000 1024		2000 2048		3000 2896		4000 4096		6000 6144		8000 8192			
LEFT WV		/15 SV		/15		RIGHT		LEFT		8000		8192		8000		8192							
73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY																							
<u>7c 20 IV</u>																							
PHYSICAL INSPECTION. DATE <u>AFES, LOS ANGELES, CALIFORNIA</u> No additional defects discovered. (Fit) (Unfit) for military service.																							
(Use additional sheets if necessary)																							
74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)																							
75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)																							
76. A. PHYSICAL PROFILE																							
P U L H E S																							
B. PHYSICAL CATEGORY																							
A B C E																							
77. EXAMINEE (Check)																							
A. <input checked="" type="checkbox"/> IS QUALIFIED FOR																							
B. <input type="checkbox"/> IS NOT QUALIFIED FOR																							
78. IF NOT QUALIFIED. LIST DISQUALIFYING DEFECTS BY ITEM NUMBER																							
79. TYPED OR PRINTED NAME OF PHYSICIAN																							
S. H. LAWRENCE, M.D.																							
80. TYPED OR PRINTED NAME OF PHYSICIAN																							
81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which)																							
82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY																							
NORMAN J. HOFFMAN CPT MC USAF																							
* U.S. GOVERNMENT PRINTING OFFICE : 1967 O-272-599																							

PETITIONER'S EXHIBIT 8

Standard Form 89
(REV. MARCH 1965)
BUREAU OF THE BUDGET
CIRCULAR A-32

REPORT OF MEDICAL HISTORY

THIS INFORMATION IS FOR OFFICIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS

89-106-01

1. LAST NAME—FIRST NAME—MIDDLE NAME SANDOVAL, Leonardo NMN		2. GRADE AND COMPONENT OR POSITION RA		3. IDENTIFICATION NO.
4. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP Code) 1833½ E. Gage Ave. Los Angeles, Calif. 90001		5. PURPOSE OF EXAMINATION RA		6. DATE OF EXAMINATION 27 Dec 68
7. SEX Male	8. RACE Cau	9. TOTAL YEARS GOVERNMENT SERVICE MILITARY CIVILIAN		10. AGENCY
11. ORGANIZATION UNIT		12. DATE OF BIRTH 15 Jul 50		
13. PLACE OF BIRTH Tucson, Ariz.		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN Nicolas Sandoval Father		
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS AFES, LOS ANGELES, CALIF. 90015		16. OTHER INFORMATION		

17. STATEMENT OF EXAMINEE'S PRESENT HEALTH IN OWN WORDS (Follow by description of past history, if complaint exists)

lost month.
had a check up recently, for my present job. - Passed the examination

18. FAMILY HISTORY				19. HAS ANY BLOOD RELATION (Parent, brother, sister, other) OR HUSBAND OR WIFE			
RELATION	AGE	STATE OF HEALTH	IF DEAD, CAUSE OF DEATH	AGE AT DEATH	YES	NO	RELATION(S)
FATHER	46	excellent					HAD TUBERCULOSIS <i>no</i>
MOTHER	44	excellent					HAD SYPHILIS <i>no</i>
SPOUSE							HAD DIABETES <i>no</i>
BROTHERS	22	excellent					HAD CANCER <i>no</i>
AND	20	excellent					HAD KIDNEY TROUBLE <i>no</i>
SISTERS	16	excellent					HAD HEART TROUBLE <i>no</i>
CHILDREN							HAD STOMACH TROUBLE <i>no</i>
							HAD RHEUMATISM (Arthritis) <i>no</i>
							HAD ASTHMA, HAY FEVER, HIVES <i>no</i>
							HAD EPILEPSY (Fits) <i>no</i>
							COMMITTED SUICIDE <i>no</i>
							BEEN INSANE <i>no</i>

20. HAVE YOU EVER HAD OR HAVE YOU NOW (Place check at left of each item)

YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)	YES	NO	(Check each item)
	<input checked="" type="checkbox"/>	SCARLET FEVER, ERYSIPELAS		<input checked="" type="checkbox"/>	GOITER		<input checked="" type="checkbox"/>	TUMOR, GROWTH, CYST, CANCER		<input checked="" type="checkbox"/>	"TRICK" OR LOCKED KNEE
	<input checked="" type="checkbox"/>	DIPHTHERIA		<input checked="" type="checkbox"/>	TUBERCULOSIS		<input checked="" type="checkbox"/>	RUPTURE/HERNIA		<input checked="" type="checkbox"/>	FOOT TROUBLE
	<input checked="" type="checkbox"/>	RHEUMATIC FEVER		<input checked="" type="checkbox"/>	SOAKING SWEATS (Night sweats)		<input checked="" type="checkbox"/>	APPENDICITIS		<input checked="" type="checkbox"/>	NEURITIS
	<input checked="" type="checkbox"/>	SWOLLEN OR PAINFUL JOINTS		<input checked="" type="checkbox"/>	ASTHMA		<input checked="" type="checkbox"/>	PILES OR RECTAL DISEASE		<input checked="" type="checkbox"/>	PARALYSIS (Inc. infantile)
<input checked="" type="checkbox"/>		MUMPS		<input checked="" type="checkbox"/>	SHORTNESS OF BREATH		<input checked="" type="checkbox"/>	FREQUENT OR PAINFUL URINATION		<input checked="" type="checkbox"/>	EPILEPSY OR FITS
	<input checked="" type="checkbox"/>	COLOR BLINDNESS		<input checked="" type="checkbox"/>	PAIN OR PRESSURE IN CHEST		<input checked="" type="checkbox"/>	KIDNEY STONE OR BLOOD IN URINE		<input checked="" type="checkbox"/>	CAR, TRAIN, SEA, OR AIR SICKNESS
	<input checked="" type="checkbox"/>	FREQUENT OR SEVERE HEADACHE		<input checked="" type="checkbox"/>	CHRONIC COUGH		<input checked="" type="checkbox"/>	SUGAR OR ALBUMIN IN URINE		<input checked="" type="checkbox"/>	FREQUENT TROUBLE SLEEPING
	<input checked="" type="checkbox"/>	DIZZINESS OR FAINTING SPELLS		<input checked="" type="checkbox"/>	PALPITATION OR POUNDING HEART		<input checked="" type="checkbox"/>	BOILS		<input checked="" type="checkbox"/>	FREQUENT OR TERRIFYING NIGHTMARES
	<input checked="" type="checkbox"/>	EYE TROUBLE		<input checked="" type="checkbox"/>	HIGH OR LOW BLOOD PRESSURE		<input checked="" type="checkbox"/>	VD-SYPHILIS, GONORRHEA, ETC.		<input checked="" type="checkbox"/>	DEPRESSION OR EXCESSIVE WORRY
	<input checked="" type="checkbox"/>	EAR, NOSE OR THROAT TROUBLE		<input checked="" type="checkbox"/>	CRAMPS IN YOUR LEGS		<input checked="" type="checkbox"/>	RECENT GAIN OR LOSS OF WEIGHT		<input checked="" type="checkbox"/>	LOSS OF MEMORY OR AMNESIA
	<input checked="" type="checkbox"/>	RUNNING EARS		<input checked="" type="checkbox"/>	FREQUENT INDIGESTION		<input checked="" type="checkbox"/>	ARTHRITIS OR RHEUMATISM		<input checked="" type="checkbox"/>	RED WETTING
	<input checked="" type="checkbox"/>	HEARING LOSS		<input checked="" type="checkbox"/>	STOMACH, LIVER OR INTESTINAL TROUBLE		<input checked="" type="checkbox"/>	BONE, JOINT, OR OTHER DEFORMITY		<input checked="" type="checkbox"/>	NERVOUS TROUBLE OF ANY SORT
	<input checked="" type="checkbox"/>	CHRONIC OR FREQUENT COLDS		<input checked="" type="checkbox"/>	GALL BLADDER TROUBLE OR GALL STONES		<input checked="" type="checkbox"/>	LAMENESS		<input checked="" type="checkbox"/>	ANY DRUG OR NARCOTIC HABIT
<input checked="" type="checkbox"/>		SEVERE TOOTH OR GUM TROUBLE		<input checked="" type="checkbox"/>	JAUNDICE		<input checked="" type="checkbox"/>	LOSS OF ARM, LEG, FINGER, OR TOE		<input checked="" type="checkbox"/>	EXCESSIVE DRINKING HABIT
	<input checked="" type="checkbox"/>	SINUSITIS		<input checked="" type="checkbox"/>	ANY REACTION TO SERUM, DRUG OR MEDICINE		<input checked="" type="checkbox"/>	PAINFUL OR "TRICK" SHOULDER OR ELBOW		<input checked="" type="checkbox"/>	HOMOSEXUAL TENDENCIES
	<input checked="" type="checkbox"/>	HAY FEVER		<input checked="" type="checkbox"/>	HISTORY OF BROKEN BONES		<input checked="" type="checkbox"/>	BACK TROUBLE OF ANY KIND		<input checked="" type="checkbox"/>	PERIODS OF UNCONSCIOUSNESS
	<input checked="" type="checkbox"/>	HISTORY OF HEAD INJURY									
	<input checked="" type="checkbox"/>	SKIN DISEASES									

21. HAVE YOU EVER (Check each item)

<input checked="" type="checkbox"/> WORN GLASSES—CONTACT LENS	<input checked="" type="checkbox"/> ATTEMPTED SUICIDE	<input checked="" type="checkbox"/> BEEN PREGNANT	AGE AT ONSET OF MENSTRUATION
<input checked="" type="checkbox"/> WORN AN ARTIFICIAL EYE	<input checked="" type="checkbox"/> BEEN A SLEEP WALKER	<input checked="" type="checkbox"/> HAD A VAGINAL DISCHARGE	INTERVAL BETWEEN PERIODS
<input checked="" type="checkbox"/> WORN HEARING AIDS	<input checked="" type="checkbox"/> LIVED WITH ANYONE WHO HAD TUBERCULOSIS	<input checked="" type="checkbox"/> BEEN TREATED FOR A FEMALE DISORDER	DURATION OF PERIODS
<input checked="" type="checkbox"/> STUTTERED OR STAMMERED	<input checked="" type="checkbox"/> COUGHED UP BLOOD	<input checked="" type="checkbox"/> HAD PAINFUL MENSTRUATION	DATE OF LAST PERIOD
<input checked="" type="checkbox"/> WORN A BRACE OR BACK SUPPORT	<input checked="" type="checkbox"/> BLED EXCESSIVELY AFTER INJURY OR TOOTH EXTRACTION	<input checked="" type="checkbox"/> HAD IRREGULAR MENSTRUATION	QUANTITY: <input type="checkbox"/> NORMAL <input type="checkbox"/> EXCESSIVE <input type="checkbox"/> SCANTY

23. HOW MANY JOBS HAVE YOU HAD IN THE PAST THREE YEARS?

8

24. WHAT IS THE LONGEST PERIOD YOU HELD ANY OF THESE JOBS? MONTHS

25. WHAT IS YOUR USUAL OCCUPATION?

26. ARE YOU (Check one)

☐ RIGHT HANDED ☐ LEFT HANDED

PETITIONER'S EXHIBIT 8

YES	NO	CHECK EACH ITEM YES OR NO. EVERY ITEM CHECKED "YES" MUST BE FULLY EXPLAINED IN BLANK SPACE ON RIGHT
	X	27. HAVE YOU BEEN REFUSED EMPLOYMENT OR BEEN UNABLE TO HOLD A JOB BECAUSE OF: A. SENSITIVITY TO CHEMICALS, DUST, SUNLIGHT, ETC. B. INABILITY TO PERFORM CERTAIN MOTIONS C. INABILITY TO ASSUME CERTAIN POSITIONS D. OTHER MEDICAL REASONS (If yes, give reasons)
	X	28. HAVE YOU EVER WORKED WITH RADIOACTIVE SUBSTANCE?
	X	29. DID YOU HAVE DIFFICULTY WITH SCHOOL STUDIES OR TEACHERS? (If yes, give details)
	X	30. HAVE YOU EVER BEEN DENIED LIFE INSURANCE? (If yes, state reason and give details)
	X	31. HAVE YOU HAD, OR HAVE YOU BEEN ADVISED TO HAVE, ANY OPERATIONS? (If yes, describe and give age at which occurred)
	X	32. HAVE YOU EVER BEEN A PATIENT (Committed or voluntary) IN A MENTAL HOSPITAL OR SANATORIUM? (If yes, specify when, where, why, and name of doctor, and complete address of hospital or clinic)
	X	33. HAVE YOU EVER HAD ANY ILLNESS OR INJURY OTHER THAN THOSE ALREADY NOTED? (If yes, specify when, where, and give details)
	X	34. HAVE YOU CONSULTED OR BEEN TREATED BY CLINICS, PHYSICIANS, HEALERS, OR OTHER PRACTITIONERS WITHIN THE PAST 5 YEARS? (If yes, give complete address of doctor, hospital, clinic, and details)
	X	35. HAVE YOU TREATED YOURSELF FOR ILLNESSES OTHER THAN MINOR COLDS? (If yes, which illnesses)
	X	36. HAVE YOU EVER BEEN REJECTED FOR MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date and reason for rejection)
	X	37. HAVE YOU EVER BEEN DISCHARGED FROM MILITARY SERVICE BECAUSE OF PHYSICAL, MENTAL, OR OTHER REASONS? (If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for unfitness or unsuitability)
	X	38. HAVE YOU EVER RECEIVED, IS THERE PENDING, OR HAVE YOU APPLIED FOR PENSION OR COMPENSATION FOR EXISTING DISABILITY? (If yes, specify what kind, granted by whom, and what amount, when, why)

WARNING: A FALSE OR DISHONEST ANSWER TO ANY OF THE QUESTIONS ON THIS FORM MAY BE PUNISHED BY FINE OR IMPRISONMENT (18 U.S.C. 1001)

I CERTIFY THAT I HAVE REVIEWED THE FOREGOING INFORMATION SUPPLIED BY ME AND THAT IT IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

I AUTHORIZE ANY OF THE DOCTORS, HOSPITALS, OR CLINICS MENTIONED ABOVE TO FURNISH THE GOVERNMENT A COMPLETE TRANSCRIPT OF MY MEDICAL RECORD FOR PURPOSES OF PROCESSING MY APPLICATION FOR THIS EMPLOYMENT OR SERVICE.

TYPED OR PRINTED NAME OF EXAMINEE

SIGNATURE

Leonardo Sandoval

39. PHYSICIAN'S SUMMARY AND ELABORATION OF ALL PERTINENT DATA (Physician shall comment on all positive answers in items 20 thru 38)

*Groups OK.
flexible ones not
his seg allows a su*

TYPED OR PRINTED NAME OF PHYSICIAN OR EXAMINER

S. H. LAWRENCE, M.D.

DATE

2/2/2008

SIGNATURE

Ken

NUMBER OF ATTACHED SHEETS

* U.S. GOVERNMENT PRINTING OFFICE : 1967 OF--267-459

PETITIONER'S EXHIBIT 8

General Services Administration
Interagency Comm. on Medical Records
PMR 101-11.809-3

REPORT OF MEDICAL EXAMINATION

56-1383

88-117

1. LAST NAME—FIRST NAME—MIDDLE NAME <u>SANDOVAL LEONARDO CENTERRAS</u>			2. GRADE AND COMPONENT OR POSITION <u>E-3 PA</u>		3. IDENTIFICATION NO. <u>564-22-7696</u>
4. HOME ADDRESS (Number, street or RFD, city or town, State and ZIP Code) <u>ST RT. BOX 104 WINKELMAN ARIZ</u>			5. PURPOSE OF EXAMINATION <u>SEPARATION</u>		6. DATE OF EXAMINATION <u>16 DEC 71</u>
7. SEX <u>M</u>	8. RACE <u>CAU</u>	9. TOTAL YEARS GOVERNMENT SERVICE <u>10 yrs. 10 mo</u>		10. AGENCY <u>DA</u>	11. ORGANIZATION UNIT <u>78th med CO. DET.</u>
12. DATE OF BIRTH <u>(217)</u> <u>15 JULY 50</u>		13. PLACE OF BIRTH <u>TUCSON ARIZONA</u>		14. NAME, RELATIONSHIP, AND ADDRESS OF NEXT OF KIN <u>DELLA C KELLEY (mother)</u> <u>[REDACTED]</u>	
15. EXAMINING FACILITY OR EXAMINER, AND ADDRESS <u>USAH FOOT CARSON COLORADO</u>			16. OTHER INFORMATION		
17. RATING OR SPECIALTY <u>E-3 67A1F</u>			TIME IN THIS CAPACITY (Total) <u>3 years</u>		LAST SIX MONTHS <u>YES</u>

CLINICAL EVALUATION		ABNOR-
NOR-	(Check each item in appropriate column, enter "NE" if not evaluated.)	MAL
<input checked="" type="checkbox"/>	18. HEAD, FACE, NECK AND SCALP	
<input type="checkbox"/>	19. NOSE	
<input type="checkbox"/>	20. SINUSES	
<input type="checkbox"/>	21. MOUTH AND THROAT	
<input type="checkbox"/>	22. EARS—GENERAL (Int. & ext. canals) (Audiometry acuity under items 70 and 71)	
<input type="checkbox"/>	23. DRUMS (Perforation)	
<input type="checkbox"/>	24. EYES—GENERAL (Visual acuity and refraction under items 58, 60 and 67)	
<input type="checkbox"/>	25. OPHTHALMOSCOPIC	
<input type="checkbox"/>	26. PUPILS (Equality and reaction)	
<input type="checkbox"/>	27. OCULAR MOTILITY (Associated parallel movements, nystagmus)	
<input type="checkbox"/>	28. LUNGS AND CHEST (Include breasts)	
<input type="checkbox"/>	29. HEART (Thrust, size, rhythm, sounds)	
<input type="checkbox"/>	30. VASCULAR SYSTEM (Varicosities, etc.)	
<input type="checkbox"/>	31. ABDOMEN AND VISCERA (Include hernia)	
<input type="checkbox"/>	32. ANUS AND RECTUM (Hemorrhoids, fistulas) (Prostate, if indicated)	
<input type="checkbox"/>	33. ENDOCRINE SYSTEM	
<input type="checkbox"/>	34. G-U SYSTEM	
<input type="checkbox"/>	35. UPPER EXTREMITIES (Strength, range of motion)	
<input checked="" type="checkbox"/>	36. FEET	
<input checked="" type="checkbox"/>	37. LOWER EXTREMITIES (Excerpt feet) (Strength, range of motion)	X
<input checked="" type="checkbox"/>	38. SPINE, OTHER MUSCULOSKELETAL	
<input type="checkbox"/>	39. IDENTIFYING BODY MARKS, SCARS, TATTOOS	X
<input type="checkbox"/>	40. SKIN, LYMPHATICS	
<input type="checkbox"/>	41. NEUROLOGIC (Equilibrium tests under item 72)	
<input type="checkbox"/>	42. PSYCHIATRIC (Specify any personality deviation)	
<input checked="" type="checkbox"/>	43. PELVIC (Females only) (Check how done) <input type="checkbox"/> VAGINAL <input type="checkbox"/> RECTAL	

NOTES. (Describe every abnormality in detail. Enter pertinent item number before each comment. Continue in item 73 and use additional sheets if necessary.)

37. Instability lateral L knee, mild.
Slight flexion

39. 4 1/2 & 5 1/2 in scars L knee.
R shoulder - Bird
L shoulder - Eagle
(Continue in item 73)

44. DENTAL (Place appropriate symbols, shown in examples, above or below number of upper and lower teeth.)																		REMARKS AND ADDITIONAL DENTAL DEFECTS AND DISEASES																																																																																																																																																																																							
0		1		2		3		4		5		6		7		8		9		10		11		12		13		14		15		16		17		18		19		20		21		22		23		24		25		26		27		28		29		30		31		32		33		34		35		36		37		38		39		40		41		42		43		44		45		46		47		48		49		50		51		52		53		54		55		56		57		58		59		60		61		62		63		64		65		66		67		68		69		70		71		72		73		74		75		76		77		78		79		80		81		82		83		84		85		86		87		88		89		90		91		92		93		94		95		96		97		98		99		100	

45. URINALYSIS: A. SPECIFIC GRAVITY										46. CHEST X-RAY (Place, date, film number and result)																													
B. ALBUMIN					C. SUGAR					D. MICROSCOPIC					E. OTHER TESTS																								
NEG					NEG					NEG					NEG																								
47. SEROLOGY (Specify test used and result)										48. EKG										49. BLOOD TYPE AND RH FACTOR										50. OTHER TESTS									
CEREBROSPINAL FLUID										[REDACTED]										[REDACTED]										[REDACTED]									

DEC 16 1971

MEASUREMENTS AND OTHER FINDINGS											
51. HEIGHT 5' 7"		52. WEIGHT 145		53. COLOR HAIR BRN		54. COLOR EYES BRN		55. BUILD: <input checked="" type="checkbox"/> SLENDER <input type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY <input type="checkbox"/> OBESE		56. TEMPERATURE 98.6	
57. BLOOD PRESSURE (Arm at heart level)						58. PULSE (Arm at heart level)					
A. SITTING SYS. 122 DIAS. 82		B. RECUM-BENT SYS. DIAS.		C. STANDING (3 min.) SYS. DIAS.		A. SITTING 76		B. AFTER EXERCISE		C. 2 MIN. AFTER	
D. RECUM-BENT		E. AFTER STANDING 3 MIN.									
59. DISTANT VISION				60. REFRACTION				61. HEAR VISION			
RIGHT 20/ 20		CORR. TO 20/		BY		S.		CX		CORR. TO BY	
LEFT 20/ 30		CORR. TO 20/		BY		S.		CX		CORR. TO BY	
62. METEOROPHORIA (Specify distance)											
ES°		EX°		R. H.		L. H.		PRISM DIV.		PRISM CONV. CT	
63. ACCOMMODATION		64. COLOR VISION (Test used and result)		65. DEPTH PERCEPTION (Test used and score)		UNCORRECTED					
RIGHT LEFT						CORRECTED					
66. FIELD OF VISION		67. NIGHT VISION (Test used and score)		68. RED LENS TEST		69. INTRACULAR TENSION					
70. HEARING				71. 150 AUDIOMETER				72. PSYCHOLOGICAL AND PSYCHOMOTOR (Tests used and score)			
RIGHT WV		/15 SV		/15		250 250		500 512		1000 1094	
LEFT WV		/15 SV		/15		2000 2043		3000 3399		4000 4099	
						5000 5144		6000 6199			
						RIGHT 20 30 50		60			
						LEFT 30 30 35		70			
73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY											

ortho consult 20 Dec 71 - As result of GSW RVN 1970 EM has slight flexion loss and mild to moderate lateral instability of L knee. Deserves permanent L3 prosth.

(Use additional sheets if necessary)

74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

37. Instability and decreased flexion L knee 2° GSW. LOD yes.

75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)						76. A. PHYSICAL PROFILE					
Ortho						P U L H E S					
						3					
77. EXAMINEE (Check)						B. PHYSICAL CATEGORY					
A. <input checked="" type="checkbox"/> IS QUALIFIED FOR											
B. <input type="checkbox"/> IS NOT QUALIFIED FOR											
78. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER						A B C E					
79. TYPED OR PRINTED NAME OF PHYSICIAN						SIGNATURE					
80. TYPED OR PRINTED NAME OF PHYSICIAN						SIGNATURE					
81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which)						SIGNATURE					
82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY						SIGNATURE					
						NUMBER OF ATTACHED SHEETS					

U.S. GOVERNMENT PRINTING OFFICE: 1969 O-339-940

STANDARD FORM 93
JANUARY 1971
GSA FPMR 101-11.8Approved
Office of Management and Budget No. 29-R0191

REPORT OF MEDICAL HISTORY											
(THIS INFORMATION IS FOR OFFICIAL AND MEDICALLY-CONFIDENTIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS)											
1. LAST NAME—FIRST NAME—MIDDLE NAME <i>SANDOVAL LEONARDO C</i>					2. SOCIAL SECURITY OR IDENTIFICATION NO. <i>564-82-7690</i>						
3. HOME ADDRESS (No. street or RFD, city or town, State, and ZIP CODE) <i>ST. RT. BOX 104 WINKELMAN ARIZ 85392</i>					4. POSITION (Title, grade, component) <i>E-3 RA ARMY</i>						
5. PURPOSE OF EXAMINATION <i>SEPARATION</i>			6. DATE OF EXAMINATION <i>16, Dec. 71</i>		7. EXAMINING FACILITY OR EXAMINER, AND ADDRESS (Include ZIP Code) <i>USA H. FT. CARSON 6646</i>						
8. STATEMENT OF EXAMINEE'S PRESENT HEALTH AND MEDICATIONS CURRENTLY USED (Follow by description of past history, if complaint exists) <i>GOOD</i>											
9. HAVE YOU EVER (Please check each item)											
YES	NO	(Check each item)			YES	NO	(Check each item)				
	<input checked="" type="checkbox"/>	Lived with anyone who had tuberculosis				<input checked="" type="checkbox"/>	Wear glasses or contact lenses				
	<input checked="" type="checkbox"/>	Coughed up blood				<input checked="" type="checkbox"/>	Have vision in both eyes				
	<input checked="" type="checkbox"/>	Bled excessively after injury or tooth extraction				<input checked="" type="checkbox"/>	Wear a hearing aid				
	<input checked="" type="checkbox"/>	Attempted suicide				<input checked="" type="checkbox"/>	Stutter or stammer habitually				
	<input checked="" type="checkbox"/>	Been a sleepwalker				<input checked="" type="checkbox"/>	Wear a brace or back support				
11. HAVE YOU EVER HAD OR HAVE YOU NOW (Please check at left of each item)											
YES	NO	DON'T KNOW	(Check each item)	YES	NO	DON'T KNOW	(Check each item)	YES	NO	DON'T KNOW	(Check each item)
	<input checked="" type="checkbox"/>		Scarlet fever, erysipelas	<input checked="" type="checkbox"/>			Cramps in your legs		<input checked="" type="checkbox"/>		"Trick" or locked knee
	<input checked="" type="checkbox"/>		Rheumatic fever		<input checked="" type="checkbox"/>		Frequent indigestion		<input checked="" type="checkbox"/>		Foot trouble
<input checked="" type="checkbox"/>			Swollen or painful joints		<input checked="" type="checkbox"/>		Stomach, liver, or intestinal trouble		<input checked="" type="checkbox"/>		Neuritis
	<input checked="" type="checkbox"/>		Frequent or severe headache		<input checked="" type="checkbox"/>		Gall bladder trouble or gallstones		<input checked="" type="checkbox"/>		Paralysis (include infantile)
	<input checked="" type="checkbox"/>		Dizziness or fainting spells		<input checked="" type="checkbox"/>		Jaundice or hepatitis		<input checked="" type="checkbox"/>		Epilepsy or fits
	<input checked="" type="checkbox"/>		Eye trouble		<input checked="" type="checkbox"/>		Adverse reaction to serum, drug, or medicine		<input checked="" type="checkbox"/>		Car, train, sea or air sickness
	<input checked="" type="checkbox"/>		Ear, nose, or throat trouble		<input checked="" type="checkbox"/>		Broken bones		<input checked="" type="checkbox"/>		Frequent trouble sleeping
<input checked="" type="checkbox"/>			Hearing loss	<input checked="" type="checkbox"/>			Tumor, growth, cyst, cancer		<input checked="" type="checkbox"/>		Depression or excessive worry
	<input checked="" type="checkbox"/>		Chronic or frequent colds		<input checked="" type="checkbox"/>		Rupture/hernia		<input checked="" type="checkbox"/>		Loss of memory or amnesia
	<input checked="" type="checkbox"/>		Severe tooth or gum trouble		<input checked="" type="checkbox"/>		Piles or rectal disease		<input checked="" type="checkbox"/>		Nervous trouble of any sort
	<input checked="" type="checkbox"/>		Sinusitis		<input checked="" type="checkbox"/>		Frequent or painful urination		<input checked="" type="checkbox"/>		Periods of unconsciousness
	<input checked="" type="checkbox"/>		Hay Fever		<input checked="" type="checkbox"/>		Bed wetting since age 12				
	<input checked="" type="checkbox"/>		Head Injury		<input checked="" type="checkbox"/>		Kidney stone or blood in urine				
	<input checked="" type="checkbox"/>		Skin diseases		<input checked="" type="checkbox"/>		Sugar or albumin in urine				
	<input checked="" type="checkbox"/>		Thyroid trouble		<input checked="" type="checkbox"/>		VD—Syphilis, gonorrhea, etc.				
	<input checked="" type="checkbox"/>		Tuberculosis		<input checked="" type="checkbox"/>		Recent gain or loss of weight				
	<input checked="" type="checkbox"/>		Asthma		<input checked="" type="checkbox"/>		Arthritis, Rheumatism, or Bursitis				
	<input checked="" type="checkbox"/>		Shortness of breath		<input checked="" type="checkbox"/>		Bone, joint or other deformity				
	<input checked="" type="checkbox"/>		Pain or pressure in chest	<input checked="" type="checkbox"/>			Lameness				
	<input checked="" type="checkbox"/>		Chronic cough		<input checked="" type="checkbox"/>		Loss of finger or toe				
	<input checked="" type="checkbox"/>		Palpitation or pounding heart		<input checked="" type="checkbox"/>		Painful or "trick" shoulder or elbow				
	<input checked="" type="checkbox"/>		Heart trouble		<input checked="" type="checkbox"/>		Recurrent back pain				
	<input checked="" type="checkbox"/>		High or low blood pressure		<input checked="" type="checkbox"/>						
13. WHAT IS YOUR USUAL OCCUPATION? <i>PUNCH PRESS OPERATOR</i>										14. ARE YOU (Check one) <input checked="" type="checkbox"/> Right handed <input type="checkbox"/> Left handed	

93-101-01

YES	NO	CHECK EACH ITEM YES OR NO. EVERY ITEM CHECKED YES MUST BE FULLY EXPLAINED IN BLANK SPACE ON RIGHT		
	<input checked="" type="checkbox"/>	15. Have you been refused employment or been unable to hold a job or stay in school because of: A. Sensitivity to chemicals, dust, sunlight, etc. B. Inability to perform certain motions. C. Inability to assume certain positions. D. Other medical reasons (If yes, give reasons.)		
	<input checked="" type="checkbox"/>	16. Have you ever been treated for a mental condition? (If yes, specify when, where, and give details.)		
	<input checked="" type="checkbox"/>	17. Have you ever been denied life insurance? (If yes, state reason and give details.)		
	<input checked="" type="checkbox"/>	18. Have you had, or have you been advised to have, any operations? (If yes, describe and give age at which occurred.)		
	<input checked="" type="checkbox"/>	19. Have you ever been a patient in any type of hospitals? (If yes, specify when, where, why, and name of doctor and complete address of hospital.)		
	<input checked="" type="checkbox"/>	20. Have you ever had any illness or injury other than those already noted? (If yes, specify when, where, and give details.)		
	<input checked="" type="checkbox"/>	21. Have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses? (If yes, give complete address of doctor, hospital, clinic, and details.)		
	<input checked="" type="checkbox"/>	22. Have you ever been rejected for military service because of physical, mental, or other reasons? (If yes, give date and reason for rejection.)		
	<input checked="" type="checkbox"/>	23. Have you ever been discharged from military service because of physical, mental, or other reasons? (If yes, give date, reason, and type of discharge: whether honorable, other than honorable, for unfitness or unsuitability.)		
	<input checked="" type="checkbox"/>	24. Have you ever received, is there pending, or have you applied for pension or compensation for existing disability? (If yes, specify what kind, granted by whom, and what amount, when, why.)		
<p>I certify that I have reviewed the foregoing information supplied by me and that it is true and complete to the best of my knowledge. I authorize any of the doctors, hospitals, or clinics mentioned above to furnish the Government a complete transcript of my medical record for purposes of processing my application for this employment or service.</p> <table border="1"> <tr> <td>TYPED OR PRINTED NAME OF EXAMINEE <u>LEONARDO C. SANDOVAL</u></td> <td>SIGNATURE <u>Leonardo C. Sandoval</u></td> </tr> </table> <p>NOTE: HAND TO THE DOCTOR OR NURSE, OR IF MAILED MARK ENVELOPE "TO BE OPENED BY MEDICAL OFFICER ONLY." 25. Physician's summary and elaboration of all pertinent data (Physician shall comment on all positive answers in items 9 through 24. Physician may develop by interview any additional medical history he deems important, and record any significant findings here.)</p> <p>1970 - GSW L distal femur & fx. Resultant instability of L knee. Currently receiving ortho evaluation. Hearing loss - Charlie model 4041C gunner PNV.</p>			TYPED OR PRINTED NAME OF EXAMINEE <u>LEONARDO C. SANDOVAL</u>	SIGNATURE <u>Leonardo C. Sandoval</u>
TYPED OR PRINTED NAME OF EXAMINEE <u>LEONARDO C. SANDOVAL</u>	SIGNATURE <u>Leonardo C. Sandoval</u>			
TYPED OR PRINTED NAME OF PHYSICIAN OR EXAMINER		DATE <u>16 Dec 71</u>	SIGNATURE <u>Seem</u>	NUMBER OF ATTACHED SHEETS

REVERSE OF STANDARD FORM 93

U.S. GOVERNMENT PRINTING OFFICE: 1971-O-424-028

PETITIONER'S EXHIBIT

Standard Form 513
Rev. August 1954
Bureau of the Budget
Circular A-32

U.S. GOVERNMENT PRINTING OFFICE : 1961 O-386575

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO: <i>Ortho</i>	FROM: (Requesting word, unit, or activity) <i>PE clinic</i>	DATE OF REQUEST <i>7/</i>	
REASON FOR REQUEST (Complaints and findings) <i>Em c instability L knee following Fx L distal femur 20 GSW in RVN. Has some permanent residual. Please evaluate for ETS.</i>			
PROVISIONAL DIAGNOSIS			
DOCTOR'S SIGNATURE <i>Dean</i>	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> BEDSIDE <input type="checkbox"/> ON CALL	<input checked="" type="checkbox"/> EMERGENCY <input type="checkbox"/> ROUTINE
CONSULTATION REPORT			

Admin. emergency ETS /

DEC 17 1971

ORTHOPEDIC CLINIC

DEC 20 1971

ORTHOPEDIC CLINIC

This man has mild to moderate med. post instability of left knee as well as some flexion loss (flexes to 120 - extends fully) as result of GSW in RVN in Oct 1950.

*Cleared for separation c h-3 prof. b.
Should see VA w/ separation.*

Jeff

(Continued on reverse side)			
SIGNATURE AND TITLE <i>Hayes Sandorval</i>	DATE <i>20 Dec 71</i>	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.

Sandorval, Leonardo

E3

CONSULTATION SHEET
Standard Form 513
513-104

Standard Form 513
Rev. August 1954
Bureau of the Budget
Circular A-32

U.S. GOVERNMENT PRINTING OFFICE : 1961 O-566373

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO: <i>P.T.</i>	FROM: (Requesting ward, unit, or activity) <i>F 19</i>	DATE OF REQUEST <i>6/28/71</i>	
REASON FOR REQUEST (Complaints and findings)			
<i>Quadriceps Strengthening</i>			
PROVISIONAL DIAGNOSIS			
<i>GSW-Q/Knee</i>			
DOCTOR'S SIGNATURE <i>Lowrey</i>	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> BEDSIDE <input type="checkbox"/> ON CALL	<input type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> ROUTINE
CONSULTATION REPORT			

*28 June 71 Treatment - SW L. Quad.
P.T. J.D. x 10.*

(Continued on reverse side)

SIGNATURE AND TITLE <i>[Signature]</i>	DATE <i>6/28/71</i>	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.

*SANDOVAL, Leonard
564-82-7690 P-2
SPD.*

CONSULTATION SHEET
Standard Form 513
513-104

Standard Form 513
Rev. August 1954
Bureau of the Budget
Circular A-32

U.S. GOVERNMENT PRINTING OFFICE : 1961 O-585373

CLINICAL RECORD		CONSULTATION SHEET	
REQUEST			
TO: <i>ORTHO</i>	FROM: (Requesting ward, unit, or activity) <i>F-19</i>	DATE OF REQUEST <i>6/28/71</i>	
REASON FOR REQUEST (Complaints and findings)			
<i>GOW 21 OCT 70 => shattered femur @ ; Treated Ft Sam Houston. now in pain @ femur & @ knee. Not given any convalescent leave Please evaluate</i>			
PROVISIONAL DIAGNOSIS			
<i>378 Shattered @ femur</i>			
DOCTOR'S SIGNATURE <i>Louisey</i>	APPROVED	PLACE OF CONSULTATION <input type="checkbox"/> BEDSIDE <input type="checkbox"/> ON CALL	<input checked="" type="checkbox"/> EMERGENCY <input checked="" type="checkbox"/> ROUTINE
CONSULTATION REPORT			

*F-19 left
distal fracture
Oct 70 - Rx healed by X-2
clinically Pt c/o pain in left knee
pt ++ med-lat instability
cruciate dx
ROM - 0 - 100°
Rec. Contain or Prox + knee support*

(Continued on reverse side)

SIGNATURE AND TITLE <i>Louisey</i>	DATE <i>28 Jun 71</i>	IDENTIFICATION NO.	ORGANIZATION
PATIENT'S IDENTIFICATION (For typed or written entries give Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.

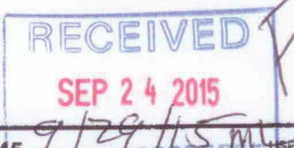
CONSULTATION SHEET
Standard Form 513
513-104

9/24/2015 8:23 PM GMT+2

From: Scanner Pro - To: Records

Page 1 of 1

OMB Number: 2900-0260
Estimated Burden: 2 minutes

Department of Veterans Affairs		REQUEST FOR AND AUTHORIZATION TO RELEASE MEDICAL RECORDS OR HEALTH INFORMATION	
<p>Privacy Act and Paperwork Reduction Act Information: The execution of this form does not authorize the release of information other than that specifically described below. The information requested on this form is solicited under Title 38, U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including Social Security Number (SSN) (the SSN will be used to locate records for release) is not furnished completely and accurately, Department of Veterans Affairs will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices identified as 24VA10P2 "Patient Medical Record - VA" and in accordance with the Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law. The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form.</p>			
ENTER BELOW THE PATIENT'S NAME AND SOCIAL SECURITY NUMBER IF THE PATIENT DATA CARD IMPRINT IS NOT USED.			
TO: DEPARTMENT OF VETERANS AFFAIRS (Print or type name and address of health care facility)		PATIENT NAME (Last, First, Middle Initial)	
Portland VA Grants Pass		Sandoval, Leonard C	
		SOCIAL SECURITY NUMBER	
		564-82-7690	
NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED			
Unique Wire, LLC 2425 NW Westhills Dr, McMinnville, OR 97128 Attn: DWS			
<p>VETERAN'S REQUEST: I request and authorize Department of Veterans Affairs to release the information specified below to the organization, or individual named on this request. I understand that the information to be released includes information regarding the following condition(s):</p> <p><input checked="" type="checkbox"/> DRUG ABUSE <input checked="" type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input checked="" type="checkbox"/> TESTING FOR OR INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV) <input checked="" type="checkbox"/> SICKLE CELL ANEMIA</p>			
<p>INFORMATION REQUESTED (Check applicable box(es) and state the extent or nature of the information to be disclosed, giving the dates or approximate dates covered by each)</p> <p><input checked="" type="checkbox"/> COPY OF HOSPITAL SUMMARY <input checked="" type="checkbox"/> COPY OF OUTPATIENT TREATMENT NOTE(S) <input checked="" type="checkbox"/> OTHER (Specify)</p> <p>Please release all information without limitation.</p>			
PURPOSE(S) OR NEED FOR WHICH THE INFORMATION IS TO BE USED BY INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED			
Legal Defense			
NOTE: ADDITIONAL ITEMS OF INFORMATION DESIRED MAY BE LISTED ON THE BACK OF THIS FORM			
<p>AUTHORIZATION: I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization, in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing the records. Redisclosure of my medical records by those receiving the above authorized information may be accomplished without my further written authorization and may no longer be protected. Without my express revocation, the authorization will automatically expire: (1) upon satisfaction of the need for disclosure; (2) on _____ (date supplied by patient); (3) under the following condition(s):</p>			
<p>I understand that the VA health care practitioner's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.</p>			
DATE (mm/dd/yyyy)		SIGNATURE OF PATIENT OR PERSON AUTHORIZED TO SIGN FOR PATIENT (Attach authority to sign, e.g., POA)	
9/15/2015		Leonard C. Sandoval	
FOR VA USE ONLY			
IMPRINT PATIENT DATA CARD (or enter Name, Address, Social Security Number)		TYPE AND EXTENT OF MATERIAL RELEASED	
		<p>DATE RELEASED: 9/29/15</p> <p>RELEASED BY: ml</p>	
VA FORM 10-5345 JUL 2013		USE EXISTING STOCK OF VA FORM 10-5345, DATED MAY 2005.	

PETITIONER'S EXHIBIT 9
Page 1 of 61

**DEPARTMENT OF
VETERANS AFFAIRS**

VA Roseburg Healthcare System
913 N.W. Garden Valley Blvd.
Mail Stop: 136b
Roseburg, OR 97471

DATE: 9/29/2015
In Reply Refer To: 136b
SSN: 7690

**UNIQUE WIRE LLC
2425 NW WESTHILLS DR
MCMINNVILLE, OR 97128**

RE: ROI Plus Request for LEONARD C SANDOVAL

Dear UNIQUE WIRE LLC:

This letter is in response to your recent request for records.

A determination has been made to disclose the information per your request in full.

This individually identifiable information is privileged. Its confidentiality should be maintained along with appropriate security safeguards to protect against individual harm (identity theft), embarrassment, or inconvenience.

We thank you for your support of our mission. If you wish to discuss anything in this letter with me, please contact me at 541-440-1000 ext. 44557 or 44558.

Sincerely,



MELINDA LYNAM - Release of Information

Vitals

Printed On Sep 29, 2015

01/13/00
 09:53
 T: 97.7 F (36.5 C)
 P: 75
 R: 20
 B/P: 155/82
 Wt: 182.10 lb (82.77 kg)
 Body Mass Index: 29*

*** (E) - Error entry

SANDOVAL, LEONAR 7690
 Unit:
 Division:

JUL 15, 1950 65 YRS MALE
 Room:

VAF 10-7987j

SEP 29, 2015 (09:57)

Cumulative Vitals/Measurements Report

Page 1

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Vitals

Printed On Sep 29, 2015

01/20/99
 10:20
 T: 98.7 F (37.1 C) (ORAL)
 P: 98 (RADIAL)
 R: 20 (SPONTANEOUS)
 B/P: 140/85
 Ht: 67.00 in (170.18 cm) (ACTUAL)
 Wt: 199.90 lb (90.86 kg) (ACTUAL)
 Body Mass Index: 31*

*** (E) - Error entry

SANDOVAL, LEONAR 7690
 Unit:
 Division:

JUL 15, 1950 65 YRS MALE
 Room:

VAF 10-7987j

SEP 29, 2015 (09:57)

Cumulative Vitals/Measurements Report

Page 1

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Vitals

Printed On Sep 29, 2015

07/24/98
09:00
T: 97.4 F (36.3 C) (ORAL)
P: 85 (RADIAL)
B/P: 128/56*
Ht: 68.00 in (172.72 cm) (ACTUAL)
Wt: 204.40 lb (92.91 kg) (ACTUAL)
Body Mass Index: 31*

*** (E) - Error entry

SANDOVAL, LEONAR 7690
Unit:
Division:

JUL 15, 1950 65 YRS MALE
Room:

VAF 10-7987j

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
SRCI
777 STANTON BLVD
ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Radiology Reports

Printed On Sep 29, 2015

FOOT 3 OR MORE VIEWS

Exm Date: JAN 19, 1999@10:47
 Req Phys: LUSSIER, WILLIAM

Pat Loc: ZZZGOMEZ (Req'g Loc)
 Img Loc: RADIOLOGY
 Service: Unknown

(Case 41 COMPLETE) FOOT 3 OR MORE VIEWS

(RAD Inactive) CPT:73630

Clinical History:

48 y/o c. male w/ pain R. calcaneal/talus region. No direct trauma, but gait modification secondary to L. knee problems and back problems.

Report Status: Verified

Date Reported: JAN 19, 1999@11:46

Date Verified: JAN 20, 1999

Verifier E-Sig:/ES/NORTHCUTT, CRAIG E

Report:

RIGHT FOOT: There are no comparison films. No fracture. No dislocation. No erosive changes. No inflammatory or malignant changes. Normal anatomical relationships are preserved, and no underlying bony pathology is demonstrated.

Impression:

Normal study.

DTD: 011999@1146 DT: 011999 (2433) TR: ve/ExecuMed PT:
 S7690

Primary Diagnostic Code:

Primary Interpreting Staff:

NORTHCUTT, CRAIG E, RADIOLOGIST (Verifier)
 /VLE

KNEE 2 VIEWS

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Radiology Reports

Printed On Sep 29, 2015

Exm Date: MAY 22, 1998@11:03
 Req Phys: CLINGER, DAVID P

Pat Loc: ZZMEDICAL WALK-IN (Req'g Loc)
 Img Loc: RADIOLOGY
 Service: Unknown

(Case 302 COMPLETE) KNEE 2 VIEWS
 Proc Modifiers : LEFT

(RAD Inactive) CPT:73560

Clinical History:

L knee pain s.c. injury 1979 continued pain and stiffness

Report Status: Verified

Date Reported: MAY 22, 1998@11:24

Date Verified: MAY 26, 1998

Verifier E-Sig:

Report:

LEFT KNEE: There is old post-traumatic deformity of the distal left femoral shaft. There is mild to moderate degenerative change of the tibiofemoral joint and mild degenerative change of the patellofemoral joint.

Impression:

1. Old post-traumatic deformity of the distal left femoral shaft.
2. Degenerative joint disease.

DTD: 052298@1124 DT: 052298 (1183) TR: ve/ExecuMed PT:
 S7690

Primary Diagnostic Code:

Primary Interpreting Staff:

CHARLES E. BOETSCH, MD, Radiologist

Verified by transcriptionist for CHARLES E. BOETSCH, MD

/VLE

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Radiology Reports

Printed On Sep 29, 2015

SPINE LUMBOSACRAL MIN 2 VIEWS

Exm Date: MAY 22, 1998@11:03

Req Phys: CLINGER, DAVID P

Pat Loc: ZZMEDICAL WALK-IN (Req'g Loc)

Img Loc: RADIOLOGY

Service: Unknown

(Case 303 COMPLETE) SPINE LUMBOSACRAL MIN 2 VIEWS (RAD Detailed) CPT:72100

Clinical History:

chronic back apin harrington rods 1979 include thoraco/lumbar spine

Report Status: Verified

Date Reported: MAY 22, 1998@11:24

Date Verified: MAY 26, 1998

Verifier E-Sig:

Report:

LUMBAR SPINE: Harrington rods are in place, extending from T12 to L4. There is an old compression fracture of L2 (no comparison films available). Elsewhere, the heights of the vertebral bodies are well maintained. The L1-L3 disks are narrow.

Impression:

Old post-traumatic and post-surgical changes.

DTD: 052298@1124 DT: 052298 (1183) TR: ve/ExecuMed PT: S7690

Primary Diagnostic Code:

Primary Interpreting Staff:

CHARLES E. BOETSCH, MD, Radiologist

Verified by transcriptionist for CHARLES E. BOETSCH, MD

/VLE

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C

SRCI

777 STANTON BLVD

ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

Radiology Reports

Printed On Sep 29, 2015

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
SRCI
777 STANTON BLVD
ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation

Printed at ROSEBURG HCS

PETITIONER'S EXHIBIT 9
Page 9 of 61

Page 8

Lab Results

Printed On Sep 29, 2015

Ordering Provider: William Lussier PA
 Report Released...: Feb 01, 2000@11:57
 Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]
 913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

h. Ordering Provider: Leona R. Calderon MD
 Report Released...: Mar 17, 1996@08:26

---- CHEMISTRY ----

SERUM	Feb 01 2000 10:15	Feb 01 2000 10:15	Mar 17 1996	Units	Reference Ranges
GLU (EX)		77.	101.	MG/DL	70 - 120
BUN (EX)		12.	11.	MG/DL	7 - 24
CRE (EX)		1.0	.9	MG/DL	.6 - 1.5
URA (EK)			4.5	MG/DL	2.8 - 9.4
NA (EK)		142.	143.	mmol/l	138 - 146
K+ (EX)		4.6	5.2 H	mmol/l	3.7 - 5.5
CL (EX)		106.	105.	mmol/l	97 - 110
CO2 (EK)		25.	27.	mmol/l	22 - 33
CA (EK)			9.8	MG/DL	8.7 - 10.3
ALB (EK)		3.7	4.1	G/DL	3.2 - 4.7
MG (EK)				MG/DL	1.7 - 2.4
TP (EK)				G/DL	6.1 - 8.1
PO4 (EK)				MG/DL	2.3 - 4.5
ALK (EK)		101.	89.	U/L	58 - 142
ALT (EK)		24.		U/L	22 - 67
TBL (EK)		1.0	.6	MG/DL	.5 - 1.2
DBL (EK)				MG/DL	Ref: <0.3
GGT (EK)			21.	U/L	3 - 81
AST (EK)		16.	14. L	U/L	9 - 44
LDH (EK)			314.	U/L	279 - 623
CPK (EK)				U/L	55 - 170
CK-B MO				NG/ML	Ref: <7
TRG				MG/DL	40 - 160
ETH					
AMY				U/L	30 - 110
LI+				mEq/L	.6 - 1.2
CHOL/PF	202. H			MG/DL	Ref: <=200
TRIG/PF	217. H			MG/DL	40 - 160
ggt		20.		IU/L	12 - 58
Comments:	c	d	g		
c. CHOL/HDL of 4.9-9.6 represents avg to above avg risk of CHD					

Ordering Provider: William Lussier PA
 Report Released...: Feb 04, 2000@11:16

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
 SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

VISTA Electronic Medical Documentation
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Lab Results

Printed On Sep 29, 2015

Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]
 913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

- d. *** For test NA(EK) Units: MEQ/L ***
 *** For test K+(EX) Units: MEQ/L ***
 *** For test CL(EX) Units: MEQ/L ***
 *** For test CO2(EK) Units: MEQ/L ***
 *** For test ggt Units: U/L ***

Ordering Provider: William Lussier PA
 Report Released...: Feb 01, 2000@13:10
 Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]
 913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

- g. Ordering Provider: Leona R. Calderon MD
 Report Released...: Mar 17, 1996@09:37

---- CHEMISTRY ----

SERUM	Feb 01 2000 10:15	Mar 17 1996	Reference Units Ranges
Glucos			MG/DL 70 - 110
BUN			MG/DL 7.8 - 21.4
Creat			mg/dL .7 - 1.5
EGFR			mL/min
NA-I			mmol/l 136 - 145
K-I			mmol/l 3.5 - 5.1
CL-I			mmol/l 98 - 107
CO2 RO			mmol/l 21 - 32
AN GAP			mmol/l 5 - 16
Calcium			MG/DL 8.8 - 10.2
IONZ CA			meq/L 4.4 - 5.3
Phospho			MG/DL 2.7 - 4.5
Magnes			MG/DL 1.5 - 2.7
T Prote			G/DL 6.3 - 8.3
Albumin			G/DL 3.4 - 5.2
GLOB			GM/DL 2.3 - 3.5
A/G			.8 - 1.8
PAB			mg/Dl 21.7 - 44.3
ALK PHO			U/L 32 - 122
AST RO			U/L 10 - 34
ALT RO			U/L 10 - 44
GGT RO			IU/L 7 - 50
T Bil			MG/DL .2 - 1
D Bili			MG/DL 0 - .2
LDH			U/L 135 - 225
CPK			U/L 24 - 204

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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TROPO T		NG/ML	0 - .09
MB-CPK		NG/ML	0 - 7
MB-INDX		%	0 - 4
Amylase		U/L	28 - 100
LIP		U/L	15 - 64
ETOH		mg/dL	Ref: <10
CHO	154.	MG/DL	Ref: <=200
HDL	36.	MG/DL	32 - 78
CHOL/HD	5.64		1.5 - 4.9
Trig		MG/DL	35 - 160
LDL CHO	123.	mg/dL	Ref: <=160
LDL CAL		mg/dL	Ref: <=160

Comments:

c

c. CHOL/HDL of 4.9-9.6 represents avg to above avg risk of CHD

*** For test LDL CHO Normals: 0 to 130 ***

Evaluation for LDL CHO:

Reference Interval: National Cholesterol Education Program (NCEP) levels in terms of risk for coronary heart disease (based on serum values):

Optimal: <100 mg/dL

Near optimal/above optimal: <130 mg/dL

Borderline high: 130-159 mg/dL

High: 160-189 mg/dL

Very high: >189 mg/dL

*** For test CHOL/HD Normals: low: AVG: 4.9 ***

Evaluation for CHOL/HD:

CHOL/HDL of 3.3-4.4 represents below average to average risk of CHD.

CHOL/HDL of 4.4-7.1 represents avg to above avg risk of CHD.

CHOL/HDL 7.1 or greater is above average risk (2X) of CHD

*** For test HDL Normals: 19 to 67 ***

Ordering Provider: William Lussier PA

Report Released...: Feb 04, 2000@11:16

Performing Lab....: ROSEBURG HCS [CLIA# 38D0988132]

913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

g. Ordering Provider: Leona R. Calderon MD

Report Released...: Mar 17, 1996@09:37

----- URINALYSIS PROFILE -----

URINE	Feb 01	Mar 17	Reference
	2000	1996	

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
SRCI
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	10:15	09:03	Units	Ranges
COLOR	YELLOW	YELLOW		Lt. Yellow - Yellow
UR APP				
SP.GRAV	1.025	1.011		1.01 - 1.035
URURO			mg/dl	0 - 2
UR. BLD	1+	Neg.		Ref: NEG
BILIRUB	NEG	Neg.		Ref: NEG
KETONES	NEG	Neg.		Ref: NEG
GLU	NEG	NEG		Ref: NEG
PROTEIN	NEG	NEG		Ref: NEG
PH	5.0	5.0		5 - 8
UR NIT				Ref: NEG
UR LEU				Ref: NEG
WBC			/HPF	0 - 9
WBC CLU			/LPF	NONE - RARE
RBC			/HPF	0 - 2
SQ EPI			/LPF	
TR. EPI			/LPF	
RENAL E			/LPF	
WBCCAST			/LPF	0 - 1
RBCCAST			/LPF	0 - 1
HY.CAST			/LPF	0 - 3
GR.CAST			/LPF	0 - 2
EP.CAST			/LPF	0 - 1
BR.CAST			/LPF	0 - 2
FATCAST			/LPF	0 - 2
CE.CAST			/LPF	0 - 2
WAXCAST			/LPF	0 - 2
AMCRYS			/HPF	
CA OXY			/HPF	
PH.CRYS			/HPF	
UR.ACID			/HPF	1+ - 2+
TYRCRY			/HPF	NONE - 1+
CYSCRY			/HPF	NONE - 2+
FAT			/HPF	NONE - RARE
O FAT			/HPF	NONE - RARE
BACT			/HPF	Ref: <MOD
H.YEAST			/HPF	Ref: NEG
B.YEAST			/HPF	Ref: NONE
SPERM			/HPF	
MUCUS			/LPF	
ICTO				Ref: NEG
CLX?	NO			
Comments:	b	e		
b.	Ordering Provider: William Lussier PA			
	Report Released...: Feb 01, 2000@12:21			
	Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]			
	913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523			

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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e. Ordering Provider: Leona R. Calderon MD
Report Released...: Mar 17, 1996@11:28

---- CHEM III ----

SERUM	Feb 01 2000 10:15	Units	Reference Ranges
FE		ug/dl	53 - 167
UIBC		UG/DL	112 - 346
TIBC		ug/dl	250 - 350
%SATUR			20 - 50
FERITIN		NG/ML	30 - 400
ACID PH		NG/ML	0 - 7.8
Free t4		NG/DL	.93 - 1.7
T3		ng/dl	85 - 184
FOLATE		ng/ml	3.1 - 17.5
C4 COMP		MG/DL	15.9 - 40.3
hTSH	1.86	MCU/ML	.49 - 4.67
T4 SEA		MCG/DL	4.7 - 11.4
VIT B12		PG/ML	243 - 894
PSA(HY)	1.0	NG/ML	Ref: <=3.9
FR PSA		NG/ML	
%FR PSA		%	
BNP PRO		pg/ml	Ref: SEE INTERP.

Comments:

d

d. *** For test PSA(HY) Normals: 0 to 4 ***

Evaluation for PSA(HY):

Refer to ward remarks for further interpretation.

Male: up to 59 yrs < or equal to 3.9 ng/ml

60-70 yrs < or equal to 5.4 ng/ml

>70 yrs < 6.2 ng/ml

*** For test hTSH Units: uIU/ML ***

Ordering Provider: William Lussier PA

Report Released...: Feb 01, 2000@13:10

Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]

913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

---- SEROLOGY TESTS ----

SERUM	Mar 17 1996	Units	Reference Ranges
-------	----------------	-------	---------------------

ANA

Ref: NEG AT SCREEN DILN OF 1:40

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C

SRCI

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RPR Non-Reactive Ref: NON-REACTIVE
 HPYLAB NONE DETECTED - 0
 RF ROC IU/ML 7 - 13.7
 Comments: f
 f. Evaluation for RPR:
 Normal is non-reactive.

Ordering Provider: Leona R. Calderon MD
 Report Released...: Mar 21, 1996@17:45

---- MISCELLANEOUS TESTS ----

DATE	TIME	SPECIMEN	TEST	VALUE
Ref ranges				
Feb 01, 2000@10:15		URINE	ZZZAPPEARANCE (REBUILD):	CLEAR
Ref: CLEAR				
Feb 01, 2000@10:15		URINE	UROBILINOGEN:	0 EU/dl
0 - 1				
Feb 01, 2000@10:15		URINE	URINE WBC/HPF:	NON OBS
count/HPF0 - <5				
Feb 01, 2000@10:15		URINE	URINE RBC/HPF:	0-1 count/HPF
0 - 2				
Feb 01, 2000@10:15		URINE	URINE MUCUS:	1
Feb 01, 2000@10:15		URINE	ABNORMAL RESULTS:	ABNORMAL H
NORMAL - 0				

Ordering Provider: William Lussier PA
 Report Released...: Feb 01, 2000@12:21
 Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]
 913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

Feb 01, 2000@10:15 SERUM VLDL: 43. H MG/DL
 0 - 37
 CHOL/HDL of 4.9-9.6 represents avg to above avg risk of CHD

Ordering Provider: William Lussier PA
 Report Released...: Feb 04, 2000@11:16
 Performing Lab...: ROSEBURG HCS [CLIA# 38D0988132]
 913 NW GARDEN VALLEY BLVD. ROSEBURG, OR 97471-6523

Mar 17, 1996@09:03 URINE ZZZAPPEARANCE (REBUILD): CLEAR
 Mar 17, 1996@09:03 URINE UROBILINOGEN: 0 mg/dL
 0 - 1

Ordering Provider: Leona R. Calderon MD
 Report Released...: Mar 17, 1996@11:28

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Mar 17, 1996 4 - 12	SERUM	T-4 (ENDED 08-2005):	8.7 ug/dl
Mar 17, 1996 .75 - 1.24	SERUM	ZT-3:	0.83 UP UNIT
Mar 17, 1996 5 - 12	SERUM	ZFTI:	10.5 mcg/dl

Ordering Provider: Leona R. Calderon MD

Report Released...: Mar 22, 1996@11:37

Mar 17, 1996 .38 - 3.47	SERUM	ZTSH:	1.62 uIU/ML
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TEST(S) PERFORMED AT PORTLAND VA CLINICAL LAB

Evaluation for NEW TSH:

NEW REF RANGE 03/27/95

Ordering Provider: Leona R. Calderon MD

Report Released...: Mar 28, 1996@12:14

----- BLOOD BANK -----

*** [LEGACY VISTA BLOOD BANK REPORT] ***

The following historical information comes from the Legacy VISTA Blood Bank System

It represents data collected prior to the installation of VBECS. Some of the information

in this report may have been duplicated in the VBECS report above (if available).

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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Immunizations

Printed On Sep 29, 2015

Immunization type: TD-ADULT
Date given: JUL 24, 1998 @ 11:00
Reaction described:

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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PETITIONER'S EXHIBIT 9 Page 17
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Consult Requests

Printed On Sep 29, 2015

Current Pat. Status: Outpatient
 Primary Eligibility: SC LESS THAN 50%(VERIFIED)
 Patient Type: SC VETERAN
 OEF/OIF: NO

Service Connection/Rated Disabilities
 SC Percent: 30%
 Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
 IMPAIRED HEARING (0%)

Order Information
 To Service: EYEGLASS REQUEST
 From Service: RSB/OP/EYE/DECK/CONSULT
 Requesting Provider: DECK, BRYAN
 Service is to be rendered on an OUTPATIENT basis
 Place: Consultant's choice
 Urgency: Routine
 Earliest Appr. Date:
 Orderable Item: EYEGLASS REQUEST
 Consult: Consult Request
 Provisional Diagnosis: Presbyopia (ICD-9-CM 367.4)
 Reason For Request:

EYEGLASS RX:
 [DISTANCE] Right Left
 Sphere Cylinder: +2.50/SPH +2.50/SPH
 Axis:
 Prism:
 Base:
 BC:
 MRP:

[NEAR] Right Left

Sphere Cylinder:
 Axis:
 Prism:
 Base:
 BC:
 MRP:

[NEAR] Right Left

BC:
 MRP:

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Consult Requests

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[NEAR]	Right	Left
Addition Height:		
Type:		
Width:		
PD Far:	29	29
PD Near:		
PD Near Inset:		
Total Inset:		

[FRAME SELECTION]

Frame Name: BLVD 3021
 Color: GOLD/BLK
 Eyesize: 50
 Bridge Size: 24
 Temple Length: 145

[EYEWEAR OPTIONS]

Lens Material: ☒ Plastic ☐ Glass ☐ Polycarb

Lens Style: ☒ Single Vision

☐ Bifocal

☐ Trifocal

☐ Lenses Only

☐ Safety

☐ Tint*

☐ Progressive*

☐ Other (Description):

*Medical Necessity (required) for Tint or Progressive:

SPECIAL INSTRUCTIONS FOR EYEWEAR FABRICATION: UV 400 & SCRATCH RESISTANT.

DELIVERY INSTRUCTIONS: ☐ Veteran ☒ VA Medical Center

EYEGLOSS REPLACEMENT: ☐ Lost ☐ Broken ☐ Stolen

(Information Below - to be completed by Prosthetics)

ORDERING INFORMATION

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

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Consult Requests

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Obligation #:

Total Cost:

VISA #:

EXP DATE:

AUTHORIZATION SIGNATURE: _____

Inter-facility Information

This is not an inter-facility consult request.

Status: COMPLETE
 Last Action: COMPLETE/UPDATE

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	02/01/01 12:25	DECK, BRYAN	HUDSON, CONNIE M
PRINTED TO ROS-PROS-L	02/01/01 12:25		DECK, BRYAN
COMPLETE/UPDATE	02/01/01 15:26	WILLIAMS, ANGELA	WILLIAMS, ANGELA
PURCHASE ORDER ISSUED.			

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult

===== END =====

Current Pat. Status: Outpatient
 Primary Eligibility: SC LESS THAN 50%(VERIFIED)
 Patient Type: SC VETERAN
 OEF/OIF: NO

Service Connection/Rated Disabilities
 SC Percent: 30%
 Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
 IMPAIRED HEARING (0%)

Order Information

To Service: OPTOMETRY OUTPT
 Attention: DECK, BRYAN
 From Service: ZZZMHC/DAVIS
 Requesting Provider: DAVIS, ELIZABETH
 Service is to be rendered on an OUTPATIENT basis
 Place: Consultant's choice
 Urgency: Routine
 Earliest Appr. Date:
 Orderable Item: OPTOMETRY OUTPT
 Consult: Consult Request
 Provisional Diagnosis: needs glasses

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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Consult Requests

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Reason For Request:

Vet is having difficulty with accomadation, is having difficulty with far vision, can no longer see to watch TV - is causing headaches, squinting

Inter-facility Information

This is not an inter-facility consult request.

Status: COMPLETE
Last Action: COMPLETE/UPDATE

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	10/17/00 11:34	DAVIS, ELIZABETH	DAVIS, ELIZABETH
PRINTED TO	10/17/00 11:34		DAVIS, ELIZABETH
EQN12-32/CINDY16			
RECEIVED	10/17/00 13:11	MURPHY, TERRY	MURPHY, TERRY
INCOMPLETE RPT	02/02/01 05:25		KAISER, JOSEPH L
Note# 1284404			
COMPLETE/UPDATE	02/02/01 08:03	DECK, BRYAN	DECK, BRYAN
Note# 1284404			

Note: TIME ZONE is local if not indicated

LOCAL TITLE: CONSULT-OPTOMETRY
STANDARD TITLE: OPTOMETRY CONSULT
DATE OF NOTE: FEB 01, 2001@10:00 ENTRY DATE: FEB 02, 2001@05:25:42
AUTHOR: DECK, BRYAN EXP COSIGNER:
URGENCY: STATUS: COMPLETED

PT: SANDOVAL, LEONARD PROVIDER: DECK, BRYAN
DD: 02-01-01@1115 DT: 02-01-01(27253) TR:amp/ExecuMed

Fifty-year-old male presents for the first time. He has a chief complaint of decreased vision while reading and uses +1.50 over-the-counter reading glasses which offer some improvement. He states his distance vision is adequate.

OCULAR HISTORY: Negative for disease, injury, or surgery. His last eye exam was seven years ago.

MEDICAL HISTORY: Negative hypertension, diabetes, heart or lung disease.

Visual acuity without correction 20/30 OD and OS. The pupils were normal. The EOMs were full. The confrontation fields were full. Refraction +0.25 sphere OD and OS 20/20 binocular plano 20/20. Total

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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near power +2.25.

Slitlamp examination: The corneas were clear. The conjunctivae were clear. The anterior chambers were quiet. The irides were intact and the lenses were clear. Tonometry was 18 OD and OS.

Dilated fundus examination: The cup-to-disk ratio was 0.2 OU. The vessels were 2/3. The maculae were clear and the periphery were attached.

ASSESSMENT:

1. Presbyopia.

PLAN:

1. Spectacle prescription ordered.
2. Return to clinic as needed.

/es/ BRYAN H. DECK, OD

OPTOMETRIST

Signed: 02/02/2001 08:03

=====

===== END =====

Current Pat. Status: Outpatient
Primary Eligibility: SC LESS THAN 50%(VERIFIED)
Patient Type: SC VETERAN
OEF/OIF: NO

Service Connection/Rated Disabilities

SC Percent: 30%
Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
IMPAIRED HEARING (0%)

Order Information

To Service: ZZCARDIOLOGY EKG AMB
From Service: ZZZGOMEZ
Requesting Provider: LUSSIER, WILLIAM
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice
Urgency: Routine
Earliest Appr. Date:
Orderable Item: EKG WT
Procedure: EKG WT
Reason For Request:
Baseline before starting beta-blocker for hypertension.

Inter-facility Information

This is not an inter-facility consult request.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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Consult Requests

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Status: COMPLETE
Last Action: PRINTED TO

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	01/13/00 10:39	LUSSIER, WILLIAM	LUSSIER, WILLIAM
PRINTED TO	01/13/00 10:39		LUSSIER, WILLIAM
EQN13-10/ADMM12			
COMPLETE/UPDATE	02/14/01 12:48	WALLICK, KEN	WALLICK, KEN

This consult has been administratively closed. Please see the electronic medical record and paper chart for results of this consult, if any.

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult

===== END =====

Current Pat. Status: Outpatient
Primary Eligibility: SC LESS THAN 50%(VERIFIED)
Patient Type: SC VETERAN
OEF/OIF: NO

Service Connection/Rated Disabilities
SC Percent: 30%
Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
IMPAIRED HEARING (0%)

Order Information
To Service: ZZPROSTHETICS
From Service: ZZZPHYSICAL THERAPY EVALUATION
Requesting Provider:
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice
Urgency: Today
Earliest Appr. Date:
Orderable Item:
Procedure: GMRCT PROSTHETICS REQUEST
Provisional Diagnosis: chronic pain
Reason For Request:
TO ENSURE THE APPROPRIATE CLINICAL PATHWAY, PHYSICIAN ORDERS MAY BE
FORWARDED TO A SPECIFIC CLINIC FOR EVALUATION/ASSESSMENT, AND DEVELOPMENT
OF THE TECHNICAL ASPECTS FOR THE PROSTHETICS REQUEST.

PROSTHETICS AND SENSORY AIDS PRODUCT LINES (CLINIC PATHWAY) SELECT ONE
FROM BELOW.

Vision (OPTOMETRY)

Mobility (OT/PT)

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Consult Requests

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Speech (OT) Home Equipment (OT/PT)
 Hearing (PROSTHETICS) Home O2 Therapy (RT)
 Auto Adaptive Equip (OT) Clothing Allowance (PROSTHETICS)
 Cosmetic Restoration (ENT) Home Improvements (PROSTHETICS)

ICD-9 Code:*

Product Line Description (include clinical assessment/criteria, and/or
 discharge planning date):*

Wal-pil-o, a cervical pillow
 Prosthetics to arrange for issuance.

Mr. Lussier, PA-C: your patient; presently being assessed by P.T.
 recommend cervical pillow for neck positioning when supine, to facilitate
 decreased discomfort. P.T. assessment this date. Gillette, MPH, PT.

Inter-facility Information

This is not an inter-facility consult request.

Status: COMPLETE
 Last Action: COMPLETE/UPDATE
 Significant Findings: NO

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	07/24/98 14:13	LUSSIER, WILLIAM	GILLETTE, VIRGINIA
CPRS RELEASED ORDER	07/24/98 14:43		LUSSIER, WILLIAM
PRINTED TO ROS-PROS-L	07/24/98 14:43		LUSSIER, WILLIAM
COMPLETE/UPDATE	07/24/98 14:51	MANSER, JAMES M JR	CHURCH, LINDA H
10-90 TO PARKWAY MEDICAL FOR ISSUANCE OF WAL-PIL-O..LHC 7-24-98			

Note: TIME ZONE is local if not indicated

Significant Findings: No

 No local TIU results or Medicine results available for this consult
 =====
 ===== END =====

Current Pat. Status: Outpatient
 Primary Eligibility: SC LESS THAN 50%(VERIFIED)
 Patient Type: SC VETERAN
 OEF/OIF: NO

Service Connection/Rated Disabilities
 SC Percent: 30%

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
 SANDOVAL, LEONARD C
 SRCI
 777 STANTON BLVD
 ONTARIO, OREGON 97914

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Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
IMPAIRED HEARING (0%)

Order Information

To Service: PHYSICAL THERAPY OUTPT
From Service: ZZZWHITE TEAM/LUSSIER
Requesting Provider:
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice
Urgency: Next available
Earliest Appr. Date:
Orderable Item:
Procedure: PHYSICAL THERAPY
Reason For Request:
Indicate Number(s) desired and add detail where needed below:
3. Sandoval, Leonard 7690

This pt. may benefit from PT for review of back care, bed positioning, home exercise program for his chronic back pain. Please consider referral.
Thanks

1. Prosthetic Equipment/Supplies as indicated in PT Assessment.
2. Prosthetic Equipment/Supplies:
Specific request for:
3. Physical Therapy Assessment with Treatment as indicated.
4. CNH Referral Assessment.
5. Home visit to assess potential discharge.
6. Alternative Wound Care Assessment.
7. Specific therapeutic exercise request:
8. Specific modalities request:
9. Assessment for soft tissue mobilization.
10. Other:

Inter-facility Information

This is not an inter-facility consult request.

Status: COMPLETE
Last Action: RECEIVED

Facility

Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	05/18/98 08:33	LUSSIER, WILLIAM	LUSSIER, WILLIAM
CPRS RELEASED ORDER	05/18/98 08:34	LUSSIER, WILLIAM	LUSSIER, WILLIAM
PRINTED TO REHAB1	05/18/98 08:34	LUSSIER, WILLIAM	LUSSIER, WILLIAM
RECEIVED	05/18/98 10:09	MESSERVIER, KAREN	MESSERVIER, KAREN

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
SANDOVAL, LEONARD C
SRCI
777 STANTON BLVD
ONTARIO, OREGON 97914

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Consult Requests

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COMPLETE/UPDATE 02/14/01 12:53 SADLER, PAMELA D SADLER, PAMELA D
 This consult has been administratively closed. Please see the electronic medical record and paper chart for results of this consult, if any.

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult

===== END =====

Current Pat. Status: Outpatient
 Primary Eligibility: SC LESS THAN 50%(VERIFIED)
 Patient Type: SC VETERAN
 OEF/OIF: NO

Service Connection/Rated Disabilities
 SC Percent: 30%
 Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
 IMPAIRED HEARING (0%)

Order Information
 To Service: OCCUPATIONAL THERAPY OUTPT
 From Service: ZZMEDICAL WALK-IN
 Requesting Provider:
 Service is to be rendered on an OUTPATIENT basis
 Place: Consultant's choice
 Urgency: Within 1 week
 Earliest Appr. Date:
 Orderable Item:
 Procedure: GMRCTZ OT CONSULT
 Reason For Request:

Select and describe need as indicated.

1. Assess and treat as indicated*
2. Assess ADL's/IADL's*
3. UE/Hand Assessment/Treatment*
4. UE Splinting/Orthotics
5. Assessment for home equipment/adaptive aids/low vision aids*
6. W/TC (manual/power) and seating assessment*
7. Environmental/Architectural Barrier Assessment*
8. Functional visual, perceptual, cognitive assessment/treatment*
9. Dysphagia assessment**
10. CNH screening* screening*
11. Other*

Inter-facility Information
 This is not an inter-facility consult request.

Status: COMPLETE

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Last Action: CPRS RELEASED ORDER

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	04/23/98 10:40	CLINGER, DAVID P	CLINGER, DAVID P
CPRS RELEASED ORDER	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
PRINTED TO REHAB1	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
COMPLETE/UPDATE	02/14/01 12:50	SADLER, PAMELA D	SADLER, PAMELA D

This consult has been administratively closed. Please see the electronic medical record and paper chart for results of this consult, if any.

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult
===== END =====

Current Pat. Status: Outpatient
Primary Eligibility: SC LESS THAN 50%(VERIFIED)
Patient Type: SC VETERAN
OEF/OIF: NO

Service Connection/Rated Disabilities
SC Percent: 30%
Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
IMPAIRED HEARING (0%)

Order Information
To Service: DO NOT USE ZZORTHOPEDICS
From Service: ZZMEDICAL WALK-IN
Requesting Provider:
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice
Urgency: Within 1 week
Earliest Appr. Date:
Orderable Item:
Consult: Consult Request
Provisional Diagnosis: OA L knee, chronic back pain post op
Reason For Request:
chronic l knee pain after s.c.L knee injury 1970 gsw
Chronic back pain Harrington rods 1979 Tucson VA

Inter-facility Information
This is not an inter-facility consult request.

Status: COMPLETE
Last Action: CPRS RELEASED ORDER

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Facility Activity	Date/Time/Zone	Responsible Person	Entered By
ENTERED IN CPRS	04/23/98 10:41	CLINGER, DAVID P	CLINGER, DAVID P
CPRS RELEASED ORDER	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
PRINTED TO ROS-CINDY16	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
COMPLETE/UPDATE	04/19/02 09:02	WALLICK, KEN	WALLICK, KEN

This consult has been administratively closed. Please see the electronic medical record and paper chart for results of this consult, if any.

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult

===== END =====

Current Pat. Status: Outpatient
 Primary Eligibility: SC LESS THAN 50%(VERIFIED)
 Patient Type: SC VETERAN
 OEF/OIF: NO

Service Connection/Rated Disabilities
 SC Percent: 30%
 Rated Disabilities: IMPAIRMENT OF FEMUR (30%)
 IMPAIRED HEARING (0%)

Order Information
 To Service: MENTAL HEALTH OUTPT (ROSEBURG)
 From Service: ZZMEDICAL WALK-IN
 Requesting Provider:
 Service is to be rendered on an OUTPATIENT basis
 Place: Consultant's choice
 Urgency: Today
 Earliest Appr. Date:
 Orderable Item:
 Consult: Consult Request
 Provisional Diagnosis: depression
 Reason For Request: depression

Inter-facility Information
 This is not an inter-facility consult request.

Status: COMPLETE
 Last Action: CPRS RELEASED ORDER

Facility Activity	Date/Time/Zone	Responsible Person	Entered By

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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Consult Requests

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ENTERED IN CPRS	04/23/98 10:46	CLINGER, DAVID P	CLINGER, DAVID P
CPRS RELEASED ORDER	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
PRINTED TO	04/23/98 10:47	CLINGER, DAVID P	CLINGER, DAVID P
ROS-COPY-B2F1/12			
COMPLETE/UPDATE	02/14/01 11:53	KAUBLE, SHARON K	KAUBLE, SHARON K

This consult has been administratively closed. Please see the electronic medical record and paper chart for results of this consult, if any.

Note: TIME ZONE is local if not indicated

No local TIU results or Medicine results available for this consult

===== END =====

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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Health Summaries

Printed On Sep 29, 2015

***** CONFIDENTIAL ACTIVE PROBLEMS SUMMARY pg. 1 *****
 SANDOVAL, LEONARD C 564-82-7690 DOB: 07/15/1950

----- PLA - Active Problems -----

PROBLEM	LAST MOD	PROVIDER
Prolonged Posttraumatic Stress Disorder 309.81	10/17/2000	DAVIS, ELIZABETH
Tobacco Use Disorder, Continuous (ICD-9-CM 305.1)	06/29/2000	CASEBOLT, DON
Hematuria (ICD-9-CM 599.7)	07/27/1998	LUSSIER, WILLIAM
Lumbago (ICD-9-CM 724.2) Harrington rods 1978	06/29/2000	LUSSIER, WILLIAM
Major Depressive Disorder, Single Episode 296.20	07/27/1998	LUSSIER, WILLIAM
Anxiety state (ICD-9-CM 300.00)	07/27/1998	LUSSIER, WILLIAM
Unspecified Arthropathy of Unspecified Site (ICD-9-CM 716.90) GSW left femur in Vietnam	06/29/2000	LUSSIER, WILLIAM
LIH (ICD-9-CM 550.90)	07/27/1998	DUGAN, TRUDY

*** END ***** CONFIDENTIAL ACTIVE PROBLEMS SUMMARY pg. 1 *****

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Progress Notes

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LOCAL TITLE: NO-SHOW MHC (T)
 DATE OF NOTE: MAY 22, 2001@10:19 ENTRY DATE: MAY 22, 2001@10:19:27
 AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet called me last week on 5/16/01 "I got served with a stalking RO by the neighbors today I have to be in court in the morning. VET agreed to come into be seen - this was the appointment scheduled per his request.

Patient failed to keep the following type of scheduled appointment:
☒ Follow-up

Action

☒ Send no-show letter informing Veteran that they may call and reschedule for ongoing Mental Health care.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 Psych/Mental Health Nurse Practitioner
 Signed: 05/22/2001 10:24

LOCAL TITLE: NO-SHOW MHC (T)
 DATE OF NOTE: APR 25, 2001@15:28 ENTRY DATE: APR 25, 2001@15:28:07
 AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Patient failed to keep the following type of scheduled appointment:
☐ New
☒ Follow-up
☐ Group
☐ Hospital discharge follow-up appointment

Action (Clinicians: please print this completed note to clinic printer):

☐ Reschedule the next available

☐ I have contacted the patient. Reschedule (overbook if necessary) for:

Date:

Clinic:

☐ Leave enrolled. Do not reschedule.

☒ Send a no-show letter informing vet he may call and reschedule for

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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ongoing

Mental Health care.

[] No new appointment will be made.

Patient has a future appointment on (date):

[] Discharge from clinic.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 Psych/Mental Health Nurse Practitioner
 Signed: 04/25/2001 15:29

LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: MAR 13, 2001@09:02 ENTRY DATE: MAR 13, 2001@09:02:09
 AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet seen as a walk-in
 Pharmacologic Management (90862)
 (Prescription use, and review of medication with no more than minimal
 medical psychotherapy)
 Session length: 30 minutes
 Primary Psychiatric Diagnosis: PTSD with Depression and Anxiety

Treatment Plan Title: PTSD

Individualized Treatment Goals: To reduce the symptoms of the vet's
 disorder, especially the following symptoms which the vet finds
 particularly troublesome: nightmares about VN, Intrusive thoughts about
 VN, anxiety

Behavioral Objectives (What the patient will do.):

1. The vet will rate the distress from his psychiatric symptoms in the
 last month to be a 3/10 or less, where 10 = "the worst possible."

Today = 6

Progress (S/O):

Alert, O_x3 affect congruent, thoughts linear, no evidence of psychosis.
 States Buspar made him "too anxious/antsy" so stopped it. States has been
 spending more time with his girlfriend and she works night shift, he is
 adapting to her schedule so sleep is more disturbed. Has not been using
 hydroxyzine for sleep - agrees to use to try and re-establish regular
 sleep pattern. Plans to go to Mexico to visit relatives and wants to get
 married when he and girlfriend are there. States that ex-wife is still
 causing problems for him- still is filing restraining orders against him
 because he travels on the road she lives on to get to his girlfriend's
 house.

Med changes/Hospitalizations since last seen: optometry - for glasses Rx
 "they help a lot"

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Herbals/OTC Meds/Vitamins: none
 S/I: denies - 1 prior attempt "Years ago before I started getting help"
 H/I: denies
 Drugs: smokes marijuana "If I don't smoke marijuana at night I have awful nightmares about VietNam" - Has a marijuana Rx from an outside physician
 ETOH: occasional 1x/month CAGE questions negative, no prior Tx

Overall Assessment: PTSD with Depression and anxiety

Plan:

Continue current Medications:
 Paxil 20mg qam; 10mg q pm
 Con't Hydroxyzine 25mg to 50mg qhs prn for sleep
 RTC scheduled for: 6/11/01 @ 0900

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 Psych/Mental Health Nurse Practitioner
 Signed: 03/13/2001 12:50

LOCAL TITLE: NO-SHOW MHC (T)
 DATE OF NOTE: MAR 09, 2001@09:50 ENTRY DATE: MAR 09, 2001@09:50:32
 AUTHOR: DAVIS,ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Patient failed to keep the following type of scheduled appointment:

[x] Follow-up

[

Action (Clinicians: please print this completed note to clinic printer):

[x] Send no-show letter informing Veteran that they may call
 and reschedule for ongoing
 Mental Health care.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 Psych/Mental Health Nurse Practitioner
 Signed: 03/09/2001 09:52

LOCAL TITLE: CONSULT-OPTOMETRY
 STANDARD TITLE: OPTOMETRY CONSULT
 DATE OF NOTE: FEB 01, 2001@10:00 ENTRY DATE: FEB 02, 2001@05:25:42
 AUTHOR: DECK,BRYAN EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

PT: SANDOVAL,LEONARD PROVIDER: DECK,BRYAN
 DD: 02-01-01@1115 DT: 02-01-01(27253) TR:amp/ExecuMed

Fifty-year-old male presents for the first time. He has a chief

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Progress Notes

Printed On Sep 29, 2015

complaint of decreased vision while reading and uses +1.50 over-the-counter reading glasses which offer some improvement. He states his distance vision is adequate.

OCULAR HISTORY: Negative for disease, injury, or surgery. His last eye exam was seven years ago.

MEDICAL HISTORY: Negative hypertension, diabetes, heart or lung disease.

Visual acuity without correction 20/30 OD and OS. The pupils were normal. The EOMs were full. The confrontation fields were full. Refraction +0.25 sphere OD and OS 20/20 binocular plano 20/20. Total near power +2.25.

Slitlamp examination: The corneas were clear. The conjunctivae were clear. The anterior chambers were quiet. The irides were intact and the lenses were clear. Tonometry was 18 OD and OS.

Dilated fundus examination: The cup-to-disk ratio was 0.2 OU. The vessels were 2/3. The maculae were clear and the periphery were attached.

ASSESSMENT:

1. Presbyopia.

PLAN:

1. Spectacle prescription ordered.
2. Return to clinic as needed.

/es/ BRYAN H. DECK, OD

OPTOMETRIST

Signed: 02/02/2001 08:03

LOCAL TITLE: NO-SHOW MHC (T)
DATE OF NOTE: DEC 07, 2000@10:32 ENTRY DATE: DEC 07, 2000@10:32:43
AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Patient failed to keep the following type of scheduled appointment:

[x] Follow-up

Action (Clinicians: please print this completed note to clinic printer):

[x] I have attempted to contact the patient. - phone number listed in computer is a fax line?

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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[x] Send no-show letter informing Veteran that they may call and reschedule or return to clinic as a walk-in for ongoing Mental Health care.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
Psych/Mental Health Nurse Practitioner
Signed: 12/07/2000 10:34

LOCAL TITLE: PSYCH/MH NURSE PRACTITIONER
STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
DATE OF NOTE: OCT 17, 2000@11:27 ENTRY DATE: OCT 17, 2000@11:27:47
AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Vet seen as scheduled
Alert, OX3 affect anxious, hair not as neatly kept as usual.
"My girlfriend's mother died and that's been so hard for her"
Denies thoughts of harm to self or others, denies etoh use.
States has ongoing anxiety and a PTSD vet suggested he try some buspar.
VET does not have panic attacks, but describes ongoing moderate level of anxiety.
Vet asks about a PTSD SC. He has never filed for this -
Army 1969 to 1971 - 2 tours in VN door gunner - was injured several times, is SC for impairment of femur - he recieved a purple heart when this injury occurred. States has also recieved many other metals including a Vietnamese Cross of Gallantry.
PTSD checklist reviewed with vet:
Often has nightmares about VN, Has daily intrusive thoughts - "espically about all the people I knew but died - you'd meet them and then you'd be putting their stuff in a bag because they were gone."
Vet avoids thoughts, feelings, conversations, activities that remind him of VN "but they did tell me it was good to talk about it so I try to do that but it's hard" States that his emotions are numb - he isolates, has problems concentrating, has a heightened startle reflex, and irritability and outbursts of anger. Vet also reports being constantly "on alert"
A: PTSD with Depression and anxiety
P: Trial Buspar 5mg TID
Risks, benefits, and potential side effects discussed with vet, he was provided with written material, and the opportunity to ask questions
Referral for Optometry for glasses
Cont Paxil 20 mg, 10mg q pm
Hydroxyzine 25 to 50mg prn for sleep - will take routinely to try and establish a regular sleep pattern
Referred to VSO in Jo County to file for PTSD SC

/es/ ELIZABETH A. DAVIS MS PMHNP CS
Psych/Mental Health Nurse Practitioner
Signed: 10/17/2000 15:24

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LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: AUG 01, 2000@08:57 ENTRY DATE: AUG 01, 2000@08:57:12
 AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet seen as scheduled.

Alert, Ox3 affect euthymic.

States "I met a girlfriend - she's a good woman - it's going really well"
 Is troubled by ex-wife filing an RO against him - his current girlfriend's
 mother lives on the same street his ex-wife does - mother is dying of
 cancer and vet is making frequent trips over to see/care for her - ex-wife
 has now filed an RO and he is scheduled for court in am to contest RO.
 Denies thoughts of harm to self or others. In fact, is puzzled why ex-wife
 would feel threatened as he has never harmed her "My record is clean"
 Denies ETOH use - still uses marijuana for sleep - states "I don't know
 how long it's been since I got a good nights sleep"

A: Depression - stable on medication

P: Cont Paxil 20mg qam and 10mg qpm

Will trial Hydroxyzine 25 to 50mg qhs for sleep

Risks, benefits, and potential side effects of medication discussed with
 vet

RTC scheduled for 10/3/00 @ 0830 - as a walk-in sooner if needed.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 Psych/Mental Health Nurse Practitioner
 Signed: 08/01/2000 09:17

LOCAL TITLE: PRIMARY CARE PROVIDER
 STANDARD TITLE: PRIMARY CARE NOTE
 DATE OF NOTE: JUN 29, 2000@10:21 ENTRY DATE: JUN 29, 2000@16:26:06
 AUTHOR: CASEBOLT, DON EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

PATIENT: SANDOVAL, LEONARD C PROVIDER: CASEBOLT, DON

DD: 06-29-00@1040 DT: 06-29-00(25853) TR:amp/ExecuMed

CHIEF COMPLAINT: Left thigh pain.

HISTORY OF PRESENT ILLNESS: About noon on June 24, patient was in an
 altercation and states that he drove ahead of another large bus in his
 truck, that large bus rammed him several times from behind. He was
 seat-belted during this time but this resulted in low back pain and
 bruising on his left thigh. He did not seek any medical attention
 until today when he was urged by his girlfriend to be seen.

PAST MEDICAL HISTORY: Gunshot wound left femur in Vietnam, Harrington

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rods put in 1978 for lumbago low back pain, left inguinal hernia surgery, anxiety state, depressive disorder, hematuria, and tobacco use.

ALLERGIES: No known allergies.

MEDICATIONS:

1. Atenolol 100 mg 1/2 tablet q.d.
2. Ibuprofen 800 mg t.i.d.
3. Paxil 20 mg for depression.

SOCIAL HISTORY: He continues to smoke. This altercation was a result of persons not wanting him to be involved with his ex-wife, he states.

REVIEW OF SYSTEMS: Essentially noncontributory.

OBJECTIVE:

GENERAL: This 49-year-old Hispanic male is alert and oriented times three, in no acute distress. Normal posture and gait. Cooperative.

VITAL SIGNS: Temperature 98.2 F. Pulse 92. Respirations 16. Blood pressure 153/90. Height 67 inches. Weight 179 pounds. Pain level 8.

SKIN: He has scars consistent with his previous surgery. He has an ecchymotic area on the left vastus lateralis, fairly proximally. It is approximately 5 cm in diameter in an oval shape, no other bruising is noted.

HEENT: There is no click at TMJ. Face is symmetrical, atraumatic. Eyes: Conjunctivae clear, sclerae white. Extraocular movements intact. PERRLA. Ears: Ear canals and tympanic membranes are within normal limits bilaterally. Nose: Nares patent bilaterally. Mouth: No lesions noted on mucosa, lips, tongue. Uvula is midline and up-going. No erythema or exudate on pharynx.

NECK: Has good range of motion. No JVD. No thyroid enlargement. Carotids are 2+ bilaterally without bruits.

CHEST: Respirations without use of accessory muscles. Clear to auscultation anteriorly and posteriorly.

BACK: Slight paravertebral tenderness to the lower lumbar area. No CVA tenderness.

HEART: Regular rate and rhythm without murmurs or extra heart sounds.

ABDOMEN: Flat, soft, nontender. Active bowel four quadrants. No organomegaly or masses palpable.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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EXTREMITIES: Pedal pulses +2 bilaterally. Deep tendon reflexes +2 at triceps, brachioradialis and patella. Muscle strength 5+ bilaterally upper and lower.

NEURO: Cranial nerves II through XII grossly intact. Able to walk on heels, toes, heel-to-toe. Romberg negative. No pronation or drift. Finger-to-nose intact.

ASSESSMENT:

1. Ecchymosis, post altercation.

PLAN:

1. The patient will be given a limited supply of Tylenol #3 to help him sleep at night as he states this is when the pain aggravates him the most and he is unable to sleep.
2. Patient will be seen back for his regular visits. It is of note that he was a no-show for a recent visit only a couple of weeks ago.

/es/ Donald E. Casebolt, RN
Family Nurse Practitioner
Signed: 06/30/2000 08:54

LOCAL TITLE: PRIMARY CARE NURSING INTAKE (T)

STANDARD TITLE: PRIMARY CARE NURSING NOTE

DATE OF NOTE: JUN 29, 2000@09:50 ENTRY DATE: JUN 29, 2000@09:50:59

AUTHOR: CRAMPTON,CAROLYN R EXP COSIGNER:

URGENCY: STATUS: COMPLETED

*** PRIMARY CARE NURSING INTAKE (T) Has ADDENDA ***

Note: Involved in altercation with a bus - called police - rammed 5 times with bus (in truck at time). L thigh bruised. Has hx of harrington rods in back. Unable to sleep. Insurance claim.

HT: 67 in [170.2 cm] (01/20/1999 10:20)

WT: 179.9 lb [81.8 kg] (06/29/2000 09:49)

BMI: Patient's BMI is 28.19.

TEMP: 98.2 F [36.8 C] (06/29/2000 09:49)

PULSE: 92 (06/29/2000 09:49)

RESP: 16 (06/29/2000 09:49)

BP: 153/90 (06/29/2000 09:49)

SMOKES: Yes

NUTRITION SCREEN: -

ALLERGY: Patient has answered NKA

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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ACTIVE MEDICATIONS:

Active Outpatient Medications (including Supplies):

Active Outpatient Medications	Status
1) ATENOLOL 100MG TAB TAKE 1/2 TABLET EVERY DAY FOR HIGH BLOOD PRESSURE	ACTIVE
2) IBUPROFEN 800MG TAB TAKE 1 TABLET 3 TIMES A DAY WITH FOOD FOR ARTHRITIC PAIN	ACTIVE
3. paxil 200 mg for depression	
4) TABLET CUTTER USE TO SPLIT TABLET	ACTIVE

ALLERGY(S)/MEDS REVIEWED: Yes
COMMENT:

PREVENTIVE HEALTH THIS VISIT: (please enter Y or N for each item)

[x] 4. Tips for Health Living brochure contents discussed with patient.

5. ETOH - audit c score -
6. PTSD - handout given./es/ CAROLYN R CRAMPTON
WHITE TEAM PATIENT CARE FACILITATOR
Signed: 06/29/2000 10:0506/29/2000 ADDENDUM
audit c score 4.

STATUS: COMPLETED

/es/ CAROLYN R CRAMPTON
WHITE TEAM PATIENT CARE FACILITATOR
Signed: 06/29/2000 10:38

LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
DATE OF NOTE: APR 13, 2000@14:49 ENTRY DATE: APR 13, 2000@15:27:11
AUTHOR: DAVIS,ELIZABETH EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Vet seen as a walk-in

"I was doing fine then out of the blue last week I started crying, I don't understand it - I know I'm lonely - I have a lovely house but noone to share it with"

Denies S/I, H/I, drug or etoh use. while he is talking about his life, and feelings suddeny has the insight that the wedding anniversary and his ex-wife's birthday (both were the same day) were April 7th and he is mourning the loss of the marriage, and lack of intimatcy/relationship in

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his life at present.
 A: Depression
 P: Con't Paxil @ 30mg/day
 RTC as scheduled - sooner if needed prn
 Explored strategies for meeting single people - vet will follow up on some of them.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 MENTAL HEALTH PATIENT CARE FACILITATOR
 Signed: 04/13/2000 15:27

LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: MAR 20, 2000@14:16 ENTRY DATE: MAR 20, 2000@14:18:47
 AUTHOR: BERENBACH,JOANN EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet is seen as walk in.
 S/O:
 Vet states he was doing really well until about 5 days ago he noted increasing depression, indecisiveness, mild anxiety. Vet states that he feels he has no direction. He denies s/i and h/i. He does not present with psychotic thinking. He is linear in thought. We discuss options for increased socialization. Possible community service clubs which may help with contact with others and purpose. Vet also agrees to trial increase in paroxetine and assess if this helps with depression and anxiety.
 Vet is encouraged to contact vet center in Grant's Pass re: community service projects.
 A: MDD, improved with medication
 P: ^paroxetine 20mg am and 10mg pm
 appt for f/u as scheduled, sooner as walk in if needed.

/es/ JoAnn G. Berenbach
 PMHNP, CS
 Signed: 03/20/2000 17:32

LOCAL TITLE: PSYCH/MH NURSE PRACTITIONER
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: FEB 01, 2000@09:50 ENTRY DATE: FEB 01, 2000@10:01:02
 AUTHOR: DAVIS,ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet seen as scheduled
 "I'm feeling so much better - I was really bad when I saw you last - but this medication is really helping me- I have more energy and my mood is good - I want to leave it alone!"
 Vet likes to take medication as 10mg bid - "I take a half a pill in the morning then in the afternoon when I start to wind down I take the other half and do fine for the rest of the day"

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Alert, OX3 affect responsive, appropriate. Denies S/I, H/I, etoh use. States smokes marijuana qhs to assist with sleep and it stops his nightmares of killing/blood etc. States does not use Trazodone as he still has nightmares when he takes that.

Just bought a new truck - is getting out more and "enjoying life now"

A: Depression

P: Cont Paxil 10mg BID

D/C Trazodone

RTC scheduled for 8/1/00 @ 0830 - sooner as a walk-in if needed

/es/ ELIZABETH A. DAVIS MS PMHNP CS

MENTAL HEALTH PATIENT CARE FACILITATOR

Signed: 02/01/2000 10:01

LOCAL TITLE: PRIMARY CARE PROVIDER

STANDARD TITLE: PRIMARY CARE NOTE

DATE OF NOTE: JAN 13, 2000@10:44

ENTRY DATE: JAN 14, 2000@10:41:57

AUTHOR: LUSSIER, WILLIAM

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

PT: SANDOVAL, LEONARD PROVIDER: WILLIAM LUSSIER

DD: 011300 DT: 011400(28548) TR: lgj/Execumed

SUBJECTIVE: The patient is a 49-year-old Hispanic-American male who presents today for a routine follow up visit.

PAST MEDICAL HISTORY:

1. Anxiety and depression, for which he is being treated in the Mental Health Clinic on Paxil with good response.
2. Insomnia, for which he had been prescribed trazodone, but the patient discontinued using trazodone due to concerns about the possibility of cross reaction with his Paxil.
3. Lumbago with frequent recurrences of back pain.
4. Hearing loss.
5. Arthropathy.

CURRENT MEDICATIONS: The patient currently takes, in addition to his paroxetine, some ibuprofen at 600 mg up to 2 tablets at a time for his back pain, and requests and upgraded to 800 mg Motrin.

OBJECTIVE:

Vital signs: Temperature 97.7 otic, pulse 75, respirations 20 and nonlabored, blood pressure 155/82, height 67", weight 182.1 pounds.

General: He is a well-developed, well-nourished Hispanic-American male in no acute distress, but with a somewhat uncomfortable facies due to lumbar region discomfort.

Heart: Regular rate and rhythm without murmur, gallop, or rub.

LABORATORY: The patient's most recent laboratory tests go back to March of

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1996, as he failed to provide lab specimens at his last visit with me.

ASSESSMENT:

1. Hypertension.
2. Anxiety/depression.
3. Lumbago.

PLAN:

1. Ibuprofen 800 mg t.i.d.
2. Atenolol 50 mg q.d.
3. We will do a baseline electrocardiogram today.
4. Fasting labs will be done on February 1, 2000, at the patient's request as that is the date that he is scheduled to come in again from Grants Pass for mental health evaluation. I have discussed with the patient that he needs to make sure and bring the mental health professionals up to date on the fact that he is not taking the trazodone and is experiencing insomnia.
5. I plan to have this patient rechecked in six months.

/es/ WILLIAM A. LUSSIER, PA-C
Physician Assistant- Certified
Signed: 01/14/2000 17:50

LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
DATE OF NOTE: DEC 03, 1999@09:51 ENTRY DATE: DEC 03, 1999@09:56:15
AUTHOR: BERENBACH, JOANN EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Vet is seen as walk in.

S/O:

"I've got one pill left and my appt isn't until the fourteenth."

Vet states he is doing well on the paroxetine. He notes his sleep has improved and he is less anxious and depressed. Vet notes that he feels great until late after noon and wondered about increasing the dosage. Vet denies side effects.

Vet is alert and oriented. His affect is restricted although mood is euthymic. Vet's thinking is linear and without psychosis. Vet denies s/i and h/i. Vet is focused in conversation. He notes he is in relationship at this time which he finds is helpful in eliminating his isolation.

Will increase paroxetine to 20mg daily. Vet requests appt be rescheduled and if needed he is aware he can be seen as walk in.

A: Depressive d/o with anxiety

P: ^paroxetine 10mg bid
continue trazadone prn
Appt for f/u in 2 months.

/es/ JoAnn G. Berenbach
PMHNP, CS
Signed: 12/03/1999 09:56

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LOCAL TITLE: MHC/P/MH NURSE PRACTITIONER WALK-IN
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: NOV 04, 1999@15:42 ENTRY DATE: NOV 04, 1999@15:46:05
 AUTHOR: DAVIS,ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet presents as a walk-in
 "I'm more depressed and I'm anxious, and my sleep is still bad - I wake up in the middle of night and I can't get back to sleep"
 Denies S/I, H/I, etoh use. States stopped smoking Marijuana several weeks ago - and has noticed an increase in depression since then.
 Thoughts linear, no evidence of psychosis.
 Had been on Prozac in the past but he felt like it worsened his sleep problems so has not taken for months
 A: Depressive D/O with anxiety
 P: Trial Paxil 10mg q day x 30
 RTC scheduled for 12/14/99 @ 1030
 Risks, benefits, and side effects discussed with vet - he was provided the opportunity to ask questions and provided with written materials on depression and on Paxil.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 MENTAL HEALTH PATIENT CARE FACILITATOR
 Signed: 11/04/1999 15:46

LOCAL TITLE: PSYCH/MH NURSE PRACTITIONER
 STANDARD TITLE: MENTAL HEALTH NURSE PRACTITIONER NOTE
 DATE OF NOTE: AUG 24, 1999@11:46 ENTRY DATE: AUG 24, 1999@11:48:01
 AUTHOR: DAVIS,ELIZABETH EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet was a no-show for scheduled appt - call placed to telephone # of record - recieved a recording that phone has been disconnected.
 Will be sent a letter instructing him that he can call and schedule an appt or rtc as a walk-in for ongoing mental health care.

/es/ ELIZABETH A. DAVIS MS PMHNP CS
 MENTAL HEALTH PATIENT CARE FACILITATOR
 Signed: 08/24/1999 11:48

LOCAL TITLE: PSYCHIATRIST NOTE
 STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE
 DATE OF NOTE: JUL 19, 1999@16:54:36 ENTRY DATE: JUL 19, 1999@16:54:36
 AUTHOR: EVERETT,ROSLEIN M EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

S/O: Pt was seen today in the MHC for his scheduled appt. He stated he is not taking Prozac. He admitted he smokes MJ and stated it helps him

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sleep and he doesn't have any problem with depression or anxiety. He admitted he "occasionally drinks beer".

Current meds: Trazodone "occasionally" for sleep.

Pt reported he sleeps good, approximately 7 hrs/night and feels rested. His appetite is good. His energy is "very good." He has a bad back and he stated his motivation is okay with what he can do. His mood is "real good." He denied any depression at this time. He denied any SI/HI. He stated he has interests and has a friend he does things with during the day.

Pt reported that in 1996 he had a lot of things happen - wife left him on 1/31, his mother died on Mother's Day, he got a divorce in July. He admitted he was a "total wreck" for sometime after but stated he is "doing much better now."

A: Depressive Disorder, NOS.

P: Will continue with occasional use of Trazodone for sleep. Highly encouraged pt to not use MJ or alcohol. RTC on 10/18/99 @10am for re-evaluation.

/es/ ROSLEIN M. EVERETT, D.O.
CHIEF PSYCHIATRIST
Signed: 01/31/2000 18:50

LOCAL TITLE: PSYCHIATRIC NURSE PRACTITIONER
DATE OF NOTE: MAY 13, 1999@10:28 ENTRY DATE: MAY 13, 1999@10:34:10
AUTHOR: DAVIS, ELIZABETH EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Vet seen for scheduled appt.

"I haven't been taking the Prozac - I was waking up in the middle of the night"

Vet states that he stopped the Prozac but that it was helpful with his mood and he is agreeable to resuming it. Instructed to take early in am and to routinely take the Trazodone to help him with sleep continuity problem.

Denies S/I, H/I, etoh use. States does occasionally use marijuana to facilitate sleep due to pain problems - has herrington rods in back, shattered L knee with chronic pain, etc.

Just returned from taking father on a road trip through Arizona - thinks will probably not move but will stay in Oregon.

A: Depressive d/o with anxiety

P: Resume Prozac 10mg qam &

Trazodone 25 to 50mg qhs for sleep

RTC to be scheduled for 2 months walk-in sooner if needed

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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/es/ ELIZABETH A. DAVIS MS PMHNP CS
 MENTAL HEALTH PATIENT CARE FACILITATOR
 Signed: 05/13/1999 10:34

LOCAL TITLE: PSYCHIATRIST NOTE
 STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE
 DATE OF NOTE: FEB 11, 1999@10:30 ENTRY DATE: FEB 16, 1999@13:23
 AUTHOR: GOLDSTEIN, HARRIS EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

PATIENT: SANDOVAL, LEONARD C. PROVIDER: HARRIS S. GOLDSTEIN, M.D.

DD: 02-11-99@1152 DT: 02-12-99(6220) TR:msh/ExecuMed

REASON FOR VISIT: Treatment for depression.

CURRENT PSYCHIATRIC MEDICATIONS:

1. Prozac 10 mg q. a.m.
2. Trazodone 50 mg h.s.

SUBJECTIVE: The patient states that he is doing well. He does appear in good spirits. His main issue is trying to decide whether he should sell his current house and return to Arizona, where much of his family resides. He likes Oregon, but he is pulled by the fact that he is so distant from children and grandchildren. He is going to take a week vacation with his parents, his father being 79 years of age, and then he will decide.

OBJECTIVE: He is well groomed and euthymic in affect.

ASSESSMENT: The patient no longer appears depressed. He needs to continue on his present medication to prevent relapse. It would probably be best for him psychologically to be closer to family, although he is also attached to the land here.

PLAN:

1. Continue current prescribed medications. He is taking the trazodone only p.r.n. and needs it only occasionally. He takes the Prozac at 11 a.m. and on a regular basis. He is doing well with it.
2. Return to clinic in 3 months for follow up.

/es/ HARRIS S. GOLDSTEIN, M.D.
 PSYCHIATRIST
 Signed: 02/17/1999 08:41

LOCAL TITLE: PSYCHIATRIST NOTE
 STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE
 DATE OF NOTE: JAN 21, 1999@11:21 ENTRY DATE: JAN 25, 1999@19:39:08

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Printed On Sep 29, 2015

AUTHOR: GOLDSTEIN, HARRIS
URGENCY:EXP COSIGNER:
STATUS: COMPLETED

PATIENT: SANDOVAL, LEONARD C. PROVIDER: GOLDSTEIN, HARRIS

DD: 01-21-99@1121 DT: 01-24-99(2911) TR:mm/ExecuMed

48-year-old male Hispanic.

REASON FOR VISIT: Followup for treatment of depression.

CURRENT PSYCHIATRIC MEDICATIONS:

1. Trazodone 50 mg h.s.
2. Prozac 10 mg q a.m.

SUBJECTIVE: The patient states he is feeling better, but still has some periods of anxiety and mild depression. He relates that in 1996, after his wife left him, his mother became ill with cancer, and she died. The separation from his wife and the death of his mother precipitated a depression, for which he consulted the clinic here. Various SSRIs were tried, the last being Prozac 10 mg. He said he was helped some by the Prozac after starting it in September at his last visit to this clinic. However, in October, he went into the hospital for diagnostic studies related to a small "tumor" on his left kidney. Following that evaluation, which was complicated by an infection, he had his left knee operated on. During the hospitalization in October, his Prozac was stopped, and he has only used it intermittently since. He did note that sometimes he believed he slept less well when he took the Prozac in the morning, but recently he took one 10 mg capsule at night and slept well. He uses the trazodone when he believes he is going to have an especially difficult night sleeping. He often breaks a trazodone in half to use it. His appetite is good and energy level is adequate.

He was having suicidal thoughts about the time of his last visit in September, but no longer has those thoughts. He is quite relieved that in September the financial debt that he was left with following the divorce was finally paid off. He felt somewhat more depressed during the Christmas holidays because most of his family and friends reside in Tucson, Arizona. He would like to visit his children there, but does not have the funds currently.

OBJECTIVE: Patient is adequately groomed and appears his stated age of 48. He was friendly and cooperative. Speech was normal in rate and productivity. Affect was euthymic. Thought processes were logical.

ASSESSMENT: The patient's depression is resolving with some fluctuation in mood reported, but not evident today.

PLAN:

1. Medications - It was recommended to him that he regularly take

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10 mg of Prozac, trying it at h.s. rather than in the a.m. He needs to remain on an antidepressant for another several months, at least, to prevent a relapse, which he still appears vulnerable to. He will also take the trazodone 25 to 50 mg h.s. prn.

2. Return for followup in one month.

/es/ HARRIS S. GOLDSTEIN, M.D.

PSYCHIATRIST

Signed: 01/28/1999 12:28

LOCAL TITLE: PRIMARY CARE PROVIDER

STANDARD TITLE: PRIMARY CARE NOTE

DATE OF NOTE: JAN 19, 1999@16:41

ENTRY DATE: JAN 29, 1999@10:33:37

AUTHOR: LUSSIER, WILLIAM

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

PATIENT: SANDOVAL, LEONARD C. PROVIDER: LUSSIER, WILLIAM A.

DD: 01-19-99@1641 DT: 01-22-99(2571) TR:msh/ExecuMed

SUBJECTIVE: Mr. Sandoval is a 48-year-old Hispanic male who is in for a routine followup.

PAST MEDICAL HISTORY:

1. Renal biopsy, performed at Portland VA Medical Center.
2. Ureteral shunt on the left side, performed at Portland VA Medical Center. Following that installation of shunt the patient apparently had some difficulty with discomfort and reported to the Roseburg VA Medical Center. He was advised by Dr. Davis on October 18, 1998 to return the next day for removal of the shunt. Instead, the patient apparently reported to the emergency room at Three Rivers Community Hospital in Grants Pass where the shunt was removed. The patient developed febrile response, left flank pain and was diagnosed as having a urinary tract infection. He was hospitalized for I.V. antibiotics for 24 hours and discharged without further medications.

Patient also complains of persistent right knee pain and complains of right heel pain, which is worse by the end of the day and is requesting an evaluation by podiatry of his foot pain.

OBJECTIVE:

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature 98.7 otic, pulse 98, respirations 20 and nonlabored, blood pressure 140/85, weight 199.9 lbs.

GENERAL: The patient was referred up to the x-ray department to obtain an x-ray of his right foot, emphasizing the calcaneus and talar region and was advised to return to the clinic at approximately 1:30

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p.m. for continuation of evaluation and plan. The patient however, failed to return despite the fact that the nurses' called for him multiple times and he was nowhere to be found. It is presumed that the patient decided to not receive further evaluation today for whatever reason.

ASSESSMENT:

1. Hematuria by history.
2. Lumbago.
3. Depression disorder, unspecified.
4. Anxiety state, not otherwise specified.
5. Arthropathy, not otherwise specified.
6. Lumbar spine fusion of L1-L2.
7. Left inguinal hernia.
8. Heel pain, etiology unknown.

PLAN:

1. Reevaluate him if and when he decides to return to Roseburg VA Medical Center.

/es/ WILLIAM A. LUSSIER, PA-C
Physician Assistant- Certified
Signed: 01/29/1999 12:12

LOCAL TITLE: MEDICAL CARE PROVIDER-MENTAL HEALTH

STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE

DATE OF NOTE: DEC 23, 1998@08:08:09 ENTRY DATE: DEC 23, 1998@08:08:09

AUTHOR: GERSON, LEON L

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

Pt cancelled at time of appointment.

/es/ LEON L GERSON
MD

Signed: 12/23/1998 08:08

LOCAL TITLE: PSYCHIATRIC NURSE PRACTITIONER

DATE OF NOTE: SEP 24, 1998@11:26:56 ENTRY DATE: SEP 24, 1998@11:26:56

AUTHOR: BERENBACH, JOANN

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

Vet seen as walk in.

Vet states the nefazadone does not seem to be effective in tx his depression, vet states he is also experiencing sexual side effects which he is unwilling to tolerate and he has discontinued medication on his own.

Vet states he feels the trazadoen was helpful for sleep, and is willing to use this at HS. Vet states since discontinuing the nefazadone he has noted an increase in his depressive feelings, and states he has begun to

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experience fleeting suicidal ideations without plan. Vet is concerned that if untreated the depression will intensify.

Vet is oriented x 3. His affect is blunted, mood depressed. He presents with mild [psychomotor retardation. He denies s/i at this time. He is future oriented and does not present with psychotic sx.

A: side effects to nefazadone

Depression

P: d/c nefazadone

trazadone 50 mg at hs for sleep

start prozac 10mg x 7 days then ^20mg

Medications prescribed until appt with Dr. Sprague.

appt with Dr. Sprague 10/14 @ 1420.

/es/ JoAnn G. Berenbach

PMHNP, CS

Signed: 09/25/1998 09:29

LOCAL TITLE: PT ED: ASSESSMENT (T)

STANDARD TITLE: EDUCATION REPORT

DATE OF NOTE: AUG 16, 1998@16:58

ENTRY DATE: AUG 16, 1998@16:58:11

AUTHOR: EVERETT,ROSLEIN M

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

PATIENT EDUCATION ASSESSMENT

From Outpatient Update survey

[1] Place Y for Yes or N for No after each choice:

Ready to learn. Pt states yes.

Able to read. yes

[2] Comments (required if No to either choice):

Learns best by hearing, seeing, doing.

[3] Place Y for Yes or N for No after each BARRIER TO LEARNING identified; UE for unable to evaluate; NA for barrier exists but does not affect current training:

Visual impairment.	Glasses
Hearing impairment.	Hearing aids
Physical impairment.	Unspecified walking aid.
Emotional impairment.	Y
Cognitive impairment.	N
Cultural	N
Religious	N
Financial	Y

[4] Comments (required if cultural or religious barriers may affect training):

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CULTURAL: Mark Cultural barrier with a Y, if pt has special learning or language need, stated a particular influence on learning preference or is homeless. Mark a Y by the Religious barrier, if the special need or influence is related to religion.

Pt states background is: Hispanic-White and Irish

Pt states that place or culture in which pt grew up had no particular influence on the way pt prefers to learn information.

Pt states no special learning or language need.

Pt lives:

alone with a spouse/significant other (girlfriend)

Pt has a place to live and has lived there 4-8 months.

FINANCIAL:

Pt has FINANCIAL problems.

EMOTIONAL: Mark Emotional barrier with a Y if patient feels other than calm, happy, fine.

Generally when pt comes to the VA, he/she feels: SAD

COGNITIVE: Mark Cognitive barrier with a Y if pt has concentration or memory problems.

When pt is at the VA, it is not hard for pt to concentrate.

Pt does not have a hard time remembering things.

[5] TEACHING NEEDS Identified (place an X by all that apply):

Pt wants to set up an ADVANCE DIRECTIVE.

Pt answered the survey question: "Nothing right now".

Community Resources (Pt marked "Community Resources") *

Continuity of Care

Food-Drug Interactions (Pt marked "Medications") *

Medical Equipment

Medications (Pt marked "Medications") *

Nutritional Counseling (Pt marked "What to eat") *

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Rehabilitation Techniques

Procedures/Tests (Pt marked lab tests/medical procedures) *

Self Care/Safety (Pt marked "caring for self") *

Disease/Health Condition (Pt marked "Diagnosis/Health Condition") *
For the following: *

Advance Directives (Pt marked wanting an ADVANCE DIRECTIVE) XXX

Preventive Health Care (Keep well) *

Personal Hygiene & Grooming

Other (specify) (Pt marked getting training/help or other) *
For the following: */es/ ROSLEIN M. EVERETT, D.O.
STAFF PSYCHIATRIST
Signed: 08/16/1998 17:05LOCAL TITLE: NURSE PRACTITIONER NOTE
DATE OF NOTE: AUG 14, 1998@10:25 ENTRY DATE: AUG 14, 1998@10:25:38
AUTHOR: BERENBACH, JOANN EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Vet is seen as walk in.
 Vet states his girlfriend has noticed a change in him. Vet describes his tolerance as being better, with decreased irritability, and increased activity. Vet states his sleep is good. Vet denies side effects to medications, he denies s/i and h/i. Vet states he does have an occassional beer.
 Vet continues to have restricted affect, he is able to converse without hesitation of slow thinking evident.
 A: mild improvement in mood
 P: ^nefazadone 100mg BID, # 60 with 1 r/f
 Appt with Dr. Sprague, 10/14

/es/ JoAnn G. Berenbach
PMHNP, CS
Signed: 08/14/1998 16:14LOCAL TITLE: PHYSICAL THERAPY INITIAL ASSESSMENT: OPT
STANDARD TITLE: PHYSICAL THERAPY INITIAL EVALUATION NOTE
DATE OF NOTE: JUL 24, 1998@19:30 ENTRY DATE: JUL 24, 1998@19:29:22
AUTHOR: GILLETTE, VIRGINIA EXP COSIGNER: LUSSIER, WILLIAM
URGENCY: STATUS: COMPLETED

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
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Progress Notes

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Patient is a 48 year old gentleman, referred to P.T. by W. Lussier, PA-C, for: this pt. may benefit from PT for review of back care, bed positioning, home exercise program for his chronic back pain. Please consider referral.

S. Patient states that he was in a motorcycle / car accident in 1978. He fractured his L1, and L2, which required fusion, and the placement of two Harrington rods. He had a lot of physical therapy after the accident progressing from mobility in a wheelchair, to walking with a walker, and then a cane. He now ambulates without the need for an assistive device. Recently he saw Dr. Plotkin for his lt knee which was injured in Vietnam (gunshot wound), and was told he needed to have arthroscopic surgery. This surgery is on hold, as he has been having blood in his urine, and is getting this checked out at the Portland VAMC. His left ankle has been swelling. A few months ago, he changed his boot style, and has found that the Honchos boots make him feel like he is walking on air, and has proven to be beneficial in decreasing his low back pain. He is unable to sleep throughout the night, and has a very tight / painful neck in the mornings. He agrees with the P.T. plans as detailed below.

Patient's goal: decrease his pain

O. Self Care: Shoes - appropriate and in good repair

Belt - he is using a wide leather belt which pulls tightly, and may be contributing to his LBP

Pockets - he has large number of keys in his front jeans pocket, and a wallet / handkerchief in his back pockets which may be contributing to his LBP

Cervical Pillow - patient should benefit from the use of a cervical pillow to facilitate head/neck position at night, discussed types of cervical pillows available, and recommended the use of a Wal-pil-o. He is willing to try same, and is able to pick up at medical supply store today.

Ther Ex: patient instructed in SAQ Ther Ex bilaterally using a coffee can to position knees. Exercise to be completed for up to 10 minutes each rt/lt knee, twice a day. He demonstrated, and verbalized good understanding of this exercise for effective/ safe completion of same. Increasing strength in his bilateral LE's will help facilitate a decrease his back pain.

Discussed having an appointment with Dr. Morrison, physical medicine physician from White City Dom., for pain control recommendations. He was agreeable with that plan.

A. Patient with long standing back pain complicated by residuals from gunshot wound injury to his lt knee. He has had extensive physical therapy in the past, and has done well in improving his functional home/community ADL's.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

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STG: 1. arrange for patient to be seen by Dr. Morrison at this facility for recommendations to facilitate decrease in his back pain: 1 - 2 Tx
 2. arrange for patient to obtain a wal-pil-o to facilitate comfort positioning when supine: 1 - 2 Tx
 3. instruct in Ther Ex for strengthening his bilateral legs: 1 - 4 Tx
 4. recommend changes in his dressing habits that will facilitate decrease in his back pain: 1 - 3 Tx

LTG: facilitate pain to tolerable level for functional home/community ADLs

Prognosis: Fair +; patient with long standing pain, however, he appears to be motivated to follow a home Ther Ex program, and self care recommendations

P. 1. schedule with Dr. Morrison
 2. OERR for wal-pil-o to W. Lussier, PA-C for review/ approval
 3. Monitor Ther Ex modify as needed
 4. Monitor self care changes, and modify / expand as needed
 5. See again: 14 August 98 @ 1000

frequency: 1X month
 duration: 1 - 4 months

Time in: 1310 out: 1440

/es/ VIRGINIA GILLETTE, MPH, PT
 Supervisor, Physical Therapy
 Signed: 07/24/1998 20:10

/es/ WILLIAM A. LUSSIER, PA-C
 Physician Assistant- Certified
 Cosigned: 07/29/1998 13:26

LOCAL TITLE: OCCUPATIONAL THERAPY PROGRESS NOTE
 STANDARD TITLE: OCCUPATIONAL THERAPY NOTE
 DATE OF NOTE: JUL 24, 1998@16:11 ENTRY DATE: JUL 24, 1998@16:11:36
 AUTHOR: BEST,JEAN EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

SUBJECTIVE

Pt. did not stay for OT appointment scheduled after PT. Will reschedule

/es/ Jean Best, OTR/L
 Supervisor, Occupational Therapy
 Signed: 07/24/1998 16:12

LOCAL TITLE: PT ED: MED EQUIPMENT CERTIFICATION (T)

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DATE OF NOTE: JUL 24, 1998@14:18 ENTRY DATE: JUL 24, 1998@14:18:05
 AUTHOR: GILLETTE, VIRGINIA EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

EQUIPMENT:

Wal-pil-o, a cervical pillow

I certify that I have educated the patient in the use of the above requested equipment.

/es/ VIRGINIA GILLETTE, MPH, PT
 Supervisor, Physical Therapy
 Signed: 07/24/1998 14:18

LOCAL TITLE: NURSE PRACTITIONER NOTE
 DATE OF NOTE: JUL 24, 1998@08:32 ENTRY DATE: JUL 24, 1998@08:32:12
 AUTHOR: BERENBACH, JOANN EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

Vet seen as walk in.
 Vet states 2 yr ago he was tx for depression, was given trazadone which worked well for him. Currently he is again experiencing increased stress related to health problems and financial issues.
 Vet states he has found himself isolating, his sleep is poor, sleeps very little and restlessly. Sleep is generally not solid due to back pain and Harrington rods in his back. Recently it is worse. Mild and fleeting suicidal ideation which vet states he would not act on due to his connection to his children and grandchildren.
 Vet denies alcohol or drug use. He states he has not had any cardia problems and states his father is an adult onset diabetic.
 Vet's affect is sad, he is cooperative, soft spoken and able to articulate his concerns. Vet agrees that if he becomes increasingly depressed or if suicidal ideation occurs he will present for assessment.
 A: Recurrent depression
 P: Trazadone 50mg i q hs, x21days
 Nefazadone 100mg 1/2 am and 1/2 at 5pm
 Risks benefits and side effects of medications discussed , written information given.
 RTC in 3 weeks for assessment and medication monitoring
 RTC for appt with Dr. Sprague 10/14 1420

/es/ JoAnn G. Berenbach
 PMHNP, CS
 Signed: 07/24/1998 13:38

LOCAL TITLE: CONSULT-PHYSICAL THERAPY
 STANDARD TITLE: PHYSICAL THERAPY CONSULT
 DATE OF NOTE: JUL 09, 1998@10:08 ENTRY DATE: JUL 09, 1998@10:08:35

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AUTHOR: GIBBS, JENNIFER M
URGENCY:EXP COSIGNER: LUSSIER, WILLIAM
STATUS: COMPLETED

Order received on 5/18/98 by W. Lussier for back pain (see OERR consult for details.) Pt. is scheduled with Virginia Gillette, MPH, PT on 7/24/98@1300 - tandem with other medical appts. Pt. not seen earlier due to staffing consideration.

/es/ JENNIFER M GIBBS
PHYSICAL THERAPIST
Signed: 07/09/1998 10:10

/es/ WILLIAM A. LUSSIER, PA-C
Physician Assistant- Certified
Cosigned: 07/24/1998 15:12

LOCAL TITLE: OCCUPATIONAL THERAPY PROGRESS NOTE

STANDARD TITLE: OCCUPATIONAL THERAPY NOTE

DATE OF NOTE: MAY 22, 1998@16:10

ENTRY DATE: MAY 22, 1998@16:10:02

AUTHOR: BEST, JEAN

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

SUBJECTIVE

Pt. seen this date as scheduled. He states that the sock aid has been helpful. He is wearing the L wrist brace during day, off and on, during activities; he finds that it has been helpful in reducing pain. He will continue to wear it. He plans to ask ortho to look at L hand today; has appointment for assessment of knee. Will f/u with OT after PT assessment, and ortho (assuming they are able to assess hand). No specific OT plan at this time.

/es/ Jean Best, OTR/L
Supervisor, Occupational Therapy
Signed: 05/22/1998 16:15

LOCAL TITLE: CONSULT-OCCUPATIONAL THERAPY INITIAL ASSESSMENT

STANDARD TITLE: OCCUPATIONAL THERAPY CONSULT

DATE OF NOTE: MAY 15, 1998@16:51

ENTRY DATE: MAY 15, 1998@16:50:01

AUTHOR: BEST, JEAN

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

SUBJECTIVE

Order received 4-23-98 for OT. Pt. scheduled and seen 5-13-98. Pt. is 47 y/o single male. History includes spinal fusion '79 with Harrington rods, chronic back pain, OA knees, depression.

Pt. lives with girlfriend who assists with IADL's. Pt. does some microwave cooking, able to drive, essentially indept in ADL's with minimal assist at times due to above physical diagnoses. He spends his time watching TV,

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reading. Pt. c/o of waking up each morning with arms and hands numb. Takes about 5 minutes before sensation returns. Has apparently been occurring ~20 yrs. Cannot sit or stand for long periods due to back pain. Has recently noted decreased strength in L wrist and pain dorsal, radial side of hand upon gripping.

Time limited today for assessment. Suggested that pt. try putting foot up on small stool when standing at sink for grooming, alternate feet, as he indicated that it was difficult to stand long enough to shave. Recommended using a lumbar pillow, roll when sitting and driving. Sock aid given today to assist with donning socks, he has difficulty with this due to back pain.

R hand dominant
 AROM WFL UE's/hands
 Strength/Sensation not tested
 Grip R 70# L 55# with c/o a little pain
 Tip Pinch 13# B
 Finklestein neg B
 Tinel/Phalens neg B

Pt. wanted to try wearing a wrist brace on L hand to see if it would help with pain. It may not, but worth a try. Fit and issued with wrist brace to be worn at night, 2 hours late morn, 2 hours late afternoon. Precautions given with good understanding.

May benefit from PT referral for review of back care, bed positioning, exercise program. C/o a leg length discrepancy also.

OBJECTIVE

written in subjective

ASSESSMENT

chronic pain with deficits in IADL's; may have more recent dysfunction L hand?; would benefit from PT referral

PLAN

1. reassess and f/u 5-22-98 at 0930
2. recommend referral to PT

/es/ Jean Best, OTR/L
 Supervisor, Occupational Therapy
 Signed: 05/15/1998 17:19

LOCAL TITLE: PSYCHIATRIST NOTE

STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE

DATE OF NOTE: APR 23, 1998@12:48 ENTRY DATE: APR 23, 1998@12:48:50

AUTHOR: SPRAGUE, CHARLES P I EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

S/O: Consult request from Dr. Clinger received on printer this AM. It asks for today consult re: recurrent depression. Veteran was in Dr.

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Clinger's clinic.

Called and spoke with Dr. Clinger who says he sent patient over to MHC walk - in. Pt. has not reported in, but when and if he does he will be seen by the walk - in personnel.

No formal consultation is needed, just the veteran's self - presentation at walk in.

/es/ CHARLES SPRAGUE, M.D.

PSYCHIATRIST

Signed: 04/23/1998 12:50

LOCAL TITLE: PRIMARY CARE PROVIDER

STANDARD TITLE: PRIMARY CARE NOTE

DATE OF NOTE: APR 23, 1998@10:51

ENTRY DATE: APR 24, 1998@10:28:13

AUTHOR: CLINGER, DAVID P

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

PATIENT: SANDOVAL, LEONARD PROVIDER: D. CLINGER, M.D.

ADMD: DD: 04-23-98@1051 DT: 04-23-98(7601) TR:bcl/ExecuMed

CHIEF COMPLAINT:

1. Lump on left side.

This is a 47-year-old veteran from southern Oregon. He has had a lump on his left side for the last two months. It has been intermittently tender, but is not so today. He has no injuries to the area, and he has had no previous medical evaluation or treatment for this.

2. He has a history of depression. He is recently divorced. His mother died, and he is now feeling more depressed. He would like to return to Mental Health for further follow up care.

3. Left knee pain, service connected from a gunshot wound in 1970, postoperative. He continue to need Tylenol and ibuprofen.

He would like to see an orthopedist regarding status of the knee and his ultimate management plan.

4. He denies any ulcers, renal problems, or other contraindications to NSAIDs.

5. Chronic back pain. Harrington rods in 1979. He is limited in his physical activities by this and he would like further evaluation.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature 99.4 degrees; pulse 84; respirations 18; blood pressure 131/83; weight 195.0 pounds.

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GENERAL: The patient is alert and oriented. He moves without difficulty.

SKIN: He has a 4 cm x 6 cm soft subcutaneous area under the left axillary line below the axilla. There are no skin changes, no nodes, no firmness, and no attachments. This is entirely consistent with a lipoma.

He has surgical scars on his back and left knee, and he has some stiffness but can move both.

IMPRESSION:

1. Lipoma.
2. Depression.
3. Osteoarthritis.

PLAN:

1. Explained the etiology and expectations for a lipoma. He will have this reevaluated when he has his new patient examination, and he will be assigned to a provider for this.
2. He will be referred to Orthopedics for a followup on his knee and back problems, postoperative.
3. He will be referred to Mental Health for depression.
4. He was given refills of his prescriptions for ibuprofen and acetaminophen.
5. Warnings given.

/es/ DAVID H. CLINGER MD
STAFF PHYSICIAN
Signed: 04/24/1998 12:00

LOCAL TITLE: PSYCHIATRIST NOTE
STANDARD TITLE: MENTAL HEALTH PHYSICIAN NOTE
DATE OF NOTE: OCT 11, 1996@10:30 ENTRY DATE: NOV 11, 1996@14:34:43
AUTHOR: EVERETT, ROSLEIN M EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Pt was a NO Show for his scheduled appt today in the MHC.

/es/ ROSLEIN M. EVERETT, D.O.

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STAFF PSYCHIATRIST
Signed: 11/11/1996 14:35

LOCAL TITLE: General Note
DATE OF NOTE: APR 22, 1996@08:22 ENTRY DATE: APR 22, 1996@08:22:30
AUTHOR: WARD,SUSAN E EXP COSIGNER:
URGENCY: STATUS: COMPLETED

VET RETURNED FOR HIS SCHEDULED APPTN. AND HE WAS ALERT, OX3, EYE CONTACT WAS GOOD. HE WAS EUTHYMIC. HE DENIED ANY SI/HI. HE DENIED ANY ETOH OR DRUG USE. HE DENIES ANY LEGAL PROBLEMS. NO C/O S.E. FROM PRESENT MEDICATION. HE REPORTED THAT HIS MOOD HAS STABILIZED AND THAT HE HAS REKINDELED A RELATIONSHIP WITH HIS DYING MOTHER, AS WELL AS OTHER FAMILY MEMBERS, EVEN THOUGH HIS DIVORCE WITH HIS WIFE CONTINUES, PER HER WISHES. HE IS HOPEFUL TOWARD HIS FUTURE AND IS GOAL ORIENTED.

DX: DEPRESSION, ADJUSTMENT REACTION
P- RENEW TRAZODONE 50MG TABS. TAKE 1 TAB QAM AND 2 TABS QHS X30 DAYS WITH 2 REFILLS. RTC WITH CALDERON CLINIC 7/9/96 @ 8:30.

/es/ SUSAN E WARD
PMHNP,CS
Signed: 04/22/1996 08:30

LOCAL TITLE: General Note
DATE OF NOTE: MAR 22, 1996@09:08 ENTRY DATE: MAR 22, 1996@09:08:37
AUTHOR: WARD,SUSAN E EXP COSIGNER:
URGENCY: STATUS: COMPLETED

VET CAME AS TO MHC AS A WALK-IN THIS AM. HE WAS SEEN WITH DR. CALDERON ALSO PRESENT. HE WAS ALERT, OX3, GOOD EYE CONTACT. HE DENIED ANY SI/HI. HE DENIED ANY ETOH OR DRUG USE. HE REPORTED "FEELING SO MUCH BETTER"WITH THE CHANGE OF MEDICATION TO TRAZODONE. HE REPORTED HE WAS TO GO THIS COMING WEEK TO ARIZONA, TO VISIT HIS SICK MOTHER AND THAT HE WAS DOING WELL AND HAD MANY SUPPORT SYSTEMS IN PLACE. HE DENIED ANY S.E.FROM TRAZODONE AND RISK/BENEFITS WERE REVIEWED. HE WAS GIVEN RENEWAL OF SCRIPT:TRAZODONE 50MG TABLETS, TAKE 1 TAB PO QAM AND 2TAB PO QHS.#90 X 30DAYS. NO REFILLS. RTC: ONE MONTH 4/22/96 @08:00.

/es/ SUSAN E WARD
PMHNP,CS
Signed: 03/22/1996 09:16

LOCAL TITLE: General Note
DATE OF NOTE: MAR 06, 1996@09:53 ENTRY DATE: MAR 06, 1996@09:53:06
AUTHOR: WARD,SUSAN E EXP COSIGNER:
URGENCY: STATUS: COMPLETED

VET WAS TELEPHONED THIS MORNING TO ASSESS HIS CURRENT STATUS, SINCE

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HE HAD PHONED IN 2/26/96 TO REPORT PROBLEMS WITH HIS ZOLOFT. HE DID AGREE, ON 2/26, TO D/C THE ZOLOFT AND RTC AS A WALK-IN, FOR CONTINUED F/U.

TODAY HE REPORTS FEELING MORE HOPEFUL, HIS SON IS VISITING HIM FROM ARIZONA, AND HE DENIES ANY SI/HI AT PRESENT. HE CANCELLED TOMMORROW'S APPTN. WITH DR. CALDERON AND STATES HE HAS OTHER OLIGATIONS AT THAT TIME. HE STATES HE WILL RETURN AS A WALK-IN IN THE NEAR FUTURE FOR CONTINUED F/U CARE. HE WAS APPRECIATIVE FOR THE CONCERNED PHONE CALL.

/es/ SUSAN E WARD

PMHNP,CS

Signed: 03/06/1996 09:58

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